

Penerapan safeguard global VIS a VIS penerapan safeguard pada perjanjian perdagangan regional (regional trade agreements) dan perjanjian perdagangan (bilateral trade agreements) dalam kerangka hukum WTO = Implementation global safeguards Vis-a-Vis implementation safeguards in bilateral trade agreements and regional trade agreements in WTO legal framework

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Abstrak

Berbagai mekanisme perlindungan global safeguards dalam WTO Agreement dan Free Trade Agreement (FTA) seperti pada Bilateral Trade Agreements (BTA) dan Regional Trade Agreements (RTA) didasarkan pada alasan-alasan yang berbeda, fungsi yang berbeda, juga memiliki mekanisme safeguards yang berbeda. Fungsi utama global safeguards sebagai instrumen sementara untuk melindungi industri dalam negeri dari kerugian serius dan atau ancaman kerugian serius disebabkan adanya lonjakan impor, sebagai akibat disepakatinya tingkat tarif liberalisasi perdagangan diantara Negara-negara Anggota WTO. Sehingga Negara-negara anggota WTO dapat menikmati fleksibilitas kebijakan tingkat tarif tertentu atas liberalisasi perdagangan. Pembebasan penerapan global safeguards antar pihak FTA tidak konsisten dengan WTO Agreement khususnya tidak sejalan dengan prinsip non-diskriminasi (Most-Favoured-Nation). Namun, pada prakteknya dibenarkan asalkan kondisi paralelisme terpenuhi. Pihak FTA juga dapat mengambil perlindungan bilateral safeguards dan regional safeguards terhadap pihak lain asalkan tingkat pembatasan tarif tidak membahayakan persyaratan yang terkait dengan menghilangkan hambatan sehubungan dengan substansial semua perdagangan. Mekanisme Bilateral safeguards dan regional safeguards di bawah FTA dirancang menyesuaikan laju liberalisasi lebih lanjut setelah pihak FTA melaksanakan rencana penghapusan tarif sebagaimana kesepakatan dalam BTA dan RTA. Karena fungsi mendasar ini, persyaratan substansial semua perdagangan berdasarkan ketentuan FTA dalam Pasal XXIV GATT 1994 merupakan satu-satunya ketentuan yang relevan terkait ketentuan bilateral safeguards dan regional safeguards. Diterapkan di FTA selama periode penghapusan tarif dan dalam batas tingkat tarif MFN, yang konsisten dengan aturan WTO. Pemberlakuan ketentuan global safeguards, bilateral safeguards, dan regional safeguards memiliki mekanisme persyaratan substantif dan prosedural dalam penerapannya. Mengingat kemungkinan banyak bentuk penerapan safeguards yang tumpang tindih, negosiator FTA dapat mengambil solusi legislatif yang efektif yang memasukkan ketentuan FTA yang secara eksplisit melarang bentuk-bentuk tertentu jika terjadi penerapan tumpang tindih yang tidak diinginkan. Tesis ini mengungkapkan bagaimana penerapan global safeguards dibandingkan dengan bilateral safeguards dan regional safeguards tersebut, juga akan memberikan preskripsi tentang hal-hal yang harus dilakukan dalam menerapkan ketentuan bilateral safeguards dan regional safeguards antar negara-negara anggota BTA dan RTA yang juga merupakan Negara-negara anggota WTO yang menerapkan ketentuan global safeguards.

.....Various mechanisms of global safeguards in the WTO Agreements and the Free Trade Agreement (FTA) such as the Bilateral Trade Agreements (BTA) and Regional Trade Agreements (RTA) is based on different reasons, different functions, also has a different mechanism of safeguards. The main function of global safeguards as a temporary instrument to protect domestic industry from serious injury or threat of

serious injury caused by a surge in imports, as a result of the agreement on the level of tariff liberalization of trade between Member States of the WTO. So WTO member countries enjoy a certain level of policy flexibility tariff on trade liberalization. The mutual exemption of the global safeguards application among FTA parties is not inconsistent with the WTO Agreement in particular are not in line with the principle of non-discrimination (Most-Favored-Nation), provided that the parallelism condition is met. An FTA party may also take safeguards against another party as long as the restriction level from those safeguards does not harm the requirement associated with eliminating barriers with respect to substantially all trade. Bilateral and regional safeguards under the FTA are designed to be mechanism for adjusting the pace of further liberalization once FTA parties implement the tariff elimination plan as an agreement in BTA and RTA. Because of this fundamental function, the substantially all trade requirement under FTA provisions in the Article XXIV of GATT 1994 represent was the only relevant provisions of the relevant provisions under which bilateral and regional safeguards measures are disciplined. Any bilateral safeguards, which are applied to sector subject to FTA tariff elimination during the tariff elimination period and within the limits of the MFN tariff rate, which is consistent with WTO Agreement. Enforcement of global safeguards provisions, bilateral safeguards, and regional safeguards have substantive and procedural requirements mechanism in its application. Given the many possibilities for the application of safeguards, which forms overlap, FTA negotiators can take effective legislative solutions that incorporate the provisions of the FTA, which explicitly prohibits certain forms in case of adoption of unwanted overlap. This thesis reveals how the global application of safeguards in comparison with bilateral and regional safeguards such safeguards, will also provide prescriptions about things to do in implementing the provisions of bilateral and regional safeguards between countries BTA and RTA member who is also the Member States WTO provisions which apply global safeguards.