

## **CHAPTER I INTRODUCTION**

### **A. Background**

Trade is crucial to a country's economic development and growth. Countries in the world had become dependent on international trade for various reasons, and no country can avoid export and import activities. Every product and service that moves freely across countries pose impacts on import and export activities. States are competing to take advantage of the opportunities that exist in the international market; it creates an environment that is prone to competition between countries, resulting in a variety of international trade disputes. The trade dispute is inextricably linked to the World Trade Organization (WTO), as the sole international regulatory body for international trade, having replaced the General Agreement on Tariffs and Trade (GATT) in 1995. (Caterin m. Simamora, 2017).

WTO, as an international organization, has the main task of promoting free trade. These include reducing and eliminating barriers such as tariffs and non-tariff, providing a forum for international trade negotiations, resolving trade disputes, monitoring trade policies in member countries and issuing binding and mandatory decisions. The WTO has several principles, namely the Principle of Protection through Tariffs, the Principle of National Treatment, the Most Favored Nation Principle, the Reciprocity Principle, and the Quantitative Border Prohibition Principle. The WTO, in facilitating the settlement of trade disputes, has a body called the Dispute Settlement Body-WTO. This body has a role in deciding cases by consensus regarding trade disputes (Jamilus, 2017).

Indonesia, as a member of the WTO, must adhere to the organization's rules and regulations. One of Indonesia's trade partners is Brazil; trade relations between Indonesia and Brazil have been started since 1996. The trade relations between Indonesia and Brazil are marked by trading activities, namely exports and imports. Indonesia's main exports to Brazil include natural rubber and rubber products, polyester textile yarn, cocoa, palm oil, copper, and auto parts. Meanwhile, the main imports from Brazil include iron ore, soybeans, pulp, cotton, sugar cane, tobacco, automotive parts, wood glue and leather (Indonesia, Brazil, 2018).

Brazil is one of the largest countries which export chicken meat and chicken products. In 2014, Brazil was the second-ranked major producer in the world alongside China for broiler meat. The largest share at the global level was contributed by the United States (US) at 20%, followed by Brazil and China, which each contributed 15%. All European countries (EU-27) accounted for 12%, while the 3 countries India, Russia and Mexico together accounted for 4 % (Hewan, 2016).

Apart from being a producer and exporter of chicken meat products largest in the world, Brazil also has a standard poultry industry halal product that have exported their products to foreign countries, especially the markets of Muslim countries in the world. In 2010, Brazil became one of the largest producers of halal chicken meat and the largest exporter of halal chicken in the world (Araujo, 2019).

**Table 1: Production, Consumption, and Export of Brazilian Chicken in 2009 - 2021 (Tons)**

<b>Year</b>	<b>Production</b>	<b>Consumption</b>	<b>Export</b>
2009	11.421.000	7.760.000	3.660.000
2010	11.420.000	8.071.000	3.350.000
2011	12.954.000	9.655.000	3.300.000

2012	13.250.000	8.907.000	3.315.000
2013	12.835.000	9.230.000	3.607.000
2014	12.692.000	9.137.000	3.625.000
2015	13.013.000	9.477.000	3.665.000
2016	13.565.000	9.351.000	3.721.880
2017	13.583.000	9.340.000	3.745.000
2018	13.800.000	9.700.000	4.100.000
2019	13.200.000	8.990.000	4.210.000
2020	13.800.000	9.570.000	4.230.000
2021	14.400.000	10.500.000	4.600.000

Source: USDA, FAO

Brazil's chicken meat production, consumption and exports fluctuate every year. Brazil's domestic chicken meat production is a surplus every year where the total production exceeds the total consumption. Then Brazil can export chicken meat with a total of 3-4 million tons more annually starting in 2009-2021.

**Table 2: Production, Consumption, and Export of Indonesian Chicken in 2009 - 2021 (Tons)**

<b>Year</b>	<b>Production</b>	<b>Consumption</b>	<b>Export</b>
2009	1.409.000	1.409.000	
2010	1.465.000	1.465.000	
2011	1.570.000	1.570.000	
2012	1.660.000	1.660.000	
2013	1.790.000	1.790.000	
2014	1.870.000	1.870.000	
2015	1.970.000	1.969.996,2	3.8
2016	2.090.000	2.089.985,7	14.3
2017	3.480.000	3.479.996,7	3.3

2018	3.700.000	3.669.982,4	17.6
2019	3.740.000	3.739.715,4	284.6
2020	3.560.000	3.559.737,6	260.4
2021	4.034.794	4.034.597,7	166.3

Source: USDA, FAO, CNN Indonesia

Meanwhile, Indonesia is one of the producers of chicken meat in the world. Statistically, Indonesia ranks 6th as the world's largest chicken producer. In 2018, according to data from FAO (Food and Agriculture Organization), chicken meat production in Indonesia reached 3.4 million tons (Santosa, 2022). The consumption of chicken meat in Indonesia can already be met with domestic chicken meat production, looking at data from the USDA (U.S. Department of Agriculture). Not only that, Indonesia in 2015-2021 experienced a surplus of chicken and chicken meat production, so that Indonesia exported to other countries.

Brazil had submitted a lawsuit against Indonesia through the WTO in 2014. According to Brazil, Indonesia has placed a five-year ban on chicken meat and chicken product. Brazil has attempted to consult the private sector and the government to gain access to the Indonesian market for chicken meat and chicken meat products since 2009 but has been unsuccessful. Private parties in Brazil and Indonesia sought to sell mechanically deboned chicken meat between 2009 and 2011. The Indonesian authorities, on the other hand, never gave the permissions. Parallel to this, Brazil and Indonesia addressed access to the Brazilian export market at many meetings of the Consultative Committee on Agriculture (CCA) (Organization, Report of the Panel to be found in document WT/DS484/R, 2017).

Brazil proposed a health certificate for fresh poultry meat, turkey, and duck based on the standards provided at the CCA's

Third Meeting on the 4-5 May 2009, but the Indonesian government did not respond. (Organization, Report of the Panel to be found in document WT/DS484/R, 2017). Furthermore, during the Fourth Meeting of the CCA on September 15-16, 2010, Indonesian authorities stated that they would explore opening the chicken market. (Organization, Report of the Panel to be found in document WT/DS484/R, 2017). Authorities in Brazil were advised that a sanitary inspection mission would be dispatched to the country, but the mission was never dispatched, and no justification was offered for its absence.

Brazil proposed a health certificate for poultry meat to the Indonesian government in 2009. A particular suggestion for turkey and duck meat was sent a year later. None of the suggestions have been authorized by the Indonesian government. The Brazilian authorities swiftly delivered all required material, as well as additional information provided on Brazil's own initiative, according to the plan. Indonesia has taken no practical efforts to approve the certificate, and it has not submitted a risk assessment citing any scientific basis for refusing to do so (Hartawan, 2017).

The Indonesian authorities not only rejected the health certificate, but Brazil also stated that Indonesia's sanitary rule (Regulation 84/2013) has a positive list of animal products that may be imported into the country, which is mirrored in its import license regulation (46/2013). (Organization, Indonesia – Measures Concerning The Importation of Chicken Meat (Request for Consultation by Brazil), 2014). In both listings, the Harmonized System codes for fresh and frozen uncut chicken meat are referred to as duck meat. As a result, it becomes unclear whether or not chicken meat can even be imported. In addition, it appears that the importation of sliced chicken meat, whether frozen or fresh, is illegal in Indonesia.

Even though Indonesia allows Brazil to import chicken meat and chicken products, Brazil argues that they still have challenges with the Indonesian import restrictions. In Indonesia's convoluted and opaque system, Brazil would still need clearance from various bodies and multiple permits. Indonesia also has a non-automatic import licensing scheme for chicken meat and chicken products that seems to unjustifiably restrict commerce due to its irregular and unpredictable implementation and administration.

Importers must attain an Importer Identity Number (API) from the Ministry of Trade, which is given at the discretion of the Minister of Trade (Organization, Request For Consultations By Brazil, 2014). They must also register with the Directorate General of Customs and Excise of the Ministry of Finance. Importers of chicken meat and goods must then receive an accreditation as a registered importer of "certain products" from Indonesia's Minister of Trade (Registered Importer of Certain Products) (Organization, Request For Consultations By Brazil, 2014). These permits have short deadlines and terms, and they may limit the ports of entry for imports.

All Indonesian chicken meat and chicken product imports require a prior recommendation from the Minister of Agriculture, who appears to have the right to limit the quantity, destinations, and/or uses of those items, according to a Brazilian report based on a WTO document. This request has short dates and parameters, and it does not appear to be clearly handled. Furthermore, Indonesia appears to have pre-shipment inspection regulations, which may cause excessive delays and unequal administration. Finally, Brazil opposes the Indonesian legislation that permits the adoption of price policies and import management measures that may impose limits in order to manage the internal supply of strategic items, which includes chicken meat and chicken products.

Finally, on October 16<sup>th</sup>, 2014, Brazil requested that Indonesia hold consultations. Brazil demands that Indonesia implements trade protection, as its chicken meat import policy violates several WTO rules, including the Agreement on Sanitary and Phytosanitary Measures, the Agreement on Technical Barriers to Trade, the Agreement on Agriculture, the Agreement on Import Licensing Procedures, and the Agreement on Preshipment Inspection. The dispute was named Indonesia-Measures Concerning the Importation of Chicken Meat and Chicken Products, number DS: 484, and has been filed in the WTO court (Organization, DS484: Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products, 2021).

## **B. Research Question**

How did the World Trade Organization play its role in settling the dispute regarding Brazil's Chicken Export to Indonesia in 2014 – 2021?

## **C. Theoretical Framework**

### **a. International Organization Concept:**

The dynamics of international relations show the increasingly strong emergence of actors outside the state with increasingly complex international relations, which is vulnerable to sovereignty issues. So, this makes the state not the only actor in international relations. According to A. Le Roy Bennett, international organizations in his book *International Organization, Principles, and Issues*, explain that international organizations are a means of cooperation between countries, which can benefit the members who join them. An international organization must also be a facilitator as a channel of communication with the Government because if a problem occurs, a solution can be easily found.

Another definition of International Organization, according to Cheever and Haviland which defines international organizations is as follows: "Any cooperative arrangement instituted among states, usually by a basic agreement, to perform some mutually advantageous functions implemented through periodic meetings and staff activities". An international organization is described as an arrangement in institutionalized international cooperation between countries, based on a common basic agreement, and it is agreed to carry out mutually beneficial functions through regular staff meetings and activities. Karen Mingst provides an even broader description of the function of international organizations. There are several functions that can be carried out by international organizations both at the international, state, and individual levels (Sugito, 2016).

At the International level, International Organizations play a role in:

1. Contribute to the creation of an atmosphere of cooperation among countries/actors. With International Organization, it is hoped that countries can socialize with each other.
2. Assist in the resolution of conflicts. The World Trade Organization (WTO) and the International Court of Justice (ICJ), for example, represent this function.
3. Coordinate international activities on common issues. For example, the WHO handles the spread of SARS and UNHCR handles the refugee issue.



4. Provide an arena for bargaining for countries in solving a problem—such as the European Council of Ministers and several other ministerial-level forums.
5. Establish an international regime. For example, the international trade regime, the European monetary regime, and others.

For a country, International Organizations function as:

1. Foreign policy instruments: the United Nations is used by developing countries to level development distribution.
2. As a tool of foreign policy legitimacy, suppose the United States (US) uses the United Nations as a source of legitimacy for military attacks on Iraq and Korea.
3. Obtain valuable information for a country. For example, if country A does not have bilateral relations with country B, then A can obtain information about B through membership in the same International Organization.
4. Limiting the behavior of a country, namely keeping a country from taking certain actions and punishing countries that take wrong actions. For example, the economic embargoes in Iraq, Serbia, and South Africa.

From this explanation, the concept of international organizations can demonstrate the role of the WTO to accommodate and supervise world trade activities and their influence as an international regime. In accordance with Bennett's statement that international organizations must be able to bring benefits to their member countries, the WTO can provide facilities in the elimination of trade barriers in the form of tariffs and non-tariff in trade agreements ratified by member countries. They provide an arena for dispute resolution, namely the Dispute Settlement Body (DSB)-WTO forum to resolve trade disputes, such as in the Indonesia-Brazil trade dispute case study where the WTO plays a role in facilitating dispute resolution panel forums and providing dispute decisions.

#### **b. Concepts of Conflict Resolution**

- **Arbitration**

Arbitration is a process by which a dispute is brought before an unequal third party for resolution. A third party (an arbitrator) hears the evidence brought by both parties and then decides. Sometimes, the decision made by the arbitrator is binding on the parties. Arbitration also means a form of Alternative Dispute Resolution (ADR) that is used instead of litigation in the hope of resolving disputes without the expense and time to go to court. Litigation is a court-based process involving a decision that is binding on both parties and an appeals process. The difference between arbitration and litigation involves the process itself and the outcome of decisions about disputes.

Arbitration is a procedure in which a dispute is submitted, with the consent of the parties, to one or more arbitrators by making a binding decision on the dispute. In choosing arbitration, the parties choose a private dispute resolution procedure instead of going to court. The arbitral tribunal's principal function is to apply the law and resolve disputes by administering the so-called "arbitral award." Like ordinary litigation, arbitration requires the parties to submit matters to a single decision maker (arbitrator) or panel of arbitrators whose decision is final and legally binding.

In arbitration, the rules of evidence and procedures governing the normal judicial process do not apply. The parties to a conflict have a better chance of "telling a story" And interacting one-on-one with the arbitrator. In addition, it also has greater control over who the arbitrators are likely to handle the conflict. In fact, out there 14 in the legal process have no control over who the judge is. In addition, if the parties to a conflict are concerned about publicity, arbitration may be more private (Rubin, Pruitt, & Kim, 1994). Any arbitration proceedings are based on the parties' signed agreement. They submit issues to arbitration rather than state courts, resulting in an "arbitration agreement."

Most commercial contracts, particularly those involving foreign transactions, have arbitration clauses. Arbitration gives arbitrators and parties a lot of leeway and flexibility when it comes to

procedure. The parties have the option of selecting their arbitrator, arbitration location, and trial language. They might also agree on how to organize and time their work. They must adhere to the ideals of fairness and equality, as well as the right to be heard and represented by lawyers.

There are two forms of arbitration: institutional and ad-hoc. In institutional arbitration, the institution takes on extra administrative responsibilities like serving briefs and so on. The level of engagement may differ from one institution to the next, but the arbitral tribunal will always settle the case. These administrative functions are either assumed by the courts themselves or outsourced to third parties in ad hoc proceedings (FindLaw, 2016). Similarly, arbitration deals with the internal and external relations of the institution that resolves the dispute regardless of the subject matter. The action presented in the arbitration process is also a special institutional arrangement.

Moreover, arbitration is also a contract that comes from a law of the parties; the norm here is that it is a binding contract. To be more specific, this norm is found in the terms of the contract through the delegation of the power of the state or originating party. In some cases, the contract is also a statement of consensus from both parties who can no longer continue to negotiate. Therefore, this new unification or coordination norm could better solve the problem. Thus, disputes or conflicts between Indonesia and the Brazil should be

resolved through the ADR stage. The different interests and backgrounds of the two countries have resulted in increasingly unresolved conflicts.

Indonesia and Brazil could not resolve this dispute bilaterally. Even though the two countries have previously held a bilateral consultation, it did not work to result in a fair decision. The WTO as an international organization has a role in being the only forum authorized to give a decision on this dispute. The body which handles the dispute between the two countries is referred to as the Dispute Settlement of World Trade Organization. This body involves several steps to tackle disputes happening between two countries, namely Consultations, Panel, Appellate Body, Recommendation from Panel and Appellate Body, and Implementation.

### **1. Consultation**

The consultation is a stage requested from member countries accused of violating WTO provisions which result in hampering their country's profits. The offending state has 10 days to respond to the request and must start implementing it within 30 days of the request for consultations being submitted and must be completed within 60 days of the request for consultations being submitted (Organizations, *The Process — Stages in a Typical WTO Dispute Settlement Case*, 2022). The purpose of consultation is to provide the parties with an early grasp of the factual conditions and legal basis that will be proposed in a more detailed and exact manner. The consultation also aims

to avoid the controversy resurfacing at a later date. At this point, the dispute is being resolved quietly.

## **2. Panel**

If the consultations carried out by the two countries fail, the next step is for the complaining state to apply for the formation of a panel. When the applicant country proposes to form a panel, since the application was initially submitted, the panel must be convened during a meeting of the Dispute Settlement Body (DSB). The panel will be created about 90 days after the consultation request is received. The panel consists of 3 panelists who are independent, have different backgrounds, and have a wide spectrum of experience (Organizations, *The Panel Stage; The Process — Stages in a Typical WTO Dispute Settlement Case*, 2022). The task of the panel is to conduct an objective assessment of the main issues raised, including an objective assessment of the facts and their application and compliance with the provisions of the WTO agreement. The function of the Panel is to assist the DSB based on its responsibilities in accordance with the Covered Agreement, to carry out an objective assessment of the subject matter, including an objective assessment of the facts of the case submitted and to observe conformity and relevance to the covered agreements, and to make a finding that will assist DSB in making recommendations or apply the rules required by the covered agreement. The panel should

meet with the parties on a frequent basis and provide them opportunities to establish mutually acceptable solutions.

Typically, the panel would recommend that acts which violate WTO standards should be modified. The panel could offer advice on how to put these recommendations into action, but this is not always the case. The Final Report was to be submitted to the parties within six months of the panel's formation, and it had to be circulated to all WTO member countries within nine months. The final report will take one year in practice (12 months) and all member countries are given 20 days to study the issue. After that, the report is submitted to the DSB for formal adoption at a certain period of time within the 60 days from the date of circulation, unless there is a consensus not to adopt it or there is an appeal. In order to obtain sufficient time, members consider the panel reports up to 20 days after they are circulated. If any members object to the panel report, they must provide written reasons for their objections to the DSB no later than 10 days before the meeting.

### **3. Appellate Body**

The members of the WTO appeal are international trade law specialists who are not linked with any government. In addition, the representative aspect of WTO membership which geographically represents their respective regions, namely America, South

America, Asia, North Africa, and South Africa. The panel's appeal must be examined by the appellate body. The Appellate Body (AB) is made up of seven persons. A three-member appeals tribunal handles each case. Three members are urged to share their opinions with the other four members before making a final decision. AB membership is for four years, and each member can be re-elected once. The operational procedure for the appeal must be formulated by the AB and in consultation with the chairman of the DSB and the Director General of the WTO and communicated with the members, the president and all AB documents are confidential. AB reports must be drafted without the presence of the disputing parties—both information and statements made. Opinions or views expressed in AB reports by individuals as AB members must be anonymous.

The AB has the power to enforce/strengthen, amend, or reverse the panel's legal findings and conclusions. The DSB must adopt the AB report, and the parties to the dispute must unconditionally accept it, unless the DSB unanimously decides not to adopt the AB report within 30 days for distribution to members, and the member will offer his opinion on the AB report (Organization, Appellate review: The Process — Stages in a Typical WTO Dispute Settlement Case, 2022).

#### **4. Panel and Appellate Body Recommendations**



The Panel and the Appellate Body concluded that a provision is contrary to the provisions of the WTO or the Covered Agreement, thus the panel and the AB must recommend that the disputing member countries place the regulation in line with the agreement, as well as the recommendation of the panel and the AB to suggest ways in which the disputing state implements its recommendations. Neither the panel nor the AB recommendation can add or reduce the rights and obligations stipulated in the Covered Agreement. The time frame or design time for panels and AB is 9 months if the panel is not appealed, and 12 months if the panel must proceed to the appeal stage (Organization, Adoption of the reports by the Dispute Settlement Body: The process — Stages in a Typical WTO Dispute Settlement Case, 2022).

### **5. Surveillance of implementation**

Monitoring the implementation of the panel's and the AB's recommendations is the final stage of the DSB dispute resolution process. This supervision is a stage to ensure whether or not the reports or recommendations from the panel or the AB are implemented by the related parties. The norm that is generally applied is if the violator country is recommended to adjust its actions to comply with the obligations stipulated in the WTO provisions (Organization, Surveillance until final implementation: The Process — Stages in a Typical WTO Dispute Settlement Case, 2022).

## **D. Research Methodology**

This study will use several methods of data collection that aims to support references from research that has been made. This methodology aims to facilitate the making of research.

### **1. Types and Method of Research**

This research applies qualitative-descriptive method of inquiry, namely by using the analytical method and the elaboration of each existing data. This research does not use count numbers in it. The author only describes existing data with qualitative methods.

### **2. Data Collection Method**

The data collection method used in this research is based on a literature study because this research uses a library approach. Some of the literature studies used came from books, journals, the official websites of the Government of Indonesia, Brazil, the WTO, and some news related to the research topic.

### **3. Data**

The data that will be used in this research is secondary data. Secondary data is data obtained from the results of research that has been done by other people. The secondary data used is in the form of literature such as theses, journal articles, books, websites, and various other online sources related to the role of World Trade Organization in dispute settlement, case study: Brazil's Chicken Export to Indonesia in 2014 – 2021.

### **4. Research Approach**

The research method used in this study was a library approach, which included articles, books, journals, theses, and other offline and online references.

### **E. Hypothesis**

How did the World Trade Organization play its role in settling the dispute regarding Brazil's Chicken Export to Indonesia in 2014 – 2021?

As a global-scope international organization, WTO applied arbitration in resolving Brazilian Chicken Export in Indonesia through the dispute resolution procedure at the Dispute Settlement Body (DSB).

### **F. Research Scope**

In this study, the author limits the focus of the discussion so that it remains in line with the title presented, thus the author analyzes the role of the WTO in resolving the Brazilian Chicken Export dispute in Indonesia in 2014 - 2021. The author started the study from 2014 when Brazil accused Indonesia of restricting chicken imports and reported violations committed by Indonesia to the World Trade Organization Dispute Settlement. Meanwhile, the author sets a time limit for the research, which is the year 2021, as Indonesia still appeals on the last decision made by the WTO regarding the results of the trade dispute between Brazil's exported chickens against Indonesia.

### **G. Systematic of Writing**

This writing consists of three chapters that will elaborate a clear picture of the issue at hand. The three chapters include:

## **CHAPTER I: Introduction**

The first chapter will explain the background, research question, theoretical framework, hypotheses, the scope of research, and systematics of writing.

## **CHAPTER II: Discussion**

### **II.A World Trade Organization**

The World Trade Organization's history, role, and task will be discussed in this sub-chapter. The tasks of the World Trade Organization's Dispute Settlement Body were included, as well as examples of cases handled by the Dispute Settlement Body.

### **II.B The Role of WTO in Trade Dispute Settlement of Brazil and Indonesia**

This sub-chapter will explain about the process of the case submitted to the WTO, the role of World Trade Organization in the dispute settlement of Brazil's chicken exports to Indonesia in 2014 – 2021, and the decision of WTO towards the dispute.

## **CHAPTER III: Conclusion**

The last chapter providing conclusion, the answer from research question, recommendation, and suggestion of the study.