

LAW OF THE REPUBLIC OF INDONESIA
NO. 7/1994

CONCERNING
RATIFICATION OF AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

BY THE GRACE OF GOD THE ALMIGHTY
PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that the objective of national development is to realize an equitable and prosper community that is distributed evenly on material and spiritual basis based on Pancasila and the 1945 Constitution in the auspice of the Unitary Sate of the Republic of Indonesia that is independent, united, sovereign, and having peoples sovereignty in safe, peaceful, ordered and dynamic national living circumference in the world intercourse environment that is independent, equitable, friendly, ordered and peaceful;
- b. that in implementation of the national development, especially in economic sector, efforts are required to, among others, continuously improve, widen, establish, and secure markets for all products both goods and services, including investment aspects and intellectual property rights relating to the trading, and to improve competitiveness especially in international trades;
- c. that in a line with the aspirations as referred to in letters a and b above, Indonesia always makes efforts to enforce the basic principles contained in the General Agreement on Tariff and Trade/GATT 1947, together with further agreements that are generated before Uruguay Round conference;
- d. that from the series of Uruguay Round conference that was started since 1986, the Agreement Establishing The World Trade Organization has been generated that henceforth will administer, control and give certainty on implementation of all undertakings in the General Agreement on Tariff and Trade/GATT and results of the Uruguay Round conference;
- e. that in Meeting of participating Ministers of Uruguay Round on April 15, 1994 in Marrakesh, Maroko, the Government of Indonesia has participated in signing of the Agreement Establishing The World Trade Organization together with all undertakings that are made as Attachments 1, 2 and 3 as an addition to such an Agreement;
- f. that on the aforementioned considerations, it is considered necessary to ratify the Agreement Establishing The World Trade Organization with Law;

In view of:

Article 5 paragraph (1), Article 11, and Article 20 paragraph (1) of the 1945 Constitution;

With the approval of
THE HOUSE OF PEOPLE'S REPRESENTATIVES

DECIDES :

To stipulate:

LAW ON RATIFICATION OF THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION.

Article 1

To ratify the Agreement Establishing the World Trade Organization together with Attachments 1, 2 and 3 thereto, the original text copy in English version and its translation into Indonesian version of which is attached hereto, as an integral part of this Law.

Article 2

This Law shall come into force as of the effective date of the Agreement as contemplated in Article 1.

For public cognizance, this Law shall be promulgated by placing it in the Statute Book of the Republic of Indonesia.

Ratified in Jakarta
on November 2, 1994

PRESIDENT OF THE REPUBLIC OF INDONESIA
Sgd
SOEHARTO

Promulgated in Jakarta
on November 2, 1994

MINISTER/SECRETARY FOR THE STATE OF THE REPUBLIC OF INDONESIA
sgd.
MOERDIONO

ELUCIDATION
ON
LAW OF THE REPUBLIC OF INDONESIA
NUMBER 7 OF 1994
ON RATIFICATION OF AGREEMENT ESTABLISHING THE WORLD TRADE
ORGANIZATION

GENERAL

I. BACKGROUND

Stipulation of the Peoples Consultative Assembly of the Republic of Indonesia No. II/MPR/1993 on the State Policy Guidelines affirms, among others, the free-active international politic principle that is increasingly able to support the national interests and directed to give contribution in realizing the new world arrangement based on independence, perpetual peace and social equity, and purposed to improve international cooperation, by stabilizing and increasing the roles of Non-Block Movement.

The State Policy Guidelines also outlines that global development that contains opportunities that support and accelerate the implementation of national development need to be utilized as good as possible by encouraging export, especially non oil and gas commodity, competitive power improvement and overseas market breakthrough and expansion.

Based on the aforesaid principles, it is reasonable if all developments, changes and other global trends are predicted to be able to affect the national stability and attainment of national objectives, need to be kept abreast thoroughly so that proper and quick measures to overcome can be taken early.

With such an attitude, the national development policies that are based on even distribution of the development and its results, economic growth, and national stability, can be maintained. In the framework of facing to development and changes, and utilizing the existing opportunities, Indonesia continuously participate in efforts of increasing international cooperation, especially in accelerating the realization of international trade system that is open, fair, and well-ordered and free from constraints and limitations that are so far deemed disadvantageous to the international trade.

In national scale, problems incurred in economic sector are not simple. Change in national economic orientation toward export market has brought various consequences including the need for increase of overseas trade activities, particularly in the field of non-oil and gas products. Not less important thing is the need to increasingly establish various export supporting facilities and infrastructures, and mutually benefit interrelation between the producers and the consumers.

Meanwhile, the policy to increase export of non-oil and gas that is aimed at supporting the implementation of national development is basically also facing to various constraints and challenges that need comprehensive attention.

The constraints and challenges can be market uncertainty and inter-states competition that is increasing sharply.

Generally, uncertainty of world economic development is also as a result of changes that continuously occur rapidly, both in political, economic, socio-cultural, and security defense life.

In the framework of international economic and trade relationship, the Indonesian success in increasing export and national development will also depend on the development of world economic system and establishment of international trade system, in addition to the ability of national economic adaptation to the existing development. One of factors that highly affect the world economy, is the arrangement or system that is the basis in the international trade relationship.

The system in question is the General Agreement on Tariffs and Trade/GATT. That Agreement was realized in 1947, and Indonesia has been participating in that agreement since February 24, 1950.

The benefit of Indonesia participation in the aforesaid agreement is principally not only allowing the international market opportunities opened more widely, but also providing a better multilateral protection framework for the national interests in international trade, particularly facing to the trade partners. Therefore, consequence that needs to be followed up is, among others, the need for improving and preparing the necessary statutory regulations. Not less importantly are the preparation, growing-up and improvement of quality of human resources, particularly familiarization among the economic practicers and the administration apparatuses, with all agreements and various constraints and challenges circumventing them.

II. GENERAL AGREEMENT ON TARIFFS AND TRADE

General Agreement on Tariffs and Trade/GATT is a multilateral trade agreement with a purpose to create free, fair trades, and to assist with creating economic and development growth in order to realize human welfare. Until nowadays, more than 125 states have been participating in the Agreement.

Viewed from its objective, the GATT is aimed as an effort of struggling for the creation of free, fair trade and stabilizing the international trade system, and struggling for decreasing the import duty tariffs and eliminating other trade constraints.

As a multilateral system that embodies international trade principles, the GATT outline a principle that international trade relationship shall be conducted on a non discriminatory basis. This means, a state that becomes a member of GATT is not allowed to give special treatment to a certain states. Every state must give equal and reciprocal treatment in the international trade relationship. The GATT functions as a consultative forum for member countries in discussing and solving the problems that incur in international trade sector, the GATT also functions as a forum of dispute settlement in trade sector between the participating countries.

The GATT is also a forum to bring forward objections from a country that feels of being impaired or obtaining unfair treatment from another participating country in trade sector. In principle, the problems incurred are solved bilaterally between the countries that are involved in trade dispute through consultation and conciliation, and its results are notified to the GATT.

In order to insure that the inter-states trade can ran well, the GATT regulates the provision on import duty tariff binding that is imposed by the participating countries. In addition, the GATT also stipulates provisions to encourage trade activities based on honest competition principle, and reject some practices, such as, dumping and giving subsidy to the export products.

Principles specified in the GATT do not prohibit protection to the domestic industries, but such a protection is only allowed through tariff protection rather than actions such as import prohibition or import quota.

The GATT prohibits any quantitative trade limitations, such as application of import and export quota. Nevertheless, exception for such as prohibitions is possible as long as the limitation is a safeguard action in order to overcome, among others, difficulty of payment balance-sheet. In its implementation, such a imitation shall only applied for a limited period, and must progressively be reduced or eliminated immediately after the difficulty in payment balance-sheet has been overcome.

The GATT allows the participating countries to obtain exception from certain obligations if they are encountering problems in economic and trade sector. In order to protect industries that are still in growth phase, the GATT allows a country to prohibit import or not to apply tariff concession it gives in the framework of GATT for a certain period.

Such an action can be taken if the related country has no other choices in facing to upsurge of imported products so that resulting in difficulty to domestic industry.

The grouping of a number of countries into regional cooperation in order to eliminate the trade constraints among them is also allowed, as long as still conforms to the GATT provisions. The GATT provision states that existence of regional groups is allowed in order to increase trade among countries in these groups, as far as this will not result in trade constraints for countries outside these regional groups.

By bewareing the difference of socio-economic levels among the GATT participating countries that allow for implementation of various provisions and disciplines regulated, the GATT recognizes necessity of special and different treatment to the developing countries.

GATT provision that regulates this special treatment recognizes the existence of developing countries that obtain more favorable conditions in their effort of entering the world markets for their products.

The developed countries are not allowed to apply constraints against the export of primary commodities and other products that are special interest of the most undeveloped countries. The developed countries may not also expect reciprocal actions from the developing countries to reduce or eliminate constraints taking the form of tariff or non-tariff.

In addition it is also affirmed on different and more favorable, reciprocal treatments and full participation of the developing countries, that further becomes a basis for granting of special treatment through Generalized System of Preferences (GSP) by the developed countries to the developing countries, and the allowed special trading treatment for the most undeveloped countries.

III. MULTILATERAL TRADE NEGOTIATION ROUND

In the framework of GATT, multilateral negotiations in trade sector are conducted through negotiation rounds.

After seven years of negotiation, on December 15, 1993 the GATT has successfully completed the multilateral trade negotiation round, Uruguay Round. In the history of GATT, such a round is the eight one. Multilateral negotiation rounds taking place prior to the Uruguay Round are, respectively, Geneva Round (1947), Anney Round (1949), Torquay Round (1950-1951), Geneva Round (1956), Dillon Round (1960-1961), Kennedy Round (1964-1967), and Tokyo Round (1973-1979).

The issues discussed since the Geneva Round until the Dillon Round basically emphasize only on the efforts of reducing and eliminating the trade tariff constraints. In the Kennedy Round,

scope of discussion did not only relate to the efforts of reducing and eliminating tariff, but also preparation of regulations on anti dumping.

Further, in the Tokyo Round, in addition to reduction or elimination of tariff and non-tariff constraints that cover subsidies and countervailing measures, Trade Technical Barriers, Import Licensing Procedures, Goods and Services Supply by the Government, and Customs Assessment, a number of agreement frameworks in agricultural sector were also discussed and agreed including Arrangement Regarding Bovine Meat and International Dairy Arrangement and Trade in Civil Aircraft.

Compared to the previous rounds that only discussed issues of trade constraints in the form of tariff and non-tariff, the Uruguay Round also cover trade in services, trade aspects of Intellectual Property Right, and trade related investment policies.

IV. URUGUAY ROUND

A. PUNTA DEL ESTE DECLARATION

In 1986, an idea arose to launch a new round negotiation considering the commitments agreed upon in the previous rounds were not fully implemented. This is partly as a result of the very bad condition of world economy for that time being, so that impossible for implementing the commitments consistently. With such a background, on September 20, 1986, a Ministerial Meeting was held in Punta del Este, Uruguay, that generated a Declaration to launch a multilateral trade negotiation round that is later known as Uruguay Round.

B. OBJECTIVES OF URUGUAY ROUND.

In general, the objective of Uruguay Round is to create an international trade system that is more free and fair by still taking into consideration interest of the developing countries in particular.

The aforesaid objective is described further as follows:

1. Access to market for export products through the efforts of reduction and elimination of import duty tariff, quantitative limitation and other non-tariff constraints;
2. expansion of international trade product scope, including trade in services, arrangement on trade aspects of Intellectual Property Right, and trade related investment policies;
3. increase of GATT roles in supervising the implementation of commitments that have been achieved, and improving multilateral trade system based on principles and provisions as specified in the GATT;
4. improvement of GATT system to be more responsive to the development of economic situation and accelerating GATT relation with the international organizations that relate particularly to the trade prospect of high technology products;
5. development of cooperation forms at national and international levels in the framework of combining other economic policies that affect the growth and development of economy, by means of improving the international monetary system.

C. MATTERS NEGOTIATED

During the course of Uruguay Round, there are 15 matters becoming topics in the negotiation agenda, namely:

1. Tariffs

Negotiation in this field is purposed to eliminate or decrease tariff rate including reduction of high tariff and escalated tariff, by emphasizing on widening tariff concession scope among the participating countries;

2. Non-Tariff Measures

Negotiation in this field is purposed to eliminate various trade constraints that are non-tariff in nature, by still taking into consideration the commitment to reduce as much as possible the similar trade constraints (Standstill and Rollback Principles);

3. Tropical Products

Negotiation in this field is purposed to create free market comprehensively for trade in tropical products, including those in the form of processed and semi-processed forms. It is specifically concerning negotiations in tropical product sector, tropical countries for the developing countries have agreed to give special attention;

4. Natural Resource-Based Products

Negotiation in this field is purposed to decrease or eliminate tariff or non-tariff trade constraints for trade in natural resource-based products, including those in the form of processed and semi-processed forms;

5. Textiles and Clothing

Negotiation in this field is purposed to formulate how to reintegrate the textiles and clothing sector into the GATT framework, based on tightened provisions and disciplines;

6. Agriculture

Negotiation in this field is purposed to improve access to market by decreasing import constraints, improving competitive climate through increasing discipline in the use of either direct or indirect agricultural subsidies, and reducing negative effects of the provisions of Sanitary and Phytosanitary;

7. GATT Articles

Negotiation in this field is purposed to review the GATT rules and disciplines, to satisfaction of member countries;

8. Multilateral Trade Negotiation Agreement/Arrangements

Negotiation in this field is purposed to make clear, rectify and widen various arrangements and agreements resulted from the Tokyo Round negotiation;

9. Subsidies and Countervailing Measures

Negotiation in this field is purposed to rectify the GATT rules and disciplines relating with all forms of Subsidies and countervailing measures as specified in the Rules on Subsidy and Surcharge as Countervailing Measure;

10. Dispute Settlements

Negotiation in this field is purposed to rectify and tighten the provisions and procedures of trade dispute settlement among the member countries;

11. Trade Related Aspects Goods/TRIPS (Trade Aspects Related to Intellectual property Rights, including trade in counterfeit goods).

Negotiation in this field is purposed to:

- a. improve protection to the Intellectual Property Right of the products traded-in;
- b. secure the implementing procedure of Intellectual Property Right not impeding the trade activities;
- c. formulate rules and disciplines on the implementation of Intellectual Property Right protection;
- d. develop the international cooperation principles, rules and mechanisms to handle the trade in goods resulted from falsification or hijacking of Intellectual Property Right. All of them by always considering various efforts that have been made by the World Intellectual Property Organization (WIPO);

12. Trade Related Investment Measures/TRIMs.

Negotiation in this field is purposed to reduce or eliminate all policies in investment sector that may impede the trade activities;

13. Functioning of the GATT System/FOGS

Negotiation in this field is purposed to improve the GATT system in supervision the implementation of agreements achieved, including trade practices that affect the functioning of international trade system, to improve the roles of GATT as decision maker, and to increase contribution of GATT by improving its close relation with the international organizations in monetary and financial sectors;

14. Safeguards

Negotiation in this field is purposed to improve the GATT rules concerning discipline and criteria in taking safeguarding actions, including improving multilateral trade negotiations;

15. Services

Negotiation in this field is purposed to set the framework of principles and rules for trade in services.

D. NEGOTIATION PROCESS

The Uruguay Round negotiation took place tightly, so that the negotiation period that was initially planned to run for 4 years as from the Uruguay Round launching, could not be reached. The negotiation process took place in the following stages:

1. Initial Negotiation Stage (1986 - 1988)

This stage took place immediately after completion of Ministerial Meeting in Punta del Este, Uruguay, in 1986. In this stage, negotiation engendered some initial texts in various sectors, that were used later as a basis for the next negotiation;

2. Interim Review Stage (1988)

In the Interim Review stage in Montreal, Canada in 1988, the negotiation process took place slightly delayed because of completely non-achievement of agreement in agricultural sector, textiles and clothing, safeguard, and trade aspects of Intellectual Property Rights;

3. Brussels Meeting Stage (1990)

This stage was initially purposed to terminate the Uruguay Round, however, since the non-achievement of agreement in agricultural sector especially between the United States of America and the European Society, then the Uruguay Round term was extended until 1991;

4. Chairman of Committee for Trade Negotiations Text Stage (1991)

The continued negotiation that took place in 1991 in Geneva could not result in comprehensive agreement, thus, in order to accelerate the completion of negotiation process, the Director General GATT as Chairman of Committee for Trade Negotiation proposed a draft final agreement text he developed at his own initiative for acceptance or refusal by the participating countries;

5. Geneva Meeting Stage (1993)

The final negotiation of Uruguay Round practically ran since the beginning of 1992 until the end of 1993, and successfully agreed the Uruguay Round Agreement Package that is based on the Draft Final Agreement Text that was developed at initiative of the Chairman of Committee for Trade Negotiation.

E. URUGUAY ROUND AGREEMENTS

1. Subjects of Agreements

In general, Uruguay Round Agreement Package includes three substances as follows:

- a. Establishment of the World Trade Organization in lieu of Secretariat GATT that further will administer and supervise the implementation of trade agreements and trade settlement disputes among the member countries;
- b. Reduction of import tariff of various trade commodities comprehensively, and access to domestic markets by decreasing the various existing trade constraints/protections;
- c. New arrangements in trade aspects related to intellectual Property Rights, trade related investment provision, and trade in services.

2. The Agreement Text

The Uruguay Round Agreement Package text consists of 3 parts, namely:

- a. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, being summary of results attained in the Uruguay Round negotiations;
- b. Agreement Establishing the World Trade Organization, is an agreement to establish the Uruguay Round of Multilateral Trade Organization, being summary of results attained in the Uruguay Round negotiations;
- c. Ministerial Decisions and Declarations concerning the implementation of agreements that have been successfully reached.

V. AGREEMENT ESTABLISHING WORLD TRADE ORGANIZATION

Agreement Establishing World Trade Organization regulates the functions, organizational structure and decision making mechanism of that organization, as follows:

1. Functions:

- a. supporting the implementation, administration, and management of agreements that have been achieved in order to realize the goals of these agreements;
- b. serving as a negotiation forum for the member countries regarding with agreements that have been achieved, including decisions that will be stipulated later in Ministerial Decisions;
- c. administering the implementation of provisions on Trade Dispute Settlement;
- d. administering mechanism of Reviewing Policies in Trade sector;
- e. creating a framework of international cooperation with the International Monetary Funds and the World Bank, and other affiliated bodies.

2. Organizational Structure:

- a. Ministerial Conference, that is the highest forum for decision making and regularly convenes meeting every two years;
- b. General Council, in charge as daily executive, consisting of member country delegates, and convenes meetings when necessary;
- c. Council for Trade in Goods, that is in charge of monitoring the implementation of agreements achieved in goods trade service;
- d. Council for Trade in Services, that is in charge of monitoring the implementation of agreements achieved in the trade in services sector;
- e. Council for Trade-Related Aspects of Intellectual Property Rights, that is in charge of monitoring the implementation of agreements in trade aspects of Intellectual Property Right;
- f. Dispute Settlement Body, that manages a forum for trade dispute settlement that incur among the member countries;
- g. Trade Policy Review Body, that is in charge of managing policy monitoring mechanism in trade sector.

3. Decision Making:

- a. Decision Making in Ministerial Conference and General Council meetings shall be conducted on a consensus basis, and if the consensus is not reached, the decision making shall be adopted based on majority votes;
- b. In the event of decision making by majority votes, then each member country shall have one vote. Agreements that are under management of the World Trade Organization and forming Attachments to its Establishment Agreement, are as follows:

Attachment 1 A :

Agreements on Trade in Goods, consisting of:

- 1) General Agreement on Tariffs and Trade 1994, embodying various meanings on interpretation of some provisions of GATT that are applicable so far;
- 2) Marrakesh Protocol GATT 1994;
- 3) Agreement on Agriculture;
- 4) Agreement on Sanitary and Phytosanitary Measures;
- 5) Agreement on Textiles and Clothing;

- 6) Agreement on Technical Barriers to Trade;
- 7) Agreement on Trade-Related Investment Measures;
- 8) Agreement on Implementation of Article VI;
- 9) Agreement on Implementation of Article VII;
- 10) Agreement on Preshipment Inspection;
- 11) Agreement on Rules of Origin;
- 12) Agreement on Import Licensing Procedures;
- 13) Agreement on Subsidies and Countervailing Measures;
- 14) Agreement on Safeguards.

Attachment 1 B :

General Agreement on Trade in Services, together with attachments thereto;

Attachment 1 C :

Understanding on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods;

Attachment 2 :

Understanding on Rules and Procedures Governing the Settlement of Disputes;

Attachment 3 :

Trade Policy Review Mechanism;

Attachment 4 :

Plurilateral Trade Agreements, consisting of:

Attachment 4 (a) :

Agreement on Trade in Civil Aircraft;

Attachment 4 (b) :

Agreement on Government Procurement;

Attachment 4 (c):

International Dairy Arrangement;

Attachment 4 (d) :

Arrangement Regarding Bovine Meat.

However, in signing of final text of the Agreement Establishing the World Trade Organization, Indonesia has not participated yet and likewise with the Plurilateral Trade Agreements that form Attachment 4 to the Agreement Establishing the World Trade Organization.

VI. EFFECTIVENESS OF THE AGREEMENT

Upon signing of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations on April 15, 1994 in Marrakesh, Morocco, the participation countries agreed that

the Agreement Establishing The World Trade Organization together with all of Attachments thereto will expectably be able to be enacted on January 1, 1995. However, the exact effective date will be determined in the meeting of the Ministries in charge of Trade from the signatory countries of the Agreement Establishing the World Trade Organization that will be held at the latest at the end of 1994.

ARTICLE BY ARTICLE

Article 1

The agreement adopted by this Law is the Agreement the text of which is signed by the Minister of Trade on behalf of the Government of Indonesia in the meeting in Marrakech, Morocco, on April 15, 1994. In the event of any difference of interpretation between the translation text in Indonesian version and the copy of text in English version, then the original text in English version will prevail.

Article 2

Since the exact effective date of the Agreement will newly be determined in the meeting of the Ministries in charge of Trade that will be held at the latest before the end of 1994, then question on the effective date of this Law is also adjusted to the effective date of the Agreement, that will be stipulated later.
