

ANTI-DUMPING MEASURE AS TRADE REMEDY: THE DOMINATION OF INTERNATIONAL TRADE DISPUTES

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Abstract

WTO as the only international organization in the scope of public international trade also governs on dumping which found both on the GATT and Anti Dumping Agreement (ADA). Anti-dumping measures may applied as a trade remedy by a state member against other state member accused for practicing dumping. However, former research found that the number of trade disputes before the DSB WTO were mostly caused by anti-dumping measures and turned out that those measures were violating the regulations. This research aims to figure out on how does anti-dumping measures contribute on the escalation and domination of the international trade disputes. With using the juridical normative method under state approach, this research found that Findings that before imposing an anti-dumping measure, the state members may determine the practice of dumping practice. The determination is self-claimed under the national authority and later the state may impose temporary anti-dumping measures. After complaints filed to the DSB WTO by the accused state, it is often proved that no dumping practice was ever carried out and the anti-dumping measures turned out to be a violation. This one-sided claim with no third party to re-examine and give approval, may cause further injuries and disrupts the climate of international trade. Hence, the WTO needs to play its role on figuring out and providing a new way out.

Keywords: *dumping, international trade, anti-dumping measure*

A. Background

Every state will continuously try to provide the welfare for its people, including on the fulfillment of the society necessity. However, limited natural resources, diverse geographical condition, and other related factors made it impossible for a state to fulfill their people's necessity independently. Therefore, international trade becomes something strategical and important as a medium for states to provide things needed by its people. The practice of international trade in this world has gone through a quite long road and until right now still becoming one of the main issue that endlessly going on the life of the international community. In its early period, international trade was linked to discriminative and protectionist measures, which then aggravated by impacts occurred post the world-war that made the fall out of the world's economy, thus, many states forced to apply high tariffs against goods coming from another country going into their territory.¹

Nevertheless, states finally realized that imposing discriminative and protectionist measures would never be able to restore global economy and international trade. On the next development, they gathered to create a new

¹ Huala Adolf, *Hukum Perdagangan Internasional*, (Surabaya: Raja Grafindo Persada, 2004).

trade climate which was more liberal, that will not hinder one another, merely with purpose to reach the communal welfare of international community. The establishment of the World Trade Organization of 1994 as an international organization specifically to govern and supervise on international trade practice marked as the achievement of consensus from states, alongside with the agreement and establishment of various multilateral treaties in the scope of international trade covering many aspects.² Through the WTO, state members agreed to put on effort on the trade liberalization by not imposing any barrier outside the agreed ones, to perform international trade by holding onto the principles of the WTO.

Trade relations that in nature are cross-border, covers several types of relation, from simple forms such as barter, buying and selling of goods and commodities (agricultural products, plantations, and alike products), until complex trade relations or transactions.³ Therefore, exports and imports are the most common forms of cross-border trade relation, particularly to reciprocally fulfill states' needs. As exports and imports (specifically on goods) has been the most common practice of international trade, it's also became the main issue governed by the WTO legal framework. One of the matters governed by the WTO regarding the exports and imports are the regulation of dumping practice prohibition. Dumping is a trade practice where international commodities exporters sell certain goods with lower price in the importing state rather than the price applied on the origin state of exported goods.⁴ The implementation of dumping would cause trade distortion or disadvantages, especially towards domestic industries on the importing state.

Hence, under the WTO legal framework, there are some regulations on dumping, i.a. Article VI GATT 1994 also on the Anti Dumping Agreement 1994. However, the ruling of dumping rather than be called simple but it's a complex sequence that governs on the determination whether a state is really performed dumping, indicators of dumping, and proper steps needs to be conducted against the allegation of dumping. It's a fact that at this moment, there is increasement on establishment and implementation of anti dumping measures used to counter the dumping practice and to protect the interest of domestic industries from the imposing states.⁵ Trade remedies under the WTO commonly used by the WTO members to counter or to retaliate the economic injury caused by prohibited practices such as dumping, subsidies,

² Hata, *Perdagangan Internasional dalam Sistem GATT dan WTO (Aspek-aspek Hukum dan Non-hukum)*, (Bandung: Refika Aditama, 2006).

³ Usak, "Penyelesaian Sengketa Impor Produk Holtikultura, Hewan dan Produk Hewan Antara New Zealand dengan Indonesia", *Jurnal Era Hukum* 2, No.1 (Juni 2017):40.

⁴ Anita Kamilah, "Law Protector for Domestic Industries Due to Dumping Practice", *Jurnal Dinamika Hukum* 15, No. 3 (September 2015).

⁵ Konstantinos Adamantopoulos and Diego de Notaris, "The Future of the WTO and the Reform of the Anti-Dumping Agreement: A Legal Perspective", *Fordham International Law Journal* 24. No. 1, (2000):32.

and the sudden and unforeseen increased imports.⁶ These trade remedies including the anti-dumping measures, were agreed and governed under the WTO regulations. Particularly on the anti-dumping measure, is in the form of additional import duties and called as anti-dumping duties.⁷ Through trade remedies on dumping, it's purposely to dismiss the practice of dumping and would contribute on the restoration of injury felt by the imposing state.

Disputes between trading parties from WTO members, may occurred at some moments, as the priority of states are on how the trade would bring advantages to them and fulfill their interests. As a consequences of potential disputes, it will be settled under one of the WTO organ which is the Dispute Settlement Body (DSB). Surprisingly, a former research conducted by C.P. Bown, a world known economist, showed that disputes initiated before the WTO mostly came from anti-dumping law, practice or measure which dominated the cause of disputes, just as shown below⁸:

Respondent Trade Policy under Dispute	Disputes Initiated Between 1995 and 1998	Disputes Initiated Between 1999 and 2004 [†]
Antidumping law, practice or measure*	13	41
Countervailing duty law, practice or measure	4	10
Other trade remedy law, practice or measure (e.g., safeguards)	4	27
Total trade remedy disputes	21	78
Other non-trade remedy disputes	133	89
Total disputes (321)	154	167

Note: [†] disputes initiated through 15 November 2004. *For a dispute challenging more than one type of trade remedy (e.g., both an imposed antidumping measure and a countervailing duty), we avoid double-counting by entering it as challenging one type of trade remedy only (typically, an antidumping measure).

Source: C.P. Bown, 2005.

Example of disputes coming from anti-dumping practice or measure also involved Indonesia as the accused party. On 2004, the government of South Korea accused the government of Indonesia for dumping practice on paper exports by several private national companies from Indonesia. Based on that allegation, later the government of South Korea imposed anti-dumping duty against Indonesia with high tariff that surely injured paper exporters from Indonesia for being forced to pay higher tariff than other exporting countries. The accusation began from a petition coming from

⁶ Roberto Soprano, "WTO Trade Remedies in International Law: Their Role and Place in a Fragmented International Legal System", Routledge Research in International Economic Law, (2019):1.

⁷ Nandang Sutrisno, "Memperkuat Sistem Hukum Remedi Perdagangan, Melindungi Industri dalam Negeri", Jurnal Hukum 2, Volume 14, (April 2007):230-246.

⁸ Chad P. Bown, "Trade Remedies And World Trade Organization Dispute Settlement: Why Are So Few Challenged?", Policy Research Working Paper No. 3540, World Bank, (2005):28.

domestic paper industries to the Korean Trade Commission, and after an investigation was carried out, the anti-dumping duty was imposed to counter the alleged dumping practice.⁹

Based on that accusation and anti-dumping duty implementation, on 2005 Indonesia filed a complaint to the DSB WTO, and after several examinations then on its report on 2007, the Panel stated that South Korea had made a mistake and neglectly imposed a dumping accusation, also was not able to prove that Indonesia did perform a dumping practice, also did a failure on the margin calculation of dumping. Thus, the Panel recommended the government of South Korea to withdraw the trade remedy and revised its regulation. But in fact, it took more than 10 years for South Korea to withdraw their policy towards Indonesia.

The dispute between South Korea and Indonesia showed that the determination of dumping practice became questionable, where an anti-dumping measure regarded as trade remedy but then turned out to be one of the main issues being complained and ended as disputes. This study then aims to comprehensively examines on the determination of dumping practice and anti-dumping measures application and how it unexpectedly contributed on the international trade disputes. Furthermore, this study wants to explain on how does current determination influence the climate of international trade and to see how effective is the implementation of trade remedy through anti-dumping measures.

B. Identified Problems

It has been described and explained before that most of the anti-dumping measures could turn into disputes and proved as a failure or violation to existing regulations. Concerns on the facts that most of international disputes occurred were caused by the implementation of anti-dumping practice or measure. Based on the background explained above, the formulation of the problem of this research is what cause the anti-dumping measures as a trade remedy dominates the international trade disputes under the WTO regime?

C. Research Methods

Method used on this research is by applying juridical normative method. Through this type of method, study and examination towards bibliographical data is performed including positive international laws, literatures, and experts opinions that are closely related to the issue in order to solve the main problem. The approaches used on this research are, *statute approach* which examines regulations associated with the issue, such as regulations under the WTO legal framework, namely the GATT 1994 and Anti Dumping Agreement 1994, and the second approach is *conceptual approach* based on conceptual theories related with the discussed issue.¹⁰

⁹ Dyan F. D. Sitanggang, Posisi, Tantangan, dan Prospek Bagi Indonesia dalam Sistem Penyelesaian Sengketa WTO, *Veritas et Justitia* 3, No. 1, (Juni 2017).

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, (Surabaya: Raja Grafindo Perkasa, 2011).

Lastly, this research also used *case approach* on the accusation of dumping which involved South Korea and Indonesia, also European Union and Indonesia.

D. Research Findings and Discussions

1. Determination of Dumping Practice

Basically, dumping has wide descriptions and practices including the social dumping, environment dumping, hazardous waste dumping, and price dumping. On the context of international trade which governed by the legal framework of the WTO is particularly on the scope of price dumping. Price dumping is a type of dumping which defined as a practice of performing discriminative price, which goods or services sold to the importing country under the selling price and/or production cost on the exporting country. The discriminative price causes damages towards competitors from the same sectors on the domestic level of importing country. Price dumping has occurred for centuries and as complaints coming from many countries, since 1980 the anti-dumping law and its enforcement were introduced.¹¹

According to the Black's Law Dictionary, dumping is defined as: "*the act of selling a large quantity of goods at less than fair value; selling goods abroad at less than the market price at home.*" It's concluded that dumping is a practice of selling product on importing states under the normal price or producer's price with the purpose to dominate foreign market.¹² Dumping is also an unfair act on international trade which may cause loss towards certain parties. It's caused by the discriminative price where the price of exported goods are lower than the domestic market.¹³ The economists classified dumping into several type as followings:

1. Sporadic dumping: selling goods on foreign markets on short period under the normal price applied on the exporting country or its production cost;
2. Persistent dumping: selling goods on foreign markets under the normal price or production cost for continuously as a continuity from prior selling;
3. Predatory dumping: occurred if the company for a temporary period applies discriminative price with the presence of foreign buyers. The discrimination was to

¹¹ Stephen O. Andersen, et.al., "Defining The Legal And Policy Framework To Stop The Dumping Of Environmentally Harmful Products", Duke Environmental Law & Policy Forum 29 No. 1, (2018).

¹² Meliyani Sidiqah, "Retaliasi Indonesia Atas Tuduhan Dumping Terhadap Korea Selatan", Jurnal Wawasan Yuridika 3 No. 1, (Maret: 2019).

¹³ Muhajir La Djanudin, "Mekanisme Penyelesaian Sengketa Dumping Antar Negara", Lex Administratum 1 No. 2, (April 2013):126.

dismiss any competitions and putting the price back to normal after then.¹⁴

Every producer aims to gain as much profit as they could and pursue greater advantages in order to surviving tough trade competitions. Dumping often performed to keeps the business going on foreign markets. Dumping actors tends to lower the their product price then other competitors in order to increase the demand of their product. This became the reason why there are distinct opinions whether is dumping is dangerous or violating the laws or both. It could be said that a dumping maybe dangerous but not violating the law, in case where a production with over quantity and the company is not able to sell it domestically, and forced them to sell that excess product with unreasonable price abroad. If this happened, then the climate of export and import will be disrupted. This situation would create discriminative price and bring injuries or threats against domestic market.¹⁵

As the only international organization that governs on states international practice, the WTO has several series of regulations which spreads on various multilateral agreements regarding on international trade, under the WTO legal framework. If a state member has accessed or ratified the Agreement Establishing the World Trade Organization 1994 known as Marrakesh Agreement, then it also bound to its derivative agreements such as the GATT 1994 and Anti-Dumping Agreement (ADA) 1994. A little flashback to one of the main reason of the establishment of the WTO, is to reach the liberalization of trade by applying barriers as few as possible, although that does not mean that no barriers are allowed on trade practice, but the barriers that may be applied by state members of the WTO shall comply to what had been agreed on, which mostly prioritizing the use of tariff barrier.

Trade liberalization would also be achieved by reducing discriminative practices between states, that's why one of the main principle of international trade is promoting fair competition which very related to Most Favoured Nation, with the outlook that each states would be treated equally so a proper and healthy climate of international trade would be created. Based on that principle, dumping practice which would harm the fair competition, is also an important thing that the WTO needed to govern specifically on its legal framework.

On the GATT 1994, dumping particularly ruled under the Article VI.1 which stated: *"The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be*

¹⁴ Nita Anggraini, "Dumping Dalam Perspektif Hukum Dagang Internasional dan Hukum Islam, Mazahib Jurnal Pemikiran Hukum Islam 14 No. 2, (Desember, 2015):161-162.

¹⁵ Mohammed Ali Alamri, A Conceptual Framework: 'Dumping' And 'Anti-Dumping' In The International And Regional Legal Systems, Global Journal of Politics and Law Research 5 No. 1, (February 2017):31.

condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry..."

According to the provision, dumping could be interpreted as an act of selling a product to the importing country less than the "normal price" of that product which caused or threatened the occurrence of material loss of domestic industry on the importing country. Furthermore, Article VI.2 of the GATT 1994 affirmed that: "*In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product...*" This means that in order to avoid or to retaliate a dumping practice, a state member may impose a countervailing measure such an anti-dumping duty which no larger than the margin of dumping.

Basically, looking back at the regulation, the WTO actually did not prohibit the practice of dumping, however dumping will be prohibited if it is proved has caused or potentially will cause material injury against domestic industry in the importing country. WTO state members are allowed to impose measures to protect domestic industry from the injuries caused by a dumping practice.¹⁶ The measure is only allowed in the form of Anti-Dumping Duty (ADD) which is in accordance with the spirit of trade liberalization in the WTO which prioritize the use of tariff barrier on international trade practice.

Besides being governed under the GATT, dumping also regarded as an important matter with the establishment of a specific treaty on dumping, particularly governing the implementation of Article VI of the GATT which is the Agreement On Implementation Of Article VI Of The General Agreement On Tariffs And Trade 1994 also known as the Anti-Dumping Agreement 1994 (ADA 1994). ADA 1994 specifically regulates on the handling procedures of alleged dumping practice. Also on steps that could be taken to counter or prevent dumping could only be conducted under the procedures regulated under the ADA 1994.

The very first step needs to be taken by a state member if an alleged dumping practice is happening in their country is to **determine** if the dumping is actually being performed by exporters through procedures as followings:

1. Dumping Determination (Article 2 of ADA 1994): if the import price of a product is lower than the normal price by considering:
 - a. Like products on the market of importing country, the comparison performed by calculation based on ex factory price from export selling;

¹⁶ Sidiqah, "Retaliasi", 83.

- b. If there is no any domestic comparison on the importing country with the exporting country, then it's allowed to use the comparison with the third state that also receive the exported products;
- c. Costs from the exporting country with administration, marketing costs, and profits.

Afterwards, the deviation of comparison price with the export price later defined as the dumping margin. If it's proved that the export price is cheaper or under the normal price, then the dumping practice is truly happening.¹⁷

2. Injury Determination (Article 3 of ADA 1994) : the determination of injury which governed under the Article VI of the GATT 1994 is based under positive proofs with objective examination related to the volume of imported product with dumped price and its impacts against the price in domestic market for like products, also the impacts of imports towards domestic producers that produce like products. The injury in this context is the injury that will occur caused by the hinder of development of domestic market because of the presence of dumped products that will also becomes a barrier on creating new industries. The limitation of injury is very wide thus it becomes very bias. The wide definition of injury causes the instrument of anti-dumping law utilized by producers to protect their personal business interests.¹⁸
3. Causal Relationship Determination: before an investigation is conducted towards alleged dumping practice, the next step is to determine the existence of causal relationship or cause and effect between the dumping practice and the injury felt by domestic business actors. It could be determined by analyzing the import dumping volume and its influence on the price of domestic market for like products. The volume of alleged dumped import product is increasing while the other imports is decreasing, then the causal relationship could be defined.
4. Investigation (Article 6 ADA 1994): to begin a preliminary investigation which will determine the existence, level, and effects of every dumping allegation should be started by a written petition under the name of domestic industry with the submission of proofs such as: the dumping, injuries, and cause and effect relationship as governed by the ADA 1994. The authority will examine the proofs and decide if a further

¹⁷ FX. Joko Priyono, "Beberapa Aspek Aplikasi Anti Dumping Agreement pada Negara sedang Berkembang", Masalah-masalah Hukum 39 No. 1, (Maret: 2010).

¹⁸ Dewa Gede Pradnya Yustiawan, "Perlindungan Industri Dalam Negeri dari Praktik Dumping, Jurnal Analisis Hukum 1 No.1, (April 2018):179.

investigation could be proceeded.¹⁹ Authority meant by the ADA 1994 is a certain institution appointed by each state members to perform investigation in the scope of dumping, such as the Indonesian Anti Dumping Commission or Korean Trade Commission.

5. Verification of proof: each party related with the dumping allegation provided the chances to submit proofs, including answers to the questions delivered by authorized officials during the period as stipulated by the ADA 1994.²⁰
6. Implementation of Provisional Measures (Article 7 ADA 1994): if the investigation has finished and it's concluded that a dumping practice is proved and truly caused injuries then the state member that imported the product may impose anti-dumping measures which is temporal or provisional measures which is the temporary anti-dumping duty that may be implemented for 4 to 9 months, price undertakings, or definitive anti dumping measures in the form of anti-dumping duty that may be implemented up to 5 years or as long as the dumping is contionously happens and still bring injuries. However, the duty shall not be larger than the determined dumping margin based on the results of investigation.

Based on the explanation above, it's understood that the determination of dumping, the injuries, causal relationship, even on deciding the anti-dumping measures that will be implemented, are given fully under the national authority of the importing country. Started off with a petition submitted by the domestic industry and verified by domestic authority. It's a logic rationale to conclude that the determination of dumping and anti-dumping measures are self-claimed characterized, as the legal instrument allows so. If the determination of dumping practice until the decision of anti-dumping measures are self-determined or self-decided, then it's very possible to be related with subjectivity and national interests of the importing country. While neither a third party or related international organization is involved in order to perform a check and balances on the policies of dumping and anti-dumping.

2. Anti-Dumping Measures and International Trade Disputes

As it has been discussed on the section above, that the determination of dumping and even anti-dumping measures are self-determined by the importing state members of the WTO and potentially related to subjectivity or national interests. The relation of anti-dumping measures and domination in international trade disputes shall be concerned. Firstly, a question may arise, as how is anti-dumping

¹⁹ Djanudin, "Mekanisme", 128.

²⁰ Djanudin, "Mekanisme", 128.

measure as one of trade remedies provided by the regulation of the WTO, turned out to be the dominate complaints filed before the DSB WTO and became disputes between state members.

Basically, anti-dumping measure as a trade remedy as a form of act of retaliation of trade regulation violation, become the unwanted barrier by most state members, especially for the exporting states. If an accused state members truly performed a dumping practice and being imposed with an anti-dumping measure, then it should be enough to force them to dismiss the practice and restoring the situation back to normal and the exporting state that conducted dumping would not file any complaint to the DSB WTO for the imposition of anti-dumping measures towards them. However, many of state members of the WTO filed a complaint regarding the anti-dumping measures before the DSB WTO, mostly because they claimed that they did not conduct any dumping practice and the accusation towards them was a failure by the importing state. Furthermore, the anti-dumping measure imposed to them, became unnecessary barrier that caused injuries to producers from the exporting country, a punishment for something that they did not do at all.

This just like the dispute happened between Indonesia and South Korea on the allegation of paper export dumping. The representative of South Korean domestic paper industry filed a petition to the Korean Trade Commission (KTC) as the authorized institution to conduct an investigation. From the independent investigation, the KTC concluded that Indonesia performed dumping practice so that it could be the ground for South Korea to imposed anti-dumping duty for paper products exported from Indonesia, which with higher duty than other exporting country, Indonesia did face injuries in its export sector. Later on, Indonesia through its government filed a lawsuit against South Korea to the DSB WTO for Indonesia claimed that it did not practice any dumping at all. Finally, the Panel of the DSB WTO found that eventually the South Korean government did not able to prove that Indonesia performed any dumping practice and even did a failure while calculating the dumping margin. This show how the anti-dumping measure did not implemented as how it should, rather than to retaliate a dumping practice, it was used as a legitimate barrier that disrupted the stability of trade between Indonesia and South Korea, furthermore it created unnecessary injuries towards Indonesia particularly on the paper industry sector.

As additional examplary on the effects of self-determined and unilateral dumping practice could also be seen on the case of biodiesel product between European Union (EU) and Indonesia which started off since 2013. The European Biodiesel Commission, which accomodated 60% of European biodiesel companies, reported and accused that Indonesia and Argentina performed a dumping practice on biodiesel products. Later on, the European Commission proceeded by conducting

an investigation and decided to punish Indonesia through an anti-dumping measure in the form of anti-dumping duty with quite large percentage of 8,8% until 23,3%. This caused a large injury to Indonesia that reached US\$600 million. However, after the Panel of DSB WTO did the examination, it was found that the EU had violated some provisions regarding anti-dumping policy while deciding to implement anti-dumping duty towards Indonesia. According to the Panel Report, the EU was failed to determine the calculation of Indonesia's biodiesel production, applying costs that was not the cost from exporting country in the construction of normal price, and failed to prove significant price faltering, implemented anti-dumping duty greater than the margin, and did a failure on the calculation of temporary margin²¹.

Two cases explained above, show that self-determined dumping practice and anti-dumping measures is very possible to dominate the international trade dispute. The determination conducted independently under national authority, with subjectivity and nasional interest while implementing the anti-dumping measures. There is also no guarantee that the investigation will be conducted accordingly with the WTO regulations on anti-dumping, then the implementation of anti-dumping duty is very possible to be misdirected and otherwise, become an unnecessary barrier which contradicts with the spirit of trade liberalization.

The concept of anti-dumping provided by the WTO to its state members, otherwise becomes a big challenge on the manifestation of trade without discrimination through protectionist which has been aspired since the establishment of the WTO. This is caused by the authority given by the regulations, utilized by importing countries as a protectionist tool to protect their domestic industries or markets from external competitors which also violates the principle of fair trade. The authority given to the national institutions in the importing state to conduct investigation towards alleged dumping could be misused to impose or implement an anti-dumping duty while there is actually no dumping practice performed.²²

It's very possible that policies produced by the importing states regarding anti-dumping duty closely linked to personal interest of the importing country, which is actually a protectionist act. Protectionism is something that is very contradictive with free trade which underly international trade nowadays. It will be very unfortunate if inappropriate policy on anti-dumping measure becomes a medium to disrupt trade relationship in order to purse state's personal interest. Policies that later will be examined in the presence of the Panel of the

²¹ Andi Rio Pane, "Proteksi Terselubung Uni Eropa Terkait Pengenaan Bea Masuk Anti-Dumping Biodiesel Indonesia", *Mimbar Hukum* 34 No. 2, (Desember:2022).

²² Henrik Andersen, *WTO Antidumping Jurisprudence and Rule of Law Challenges*. In: *Festschrift till Christina Möell*. (Juristforlaget i Lund: 2017).

DSB WTO and proved to violate the regulation of dumping under the WTO legal framework.

The domination of international trade disputes by anti-dumping measures is something that need to be solved. Trade remedy should be utilized to assist state members to restore injuries caused by dumping, not to be a protectionist act in disguise. Here we understood that the cause of the domination is mainly because of false accusation of dumping practice which caused by unilateral and independent determination of dumping and anti-dumping measure.

3. Urgency of Establishing New Structure Under TPRB

The independent determination of dumping practice and anti-dumping measures has proved to become the main cause of international trade disputes. The practice of international trade under the regime of WTO shall not be performed by carrying protectionist spirit but shall always try to pursue the fair trade and trade liberalization. A climate where trade would bring advantages to both party, would help the international community to reach global welfare. As it has been showed on how does the self-determined of dumping practice mostly conducted falsely and led to unnecessary injury, an evaluation needs to be exercised within the current regulation of WTO particularly on dumping.

We need to consider on how current regulations provide full authority to national institutions to receive petitions, receive proofs, conducting an investigation, and conclude the dumping practice. Later, the government would establish a new policy regarding anti-dumping measure to counter the dumping. Here we could see that there is no involvement of other party to supervise or to check on how the examination is going. The policy then will be imposed to another country and they had to follow it in order to keep the trade and business going.

According to the WTO, there is an existing structure of the WTO which is the Trade Policy Review Body (TPRB), to undertake trade policy reviews of Members under the Trade Policy Review Mechanism (TPRM).²³ The TPRM of the WTO is a cardinal point of transparency which will allows members to understand better each other's trade policies, as well to make sure it is complying to the obligations under the WTO regulations.²⁴ As the countervailing measures are in the form of national policies, then the anti-dumping duty as a form of anti-dumping measure usually will be stipulated under a national policy.

In order to make sure that the regulation of anti-dumping duty in the national trade policy, the WTO may establish a new structure under

²³ WTO, The Trade Policy Review Body, https://www.wto.org/english/tratop_e/tpr_e/tprbdy_e.htm#:~:text=The%20WTO%20General%20Council%20meets,open%20to%20all%20WTO%20Members.

²⁴ Julien Grollier, WTO Trade Policy Review Mechanism: Participation of Small Developing Countries, (Geneva: CUTS International, 2017).

the TPRB that will given the authority to review, approve, and supervise the policy regarding countervailing measures, including the anti-dumping measure. The national trade authority may keep continue to determine the dumping practice and the government may produce a policy containing the anti-dumping measure, but then, the policy must be submitted to the new organ under the TPRB to be reviewed and approved. The new organ shall perform a thorough examination if the dumping practice is truly happening and the policy already comply to the WTO regulations. The anti-dumping measure which shall be conducted temporary, shall mention the period of implementation, and later the new organ will supervise the implementation according to the submitted policy. With this new scheme, it's hoped that the such unnecessary barrier and injury could be avoided, and the implementation of trade remedy would be applied only to the exporting country that has been proved for performing dumping practice and has to restore the injury occurred. Thus, the number of international trade disputes caused by anti-dumping measures would be decreased. Under the new scheme, it's aspired that the climate of international trade will remain in peace and sustainably prioritizing the welfare of international community.

E. Conclusions

Dumping is an act of selling a product to the importing country less than the "normal price" of that product which caused or threatened the occurrence of material loss of domestic industry on the importing country. Dumping is an act that is violating the principle of fair trade under the WTO regime. The WTO legal framework allows injured state members to counter the other state member by imposing anti-dumping measures. Prior to impose an anti-dumping measures, the state member independently can determine the dumping practice. However, the anti-dumping measures dominated the international trade disputes, this happened because the self-determination of dumping practice and anti-dumping measures often misused as a tool of protectionist act which created unnecessary barrier and injury to other state member accused for practicing dumping, which eventually not proved after the examination by the Panel of DSB WTO. The self-determination could lead into the disruption of international trade climate, thus this should be solved by establishing new organ under the TPRB of the WTO to review and approve every trade policy on counter-vailing measures including the anti-dumping measures before could be implemented. With the involvement of third party, it is hoped that the domination of international trade disputes by anti-dumping measures could be decreased, and anti-dumping measures could be truly used as a remedy.

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