



Harmonization of Import Duty in the Form of Security Measures for Textile Products

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Abstract

This article aims to determine the principles and regulations of international trade and to analyze the regulation for imposing security measures on imports of fabric products. The method used in this study is a normative juridical legal research type, with a statutory approach or statute approach to analyze legal issues. This research finds that the principle of International Trade adopted by the Indonesian state/Government is essentially aimed at protecting domestic products to maintain a healthy trade climate. International Trade is regulated by General Agreement on Tariffs and Trade, General Agreement on Trade in Services, The Agreement on Trade-Related Aspects of Intellectual Property Rights and Dispute Resolution of the World Trade Organization. Furthermore, in regards to the imposition of security measures on the import of fabric products in Indonesia, it is regulated in the Minister of Finance Regulations and its amendments. However, the Ministerial Regulation felt to be contradictory to the Minister of Trade's Regulation. So, it is considered less effective because it will only burden local entrepreneurs/companies who need material products from abroad, on one hand the volume of imports has been limited and on the other hand there is an additional imposition of import duty as a result of security measures.

I. Introduction

Like other basic needs, clothing which originated from yarn and fabrics is one of the most essential elements for the community in general. Therefore, it is but natural that these needs should be balanced by the stock of Raw Materials. India, for example is a country which is very well known for its textile Industries, in fact it is also known that the country has the largest textile production Industries. For making ready to wear garments/ textiles, what is needed is cotton thread specially for weaving purposes, and India also export cotton threads to Indonesia. With the above facts, and in this free trade Era, it may endanger the domestic textile Industries who produces textile and textile

products. Therefore, some security measures must be taken to prevent market disruption¹

With the above findings, it is also a known fact that international trade in this era which may be called as Globalization era is getting more open, especially it is being supported by Liberalization policy resulting in increment of the trade in relate to textiles and textile products. International Trade is expected to encourage economic growth in every country, liberalization of International Trade policy, will provide a very significant advantages especially in regards to elevation of efficiency in allocation of resources. In his research "Pavenik pointed out that the effect of free trade/trade openness due to import rate/tariff reduction of ready-made goods to the productivity of a company/Industry in Chile. The research drew a conclusion that the reduction in import tariff/rate for ready made goods will result in the upscale of productivity in a company due to import competition. Based on Structure Conduct Performance (SCP) paradigm which argues that market structure is a determinant of a firm/company's conduct, which in turn determines performance and market structure can be measured by several factors such as the number of competitors in an Industry, the heterogeneity of products and the cost of entry and exit. Structure Conduct Performance also says that the ability of Domestic Industry to dominate the market will automatically reduce the multitude foreign competitors on that market.

Indonesia as a member of World Trade Organization (WTO), inter wine connections for cooperation in international trade with other member countries. Indonesian Government has also ratified The General Agreement on Tariffs and Trade - World Trade Organization (GATT-WTO) with Republic of Indonesia Act number 7-year 1994 concerning Agreement of the formation of WTO (there after refer to as UU Nr.7/1994). With that, Indonesia has fulfilled its obligations as a member of WTO and WTO agreement has also been formally enacted into its national law system. Though Indonesia is free to inter wine cooperation relationships with every member country of WTO, but Indonesia has never really been free from facing obstacles as well as resistance in terms of international trade. On the grounds of international trade law principles which is regulated in the article 1 UU nr.7/1994 Indonesia is called as Most Favored Nation (MFN) that says any trade policy should be held based on non-discrimination. Agreement "of Safeguard article XIX GATT 1947 has given chances to any countries to take any trade security measures if there are surges of import products in the market that can threaten the sustainability of domestic industries. Therefore, exporter countries must be limited at the market of importer countries and that can be done through additional import duties as an act of security measures as well as subject to quota provisions².

As a guarantee WTO has already enacted safeguard Policy to protect the domestic market which is poured forth in the "Agreement of safeguard article XIX GATT 1947.

¹ F Rahmadani, 'Pengaruh penerapan tindakan pengamanan perdagangan (safeguard) produk impor benang asal india bagi industri tpt (tekstil dan produk tekstil) di Indonesia tahun 2011', *JOM FISIP*, 2017, 13-29.

² F. I Rachmawati, 'Pengaruh kebijakan bea masuk tindakan pengamanan (BMTP) terhadap price cost margin industri manufaktur yang diproteksi', *Jurnal Riset Ekonomi Dan Manajemen*, 2017, 54-72.

This policy put forward guarantee to any member countries capable for doing anticipatory action for their security measures in trade if surges of import products happened, which in turn will threaten their domestic industries so that the access of exporter countries may be limited towards the market of importer countries either in the form of additional import duty for security measures and/or quota allotments. According to Agreement on Safeguard article XIX of GATT 1947 confirmed that “actions can be taken by the importer countries to recover serious loss and/or to prevent serious loss threats towards domestic industries as a result of surges in import of the same kind of goods or goods that are directly in competition with the domestic products³.

Safeguard measures can be taken if one type of domestic industries is facing difficulty because of the flooding of import products. But special privileges given to lighten up for the developing countries. This is because of the principle occurred in the agreement as a special problems and differential treatment is given so that they can get a solution, among others deadline of safeguard measures that can only be settled through political will of that governments also more and more countries have joined in the free trade area and custom union⁴.

In the same manner, article 23A Republic of Indonesia’s Act number 17-year 2006 concerning Amendment to Republic of Indonesia’s Act number 10-year 1995 concerning custom and excises (there after refer to as UU nr. 17/2006 jo UU nr.10/1995) stated “ additional import duty as means of safeguard measures can be taken if there are surges in import goods absolutely or relatively in competition towards the same kind of goods or goods that are in direct competition with domestic products, and the spike may result in : a.)” serious loss towards domestic industries that produces the same kind of goods and/or goods that are directly in competition ; or b.) threatens the domestic industries that produces the same kind of goods and/or goods that are directly in competition that can result in serious loss,”.

Both the countries that is Indonesia and China are covered in a multilateral agreement as mentioned in ASEAN Free Trade Area (AFCTA) with a very large population, these two countries are potential and promising market as they are consumptive people. Import of fabrics in Indonesia has spike considerably and suspected that the surge can threaten the domestic industries which may occur serious loss to them. But then the problem arises in importing fabric products, request of permission must be made by the firm/company before importing these goods/fabrics to the Directorate General of Foreign Trade Affairs, Ministry of Trade Republic of Indonesia and in turn Directorate General of Foreign Trade Affairs will give an agreement letter and in that agreement letter, they will specifically state the amount of quota of the fabrics they can import. Therefore, this is a contradictory approach towards importers, because of that permitted import quota given by the ministry of trade, The directorate General of customs and excises, Ministry of Finance will impose additional import duty as means of safeguard measures. In the explanations of article 23A UU nr.17/2006 jo UU nr.10/1995 concerning customs and excise affairs and article 2 paragraph 2 point h Minister of Trade’s

³ Suhendra, ‘Pengenaan bea masuk tindakan pengamanan perdagangan sementara (bmtps) terhadap impor produk kain tahun 2019 sebagai akibat peningkatan volume impor tekstil’, *Dharmasiswa*, 2021, 54–72.

⁴ Muhammad Sood, *Hukum perdagangan internasional* (Jakarta: Rajawali Pers, 2012).

Regulation Number 20 year 2021 jo number 25 year 2022, by which in that regulation, it has been done limitations on imports of textile and textile products be contradictory with Minister of Finance's Regulation Number 34/PMK.010/2022 as second amendment on Minister of Finance's Regulation Number 55/PMK.010/2020 concerning Imposition of Additional Import Duty as Means of Security Measures towards Importation of Textile Products. Therefore, it is considered less effective because it will only burden local entrepreneurs' companies who need fabrics/material products from abroad, on one hand the volume of imports has been limited and on the other hand there is an additional import duty as mean for security measures.

There are many textile and textile products industries scattered in many provinces around Indonesia for example East Java Province (Sidoarjo), West Java (Bandung, Tasikmalaya), Banten Province (Tangerang), Jakarta (Bonded warehouse), Central Java (Semarang) and in many other provinces, but sadly most of those Industries are only CMT industries (Cut, Make, Trim) , CMT is a service based Industry by which the CMT Companies will only do three main processes, that is cutting the fabrics given by foreign exporters/importers, they will custom made it in accordance with the sizes given by the exporters/importers and the last process is trimming the finished fabrics form unwanted threads as well as Quality Control so that the finished goods /garments may be well received by the importers/ exporters without any defects, these CMT companies will then export the finished goods as per instructions by the importers/exporters. In terms of fabrics, Indonesia is also known as "tailor" nation. While others are real textile manufacturers but again sadly enough most of their products are exported to other countries and only small part of it, they use for uniforms (School, service people, army uniforms, police uniforms) and seldom to be seen in retail market.

Thus, this research will be deliberating among others, firstly how is the principle and regulation of International Trade? and secondly how is the regulation in regards to implementation of import duty as means of security measures towards importation of textile products?

This article is an original scientific paper with the hope that it can contribute and will have a role in adding and/or developing scientific knowledge. To analyze the issues in this article, writer uses three theories, they are: Economic Law Theory, Harmonization Concept of Law Theory and Economic Theory. The writer found few other articles/research in relation to the writer's article which deliberately pointing out concerning import duty as means of security measures in regards to importation of fabrics, among others, firstly from Dharmasisya Journal with the topic "Pengenaaan Bea Masuk Tindakan Pengamanan Perdagangan Sementara (Bmtps) Terhadap Impor Produk Kain Tahun 2019 Sebagai Akibat Peningkatan Volume Impor Tekstil"⁵. The issue that is discussed in this article is about causal relations due to the hike in terms of valume of imported textile products that threatens and causing serious damages/loss in those industries in Indonesia. Secondly from Mercatoria Journal with the topic "Perlindungan Hukum Terhadap Industri Tekstil Dan Produk Tekstil Dalam Negeri Melalui Tindakan

⁵ Suhendra.

Pengamanan (Safeguard) di Indonesia Relevansinya Dengan MEA 2015”,⁶ discussion raised in this article is about how far was the legal protection for the domestic textile Industries and textile products in regards to the safeguard measures in Indonesia in relations to ASEAN Economic Community (AEC) 2015. And lastly from Diponegoro Law Journal with the topic “Tindakan Pengamanan Perdagangan terhadap Kain Tenun dari Kapas dan Benang Kapas sebagai Akibat Peningkatan Volume Impor Tekstil”⁷. This article explained the extended action for safeguard trade measures in the form of woven fabrics from cotton and cotton yarn as an impact from the hike in volume of imported textile domestically. Whereas in this article, the writer investigate thoroughly the contradictions of norms specifically between the explanations of article 23A and article 2 Paragraph (2)h Statute Number 17/2016 jo Minister of Trade’s Regulations number 20 year 2001 with Minister of Finance’s Regulations number 34/PMK.010/2022, second amendment of Minister of Finance’s Regulations Number 55/PMK.010/2022 concerning imposition of additional import duties in the form of safeguard measures towards textiles and textile products. On one hand the volume is restricted and on the other hand there is an additional import duty for safeguard measures, hence there is significant difference between this article and the three above mentioned articles. Hence the aim of this research is to know the principles and regulations of international Trade also to analyze regulations in regards to imposing additional import duty as means of security measures towards imported fabrics/textile products.

2. Research Method

In this article the writer uses normative kind of research, hence the focus of this research is in the process of analyzing legal materials in the form of every kind of regulations that is available in Indonesia in regards to the topic of this article and as a guideline for this study which is a definition of normative research⁸. Definition of Normative Juridical research is said as research procedure using scientific logic from normative point of view to find the truth/facts, and further this can lead us to elucidating in regards regulations of import duties as means for security measures towards importation of textile and textile products⁹. Writer uses norms approach that is this research focused in studying the statute in relations to the issues and analyses approach towards concept of law. This research possesses descriptive analytical properties that is to give a broad picture of studying it also to do an analysis in regards to the law policies and to answer the prevalent law issues.¹⁰ Law issues elevated in this research videlicet with the contradictory norms concerning the explanation of article 23A and article 2 paragraph (2)h statute number 17/2006 jo Minister of Trade’s Regulations number 20 year 2001 concerning import policies and regulations with Minister of Finance’s regulations

⁶ A Setiawan, ‘Perlindungan hukum terhadap industri tekstil dan produk tekstil dalam negeri melalui tindakan pengamanan (safeguard) di Indonesia relevansinya dengan MEA 2015’, *Jurnal Mercatoria*, 10.1 (2017), 18-31.

⁷ M Adine, S Mahmudah, and F. D Priyono, ‘Tindakan pengamanan perdagangan terhadap kain tenun dari kapas dan benang kapas sebagai akibat peningkatan volume impor tekstil’, *Diponegoro Law Journal*, 5.2 (2016), 1-14.

⁸ R Adi, *Metodologi penelitian sosial dan hukum* (Yayasan Pustaka Obor Indonesia, 2021).

⁹ D Tan, ‘Metode penelitian hukum: mengupas dan mengulas metodologi dalam menyelenggarakan penelitian hukum’, *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8.8 (2021), 2463-78.

¹⁰ *Ibid.*

number 34/PMK.010/2022 second amendment of minister of finance's regulations number 55/PMK010/2022 concerning imposing additional import duties in the form of security measures towards textile products. In this research, writer uses economic law concept, i.e., regulatory law in the field of economics, as can be seen that the existing rules and regulations apparently affect the economy of the society in general.

3. Results and Discussions

3.1 Principles and Regulations of International Trade

At the beginning WTO started with negotiations "Uruguay Round" which took place year 1986-1994 and negotiations before that under GATT which was done between year 1948 till 1994, it was then transformed into WTO at the year 1995 which aimed in forming liberal multilateral trade through trade negotiations, included in it was, agreements towards goods (GATT), Services (GATS), Intellectual Property (TRIP's), and Dispute Resolutions¹¹.

WTO gives assurance for the protection of domestic industries towards one of its instruments with safeguard policy, which is provisioned in the agreement of safeguard in Article XIX GATT 1947. This policy provides possibility to anyone contracting state to perform trade safeguard measures if the import products which threatens domestic industries hiked. Access of exporter states must be restricted to the importer states either in the form of import duty as a security measure as well as in the form of imposing quota. According to the Agreement of Safeguard, Article XIX of GATT 1994, safeguard measures: measures that is taken by importer states government for recovering serious loss and/or prevention serious loss threatens towards domestic industries as a result in the increment of the alike imported goods or goods that is directly in competition.

As a member of WTO, Indonesia must have a strategy and political trade policy which is in line with GATT 1994 regulations also to harmonize international trade policy with that of the national trade policy as an effort in reducing trade obstacles, Indonesia is a developing country which in turn have the same obligations to enforce principles that occurred in GATT. The most important principles in international trade is one country may not be given privileges than the other countries, all countries will be treated the same, Non-discrimination principles and all countries will then receive and relish opportunities in regards to liberalization of international trade also bear the same responsibility. WTO as an international trade organization regulates 5 (five) principles which are to be observed by all the contracting countries among others, non-discrimination principle, reciprocity principle, quantitative obstacle principle, just trade, binding tariff principle, so that every WTO member country will have to fulfil the rate/tariff amount that is already been agreed upon by countries which is in accordance with the list of the WTO regulations¹².

¹¹ Arriza Briella Kurniawardhani, 'Sejarah organisasi ekonomi internasional: world trade organization (wto)', *Jurnal Widya Winayata: Jurnal Pendidikan Sejarah*, 9.1 (2021), 42- 61.

¹² Rizmawati Darmawan Irawati, 'Penerapan kebijakan anti-dumping WTO sebagai bentuk tindakan proteksi', *Jurnal Riset Ilmu Hukum*, 1.1 (2021), 21-41.

To reach economic welfare, free trade/ trade openness possesses common goals between countries so that they can create world economic to keep on growing together with reducing obstacles in the form of neither tariff nor non-tariff for the benefit of each one country in making trade transactions, that is commonly named as trade policy or commercial policy¹³. Trade openness or free trade is capable for optimizing world total output and beneficial for the contractual countries, but in practice, yet many countries are still doing restrictions or limitations towards international trade, Each one countries have their own political and economic policy and raises complexity for implementing international trade, among others through implementation of tariff policy and non- tariff obstacles such as standardization, prohibition and limitation of import products. Additional tariff charges will automatically protect domestic industries, additional income for the Government, correctional approach towards trade imbalances, also to cope up with trade distortion. World Trade Organization have made three efforts on their own for responding the importance of the developing countries, firstly, special clauses in WTO agreements for developing countries, secondly, special committee on trade and development who will be handling for the benefit of developing countries, and lastly WTO secretariat will give assistance in the form of technical guidance/aid which is usually in the form of training for developing countries. Free trade system shows the importance of protecting for the national interest within the framework of protecting national business entities, such as protecting infant industries and how to determine the direction for economic growth through national law tools which is responsive internally as well as externally¹⁴.

Indonesia embraced principle of international trade which is in line with the principles of the agreed Internationally with the core aim to protect domestic products so that it can safeguard a healthy trade climate in their domestic market. The meaning of international trade is the exchange of goods and service between nations and further “as used it generally refers to the total goods and services exchange among all nations”¹⁵. The core of this definition is an exchange of goods between all contractual nations. International trade has become crucial and important factors to increase economic development of countries in the world.

Government of Indonesia’s Policy in the form of additional import duty as means of safeguards measures which aimed to protect domestic products from excessive foreign products that will threaten in serious loss towards domestic producers, has been established in their regulations and the main guidelines is a principle of national trade that is to protect domestic products. Quoting the opinion of Muh.Risnain which was taken from the opinion of “John Jackson stated that there are two reasons for giving

¹³ A. P Barus and J Leviza, ‘Sengketa penerapan tariff impor dan hambatan dagang antara amerika serikat dan negara china dalam perspektif kerangka WTO’, *Locus: Jurnal Konsep Ilmu Hukum*, 2.1 (2022), 42-54.

¹⁴ Ade Maman Suherman, *Hukum perdagangan Internasional: lembaga penyelesaian sengketa WTO dan negara berkembang* (Jakarta: Sinar Grafika, 2014).

¹⁵ Bambang Satrianto, ‘Aspek hukum importasi barang dalam transaksi perdagangan internasional general agreement on tariffs and trade/world trade organization dikaitkan dengan syarat sahnya perjanjian kontrak (sales contract) impor barang’, *Jurnal Panji Keadilan: Jurnal Ilmiah Nasional Mahasiswa Hukum*, 4.2 (2021), 32-51.

safety measures, one is economic adjustment, increase in import sometimes will destroy industries especially domestic industries ¹⁶.

There are two types of mechanism to cope up with trade imbalances, namely through tariff. Tariff is basically a tax implemented towards import goods. Tariff can be in the form of ad valorem that is a fixed percentage on the value of the certain products that is going to be traded, fixed rate on physical products unit that is going to be traded called as specific tariff and compound tariff which is a combination of ad valorem tariff and specific tariff, both of which will add the cost of importation of certain products. Secondly, besides implementation of tariff as a tool for controlling the trade, trade protectionism is used through enforcement of non-tariff/non-tariff measures/NTM. NTM can be in the form of subsidy on exports and productions, import quota, Voluntary export restraints and voluntary import expansion, binding aid, formality at the custom clearance, embargo, anti-dumping, countervailing duty, safeguard, and regulations for health and safety.

Categorically safeguards is also known as instrument of NTM. Safeguard can be equated with import quota, because its restraint importation of competitor's products for protecting domestic industries from threats as well as injury. Threats against domestic industries occurred because of the increase in import products, also because of the subsidy given by the government of exporter countries or dumping price from the foreign producers. Impact of the import quota policy is to increase producer's surplus, decrease consumer's surplus, but it will not be beneficial for the Government's income nor causing decrease of the level of national welfare for small countries, but it is an ambiguous/unclear towards developed countries/ big countries. Safeguard is an emergency rights of any governments to limit the import if there seem to be surges of import products that will raise serious injury or serious injury threats towards domestic industries of a country. Safeguard measures are meant to avoid any situations whereby any WTO member countries is facing a dilemma as to let the domestic market be disturbed with import goods or forfeit from the agreements.

Injury threats towards domestic products due to dumping price will therefore cause serious loss are divided into three categories. Firstly, products of a certain country that is sold by other country and traded below than the normal price or we call it "less than fair value" (LTFV)." secondly, due to price discrimination that can cause material loss towards the established industries or becoming an obstacle towards domestic industry's establishments. Lastly, causal connections between seller and buyer for LTFV and loss shall be borne by import countries. Towards dumping price practice, WTO allow member countries to observe sanctions in the form of implementation of Anti-Dumping Import Duty¹⁷.

¹⁶ Muh Risnain, 'Politik hukum perlindungan industri dalam negeri indonesia dalam menghadapi perdagangan bebas', *Jurnal Ilmu Hukum, Universtas Mataram*, 5.3 (2011), 12-32.

¹⁷ Nella Octaviany Siregar, 'Regulasi anti dumping dalam hukum perdagangan internasional dan penerapannya di indonesia', *Justisi*, 8.1 (2022), 21-37.

3.2 Regulations on the Implementation of Import Duty as Means for Security Measures towards Textile Products in Indonesia

Article XIX of GATT which regulates trade security measures, basically states that security measures/safeguard is a measure that must be taken by the government of importer states to recover serious loss and/or for prevention of serious loss threatens towards those domestic industries as a result of the hikes in importation of alike goods or of goods that are directly in competition. The conditions set forth for importer countries, who can apply the safeguard policy is regulated in Article II Agreement on Safeguard:

- a. "A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products
- b. Safeguard measures shall be applied to a product being imported irrespective of its source."

Based on Article XIX: 2 General Agreement on Tariffs and Trade (GATT) 1994, Article 6 WTO Agreement on Safeguard's and Article 80 Government Regulations Number 34 year 2013 concerning Anti-Dumping, reward action and trade security measures (PP 34/2011), the Indonesian Textile Association stated that the application of temporary import duty as means for security measures towards textile products has a strong legal based, it is in accordance with the condition that must be fulfilled for that purpose, those are: critical circumstances which may cause bankruptcy/irreparable damage, if it is not followed with immediate action by temporary security measures and there must be hikes of import goods causing serious loss and serious threaten".

Indonesian Government, while carrying out international trade transactions may put forward on perspective an offensive as well as defensive interest in trade policy. Consultancy process, offensive strategy is a strategy used during negotiations for getting vast market access from contractual countries. While defensive strategy refers to an effort that can be done by a certain member country to apply safeguard policy measures to protect their domestic products¹⁸.

Refer to the Regulation of the president of Republic of Indonesia number 84-year 2002 concerning safeguard measures towards domestic industries from import hikes (there after refer to as Keppres nr. 84/2002), strengthened by the Government Regulations number 34-year 2011 concerning Anti-dumping Action, Reward action And trade safety measures (there after refer it as PP nr. 34/2011), in its considerations it is stated that the basic principle consideration is to prevent serious loss and/or serious loss threats through National regulations which regulates safety measures for the purpose of protecting domestic industries. This regulation regulates provisions and procedures of safeguard measures towards all domestic industries who are facing losses and/or

¹⁸ Poppy Sulistyaning Winanti, 'menakar kesiapan indonesia dalam merespons perjanjian perdagangan internasional', *Politika: Jurnal Ilmu Politik*, 13.1 (2022), 1-17.

serious loss threats due to hike of import goods relatively or absolutely that enters Indonesian territory.

Spirits in protecting domestic industries from imbalances or loss due to injury is strengthened by UU Nr. 7/2014 concerning trade which was made as a base law for implementing safeguard measures if surges upon import products happened and causing loss or serious threat loss towards domestic industries. Article 69, article 67, article 97 of UU nr.7/2014 specifically regulates concerning safeguard measures. But sometimes during implementations, precisely causing a loss towards local business owners who uses only foreign products as their raw materials. Subject to additional import duty in the form of safeguard measures will affect in production costs for industries who uses semi-finished raw materials as their finished products from foreign countries.

Refer to UU nr.17/2006 jo UU nr.10/1995, at the beginning only regulates anti-dumping import duty and subsidy import duty, as safeguard policy is on board, UU nr. 17/2006 jo UU nr.10/1995 has expanded itself towards security measures related to trade in inserting two more new provisions, that is Safeguard measures and retaliation import duty besides import duty on anti-dumping provisions, and subsidy import duty. Article 23A, also explained that import duty as means of security measures may not be applied provided import quota has been given (import limitations) as means for security measures, this is so because of the possibility of double security measures, that is quota cum import duty levies.

Government of Indonesia's policies through elucidation concerning safeguards measures poured in article 1 paragraph (2) Minister of Trade Republic of Indonesia's Regulation number 37/M-DAG/PER/9/2019 concerning delegation of some governmental affairs in trade to Governors as Government representative in order to organizing DE concentration fiscal year 2011 (thereafter refer it as permendag nr.37/M-DAG/PER/9/2010) explained "safeguard measures is an action taken by the government for recovering serious loss and/or to prevent serious loss threats in domestic industries as a result of surges on importation of the same kind of products or goods that are directly in competition with domestic industrial output products who experiences serious loss and/or threats of serious loss, can implement structural adjustments". Safeguard measures is aimed mainly towards importers who does not comply with the Certificate of Origin from the exporters original country and this certificate becomes very important factor¹⁹.

The purpose of the Government in bringin out the policy for additional imposition of import duty that is safeguards measures is appreciated of because it can suppress the volume of import goods that will enter Indonesia as a form of impact anticipation as a result of free market trade in this globalization era. The purpose of international trade is to protect domestic products and therefore domestically it can maintain a healthy trade

¹⁹ Junimart Girsang, Rufinus Hotmaulana Hutauruk, and Eva Dian Sari, 'Analisis yuridis mengenai pemberlakuan surat keterangan asal (ska) di Indonesia', *Jurnal Komunitas Yustisia*, 3.3 (2020), 32-42.

climate. Principle of Indonesia's in regards to international trade is established by imposing additional import duty as means of safeguard measures

In easing up surges of textile import products in Indonesia, Government of Indonesia have enacted few Policies, through Minister of Finance Republic of Indonesia's Regulations which regulates temporary import duty as safeguard measures for import of textile and textile products commodity. One, Minister of Finance Regulation number 161/PMK.010/2019 concerning imposition of import duty as means for safeguard measures temporarily upon thread products (besides sewing thread) made of synthetic and artificial staple fiber (there after refer to as Permenkeu nr.161/PMK.010/2019). Mentioned in article 2 which stated "imposition of import duty as means of safeguard measures temporarily as said in article 1 charged with Rp.1.405.00/Kg (one thousand four hundred and five Rupiah per kilogram)" but this provision is exempted for the 121 nations and importers, they need to enclose Certificate of Origin. Second, this regulation talks about imposition of import duty as means of safeguard measures temporarily between RP. 1.318.00 to Rp. 9.521.00, this statement is seen at article 1 a quo regulation. Second, Minister of Finance Regulation number 163/PMK.010/2019 concerning the Imposition of import duty as means of safeguard measures on the import of curtain products (including curtain), inner blinds, bed netting, and goods for the use of furniture products (there after refer to as Permenkeu Nr.163/PMK.010/2019) containing imposition of additional import duty for curtain products (including curtain), inner blinds, bed netting, and goods for the use of furniture products. As stated in article 2 that, "imposing temporary import duty as means of safeguard measures as meant in article 1, charged by Rp.41.083.00/kg (forty-one thousand eighty-three rupiah per kilogram)".

The above Minister of Finance Regulations were regulated in response or to fulfil article 81 PP nr.34/2011. But it has become contradictory towards as properly stated in article 2 paragraph 2-point h Minister of Trade's Regulation number 25-year 2022 amendment of Minister of trade's Regulation number 20-year 2021 concerning Importation Policy and Regulation determine limitations with the two-above minister of finance regulations. This matter is of course will not be in line with imposing of import duty mentioned above which is in the form of safeguard measures, because basically imposing import duty as safety measures is intended to recover serious loss or to prevent threats of serious loss suffered by domestic industries as a result of surges in volume of import goods of the same kind. How is it possible that textile and textile products experiencing surges and threatens domestic industries if ministry of trade has given limitations for importing textile and textile products.

Refer to UU Nr.17/2006 jo UU nr.10/1995, as the main funnel levelling to as an Act/Statute which is quite explicit, regulates import duty explained formerly through article 23A UU nr. 17/2006 jo UU nr.10/1995 stated that "if security measures have been taken in the form of quota provisions (import limitations), hence import duty as means of safeguard measures may not be imposed". In making the regulations in regards to importation of textile and textile products, Minister of Finance should be in line/ in harmony with UU Nr.17/2006 jo UU Nr. 7/2014 and regulations by the Minister of trade

as a stake holder in field of trade which clearly stated about limitations as mentioned in the article 23A, because importation of textile and textile products which has been given limitations but still it is imposed with additional import duty, will be burdening business people especially who are dealing with textile and textile products and who are depending so much in getting the raw materials through importations.

But, the more the Government tried to clarify the regulation in regards to imposing additional import duty on textiles, it turns out raises contradictory regulations between article 23A UU nr.17/2006 jo UU nr.10/1995 concerning customs and excise affairs and article 2 paragraph 2 point h Minister of Trade's Regulation Number 20 year 2021 jo number 25 year 2022, by which in that regulation, it has been done limitations on imports of textile and textile products, further, Minister of Finance's Regulation Number 34/PMK.010/2022 as second amendment on Minister of Finance's Regulation Number 55/PMK.010/2020 concerning Imposition of Additional Import Duty as Means of Security Measures towards Importation of Textile Products. That way it will not be an effective approach and will only burden local business people who needs foreign raw materials, on one side import volume is limited and on the other side imposing additional import duty in the form of security measures.

As delivered by Adam Smith through his Economic Law Theory, that self-centered individual measures will bring benefit to the public, this is because of the invisible hand that is working through competition process in that competitive market, in a sense that in that economic system the tensile strength of power is controlled by the invisible hands, hence there should not be any need for the Government's interference²⁰. This statement is indeed in line with the contradictory norms that occurred, in which Minister of Finance's Regulation number 34/PMK.010/2022 as second time amendments on Minister of Finance Regulation number 55/PMK.010/20220 for imposing additional import duty for importing textile and textile products, but in article 2 Paragraph 2 Point h Minister of Trade's regulation number 20 year 2021 jo minister of trade's Regulation number 25 year 2022 concerning Import Policy and Regulations, limitations towards volume importation of textile and textile products are stated there. On one hand there is an additional imposition of import duty and on the other hand the import volume is restricted/limited. This shows that the norms made by the Government made it more difficult for textile and curtain business community, especially curtain business entrepreneurs and yet in actual there is no curtain industries as such in Indonesia.

Further, if it is linked up with Harmonization Concept of Law, it should be in line and in harmony between Minister of Finance regulations and Minister of Trade Regulations so that the norms will not be in disharmony. Therefore, in forming policies/laws that is interwinding with each other, it should be carefully and intensely studied, so that Di harmonization of norms or contradictory norms will not happened. The function of

²⁰ Irawan Fakhruddin Mahallizikri, 'Perpaduan antara pandangan ekonomi konvensional dengan ekonomi syariah melahirkan sebuah paham ekonomi yang baru dari sebuah sistem yang telah ada', *STIE Syariah Bengkulu*, 2015 <<https://www.stiesyariah Bengkulu.ac.id/kolompikiran-11-perpaduan-antara-pandangan-ekonomi-konvensional-dengan-ekonomi-syariah-melahirkan-sebuah-paham-ekonomi-yang-baru-dari-sebuah-sistem-yang-telah-ada.html>>.

harmonizing the law is to prevent and overcome Di harmonization of law/norms. By undertaking invention of law, legal reasoning with logical and rational law argumentation, Di harmonization of law/norms may be prevented. All efforts should be done to direct in confirming with the aspirations of the law, of the people and moral aspirations. This is to be done for anticipating the facts that there will be potential factors which is likely in causing Di harmonization of the law/norms²¹.

Besides that, David Ricardo with his Economic Theory stated that national and/or international trade that may materialize depends on comparative superiority which is more effective and efficient than superiority in terms of absolute, because every country will tend to sell their goods and services more efficient in their production and it's because of conducting specialization to achieve profitable trade nationally as well as internationally and according to Ricardo, State have to concentrate on the economic activities towards industries so that they can incorporate more competitively at the national and/or international trade activities²². As a result of not having curtain industries in Indonesia, the curtain business people here constantly import curtains for their domestic market/trade. Many reasons for that, one of them is due to expensive prices for the machineries needed for their productions. But, whenever inclinations of demand happened, surely business people will find it in a difficult situations, because again, on one side there is an imposition of additional import duty and on the other hand limitations of import volume policy for textile and textile products, the impact will be on the profits which will be lesser and lesser and if this goes on, the entrepreneurs will not be able to purchase the machineries for the purpose of curtain production industries and will always import curtain/curtain products/ textile products from foreign countries. This situation will not only take effect to the business people specially for curtain/curtain products/textiles but further it will also affect the workers. And as situations of importing those products are getting harder, it will enlarge the tendencies of bankruptcies for the companies dealing with those products and at the end it will cause serious conditions of unemployment in Indonesia. Of course, this matter is not in line with the principle of welfare state which says that in a state where the Government is responsible in guaranteeing minimum standard living welfare towards their citizens. In fact, these policies will even cause big chances for the entrepreneurs/ companies to file bankruptcy clauses which will implicate in firing the workers and eventually will add unemployment rate in Indonesia.

4. Conclusion

The Principles of international trade embraced by Republic of Indonesia is intended to protect domestic product industries so as to have a healthy trade climate domestically. Basically, international trade is regulated through agreements in regards to goods (GATT), service (GATS), intellectual property (TRIP's), and dispute resolutions. As a member of WTO, Indonesia also applied tariff imposition as a tool in controlling trade, trade protectionism which is done through provisions of non-tariff instrument/NTM.

²¹ Maria Farida Indrati, 'Meningkatkan kualitas peraturan perundang-undangan di Indonesia', *Jurnal Legislasi Indonesia*, 4.2 (2007), 25-31.

²² H. D Atmanti, 'Kajian teori pemikiran ekonomi mazhab klasik dan relevansinya pada perekonomian Indonesia', *Jurnal Ekonomi & Bisnis*, 2.2 (2017), 511-24.

Categorically safeguard is formulated in the NTM. Further, in relate to imposing import duty in the form of security measures towards importation of textile products in Indonesia is regulated in the Minister of Finance Regulation Number 161/PMK.010/2019 concerning temporary imposition of import duty towards thread products (besides sewing thread) made of synthetic and artificial staple fibre; Minister of Finance Regulation Number 163/PMK.010/2019 concerning Temporary imposition of import duty as means of security measures towards curtain products (including curtain), inner blinds, bed netting, and goods for the use of furniture products and Minister of Finance's Regulation number 34/PMK.010/2022 as Second Amendment on Minister of Finance's Regulation Number 55/PMK.010/2020 concerning Imposition of Additional Import Duty as Means of Security Measures towards importation of Textile Products. But those regulations seems contradictory with article 2 paragraph 2 point h Minister of Trade's Regulation number 25 year 2022 amendment of Minister of trade's Regulation number 20 year 2021 concerning Importation Policy and Regulation, hence it is not effective and it will only burden local business people who need raw materials from foreign countries, on one side volume of imports is being limited and the other side imposing additional temporary import duty as means for security measures. Therefore, in depth study of the policies must be done especially for curtain industries so that these companies can expand in Indonesia as industries and they will not constantly import these products.

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(termasuk Gorden), Kerai Dalam, Kelambu Tempat Tidur, dan Barang Perabot Lainnya
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