

THE IMPLEMENTATION OF SAFEGUARD IN EFFORTS TO PROTECT DOMESTIC INDUSTRIAL PRODUCTS

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Abstract

Trade security measures (safeguards) are government policies of importing countries to recover serious losses or prevent the threat of serious losses to domestic industries as a result of a surge in imports of similar goods are directly competitive. The purpose of this study is to analyze safeguard regulation in international trade, and to analyze the implementation of safeguards to protect domestic industries. This research is a normative legal research with a statute approach, a conceptual approach and a comparative approach. The technique of collecting legal materials is conducted by literature study. The analysis of legal materials was carried out in a qualitative descriptive manner. The results show that the safeguard arrangement is intended as a legal basis for the government to take security measures to recover serious losses and / or prevent the threat of serious losses from the domestic industry as a result of a surge in imports of similar goods which are directly competitors to domestic industrial products. The implementation of safeguards by importing countries is carried out by the Trade Safeguard Committee through stages, namely starting from investigation and evidence, determining the existence of a loss or threat of loss, and implementing security measures.

Keywords: safeguard; international trade; domestic industry protection; tariff of import, serous injury.

INTRODUCTION

International trade is one part of business activities which has recently progressed very rapidly. This can be seen from the growing circulation of goods, services, capital and labor between countries. This activity can occur through export-import relations, investment, trade in services, licenses and franchises, intellectual property rights and technology transfer, which in turn have an impact on other economic activities, such as banking, insurance, taxation and so on. The entry of Indonesia as a member of world trade through the ratification of Law Number 7 of 1994 concerning Ratification of the Agreement on Establishing

The World Trade Organization (WTO) has consequences for Indonesia, namely that it must comply with all results of agreement in the WTO forum, as well as harmonize national laws and regulations. in accordance with the results of the WTO agreement.

International trade greatly affects the economic growth and development of a country, because each country competes with each other in the international market. One of the advantages of international trade is that it allows a country to specialize in producing cheap goods and services. In addition, the real benefits of international trade can be in the form of an increase in state income, foreign exchange reserves, capital transactions and the breadth of employment opportunities. Economic growth is an achievement that is a top priority for a country in an effort to improve welfare for the community.¹

Indonesian participation in free trade is intended to encourage domestic industrial products to be able to compete with imported products, both domestically and in the export market. However, Indonesian participation in the free market is still a problem, because the capacity of domestic products, both in terms of quality and quantity, is still weak. Another problem faced by Indonesia in facing free trade is the difficulty of stemming the surge in imported products, resulting in less competitive domestic industrial production-like goods which in turn will kill the domestic market for similar goods. Furthermore, there will be side effects such as termination of employment, unemployment and the bankruptcy of the domestic similar goods industry. Moreover, Indonesia is facing the ASEAN free market after AFTA since 2003 which was then followed by the ASEAN-China free market through the ACFTA agreement since the 1st January 2010.²

To anticipate these problems, it is necessary regulation and implementation of safeguards in an effort to protect domestic industries. Security measures or known as safeguards are a trade policy instrument that is almost similar to anti-dumping and anti-subsidy policies. The three of them are both regulated in WTO approval, and both may be subject to additional import duties if they incur injury to the importing country.

Base on the description above, the following problems can be formulated:

- a. How to regulate trade security measures (safeguards) in International Trade Law and Indonesia Legal System.
- b. How to implement trade safeguards in an effort to protect domestic industrial products.

This research is a normative legal research with the statutory approach, conceptual approach, and comparative approach. The technique of collecting legal materials is carried out through literature study, namely by analyzing various references in the form of statutory regulations and literature books in order to obtain legal materials that have

¹ Mikhral Rinaldi, Abd. Jamal, dan Chenny Seftarita, *Analysis of the Influence of International Trade and Macroeconomic Variables on Indonesian Economic Growth*, Journal of Indonesian Economics and Public Policy, Volume 4 Number 1, E-ISSN. 2549-8355, May 2017

² Muhammad Sood, *International Trade Law, Second Edition, Cet.3*, (Depok: Rajawali Press). 2018

relevance to the issues raised. Furthermore, the analysis of legal materials is carried out in a qualitative descriptive manner, namely examining in depth and thoroughly various references, and evaluating these legal materials as an elaboration of the regulations in the field of safeguards in an effort to protect the domestic industry.

DISCUSSION

Safeguard Regulations in International Trade Law

Safeguards are actions taken by the government to recover serious losses and / or prevent the threat of serious losses to the domestic industry as a result of a surge in imports of similar goods or goods that are directly competitive, with the aim of enabling the industry in question to make structural adjustments. Domestic industry which produces goods of the same type as investigated goods and / or similar competitive goods; researched association of producers of similar goods and / or similar competitive goods; and labor organizations that represent the interests of domestic industry, can submit requests for investigations due to losses or threatening losses to the domestic industry.³

Based on the Agreement on Safeguard Article XIX of GATT 1994 that Safeguards are actions taken by governments of importing countries to recover serious losses and or prevent the threat of serious losses to domestic industries as a result of a surge in imports of similar goods. or goods that are directly competing. Furthermore, according to the Regulation of the Minister of Trade Number: 37 / M-Dag / Per / 9/2008, that Safeguards are actions taken by the government to recover serious losses and / or prevent the threat of serious losses from the domestic industry as a result of a surge. import of similar goods or goods that directly compete with domestic industrial products with the aim that domestic industries that suffer serious losses and / or threat of serious losses can make structural adjustments.

Safeguard regulation aside from referring to Article XIX GATT (Emergency Action on Imports of Particular Products) Year 1947 as enhanced by Agremenn on Safeguard 1994, also refers to national regulations, namely Law Number 7 of 1994 concerning Ratification of the Agreement on Establishing the World Trade Organization (WTO), Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, and Regulation of the Minister of Trade of the Republic of Indonesia Number 37 / M-Dag / Per / 9/2008 concerning Certificate of Origin against Imported goods subject to Safeguards.

Based on Article XIX GATT 1947, one of the requerement for implementing safeguards by WTO member countries is to protect domestic industries and be non-discriminatory. This means that safeguard measures through import restrictions are

³ Hari Murti dan Mutiah Pramesi, *Use of International Trade Safeguard Instruments and Global Competition Strategy*, JIEP: Journal of Economics and Development, Sebelas Maret University Solo, Vol 6, No 1, 2006, <https://www.google.com/search>. March 11, 2006

applied because there has been an increase in imported products, causing serious injury in the country (importing country). Thus, exporting countries must have limited access in the importing country market. In addition, another condition is that countries facing importing countries must be compensated. Furthermore, it was also determined that the remedies imposed in the safeguard efforts were tariffs, although quantitative restrictions were also allowed.

According to H.S. Kartadjoemena, given the very strict requirements, since the 1947 GATT agreement the use of safeguard mechanisms is considered unsatisfactory. Rules for implementing safeguards are often ineffective, so this mechanism is used less and less. With unsatisfactory safeguard systems, more and more countries are using measures outside of GATT to stem imports. To achieve the same goal, namely limiting the increase in imports, what happens is the practice of agreements that are applied informally even though in essence they violate GATT but politically and technically it is difficult to prevent, this is known as gray area measures.⁴

Safeguard measures are taken if a domestic industry faces difficulties due to a flood of imported products. However, developing countries are given special mitigating treatment. This is a principle that applies in the agreement as a special and differential treatment problem that must be resolved, among others, the safeguards time issue which also still requires political resolution, as well as the increasing number of countries joining the free trade area and custom union.

Therefore, if the government does not implement a measurable trade protection policy, the domestic market will be dominated by imported products of relatively better quality at relatively lower prices due to advances in production technology which were previously controlled by advanced industrial countries. As a result, several domestic industries which are in the development stage will experience the threat of loss.⁵

With the implementation of the final round of the Uruguay negotiations in Marrakech (Morocco) on April 15, 1994, the results of the agreement in the field of safeguards were finally agreed. The summary of negotiation results in the safeguard sector is as follows.⁶

- a. Developing countries fear more and more effective measures.
- b. Safeguard provisions can be applied provisional during an investigation if:
 - 1) There is clear evidence that the increase in imports has caused or will cause a serious injury.
 - 2) If the delay in implementing the safeguard will result in losses that are difficult to repair.

⁴ HS. Kartadjoemena (1), *GATT, WTO and Uruguay Round Results*. Cet. First. Jakarta: University of Indonesia (UI-Press), 1997, p. 155

⁵ Syariful Anam, *Impact of Safeguard Measures Import Duty Policy on Protection and Competitiveness of Aluminium Zinc Coated Steel Products*, Fiscal Policy Agency, Ministry of Finance. *Journal of Indonesian Treasury Review* Vo. 1.5, No.3, (2020), <https://itrev.kemenkeu.go.id/index.php/ITRev/article/view/2020p.237>.

⁶ HS. Kartadjoemena (2). *GATT and WTO International Systems, Forums and Institutions in the Field of International Trade*. Cet. First. Jakarta: University of Indonesia (UI-Press), 1996, pg. 165

- c. Provisions such as voluntary export restraints (VER) should not be applied.
- d. Safeguards may not be applied for more than 4 (four) years unless it is still necessary to prevent injury and the affected industry is being restructured.
- e. Safeguards that exceed one year must be phased out and if they exceed 3 (three) years must be reviewed in one half year.
- f. Safeguards are not imposed for developing countries if the share of that country is 3 % (three percent) or less of the total imports of the safeguards implementing country and if the collective share of developing countries is 9 % (nine percent) or less of the country's total imports.

Thus, the Agreement on Safeguards which ended in Marrakech (Morocco) 15 April 1994 aimed to improve and strengthen the international trade system based on the provisions of the 1994 GATT with the following considerations:

- a. Clarify and strengthen the rules of the GATT 1994, and in particular Article XIX GATT (Emergency Measures for the Import of Certain Products), to re-enforce multilateral controls on security measures, and eliminate those that escape such control.
- b. The importance of structural adjustment and the need to increase rather than limit competition in international markets.
- c. Consider further that for this purpose, a comprehensive agreement that can be enforced by all members based on the principles of the GATT 1994.

With the ratification of regulations regarding safeguard agreements into national laws, each member country of the WTO members can implement safeguard measures for their domestic products if the domestic industry is unable to compete so that they suffer serious losses as a result of the increase in imported products.

Implementation of Safeguards to Protect Domestic Industrial Products.

In the General provisions of the Agreement on Safeguards, it is stated that the safeguard agreement applies regulations for the implementation of security measures which must be interpreted as actions that will be regulated in Article XIX GATT 1994. Implementation of safeguards is intended to protect domestic industrial products from inflating. imported products that harm or threaten the loss of the domestic industry.

The requirements for implementing safeguards as described in Article 2 of the Agreement on Safeguard are as follows:

- 1) The requirements for implementing safeguards as described in Article 2 of the Agreement on Safeguard are as follows:
- 2) Members can request security measures for a product if the product imported into the territory in such a number threatens domestic similar products, thus causing serious losses to domestic industries that produce similar products or direct products.
- 3) Safeguard measures will be applied to imported products regardless of the source.

The policy of implementing safeguards by the importing country is carried out through several stages, including conducting investigations and proving, determining the existence of a loss or threat of loss, and implementing the following safeguards, this can be explained as follows:

a. Investigation and Evidence

Each member country can apply security measures after an investigation by the authorized party is carried out in accordance with the procedure and announced in accordance with Article X GATT 1994. This is stated in the Article 3 Agreement on Safeguard: “A member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994 ”.

These investigations should include notification to all interested parties so that importers, exporters and other interested parties can present their evidence and views on whether the security measures protect the public interest. The competent authorities will then submit reports of their investigations and provide conclusions regarding all facts and applicable laws.

The implementation of investigations into the existence of serious losses or the threat of serious losses to the domestic industry due to the surge in imports is carried out by a committee, which in Indonesia is called the Indonesian Trade Safeguard Committee (ITSC). For this reason, interested parties who are directly affected can submit a request for an investigation of security to the Committee.

The interested parties who are directly affected by the increase in imported products can submit an investigation to the ITSC as follows: ⁷

- 1) Indonesian domestic producers that produce goods of the same type as investigated goods and / or goods that are directly competitive;
- 2) Investigated associations of producers of similar goods and / or goods that are directly competitive;
- 3) Labor organizations representing the interests of domestic industrial workers.

If deemed necessary in the framework of protecting the domestic industry, the Government can even propose an investigation to the Committee. Furthermore, the Indonesian Trade Safeguard Committee (ITSC) on its own initiative can investigate the surge in imports which has resulted in serious losses and / or threats of serious losses to the domestic industry.

Based on Presidential Decree No. 84/2002 concerning Safeguard Measures for Domestic Industries from the Impact of Surging Imports, Article 3 paragraph (2) states, in order to facilitate the investigation process, the applicant must complete data at least containing the following:

⁷ Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 85 / MPP / Kep / 2/2003 concerning Procedures and Requirements for Application for Industrial Safeguarding from the Impact of Surging Imports, Article 2 paragraph (2)

- 1) identification of the applicant;
- 2) complete description of the investigated item;
- 3) complete description of similar goods or goods that are directly competitive;
- 4) name of exporter and exporting country and or country of origin of the goods;
- 5) domestic industries that are disadvantaged;
- 6) information regarding serious loss and or threat of serious loss;
- 7) information on investigated goods import data.

For the purposes of collecting evidence and for the purposes of proof in exercising its authority, the Committee has the right to request data and information directly from interested parties or other sources deemed appropriate, either government or private agencies / institutions.

In addition, the Committee may determine its own evidence based on available data and information (best information available) if the interested party investigates:

- 1) failing to provide the necessary responses, data or information within the time provided by the Committee; or
- 2) obstructing the investigation process.

The Committee treats any confidential data and information according to its nature. Confidential data and information cannot be disclosed publicly without the permission of the owner of the data and information. Interested parties submitting confidential data and information to the Committee must attach a brief note derived from confidential data and information. These brief notes are non-confidential summaries.

In carrying out the evidentiary process, the Committee must provide equal or equal opportunity to interested parties to submit written evidence and to provide information or other additional written information to the Committee. Then the Committee can verify data and information originating from or obtained from interested parties in the exporting country or in the country of origin of the investigated goods and the domestic industry.

Furthermore, within a maximum period of 30 days after the submission of the application for security measures is received completely by the Committee, based on the results of the research and complete initial evidence as submitted by the applicant, the Committee shall issue a decision as stated in Article 3 paragraph (3) that:

- 1) rejecting the application in the event that the application does not meet the specified requirements; or
- 2) accept the application and initiate an investigation if the application meets the requirements.

If the committee determines whether or not to conduct an investigation into the request of an interested party, this is stated in Article (4), that the Committee must notify the interested parties in writing along with the reasons thereof and announce the decision in the printed media. Upon such notification, the interested party is given

the opportunity to respond if it is deemed that there is a discrepancy for these reasons no later than 15 (fifteen) days after the Committee's appointment

Likewise, the postponement or termination of an investigation must be announced in print media with reasons and supported by facts and conveyed immediately to the interested parties. Furthermore, the party submitting the application can withdraw the request for investigation submitted to the Committee (Article 6).

In terms of the results of the investigation it turns out that there is no solid evidence that shows that the domestic industry has suffered serious losses and or the threat of serious losses as a result of the surge in imports, the Committee shall stop investigating the safeguard measures. Based on the determination of the termination of the investigation of safety measures by the Committee, all import duties on the import of investigated goods subject to temporary security measures that have been paid by the importers of investigated goods must be returned to the importers of the investigated goods. Then within a period of no later than 15 (fifteen) days from the determination of the termination of the investigation of security measures by the Committee, the Minister of Finance shall revoke the import duty for the investigated goods subject to temporary security measures. The return of the import duty must be carried out as soon as possible, not later than 15 (fifteen) days after the issuance of the Decree of the Minister of Finance regarding the lifting of the imposition of import duty (Article 7).

Investigations conducted by the Committee must be completed within no later than 200 (two hundred) days after the determination of the commencement of the investigation. In the event that additional information is required for evidentiary purposes, the Committee may send a written list of questions to interested parties. The list of questions must be answered by the interested party within 15 (fifteen) days of sending the written questionnaire or within 20 (twenty) days in the event of a request from the interested party due to certain reasons.

b. Determination of the Existence of Loss or Threat of Loss

Before security measures are put in place, it is necessary to prove that there has been a serious loss or threat of serious loss due to a surge in imported goods. Determination of the existence of a loss or threat of loss is regulated in Article 4 of the Agreement on Safeguard as follows:

- (1) The occurrence of "serious loss" which is interpreted as being able to hinder the development or existence of domestic industry;
- (2) The existence of "threat of serious loss" which must be understood as a clear serious loss as meant in paragraph 2. Determination of the threat of serious loss must be based on facts and not on accusations, allegations or other undercover possibilities.

In determining the said loss or threat, "domestic industry" is the overall producer that produces similar or directly competitive products operating within the territory of a member, or the production of similar products which directly competes constitutes the largest share of total production.

Then, to identify serious losses or threat of serious loss the steps taken are First, identify domestically produced goods that are "similar" or "directly competitive" with the imported goods under investigation. Second, identify the domestic industries that produce these goods, and third, thoroughly assess the significant decline in the performance of the domestic industry.⁸

To realize the provisions of Article 4 Agreement on Safeguard, the Government has issued Presidential Decree Number 84 of 2002, Article 12 states:

- (1) Determination of serious losses and / or threats of serious losses to the domestic industry as a result of the surge in imports of investigated goods must be based on the results of an objective and measurable analysis of all relevant factors of the industry concerned, which includes:
 - a. the rate and magnitude of the surge in investigated goods imports, either in absolute terms or relative to similar goods or goods that are directly competitive;
 - b. domestic market share taken as a result of the surge in investigated goods imports; and
 - c. changes in the level of sales, production, productivity, capacity utilization, profit and loss as well as employment opportunities.
- (2) In order to determine a surge in imports resulting in a threat of serious loss, the Committee may analyze other factors in addition to the factors referred to in paragraph (1), such as:
 - a. Real and potential export capacity of the country or producing countries of origin of the goods;
 - b. Inventory of goods in Indonesia and in the exporting country.
- (3) In the event of serious losses and / or threats of serious losses to domestic industries which arise at the same time as a surge in imports but are caused by factors other than the factors referred to in paragraph (1) and paragraph (2) serious and / or threat of serious loss cannot be stated as a result of a surge in imports.

Furthermore, Article 13 states that the determination of the occurrence of a threat of serious loss as a result of a surge in imports must be based on facts and cannot be based on assumptions, forecasts or possibilities. This means that in determining the existence of a serious loss or threat of loss, the Trade Safeguard Committee must carry out in-depth investigation and analysis in order to find accurate facts that the loss or threat of loss is really the result of a surge in imports, not based on allegations or mere

⁸Theresia L. Pesulima, *Safeguard Measures in the Asean Free Market as a Protection Effort for the Domestic Industry*, S A S I, Scientific Journal of the Faculty of Law, Pattimura University, Ambon, Volume 23. Number 1. January - June 2017, ISSN 1693-006, pg. 23

perception. Inaccurate investigations are not only detrimental to both the importing country but also the exporting country.

c. Imposition of Security Measures

Imposition of Safeguards is regulated in the Agreement on Safeguard, namely Article 5 (permanent security measures) and Article 6 (temporary security measures). Both articles allow each member country to implement safeguard measures to the extent necessary to prevent or remedy serious losses in order to facilitate adjustment or compensation. These security measures can take the form of tariffs, quotas and a combination of tariffs and quotas.

According to Law Number 17 of 2006 concerning Amendment to Law Number 10 of 1995 concerning Customs, Article 23A states that “Safeguard duties may be imposed on imported goods in the event of a surge in imported goods, either in absolute terms or relative to domestically produced goods. similar products or goods that are directly competitive, and the surge in imported goods:

- 1) causing serious losses to domestic industries that produce goods similar to these goods and / or goods that are directly competitive; or
- 2) threatening serious losses to domestic industries that produce similar goods and / or goods that are directly competitive.

Furthermore, Article 23B states that “The import duty for such security measures is the maximum amount required to overcome serious losses or prevent the threat of serious losses to domestic industries. The import duty is in addition to the import duty collected under Article 12 paragraph (1) of the Customs Law Number 10 of 1995.

Based on the description above, security measures are taken for domestic industrial products because:

- 1) There has been a surge in imports of similar goods or goods that directly compete with domestic industrial products.
- 2) There is a serious loss or threat of serious loss to the domestic industry due to an influx of imported products.
- 3) There is a causal relationship between the increase in imports with serious losses or the threat of serious losses. Causality analysis based on economic indicators includes: production, domestic sales, market share, profit, capacity and labor utility.

Based on the results of the investigation, if evidence is found that there has been a serious loss or threat of serious harm to the domestic industry due to a surge in imported products, the importing country must notify the Safeguard Committee before taking security measures. Then the importing country first invites the exporting country as a member of the WTO to conduct consultations to give the country an opportunity to negotiate a solution to the problem.

According to Bhagirath Lai Das in Cristhophorus Barutu, the form of security measures can be in the form of imposing import or non-tariff tariffs as follows:

- 1) The imposition of tariffs such as: increasing import obligations beyond the limit level, imposition of additional fees or additional taxes, reimbursement of production taxes, imposition of quota rates, namely quotas for imports at a lower rate and imposition of higher tariffs for imports that are in the over the quota.
- 2) The imposition of non-tariffs such as: determination of global quotas for imports, introduction of convenience in licensing, import authorization, and other similar measures to control imports.

According to the Agreement on Safeguard, the implementation of safeguard measures for international trade includes two forms, namely:

- 1) Temporary Security Measures

Temporary security measures are in the form of tariffs (cash bonds) which are valid for a maximum of 200 days. However, if no evidence is found that the import of goods is causing serious losses or the threat of serious loss to the domestic industry, the tariff to be paid must be returned to the importer. The implementation of temporary security measures is carried out before the implementation of permanent security measures. Temporary security measures are implemented from the initiation or commencement of the investigation process which is preceded by notification. This action is carried out in case of an emergency which, if postponed or not implemented, will cause damage that is difficult to repair.

The implementation of security measures is stated in Article 5 of the Agreement on Safeguard, that temporary security measures can be taken by importing countries of WTO members in case of an emergency and if it is postponed it will cause damage that is difficult to repair. Temporary security measures should not exceed 200 days, these measures are carried out in accordance with a provisional determination that clearly proves that increased imports have caused or threatened serious losses to the domestic industry.

Furthermore, according to Article 9 of Presidential Decree Number 84 of 2002, that in the event there is strong evidence that the surge in imports of investigated goods has resulted in serious losses or the threat of serious losses; or the surge in imports of investigated goods caused serious losses to the domestic industry which would be difficult to recover if temporary safety measures were taken too late, the Committee may recommend temporary security measures in the form of import duties.

In determining temporary countermeasures, the Minister of Industry and Trade can propose recommendations to the Minister of Finance. On the basis of this proposal, the Minister of Finance determined the amount of import duty as

a temporary security measure. Temporary security measures can only be applied for a maximum period of 200 days (Article 10).

Temporary security measures must be announced in the State Gazette and printed media and officially notified to the interested parties. The announcement must contain at least the following information as provided for in Article 11:

- (1) complete description of the investigated item including its technical characteristics and uses, and the tariff post number;
- (2) complete description of similar goods or goods that are directly competitive;
- (3) names of well-known domestic industries that produce similar goods or goods that are directly competitive;
- (4) names of exporters and exporting countries or countries of origin of the goods under investigation;
- (5) a summary of the loss determination process and its determinants, findings and conclusions.

2) Permanent Security Measures

Security measures can still be defined in three forms including increasing import duties, establishing import quotas and a combination of the two forms. If the safeguard measures are still stipulated in the form of a quota, the quota must not be smaller than the average import in the last three years.

For the case of the imposition of a quota that is different from the average import in the last three years, it is necessary to have evidence or special justification as confirmed in Article 5 (1) Agreement on Safeguard which states

“A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.”

According to Article 5, “Each member can implement security measures as far as necessary to prevent or remedy serious losses and to facilitate adjustment or provision of compensation. If a quantitative restriction is used, then the measure shall not reduce the number of imports below the level of a recently enacted period which was the average of imports in the last three years based on available statistics, unless it is clear that a different level is required to prevent or make up for serious losses. The members must choose the most appropriate action to achieve the goal.

Furthermore, countries that take safeguard measures in the form of quotas can make an agreement with the largest exporting country regarding the allocation of the quota. If there is no agreement, the quota of each country is determined on the export market share of each country in a certain period. This Agreement

justifies action in special situations where member countries deviate from the non-discrimination rule in imposing quota restrictions on one or more countries whose imports originating from these countries increase the percentage of imports disproportionately in relation to the total increase in imports of goods in the period, which represents. To ensure that the intended action is taken in special situations, the agreement stipulates that the parties must carry it out after going through a consultation process and being approved by the Safeguard Committee. The committee is formed by approval.

Based on Presidential Decree Number 84 of 2002, Article 20 paragraph (1-3) that, the Committee can stipulate recommendations for permanent security measures after all investigative procedures for security measures have been carried out, and there are strong facts and evidence which state that the surge in imports of investigated goods is real and proven to have caused serious losses and or threat of serious harm to the domestic industry. The recommendation must be submitted to the interested parties no later than 10 days after the decision has been taken and published in the State Gazette and / or printed media.

The announcement in the State Gazette and / or the printed media above must at least contain the information as referred to in Article 20 paragraph (4) as follows:

- a) Complete description of the investigated item including its technical characteristics and uses and its tariff postal number;
- b) Complete description of similar goods or goods that are directly competitive;
- c) Names of well-known domestic industries that produce similar goods or goods that are directly competitive;
- d) Names of exporters and exporting countries or countries of origin of the goods under investigation;
- e) A summary of the process for determining serious harm and / or threat of serious loss, its determinants, findings and conclusions;
- f) Form, level and duration of security measures;
- g) The proposed date of implementation of permanent security measures;
- h) The amount of quota allocation for each supplying country if the form of security measure stipulated is not a tariff; and
- i) List of developing countries that are exempt from the said safeguard.

Recommendations for permanent security measures as stated in Article 21, apart from being conveyed to interested parties after the decision has been taken and announced in the State Gazette and / or printed media, is also conveyed by the Committee to the Minister of Industry and Trade. Fixed security measures can be stipulated in the form of import duties by the Minister of Finance and / or quotas by the Minister of Industry and Trade.

As for the permanent security measure in the form of a quota as emphasized in Article 22, it is stipulated that it cannot be less than the volume of imports calculated on average in the last 3 (three) years, unless there are clear reasons that the quota in the amount or volume of imports is smaller. necessary to recover serious losses and or prevent the threat of serious loss. If more than one country exports investigated goods to Indonesia, the import quota that is set must be allocated among the supplier countries. The quota must be allocated on a pro-rata basis in accordance with the average percentage of imports from each supplying country in the last 3 years.

Safeguard measures remain only in effect as long as it is deemed necessary to recover serious losses and / or prevent the threat of serious loss and to allow time for structural adjustment for domestic industries that suffer serious losses or the threat of serious losses. The period of validity of security measures remains for a maximum of 4 years and can be extended. In the event that the security measures have been in effect for more than 3 (three) years, the Committee shall conduct an assessment of the security measures and notify the results of the assessment at least 6 (six) months before the validity period of said security measures ends to the interested parties (Article 23).

Extension of the enforcement of security measures can be carried out based on an official request submitted by the domestic industry or on the basis of the Committee's initiative in the event that there is a strong reason that the loss and or threat of loss suffered by the domestic industry due to the surge in imports will still continue and the domestic industry is still continuing. make structural adjustments. Security measures during the extension period shall not be more restrictive than previous security measures. The period of validity of security measures as a whole shall not exceed 10 years including the validity period of temporary security measures, the validity period of permanent security measures and the extension of permanent security measures. The security measures as referred to in Article 21 paragraph (2) will be gradually reduced or liberalized during the validity period of the permanent security measures.

Permanent security measures as emphasized in Article 25, will not be re-applied to imported goods that have been subject to security measures. Except for fixed security measures with a maximum validity period of 180 days, imported goods may be imposed if:

- 1) at least 1 (one) year has been effective since the date of enactment of a security measure on the imported goods concerned; and

- 2) the permanent security measure has never been applied to the same imported goods more than 2 (two) times in a period of five years immediately after the date of the permanent security measure.

In connection with the description above, that in an effort to protect the domestic industry from a surge in imported products, the Government through the Director General of Small, Medium and Miscellaneous Industry (IKMA) of the Ministry of Industry (Kemenperin) is committed to protecting the national small and medium-sized garment industry (IKM) as many as 569,745 business unit. One of the steps taken is the implementation of safeguards to safeguard the domestic garment market. According to BPS data for the 2017-2019 period, the import figure for garment products reached USD 2.38 billion. However, with the high number of imports in this sector, the Ministry of Trade must take it seriously because it can close the potential of the domestic market, especially since the imported products are relatively cheap. Therefore, the implementation of safeguards not only protects the garment industry from the entry of imported products, but can also encourage the growth of this potential sector, considering that the sector's contribution to GDP is quite large, reaching 5.4 percent in 2019.⁹

Likewise with imported products in the form of aluminum foil from China, the Trade Safeguard Committee (ITSC) has conducted an investigation based on a request from the Association of Aluminum Extrusion Manufacturers and Aluminum Sheet & Foil (Apralex Sh & F). From the results of these investigations, ITSC found evidence of a surge in imports of aluminum foil with HS code 7607.11.00, during the 2015-2017 period with details in 2015 amounting to 19,438 tons (88.5 %) and in 2017 it reached 30,647 tons (92, 4 %). However, until now, the government is still reviewing the imposition of security measures against aluminum foil, as well as kramik from China, with the consideration of maintaining the stability of domestic products, because domestic producers have not been able to meet consumer needs, while other imported products have not been touched at all by security measures.¹⁰

Apart from garment products, various imported products that are subject to safeguard measures include Aluminum Foil Products (2018). These products originated from China with a share of 92.4% in 2017, followed by the Republic of Korea with a share of 7.1%, and other countries with a share of 0.5%.¹¹ Meanwhile in 2019 for textile products, such as curtain products (curtains), bed nets and other furniture items, yarn

⁹ Ministry of Industry of the Republic of Indonesia, Ministry of Industry Supports Safeguards Implementation for the Domestic Garment Industry, 12 June 2020.

¹⁰ Andika Prasetyo, Media Indonesia, *ITSC Investigates Imports of Aluminum Foil*. <https://mediaindonesia.com/read/detail/190220>, 13 August 2020

¹¹ Grace Olivi, Imports of Aluminum Foil are subject to Safeguard Duties, <https://national.kontan.co.id/news>, 24 October 2019

products (other than sewing thread) from synthetic and artificial staple fibers, are still under investigation.¹²

Based on the above facts, it is imperative for Indonesia to be more proactive in utilizing instruments in the form of trade remedies in order to protect domestic industries. Trade remedies are government actions or policies to minimize the negative impact of imported products on domestic industrial products, whether those imports are carried out dishonestly, such as dumping and subsidies, or honestly, such as a surge in imported products. This can be detrimental to the domestic industry of the importing country.¹³

Based on the description above, the implementation of safeguards carried out by the government of the importing country is to recover serious losses or prevent the threat of serious loss to the domestic industry as a result of a surge in imports of similar goods or goods that are directly competitive. This measure is used by WTO member countries to protect domestic industries and is non-discriminatory. Thus, the regulation and implementation of safeguards is aimed at protecting domestic industrial products from a surge in imported products that is detrimental or threatening to the loss of domestic industries that produce similar goods.

CONCLUSION

The regulation and application of safeguards is intended so that the government government can take action to recover serious losses and / or prevent the threat of serious losses from the domestic industry as a result of a surge in imports of similar goods or goods that are directly competing with domestic industrial products with the aim that the domestic industry those who experience serious losses and / or threat of serious losses can make structural adjustments. The policy of implementing safeguard measures by the importing country is carried out through stages, namely carrying out investigations and proving, determining the existence of a loss or threat of loss, and implementing security measures. The institution that has the authority to handle safeguard issues is the Indonesian Trade Safeguard Committee (KPPI). Efforts to socialize regulations are needed as one of the safeguards for domestic industry, especially for small and medium industry groups, because these two groups are part of the national manufacturing industry sector which will receive direct impact from the implementation of global market policies.

¹² KPPI, Ministry of Trade of the Republic of Indonesia, Investigation of Curtain Products, Inner Sunshade, Bed Nets and Other Furniture Items, http://kppi.kemendag.go.id/daftar_kasus/detail_produk, 12 October 2018.

¹³ Nandang Sutrisno, *Strengthening the Legal System for Trade Remedies, Protecting Domestic Industries*, Journal of Law, Faculty of Law, UII Yogyakarta, No. 2 Vol. April 14, 2007, <https://media.neliti.com/media/publications/85149>.

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