

The Protection of Domestic Industry through Safeguards Instrument GATT/WTO and Its Implementation on Downstream Steel Industry In Indonesia

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World Global Crisis causes all trade world find difficulties. There will be increasing particularly import product in a country, including to Indonesian market. This getting worse by the implementation of free trade agreement between ASEAN member and China in the form of ASEAN China Free Trade Agreement (ACFTA). Steel as national strategic industry is a vital industry for developing country like Indonesia, so government should protect it against incursion of import products. Indonesia as member of WTO can use GATT/WTO safeguards instrument to protect domestic downstream steel industry from increasing import of downstream steel product. The protection for domestic industry through safeguards GATT/WTO instrument in Indonesia executed under trade security instruments, namely President Decision (Kepres No. 84 Year 2002) and Act 17/2006 (UU No. 17 Year 2006). Therefore, this article analyzes: first, how to protect domestic industry through safeguards GATT/WTO instrument in Indonesia and, how does implementation of safeguards instrument has protecting Indonesia domestic downstream steel industries.

Keywords : *Protection, Domestic Industry, Safeguards, Downstream Steel Industry*

I. Introduction

Free trade always give an advantage in one hand, such as possibility to impor product higher than domestic, so it able to cause competition between importir and domestic producer. In turn, it will trigger domestic producer to do efficiency, lower price, and improving quality. Furthermore, free trade will increasing volume trading of a country, and effecting the economic growth. But in the other hand, many facts, especially in developing country, they suffer some economic injuries with this free trade agreement.¹

Free trade never separate with General Agreement on Tariffs and Trade (GATT). After World War II Year 1945, United States and Aliens as an economic and politic power, initiated Bretton Wood Conference.²

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¹ Hendra Halwani, "*Ekonomi Internasional dan Globalisasi Ekonomi*", Edisi Kedua, Ghalia Indonesia, Jakarta, 2005, p. 322.

² *Bretton Woods Conference*, held in United Statesof Amerika on July 1944, which

This conference produced a set of rules of international economic law, including its organization to preparing world economic system. GATT made development through some multilateral economic trade rounds³ which forming world trade organization (WTO). GATT become a general agreement for inter state trading that more order, fast, free, transparent and predictive with fairly dispute settlement mechanism.⁴

World global crisis which stricken in 2008 have caused all world trade find difficulties. It caused a decrease on liquidation finance in perpetrators economy in developed countries like United States, European Union, Japan and other Asian countries. It has resulted decreasing of request exporting products from Indonesia in foreign countries market.

According to "supply-demand principle" that also recognized as market mechanism, decreasing of market demand in the middle of overflow stock will cause declining price of various product in the market. Declining of domestic product demand in main exporting country also experience by Indonesia competitor countries like China, India, Vietnam, Thailand, Malaysia and others. It caused export product from competitor transferred its market to other country, including to Indonesia. This real situation faced by national industry. And it become harder because domestic market inundated by import product. Of course it threat domestic industry, then it will deliver big loss to domestic industry.

This getting worse by the implementation of free trade agreement between ASEAN member and China in the form of ASEAN China Free

produce recommendation for *International Monetary Fund (IMF)*, *The International Bank for Restruction and Development (World Bank)* and *International Trade Organization (ITO)*. IMF and World Bank succeeded formed at that moment, but ITO fails formed. Then in Uruguay Round, ITO formed by name of *World Trade Organization (WTO)*. Huala Adolf, "*Hukum Ekonomi Internasional: Suatu Pengantar*", Rajawali Pers, Jakarta, 2005, p. 115-118. Munir Fuady, "*Hukum Dagang Internasional (Aspek Hukum dari WTO)*", Citra Aditya Bakti, Bandung, 2004, p. 6.

³ GATT Round are: Geneva Round(1947), Anneey Round (1948), Torquay Round (1950), Geneva Round (1956), Dillon Round (1960-1961), Kennedy Round (1964-1967), Tokyo Round (1973-1979) and Uruguay Round (1986-1994). On Uruguay Round, WTO formed and effective operate on January 1st 1995. Huala Adolf and A. Chandrawulan, "*Masalah-masalah Hukum Dalam Perdagangan Internasional*", Rajawali Press, Jakarta, 1995, p. 1-43.

⁴ Four targets that will be reached by GATT, that is: (1) improve mankind living standard; (2) improve jobopportunity; (3) improve utilization of world natural resources; and (4) increase product and goods exchange. *Ibid.*

Trade Agreement (ACFTA) per January 1st 2010. Then it brings consequence that domestic industry in Indonesia must able to compete with China's product that recognized cheaper in the world, which has inundated in domestic market.

Steel as a national strategic industry is becoming very important to protect from incursion of import products, from upstream product to downstream product. Indonesia as a developing country still need develop infrastructure like building, bridge, street, etc. Has to be admitted, Indonesia is still very depend on import of raw material. But it does not mean semis product and domestic finished product can not protected by government. Government still have obligation to optimize the existing domestic product, then fulfilled need in country by added capacities by importation

In consequence, many steel industries easy to get affected by abundant importation. Downstream steel industry is sector of steel industry which affected the most. Increasing of import products causes a big injury to domestic downstream steel industries. It directly impact to most downstream steel industry, such as nail, successor steel, strand metal, steel wire rope, nut, bolt and other. This significant injury has made many domestic producer closed his company.

Government basic factors to take some policies for protecting downstream steel industry are incursion of downstream steel import to Indonesian market with lower prices and declining domestic consumer to use domestic downstream steel product caused domestic downstream steel industry more buried. It becomes important; remember indication from impact of more decreasing product of domestic downstream steel and downstream steel selling in domestic market cause the close of factory, reduction of employees and finally mass unemployment. Moreover, export of domestic downstream steel burdened with high import tariff in some target country like United States and European Union because of domestic protection they conduct.

Free trade is not for limiting inter-state trading but with the right rules government able to do protection for its domestic industry. World free trade connected with development of science and technology which unbondaries between states and human life dynamic on economy and commerce continue expand to "borderless society" with transnational characteristic.

II. Safeguards Instrument on GATT/WTO

Safeguards term used to mention security action. General Agreement on Tariffs and Trade (GATT) allow two forms of Security action (safeguards) in multilateral: (1) Country is entitled to observe import in transient or other commerce resistance to prevent loss for domestic industry, and (2) the same right to exporting country for not withdraw access market in arbitrary. According Article XIX GATT, a member shall be free to withdraw or modify the concession that has been agreed on, apply import restriction for temporary time if can be proved that certain improvement of import product causing serious injury for domestic producer, and remain to apply import restriction during that required to repair the injury.⁵

The following materials provide targets of safeguards measure:

1. Compensation and Adjustment Cost, safeguards might serve to 'compensate' those who suffer from trade liberalization and giving compensation to injured party because of trade liberalization and help them 'adjust' to their new situation, international competition.
2. Restoring Competitiveness, safeguards action provide ailing firms with an increase in profits, enabling them to invest in new technology and modern equipment, which will later allow them to compete successfully in the international marketplace.
3. The Safety Valve Hypothesis and the Public Choice Perspective, safeguards fulfill need of policymakers to pursue a long-term strategy of free trade.⁶

Safeguard is action taken by the government in the form of tariff imposition, quota, or tariff at the same with quota which apply on non-discrimination principle for all importing country, to protect domestic industry and domestic trading from injury caused by increasing like product in a short period of time (sudden).⁷

In International Trade Law recognized there are three forms of obligation exemptions in opening market, which are general exceptions,

⁵ Directorate General of International Trade, *Kamus lengkap Perdagangan Internasional*, Department of Industry and Trade, Jakarta, 1997, p. 320.

⁶ Jackson, John H (et.al.), *Legal Problems of International Economic Relations: Economic, Materials and Text*, 3rd edition, West Publishing USA, p. 598-603.

⁷ Suhardi, "Safeguards", *Workshop on anti-Dumping, Countervailing Duties, and Dispute Settlement Understanding*, Surabaya, 2003, p. 3.

security exceptions and economic emergency exceptions. Safeguards consider as economic emergency exceptions faced by country.⁸

A safeguard is one of trade instrument regulated on WTO Agreement. Member could provide safeguards measure for protecting his domestic industry in such increased import quantities product and under such conditions as to cause or threaten serious injury to domestic producers. Safeguards measure meant for avoid situation where member state WTO find difficulties wheter must let domestic market bothered by import product or must withdraw from membership. Because of that, GATT 1947 requires special requirement in the case of emergency action under Article XIX GATT 1947 entitled Emerging Action on Imports of Particular Products. Specified some requirements how safeguards measures can be executed.⁹

Article XIX GATT 1947:

"1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in subparagraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in

⁸ Peter Van den Bosche, *The Law and Policy of The World Trade Organization : Text, Cases and Materials*, Cambridge University Press, Cambridge, 2005, p.633.

⁹ Indonesia Safeguarding Trade Committee/Komite Pengamanan Perdagangan Indonesia (KPPI), *Perlindungan Industri melalui Kesepakatan Safeguards World Trade Organization*, p. 2.

whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury."

Word "if" is a conditional situation where safeguards measures can take. Safeguards measures can be executed if as a result of unforeseen developments and effect of the obligation by parties that conduct agreement, including tariff concessions, any product is being imported in the territory of that member in such increased quantities, so under such condition as to cause threaten serious injury to domestic producer in that territory of like or directly competing products, member has authorized to take a precaution act to prevent more serious injury that will be experienced by domestic industry. Precaution and repairation measures can be in the form of suspending the obligation in whole or in part or to withdraw or modify the concession. This kind of protection is called safeguards measures.

"2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Pasal, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Pasal may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action."

"3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received

by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Pasal, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, where action is taken under paragraph 2 of this Pasal without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury."

Article XIX GATT 1947 still exist without changing in GATT 1994. Safeguards provision formulated further in Agreement on Safeguards (Safeguards agreement) as a part of WTO Agreement. Article XIX of the GATT 1994 and the Safeguards Agreement apply cumulatively.

Safeguards measures is measures which are justified under the economic emergency exception provided for in Article XIX of the GATT 1994 and the Safeguards Agreement. The purpose of the a safeguards measure is to give 'breathing space' to a domestic industry to adapt it self to the new market situation by temporarily restricting imports. Safeguards measure therefore typically take the form of:

1. Import tariff for duration of four years,
2. Quota for duration of four years,
3. Combination Tariff and Quota for duration of four years.

Safeguards measures are, by nature, temporary measures. Article 7.1 of the Agreement on Safeguards provides that safeguards measures may only be applied for such a period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

In fact, the initial period of application of a definitive safeguards measure must not exceed four years. Furthermore, a safeguard measure exceeding one year must be progressively liberalized, and if, the measure exceed three years, the Member applying the measure must carry out a mid-term review to establish whether the measure still meets

the requirements discussed below. Extension of a safeguard measure beyond four years is possible but only if:

1. The safeguard measure continues to be necessary to prevent or remedy serious injury to the domestic industry; and
2. There is evidence that the domestic industry is adjusting.

Article 9.2 of the Agreement on Safeguards allows Developing Country Members to apply a safeguards measure up to ten years, instead of eight. Developing Country Members may also apply a new safeguard measure on the same product sooner.

The Agreement on Safeguard has put an end to that debate by clearly requiring that safeguards measures be applied on an MFN basis, i.e. without discrimination between supplying Members. The 'selective' application in safeguard measures is, in principle, prohibited. However, the Agreement on Safeguards provides two exceptions to the prohibition of 'selective' application of safeguards measures. These exceptions are set out in Article 5.2 (b) and Article 9.1 of the Agreement on Safeguards. Article 5.2 (b) allows the selective application of safeguards measures taken in the form of quotas allocated among supplying countries if, apart from other requirements:

Clear demonstration is provided to the Committee (on safeguards) that "imports from certain Members have increased in a disproportionate percentage in relation to the total increase of imports of the product".¹⁰ Article 9.1 of the Agreement on Safeguards provides for an exception to the prohibition of selective application for the benefit of developing country Members.

A safeguards measure in the form of quantitative restriction may not reduce the quantity of imports below the average level of imports in the last three representative years. An exception to this rule can be allowed when clear justification is given that a lower level is necessary to prevent or remedy serious injury.¹¹

Article 6 of the Agreement on Safeguards allows Members to take provisional safeguard measures in 'critical circumstances'. Critical circumstances are defined as circumstances 'where delay would cause damage which it would be difficult to repair'. Provisional measures may only be applied for a maximum 200 days and can only take the

¹⁰ For the other requirements, see Article 5.2 (b) of the Agreement on Safeguards

¹¹ Article 5.1 of Agreement on Safeguards.

form of tariff increases.

Members may apply safeguard measures only when three requirements are met.¹² These requirements are:

1. The 'increased imports' requirement (must be recent, sudden, sharp and significant);
2. The 'serious injury' requirement ('injury factors' include: the rate and amount of the increase imports of the product concerned, in absolute and relative terms; the share of the domestic market taken by increased imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment); and
3. The causation requirement (the test for establishing causation: the 'causal link' sub-requirement; and the 'non-attribution' sub-requirement).

III. Downstream Steel Industry In Indonesia

Industry Development in Indonesia is marked with enactment of Capital investment, either domestic investment or capital investment foreign. Background of capital investment industrial development program is for accomplishing society need.¹³

Downstream industry is industry processing semis material become finished product until that product can be directly weared or enjoyed by consumer. For example: plane industry, convection industry, industry otomotif, nail; axis industry, strand of metal industry.¹⁴

Like we all known that steel industry is a strategic industry and become backbone for growth of industry in a nation, this matter because of steel industry is producer of steel product which accomplishment for requirement of manufacture industry base on metal and especial

¹² Article 2.1 of Agreement on Safeguards: *...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.*

¹³ Perdana Ginting, *Perkembangan Industri Indonesia: Menuju Negara Industri*, Yrama Widya, Bandung, 2009, p. 11. Now regulate with Act No. 25 Year 2007 Concerning Capital Investment.

¹⁴ *Idem*, p. 118.

development of construction and infrastructure sector. Steel industry either on pate; upstream or downstream, is foundation of development of a nation.

Year 2008 is a historical year for iron and steel industry in Indonesia, and also for other steel industries in the world. Some steel industries enjoy the advantages from the booming of steel, especially for integrated steel industries where less dependence on imported material. But in other side, some industries have to survive to get their raw material since some exporters, or the country of origin restricted the exportation of the semis and raw material. If any, importers have to pay a very high price of raw material and semis, which then caused in competitiveness of their industries¹⁵

Our major problems which faced by national steel industry are height depend on raw material import, especially at the upstream steel industry. So that our national steel industry becomes not self-supporting and very depend on the condition of steel market world. This matter cause the lack of national steel industrial competitiveness compared to other states.

According to Indonesia Safeguarding Committee on Trade (KPPI)¹⁶, by seeing Safeguards report in 2010, tren Steel Wire Rope importation in 2006 from 6.694.846 kg become 13.909.934 kg in 2007. Import volume Wire rope steel increase to 24.148.480 kg in 2008 and reach 25.862.339 kg in 2009. From KPPI evaluation, during investigation period, there are increasing volumes of import as high as 299%. There is improvement tren volume import of metal bindrat strand 119,7% from 2006 to 2007, and 95,6% from 2007 to 2008.¹⁷ KPPI also has accepted

¹⁵ *The Indonesian Iron and Steel Industry Association (IISIA), Directory 2009: Enhancing National Power*, 1st edition, 2009, p. ii.

¹⁶ KPPI is government institution that handle investigation on request of *Safeguard under conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive product to domestic producer*. KPPI established in 2003 through SK Menperindag No. 84 /MPP/Kep/2/2003 on February 17th 2003. This Decision Letter is follow up of Keppres No. 84 Year 2002 on December 16th 2002 concerning Safeguard Measure for Domestic industry from Increased Import (Tindakan Pengamanan Industri Dalam Negeri Dari Akibat Lonjakan Impor).

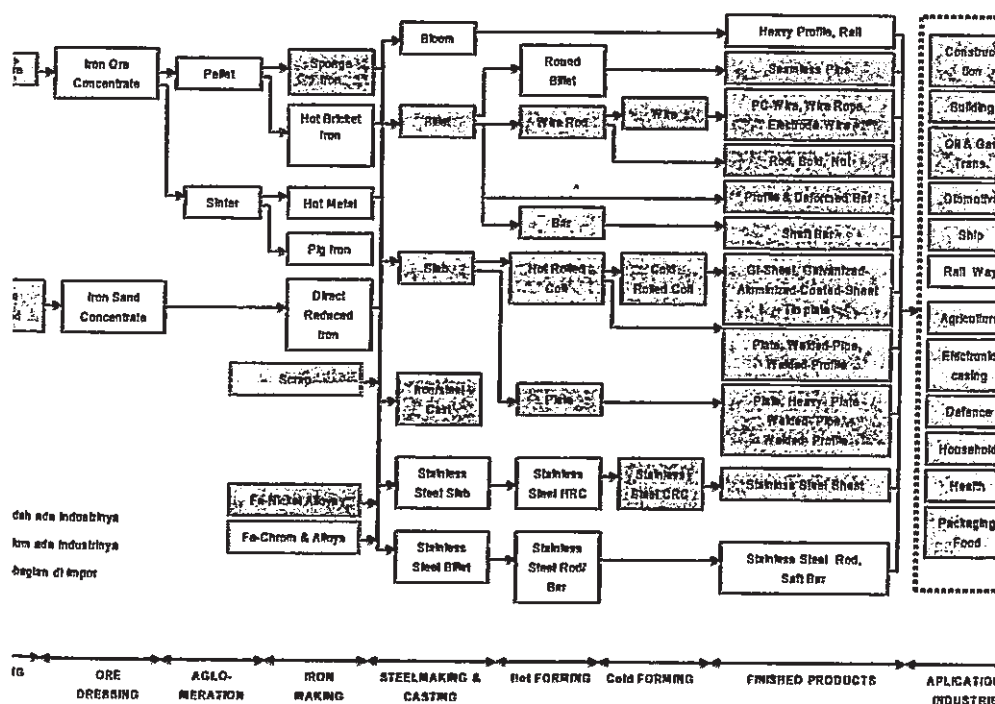
¹⁷ Final Report of Safeguards Investigation by KPPI from 2004 to 2011. Noted eight investigations case of downstream steel product industry, and most recently raised on April 16th 2010 that is import of steel wire rope product.

a lot of investigation petition from several of domestic steel industry associations, particularly since ACFTA agreement implemented. Investigations to some petitions are being conducted. In consequence, community of downstream steel industry has urge to implementing safeguards measures for import product.

Condition of national iron and steel industry still has to support with import product, especially raw material. It might seem illustrated from the table below.

Table. I

TREE OF NATIONAL STEEL INDUSTRY



Source: The Indonesian Iron and Steel Industri Association (IISIA)

Another problem that faced by national downstream steel industry is related to implementing of BMTP (Bea Masuk Tindakan Pengamanan) as an action form of safeguards by certain ministries. According to KPPI, at least, it need one year since initiation for decision of BMTP.

This uneffectiveness caused domestic downstream industry had injury because of increasing import product. Domestic industry must stay survive till BMTP implemented applied effectively.

According to data that released by KPPI during 2004 to 2011, KPPI has handled 23 cases. Those progressing case resulting some decision: Case that has been imposed BMTP is 8 cases, case finish investigation process and waiting for Decision of Finance Ministry (Permenkeu) is 1 case, Case still in process investigation (already initiate) only 1 case, Case doesn't fulfill requirement to initiate are 7 cases, Case has been closed because no causal link between injury and import increase is 5 cases and there is 1 case for extended BMTP.

The increasing of product of steel import into domestic market also experienced by America in 1970s, specifically for stainless steel and alloy tool steel. Previously United States has had commercial legislation concerning escape clause in US. Tarde Act Year 1974 Sections 201-204. During 1964 to 1975 had experience increased import of steel product. Since 1964, total imports of stainless steel and alloy tool steel have tripled, imports of stainless sheets and strip have more than doubled, and other stainless steel and alloy tool steel articles have increased threefold to tenfold. Under that situation, caused injury to domestic steel industry in United States. Then Commission Investigation conducted investigation on import steel product. Finally, solution of this case was by implementing Voluntary Restrain Agreement (VRA).¹⁸

IV. Instrument Protection for Domestic Industry in Indonesia

In the context related to regulation policy for instrument protection to domestic industry, Indonesia has national regulation namely President Decision (Kepres No. 84 Tahun 2002 Tentang Tindakan Pengamanan Industri Dalam negeri Dari Akibat Lonjakan Impor) and Act 17 Year 2006 (UU No. 17 Tahun 2006 Tentang Kepabeanan). That regulation has to be harmonized with standard provision in GATT/WTO. Indonesia Safeguards policy must rely on spirit of domestic industry protection and spirit of opened and fair international trade.

Some law product regulate about safeguards (security action) made

¹⁸ Jackson, John H., (et.al.), *Legal Problems of International Economic Relation: Cases, Materials, and Text*, 3rd edition, West Publishing CO, Amerika, 1995, p. 612.

in order to support government policy to give protection to domestic industry from increasing import take the shape of.

A. Act No. 17 Year 2006 Concerning Customs

Act No. 17 Year 2006 About Customs is a new law regime. Act No. 17 Year 2006 About Customs is changing the old regulation, Act No. 10 Year 1995 About Customs. Act No. 10 Year 1995 About Customs in the beginning only regulate Anti-Dumping and Subsidies. Act No. 17 Year 2006 About Customs enlarge security trade action with enter two new rules beside Anti-Dumping and Subsidies, namely Safeguards and Countervailing Duty.

Some Articles related to arrangement of security action arranged under separate part of regime that is Bea Masuk Tindakan Pengamanan/BMTP (Tariff on Security Action) can be seen from distorting of number 37:

"37. Section IV added 3 (three) part, Part Three, Part Four, and Part Five provide:

Part Three

Safeguards Measures

Article 23A

a. Safeguards Measures may apply to import product under condition where there are such increased quantities of import product, absolute or relative to domestic production that produces like or directly competitive products, and such increased import product:

b. cause serious injury to domestic industry which produces like or directly competitive products; and

c. threaten to cause serious injury to the domestic industry which produces like or directly competitive products

Article 23B

(1) Safeguards measures tariff intended to Article 23A only as much as needed to overcome serious injury or to prevent threaten to cause serious injury to the domestic industry.

(2) Safeguards measures tariff intended to sub (1) is additional cost from import tariff collected based on Article 12 ayat (1).

Part Four

Countervailing Duty

Article 23C

(1) Countervailing Duty tariff may apply to import product originated from countries that discriminatively treat Indonesian export products.

(2) Duty tariff as in the paragraph 1 is an additional duty tariff which imposed based on Article 12 paragraph 1.

Part Five

Arrangement and Decision

Article 23D

(1) Rule concerning requirement and procedures imposition of antidumping tariff, anti-subsidies tariff, safeguards measures tariff, and countervailing duty tariff is regulate furthermore with government regulation (Peraturan Pemerintah).

(2) Antidumping tariff, anti-subsidies tariff, safeguards measures tariff, and countervailing duty tariff referred to sub (1) specified by Minister.

In the explanation of Article 23A, Safeguards Measures is import cost that collected by government to remedy serious injury (already happened) and/or prevent threatened serious injury (strong confidence there will be injury in the future) to domestic industry of like or directly competing domestic products to facilitate structural adjustment for those injury domestic industry.

In this explanation also lined that safeguards measures does not have to apply if there is quota implementation (import restriction) as safeguards measures. This condition is to avoid double application of safeguards measures form, that is quota and import tariff.¹⁹

¹⁹ Christophorus Barutu, *Ketentuan antidumping, Subsid dan Tindakan Pengamanan (safeguards) dalam GATT dan WTO*, Citra Aditya Bakti, Bandung, 2007, p. 142. Compare with Article 6 of the Agreement on Safeguard concerning provisional safeguards measuresnt which only implemented in the form of increasing tariff, and Article 5.1 of Agreement on Safeguards concerning Safeguard Measure in the three form, they are increasing tariff, quantitative impor, and combination both of them. Article 6 and Article 5.1 Of Agreement on Safeguards adopted and included into Keppres

Serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry. A determination of the existence of a serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility. Quantity of import safeguards tariff is specified by Minister. In this case, for import tariff on safeguards specified by Minister of Finance by decree of minister for finance (Kepmenkeu). In line with Article 21 (2) Kepres Nomor 84 Tahun 2002 Tentang Tindakan Pengamanan Industri Home affairs Dari Akibat Lonjakan Impor.

A. Keputusan Presiden Nomor 84 Tahun 2002 tentang Tindakan Pengamanan Industri Dalam Negeri Dari Akibat Lonjakan Impor. (President Decision No.84 Year 2002)

President Decision (Kepres) is an execution regulation from Act No. 7 Year 1994 about Authentication of Establishing the World Trade Organization Agreement, especially Agreement on Safeguards. This Kepres is a form of execution of government commitment which ratifies Establishing WTO Agreement.

As the consequence from ratification of Agreement on Establishing WTO, specially related to Safeguards Agreement, then all national law product concerned with safeguards must do some structural law adjustments.

Through President Decision No. 84 Year 2002, government tries to formulate safeguards problems with more elaborate and also solution formulation in answering safeguards problems that expected with Agreement on Establishing WTO, especially correlated with Safeguards Agreement.

Article 1 President Decision No. 84 Year 2002 explained about important terms that related safeguards measures. Terminology related to safeguards measures as the base in equalizing perception according to Safeguards Agreement provision.

Section III provide about Investigation, Article 3 - Article 8

Nomor 84 Tahun 2002 concerning Domestic Industrial Safeguards Caused by Import Increase, especially on Section IV Provisional Safeguards Measures in Article 9 point (b) and Article 10 (2) also Section VIII Safeguards Measures in Article 21 (2). Keppres No 84 Year 2002 Article 21 (2) explaining about imposition of import tariff given by Minister of Finance, meanwhile imposition of kouta given by Minister of Industry and Trade.

provide a couple of rule of application for investigation mechanism for investigating increasing import product, which become an elementary base of investigation by The Committee. To deliver certainty on law, then the investigation take period time in its implementation, for efficiency.

Safeguards measures exist in section IV, Article 9 - Article 11. Provision about Injury, provide in Section V Article 12 - Article 13. Evidence issue provides in Section Bab VI Article 14 - Article 18, and Safeguards Measures provide in Section VII Article 20 - Article 26.

Section X Article 28 - Article 29 provide about notification and consultation where regulating about committee obligation to notificate all safeguards measures took by Safeguards Committee.

It can be told that President Decision No. 84 Year 2002 is an umbrella law which is very important for Indonesia in applying safeguards measures to protecting domestic industry from impairment cause by uncontrolling import.

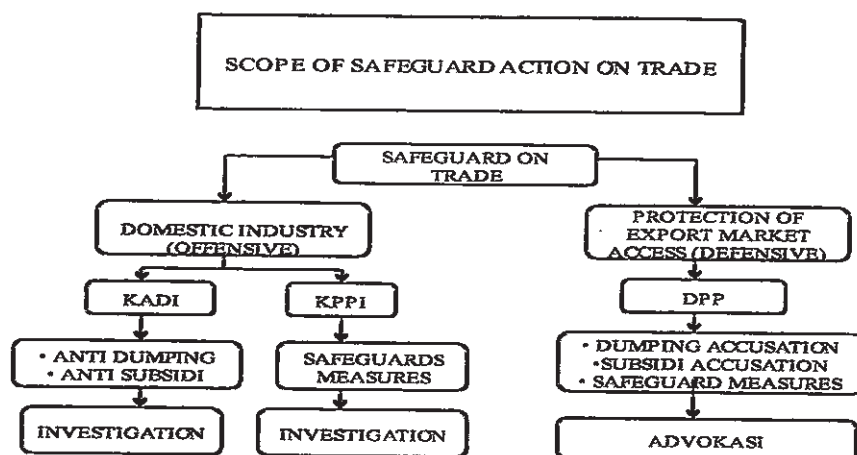
B. Keputusan Menteri Perindustrian dan Perdagangan Nomor 85/MPP/Kep/2/2003 tentang Tata Cara dan Persyaratan Permohonan Penyelidikan atas Pengamanan Industri Dalam Negeri dari Akibat Lonjakan Impor (Decision of Industry and Trade Minister)

Decision of Industry and Trade Minister No. 85/MPP/Kep/2/2003 is regulation that born as execution commended by Article 4 (3) of President Decision No. 84 Year 2002.

This Minister Decision of Industry and Trade consist of 8 article, substantially explain comprehensively about anything connected to mechanism, procedures and requirement of investigation application of safeguards for domestic industry from increasing import, which cover stake holder or interest party on safeguards investigation application, which provide on Article 2.

Completed application that raised provide in Article 4 and duration for committee for making decision after accepting and verificating application is provide in Article 5 and Article 6. Article 7 elaborating announcement that conducted by Committee on Official News of KPPI after application is accepted and notification to stake holder concerning investigation of import product starting.

V. Implementation of Safeguards Agreement



Source: Direktorat Pengamanan Perdagangan
Direktorat Jendral Perdagangan Luar Negeri
Kementerian Perdagangan R.I.

Indonesia concern on problems related to safeguard, as an effort to protect domestic industry, either from serious injury or threat of injury cause by increasing import. Ministry of Industry and Trade has separate instrument for securing trade, as seen at following diagram:

Indonesia has ratifies WTO Agreement and formulated in law action in shape of authorization Agreement on Establishment of World Trade Organization (WTO). Meaning, Indonesia is to be bound in international agreement. Indonesia has obligation to adhere all rights and obligations that born from that international agreement.

Agreement on Establishment of WTO complete with several set of integrated rules, which connected each other with provision on it. Correlating with safeguards measures, there is Agreement on Safeguards which is one of international agreemnet integrated on WTO frame. Agreement on Safeguards is a plurilateral agreement, all member of WTO connected on it. Meaning, when a country becomes member of WTO, then that country as a Member (party) of Agreement on Safeguards. Rights and obligation which born from WTO, has equal law inforcement with Agreement on safeguards.

Legal consequences for Indonesia as Member of WTO, Indonesia bound to Agreement on Safeguards. All rights and obligation which

come up from agreement has to adhere by Indonesia as Member (party). In context regulation on protection for domestic industry through safeguards instrument in Indonesia, then safeguards regulation in Indonesia has to be based on agreement on safeguards. As well as agreement on safeguards as a part of national law system, used as base for giving law protection to domestic industry from increasing impor.

Many safeguards petition have risen by downstream steel industry. It proves that downstream industry is the most affected industry with badly serious injury cause by increasing quantities product, especially product being imported from China in domestic market. Under such condition, domestic industries need safeguards measures for protection

Investigation Application for downstream steel product to KPPI increased after 2008. Steel Industry Association realizes the importance of safeguards to protect domestic downstream steel product. It shown, from 23 cases requested for investigation to KPPI, 7 applications come from downstream steel industry. From 10 cases imposed BMTP, five cases are given to domestic downstream steel industry to protect national product.

There is 12 case of investigation applications for imposition safeguards that stopped, by reason can't reach requirement and there is no causal link between increased imports of the product concerned and serious injury or threat thereof to domestic industry. For steel it case, from 7 that requested investigation, 2 can not be continued by reason not reaching investigation requirement.

From data above, government still not maximize on giving protection for domestic industry which requesting investigation. Various constraints are faced by KPPI in conducting investigation; it because government effort to giving protection through safeguards measures is not maximal. From data of investigation, some cases are stopped because KPPI find difficulties in getting faktual data from domestic producer to be process. KPPI also burdened with long bureaucracy. Domestic producer which products compete by impor product also facing the same constrains with KPPI, especially in the case of lack of socialization from government concerning safeguards and the use of company data.

The Ministry of Foreign Trade and Economic Cooperation China (MOFTEC) applied safeguards measures to five import steels product

on 20 November 2002. Safeguards measures applied to import steel product, which are: hot-rolling thin plates, cold-rolling thin plates (strips), color-coated plates, silicon electrical sheets, and cold-rolling stainless thin plates (strips). Additional tariff that imposed will be reduced every year, and in the last year safeguards tariff will be less than 85% from the first year. On April 19th 2002, China Steel Industry Association and other 5 biggest steel producers, formally request to MOFTEC to investigate for safeguards measures to import steel product. May 20th 2002, MOFTEC announced their early investigation. Application of provisional safeguards announced on May 21st 2002, starting on May 24th 2002 until 180 days further. Safeguards measures still applied to that 5 import steel product on November 20th 2002.

Learning from China on implementing Safeguards measures, it shown, duration from investigation process to imposing of safeguards measures, China only took six months for implementing safeguards measures to import product investigated. In Indonesia, consider from KPPI Table of cases²⁰, it shown that duration of investigation until Decision Minister of Finance concerning imposition of BMTP, at least need one or two years for domestic producer to enjoy protection through safeguards measures from government.

There is only one institution conducting investigation and giving safeguards measures, that single institution is MOFTEC, it will minimize bureaucracy and other needed which will be slow down BMTP decision to import product. Different with KPPI, when investigation has done, investigation result in the form of KPPI safeguards recommendation reported Minister of Trade with informed to Minister of Industry, after that Minister of Trade together with Minister of Finance held meeting to decided safeguards measures and how much BMTP will be imposed, finally Minister of Finance will release Decision Minister of Finance concerning BMTP for investigated import product.

VI. Conclusion

The Indonesian government that was part of the World Trade Organization have to make the provision in accordance to the provision

²⁰ KPPI, Table of Cases imposed Tariff on Security Action (BMTP) report from 2004 to March 2011.

that have been encated by the Worl Trade Organization. There are some provisions related to protection instrument for domestic industry allowed by WTO. One of the instruments is Safeguards. Safeguards take a form of Import Tariff, Quotas, and combination both of it.

The protection for domestic industry through safeguards GATT/ WTO instrument in Indonesia executed under trade security instruments, namely President Decision Number 84 Year 2002 (Kepres No. 84 Tahun 2002) and Act Number 17 Year 2006 (UU No. 17 Year 2006).

Some provisions in these instruments have not yet in accord to Safeguards Agreement and growth of industry progress. Safeguards regulations do not give protection to downstream steel industry effectively. There are numbers of constraint faced by downstream steel industry and by KPPI. This is the time for government to amandement big part of those regulations.

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