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THE IMPLEMENTATION OF NON-DISCRIMINATION PRINCIPLE IN PALM OIL TRADE BETWEEN INDONESIA AND THE EUROPEAN UNION

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ABSTRACT

The increase in the popularity of palm oil brings new issues regarding environmental conservation. The European Union, as a region that pays more attention to ecological conservation, proposes a plan to ban palm oil of up to 0% by 2021. Indonesia and Malaysia as the biggest palm oil producers against the proposal and believe that it is a violation against the non-discrimination principle of GATT 1994. The violation happens because the European Union only bans palm oil, but keeps allowing the production of other vegetable oil, which is also the raw material of biofuel. Therefore, the analysis of whether the proposal to ban palm oil by the European Union is the violation against the non-discrimination principle is fundamental. This study is carried out by using the normative research to obtain the result that affirms if the proposal to ban palm oil by the European Union is inconsistent with the GATT clauses. The practical implication of this study is to provide a recommendation of literature on whether the proposal included in RED II violates the non-discrimination principle.

INTRODUCTION

As social beings, human always needs one another to fulfill every need, and so is by living as a state – no state can live on its own to meet every one of its citizens' needs. To meet those needs, each country exports its products. The trade between countries has been carried out since ancient times, ranging from trade between Arab and China via the Silk Road until the formation of the General Agreement on Tariffs and Trade (hereafter, GATT) in 1947, which accommodates modern international trades (Ylönen and Teivainen, 2018).

The fundamental principle of international trade is non-discrimination, as mentioned in the World Trade Organization (hereafter, WTO) agreement, and becomes a significant instrument for WTO to achieve its goals. Non-discrimination is manifested in two different principles: Most Favoured Nation (MFN) and National Treatment (NT). By referring to those principles, WTO member countries are required to give the same treatment to the products from the other member countries. Both principles, MFN and NT, additionally, are applied to similar products from or to other countries (Ylönen and Teivainen, 2018).

One of the main objects of international trades is a commodity. Out of various commodities that are globally traded, one of the most popular products is palm oil. Occupying the fourth most traded food product, palm oil is commonly used as food, cosmetics, and biofuels. However, in early 2017, the European Union (hereafter, EU), as the second-biggest palm oil importer, proposed a proposal to limit the import with the goal of 0% palm oil by 2020 (McCarthy and Zen, 2010). The EU, furthermore, suggested that the limit is based on the environmental damage due to palm oil plantations, which continues to expand in line with the increasing demand in palm oil. The proposal, in consequence, threatens the palm oil-producing countries, including Indonesia, as the largest palm oil-producing country (Prihandono, 2014).

The proposal on the limitation of palm oil is an issue for Indonesia as the primary producer of palm oil. The plan, however, can violate the non-discrimination principle in international trades, since palm oil is the only product banned by the EU. In contrast, the other vegetable oils that have the same functions are only banned up until 7%. The policy raises questions on why palm oil is the only product banned or is it because palm oil and the other vegetable oils are not included in the like products even though they have the same functions (Abood et al., 2015).

Based on the background elucidated above, this study aims to: (1) scrutinize whether palm oil is included in Like Products as are the other vegetable oils, and (2) identify whether there is a non-discrimination violation in the proposal to limit palm oil by the EU. As for the theoretical implications, this study is expected to provide a recommended literature on non-discrimination principle, on like products concepts, on how processes or production methods (PPMs) determine the like products, and whether PPMs can be used under the Article XX of GATT, as well as on how the principle controls the multilateral trade system. Meanwhile, for the practical implications, this study is to provide additional literature on whether the proposal to limit palm oil by the EU in the RED II violates the non-discrimination principle.

RESEARCH METHODS

This study applied the doctrinal research methodology along with the statute approach, conceptual approach, and case approach. The primary legal material used was the international law instruments that are related to international trade law. Meanwhile, the secondary legal material was legal literature (Niyobuhungiro, 2019). Furthermore, the additional legal materials used in this study were taken from the cases and references in the form of research, papers,

and information obtained from both electronic and printed media. The analysis of the legal materials was carried out deductively, which is by analyzing the legal material sources, such as the international agreement, EU cases and regulations related to the violation of non-discrimination principle, like products concepts, PPMs, and environmental conservation regarding palm oil (Susan and Budirahayu, 2018).

LITERATURE REVIEW

The Principle of the Most-Favoured Nation

The Most-Favoured Nation (hereafter, MFN), as an implementation of the non-discrimination principle, had been established in numerous European bilateral agreements before GATT was formed (Bhagwati, 2017). The principle of the MFN requires that all special treatment, remission, or the immunity right granted by one country to another, must also be given to all WTO member countries directly and without conditions. The MFN, furthermore, creates uniformity in international trade (Ylönen and Teivainen, 2018). Also, the prominent role of the MFN in international trade can be seen in the formation of efficient and reciprocal global trade systems. The system, however, can only be achieved if the member countries follow the non-discrimination principles so that the tariff and other obstacles can be deducted. Additionally, the MFN also increases economic efficiency by uniforming trade policies at the level that is most beneficial for all parties.

Therefore, to analyze whether a condition is violating the MFN clause, a test on three elements is to be carried out accumulatively so that a policy can be categorized as discrimination. Those elements are: (1) there are advantages, special treatment, and privileges or immunity; (2) products affected by discrimination are similar products; and (3) benefits and privileges as mentioned in point one are not given immediately and without conditions to related products from other countries. In other words, discrimination has happened if three elements of Article I (there are advantages or privileges, to similar products, and not given immediately and without conditions to other countries) are accumulatively fulfilled (Mukhlis et al., 2015).

Domestic Barriers in the Form of Tax (Article III:2 of GATT)

The primary subject of the National Treatment principle discussion is the internal policy and how it affects the competitive position of the local products against foreign products. Article III of GATT divides domestic policy into fiscal and non-fiscal policies. In interpreting Article III:2, there are two-tier tests to be carried out, namely testing narrowly and broadly. For instance, to analyze the first sentence, we can look at the Panel of Japan – Taxes on Alcoholic Beverages case (hereafter referred to as Japan – Alcoholic Beverages 2). In the first sentence of Article III:2, there are two inconsistent aspects to be assessed, namely, whether the imported and domestic products are alike (like products), and whether the imported products are more than the local products (Sari, 2012).

International Barriers in the Form of Regulations (Article III:4 of GATT)

The next point that becomes an object of the National Treatment is included in

Article III:4, which is the non-fiscal policies, which comprise national laws, regulations, and conditions on trades, transportation, distribution, and product use within the internal scope of a country. In assessing whether there is any non-fiscal barrier that leads to discrimination against imported products under Article III:4, we can look at the verdict of the Panel of Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef (hereafter, Korea – Beef) case.

The policy mentioned in Article III:4 is not merely the policy that directly regulates the selling of imported products, but also the sale that may cause adverse impacts to the competition between domestic and imported products. For example, in Canada – Certain Measures Affecting Automotive Industry (hereafter, Canada – Autos), the automotive policy in Canada (Canada Auto Pact) is advantageous for the domestic products, but not for the imported products. In practice, the violation against Article III:4 is considered to occur without having to analyze whether an action is carried out to protect domestic products. In other words, as soon as there is a policy that is disadvantageous for imported products, the protection of local products is considered performed.

Environmental Protection in GATT 1994

The debate between trade and the environment has been going on for a long time, and each has a different perspective. On one side, the trade experts and the GATT makers support the existence of free trades. They further drew an exception in GATT 1994 that can be used by the member countries to deviate both the WTO clauses and the international trade agreements.

The EU policy implements the preferential tariff system intending to combat drug manufacturing and smuggling that is not included in the scope of Article XX(b). Moreover, the Panel does not find any actions to protect lives or human health in their policy (stated in Council Regulation No 2501/2001) that is in line with the scope of Article XX(b). The plan is aimed to eliminate poverty and encourage sustainable development as the goal of the WTO in general and not included in the general exception of GATT 1994 (Poletti and Sicurelli, 2016).

In determining whether a violation is really “necessary” to protect the lives and health of humans, animals, or plants, the test of necessity must be carried out so that the limitation act is consistent with Article XX. The concept of “necessity” in Article XX is influenced by several factors, such as (i) how influential a limitation action is on achieving the objectives of the limitation itself; (ii) the importance of necessity or values at stake with these limitations; (iii) the nature of trade in the actions taken. Other than that, the limitation actions must be compared to other possible alternatives that are not too restrictive but can still achieve the objectives of the limitation (McCarthy and Zen, 2010).

RESULTS AND DISCUSSION

Palm Oil Limitation Plan in the European Union Renewable Energy Directive (EU RED) II Proposal

The EU and Indonesia have a long history of trades. Since its formation, the cooperation of the two jurisdictions have developed and increased, which can

be seen from the low import duties received by Indonesia for 30% of the total imported products from Indonesia through the European Union Generalized Scheme of Preferences program. The statistics of the export and import between the EU and Indonesia, furthermore, are considered stable (van Noordwijk et al., 2017).



Figure 1: European-Indonesia Cooperation during the past four years
 Source: ec.europa.eu

One of the main and most important commodities in the trade relations between the EU and Indonesia is palm oil. This argument can be seen from the data, which shows that palm oil has become one of the biggest export-import objects between the two jurisdictions. EU, additionally, is the biggest market for the palm oil industry in Indonesia. The palm oil commodity that consists of palm oil, palm oil crude, and palm carnal includes 20 biggest commodities from Indonesia to the EU, with a total of nearly 4.2 billion.

No	KODE HS-6	PRODUK	2010	2011	2012	2013	2014	TREND
1	1511.90	Palm oil and its fractions refined but not chemically modified	5,819.00	8,484.23	10,925.66	10,860.32	13,258.16	20.85
2	2711.11	Natural gas, liquefied	10,571.56	17,972.74	15,040.52	12,928.64	11,704.46	-1.25
3	2709.00	Petroleum oils and oils obtained from bituminous minerals, crude	10,402.87	13,828.68	12,293.41	10,204.71	9,528.23	-4.68
4	2701.12	Bituminous coal, whether or not pulverised but not agglomerated	11,976.28	15,225.80	13,245.40	12,306.41	9,404.30	-6.73
5	2701.19	Coal nes, whether or not pulverised but not agglomerated	6,154.79	10,270.96	11,013.72	10,441.09	9,289.50	8.76
6	2711.21	Natural gas in gaseous state	2,887.14	4,613.85	5,470.82	5,190.00	5,471.35	14.98
7	4001.22	Technically specified natural rubber (TSNR)	7,102.86	11,416.10	7,626.73	6,706.86	4,595.06	-13.09
8	1511.10	Palm oil, crude	7,649.97	8,777.02	6,676.50	4,976.53	4,206.74	-16.16
9	2713.90	Residues of petroleum oils/ of oils obtained from bituminous minerals nes	1,726.99	1,783.48	2,304.53	2,607.10	2,262.43	9.76
10	2702.10	Lignite, whether or not pulverised, but not agglomerated	339.17	1,704.84	1,878.10	1,741.64	2,121.30	44.60
11	7113.19	Articles of jewellery&pt thereof of/a prec.met w/n plati/clad w prec.met	100.23	145.42	74.59	84.07	1,882.23	70.19
12	4703.29	Chemical wood pulp,soda/sulphate,non-coniferous,semi-b/bleachd,nes	1,448.72	1,554.13	1,544.66	1,840.84	1,718.32	5.24
13	2603.00	Copper ores and concentrates	6,882.17	4,700.35	2,594.67	3,006.81	1,683.59	-27.84
14	8001.10	Tin not alloyed unwrought	1,709.20	2,403.89	2,051.30	1,959.80	1,574.93	-3.61
15	3061.13	Shrimps and prawns, frozen, in shell or not, including boiled in shell	790.57	997.51	970.57	1,219.53	1,569.94	17.04
16	3823.19	Industrial fatty acids, acid oils nes	394.22	791.65	1,009.83	928.90	1,431.01	31.50
17	4011.10	Pneumatic tire new of rubber f motor car ind station wagons&racc cars	1,145.01	1,531.31	1,379.40	1,325.61	1,276.95	0.74
18	6403.19	Sports footwear,o/t ski,outsole of rbr/plas/leather&upper of leather	1,088.76	1,358.12	1,334.07	1,371.67	1,206.38	2.17
19	3824.90	Chemical/allied industry preparations/prods nes	498.14	1,458.86	1,402.24	1,430.80	1,166.11	18.31
20	1513.29	Palm kernel/babassu oil their fract,refind but not chemically modifid	262.12	473.80	659.30	948.62	1,151.39	44.11
	Subtotal		78,948.78	109,472.74	99,696.04	92,081.95	86,502.40	
	Others		55,163.23	66,619.44	66,767.35	67,045.53	68,514.59	
	TOTAL		134,113.00	176,092.18	166,463.38	159,127.48	155,017.00	

Figure 2: Export Performance of Indonesia's 20 Major Commodities to the EU
 Source: Sathia Varga, "Essential Palm Oil Statistic," 2017

The EU needs palm oil to fulfill its needs of crop-based biofuels. Palm oil is one of the plants that produce crop-based biofuels; even, per 2015, palm oil was the most popular and most-consumed crop-based biofuel producer. Yet, the industry which value is mesmerizing is threatened by the EU's plan to ban palm oil by 2021 through the European Union Renewable Energy Directive (EU RED) II proposal (Obidzinski et al., 2012).

The EU has three different legal instruments, namely, regulations, directives, and decisions. One of those directives is the direction given by the EU to its member countries to achieve a particular goal/result without dictating the way to achieve such goals. To achieve the desired results, directives must have the binding legal force, and directives are legally binding if implemented to the national policy of each member country of the EU. The member countries, however, have various discretions in implementing the directives. Besides, the member countries can carry out the directives under every country's condition but must be based on the principle of cooperation in good faith that underlies the formation of the EU and guarantees the effectiveness of EU laws (Sumarga et al., 2016).

The EU is a region that pays special attention to the environmental sector. The implementation of the focus is on their desire to become a global leader in environmental conservation by implementing Sustainable Development Goals (hereafter, SDGs). Moreover, some things must be done by the EU so that the SDGs can be fully implemented, namely: (i) preventing the climate change by reducing greenhouse gas emissions, (ii) achieving sustainable development, (iii) participating actively and initiatives in environmental conservation, and (iv) improving the health level of the population (Obidzinski et al., 2012).

The EU has been through many endeavors in fully implementing SDGs. One of the efforts is by reducing emissions and completely transitioning to renewable energy. The EU's needs for energy and fuel have been fulfilled by biofuels. Additionally, from five liters of biofuels distributed in the EU, four of them are used in the form of biodiesel. However, biodiesel produces more gas emissions than replaced fossil fuels. On average, crop-based biofuels produce 80% more carbon dioxide, and biodiesels made of palm oil have a three-time greater adverse impact on the environment other than other types of biodiesel (Moreno-Peñaranda et al., 2018).

To overcome the air pollution problem, the EU has decided to reduce the consumption of conventional crop-based biofuels and switch entirely to the advanced level of biofuels made of the renewable energy sources to fulfill the energy needs. The commitment was outlined in 2009 in a directive proposal, namely Renewable Energy Directive No 2009/28/EC (RED I). Furthermore, RED I requires the EU's member countries to meet at least 20% of their total energy needs and at least 10% of their national consumption of public transportation fuels from the advanced biofuels as a renewable energy source by 2020.

The RED I proposal was renewed on 17 January 2018 as the RED II proposal with some changes, including the limitation of crop-based biofuels and bio-

liquids consumptions. However, there are two different treatments to biofuel-producing plants, namely palm oil and other than palm oil. Palm oil as the biggest biofuel-producing plant in Europe will get a phase-out of up to 0% by 2021, while biofuels made of other plants than palm oil will only be limited to no more than 7% of total consumption (Pichler, 2015).

The EU further stated that them phasing out palm oil is because the plant has the most significant contribution to global deforestation, which is 40% by converting forests into palm oil plantation land. The conversion causes loss of rainforest and biodiversity, which is an essential asset for the continuation of human life on earth; thus, the limitation must be imposed (Al-Amin et al., 2015). Also, the EU argued that palm oil limitation is to address the problem of land conversion. For example, from 1990 to 2005, there had been a change in land from forests to plantations with conversion rates of 56% (1.7 Mha) in Indonesia. The problem of land conversion does not only impact the deforestation but also the lives of the surrounding communities – the land and forests that were previously a source of living must be displaced by the existence of palm oil plantations (Abood et al., 2015).

Indonesia and Malaysia, as the most significant county-producing palm oil, responded by regretting the policy plan. The Minister of Foreign Affairs of the Republic of Indonesia, Retno Marsudi, affirmed that the moves of the EU could be seen as a discriminative action that if implemented, can damage the palm oil industry in Indonesia (Moreno-Peñaranda et al., 2018). Meanwhile, the former Malaysian Prime Minister, Najib Razak, and the President of the Republic of Indonesia, Joko Widodo, questioned why the EU only excluded palm oil while other vegetable oils continue to be produced and traded (Van Heeswijk and Turnhout, 2013).

The Characteristics of Like Products in Palm Oil and Other Vegetable Oils Producing Biofuels

The plan to limit palm oil is one of the EU's attempts to reduce the use of conventional biofuels to achieve RED II's objectives by 2030. The EU further argued that the use of traditional biofuels, particularly palm oil, is contradictory to the goal of reducing greenhouse gas emissions. Moreover, the use of palm oil also causes other environmental problems, such as deforestation in South-East Asia and the Indirect Land Use Change (hereafter, ILUC). ILUC, besides, is the change of the land function when the biofuel-producing plantations displace agriculture for food (Obidzinski et al., 2012).

The shift in the land function is due to overly aggressive demand for biofuels so that what is available is not sufficient to meet the demand. Due to the increasing demand, biofuel plantations need to be expanded and collided with sensitive areas, such as forests, peatlands, and swamps that cause a lot of gas emissions. Based on these reasons, the EU believed that eliminating palm oil as biofuels that produce the most abundant greenhouse gas emissions will help the EU to achieve the RED II goals (Pacheco et al., 2017).

However, the problem following is that not the EU bans all biofuels – only crop-

based biofuels are limited and only palm oil is restricted up to 0%. In other words, other plant-producing crop-based biofuels can continue to be produced and traded with the limitation of no more than 7%. Whereas, other plant-producing crop-based biofuels, such as soybeans (19%), corn (11%), rice (6%), and sugar cane (5%), also contribute to deforestation and other environmental problems (Poletti and Sicurelli, 2016).

Crop-based biofuels are the biofuels made of the edible plants, for instance, sugar, starch, and vegetable oil. These plants are specifically planted to be converted to become biofuels. Palm oil is the most significant plant-producing crop-based biofuel, as shown in Figure 3 below:

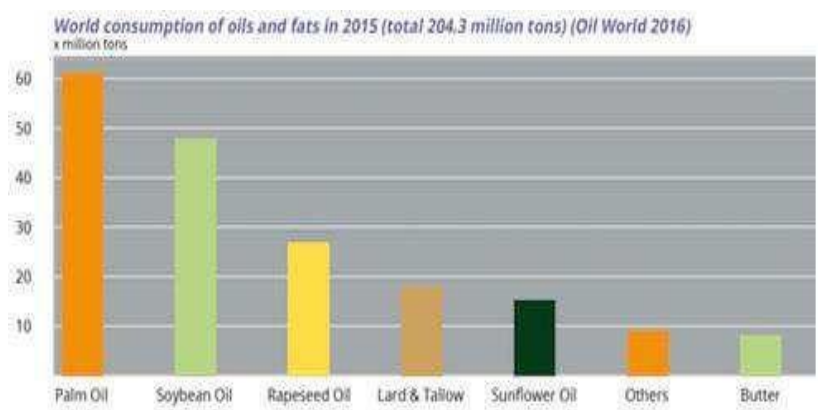


Figure 3: Oils and fats consumption by 2015

Source: <http://www.biofuelsdigest.com>

The crop-based biofuels produced domestically by the EU uses raw materials, namely rapeseed oil and bioethanol that are different from the majority of biofuels from non-EU countries, such as palm oil. Although derived from various plants, these vegetable oil products have the same uses, that are raw materials for food, cosmetics, medicines, and biofuels (Moreno-Peñaranda et al., 2018).

The Comparison of Physical Characteristics between Palm Oil and Other Vegetable Oils

The first criterion to be assessed is the physical characteristics of the product. There are several aspects to be taken into notes in evaluating the physical characteristics of vegetable oils, such as biodegradability, the presence or absence of sulfur, low content of carbon monoxide emissions, and product resistance to heat or combustion. Those elements are the ingredients contained in vegetable oils. It must be remembered that vegetable oils are formed by the chemical composition and configuration of different carbon atoms. Altered carbon and chemical structures can produce different characteristics of vegetable oils (Moreno-Peñaranda et al., 2018). In reality, the difference in the chemical composition in various kinds of vegetable oils only has significant effects on the temperature and fuel viscosity level. In other words, all mentioned vegetable oils can be functioned as biofuels, even in different levels of effectivity. This minor difference, however, is not adequate to categorize vegetable oils as other than like products.

The Final Use of Palm Oil and Other Vegetable Oils

The second criterion to be assessed is whether the oils have the same final use. According to the research conducted by the Center for the Promotion of Imports from Developing Countries (CBI), the vegetable oils imported to the EU are used for three purposes, that is for food, cosmetics, and biofuels (Manzo and Padfield, 2016). Consequently, the increasing demand for vegetable oils in recent years is mostly caused by the high consumption of biofuels to replace fossil fuels.

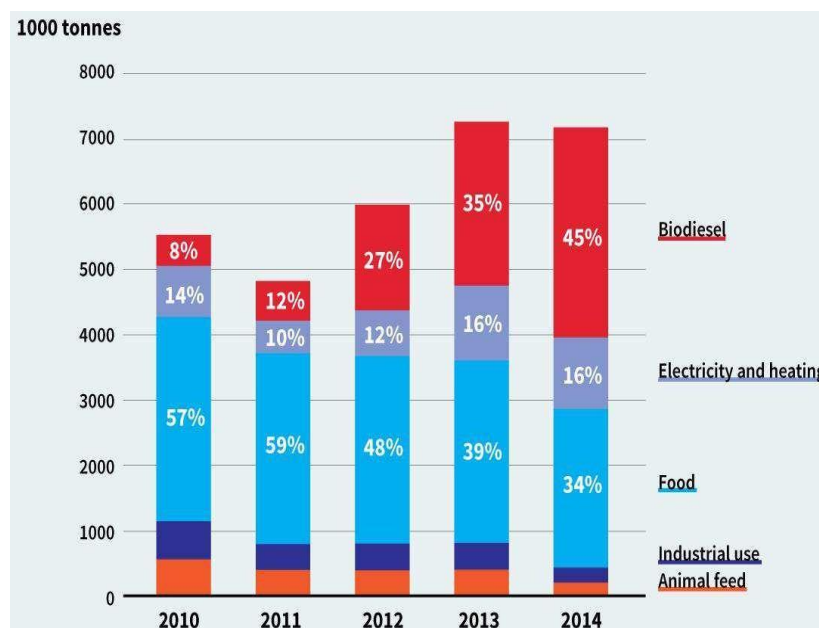


Figure 5: Vegetable oil consumption in Europe

Source: www.transportenvironment.org

The similar final use of vegetable oils is supported by the fact that during the process of making biofuels, those vegetable oils are often mixed. The mixing should be done because one type of oil only is not sufficient to meet the need for fuels in all over the EU. The mixing, furthermore, creates biomass that is converted to become biofuels. Thus, it can be strongly argued that all vegetable oil products consumed in the EU have the same final use (Sumarga et al., 2016).

The Classification of Tariffs for Palm Oil and Other Vegetable Oils

The last criterion to determine like products is through the classification of tariffs. This classification can determine like products if the definition of each product is explained in detail. Even so, it does not mean that the products included in a different classification of the tariff are not included in like products. There are some cases where the products belong to a different classification but are still considered as like products due to the similarity of the other three criteria. For example, in the EC Asbestos case, although the various kinds of asbestos fiber are from different classifications, they still have the same final use; thus, they are classified as like products (Prihandono and Relig, 2019).

Table 1: Classification of the tariff of palm oil Source: Report of the Panel, “EC – Asbestos” p. 429

HS Code	Description
15111090	Crude palm oil for the manufacture of foodstuffs for human consumption
15119011	Refined palm oil (solid fractions) in immediate packings of a net content not exceeding 1 kg
15119019	Refined palm oil (solid fractions) in immediate packings of a net content not exceeding 1 kg
15119099	Refined palm oil for the manufacture of foodstuffs for human consumption

In the classification above, palm oil is defined as a product of palm (*Elaeis guineensis*) that grows in tropical countries. Palm oil contains high levels of saturated fat and becomes solid at room temperature. Palm oil is mostly used as a food product and often mixed with other oils from countries with low heat. Even though palm oil belongs to a different classification of tariffs from other vegetable oils, in the explanation, it is described that palm oil is often mixed with other vegetable oils originating from countries with low temperatures. This indicates that although classified into different tariffs, both kinds of oil still have the same final use (McCarthy, 2012).

The Implementation of Palm Oil Limitation based on the Chapeau of Article XX

The Chapeau of Article XX examines the validity of the implementation of GATT general exemptions through economic and policy assessments that are realized under two conditions. The first condition prohibits the actions that imply arbitrarily or unjustifiably discriminations between two countries where similar circumstances occur. This condition includes the prohibition of any action with a worse economic impact on domestic products than the products of competitors from other countries with similar situations. On the other hand, the same situation will not occur if the factors influencing are different; thus, the chapeau cannot be enforced as well (Abood et al., 2015).

The Chapeau of Article XX does not prohibit discrimination against the competition of all products in the market. Still, only the products originating from “the countries where the same conditions occur.” The interpretation of this condition, however, depends on how someone interprets the objectives of the legal exemptions to determine “similar conditions” in other countries. In this regard is the Appellate Body in the case of European Communities (McCarthy and Zen, 2010).

One of the methods that can be implemented to analyze whether “a similar condition” also occurs in other countries is by understanding “the problems” that are to be solved by the legal exemptions. For example, in the ban on the products import made by prisoners, the same conditions occur in countries where prisoners also make products. Meanwhile, in the countries where

prisoners do not make the products, the same conditions do not happen and are not the scope of the chapeau assessment.

However, not all problems resolved by legal exceptions are relevant for use in assessing the “similar conditions.” For instance, in the US – Turtle Shrimp case, the purpose of the exemption is to protect endangered sea turtles. With the same condition in other countries, it depends on the status of the endangered sea turtles in the country. Due to that reason, the US can ban imports of shrimp products originating from the countries where sea turtles are endangered, but not from the countries where the species are abundant (Pichler, 2015).

To determine whether an exemption is carried out fairly or by the principle of justice, the Panel in Brazil – Retreaded Tyres argued that in assessing whether the implementation causes arbitrariness or discrimination that is not justified, the assessor must focus on the causes of discrimination or rationalization underlying the actions (Potter, 2015).

In the case of palm oil ban by the EU, the first matter to analyze is whether there is another country with the same condition. The second one is whether the action causes inequity for the countries with the same conditions. By implementing phasing out on palm oil up to 0% but keeps continuing the distribution of other vegetable oils with the limit of 7%, the EU has discriminated against palm oil, given both types of vegetable oils are potential to environmental damage and deforestation. To fulfill the Chapeau, the UE must determine the same limit for all vegetable oils producing crop-based biofuels. If not, the elements of the Chapeau of Article XX will not be fulfilled, and the EU’s action will be considered violating the non-discrimination principle.

However, if the EU is determined to implement the RED II proposal, the action will not only disadvantageous for Indonesia as a producer, but also the EU. The domino effects from the banning of biofuels from palm oil will also cause losses for other palm oil products, such as palm carnal, food, and cosmetics. If not addressed from the beginning, this issue will spread and threaten other Indonesian export products (Sukoco et al., 2018).

Based on this concern, Gaines argued that one of the reasons the WTO has never passed the environmental protection as the basis for implementing the legal exemptions in Article XX is because it will give other countries opportunities to do the same – not only to palm oil but also to other products (Al-Amin et al., 2015). The concern will eventually threaten the order of the multilateral trading system that has been built by GATT. Besides, it will consequently damage the predictability and efficiency of international trade (Harymawan and Nowland, 2016).

CONCLUSION

The plan on palm oil limitation by the EU in the RED II proposal is a violation against the non-discrimination principle. The discrimination is because only palm oil to phase out up to 0%, while other vegetable oils producing biofuels only get up to 7% of limitation. Whereas, both palm oil and other vegetable oils belong to like products. Article XX, additionally, cannot be used to justify the

plan, since it will cause the unjust discrimination that does not meet the clauses of the chapeau of Article XX. The implementation of the non-discrimination principle in palm oil trades between Indonesia and the EU, furthermore, is essential for both regions. On the one hand, the EU needs commodities to fulfill their domestic needs. On the other hand, Indonesia, as the producer, needs a market to increase palm oil production as its primary commodity.

Ethical clearance

This research does not involve any participants. Instead, it is a descriptive study. This research was carried out following the research principles. This study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

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