1 of 1

L Download ☐ Print ☐ Save to PDF ☆ Save to list ☐ Create bibliography

Journal of International Trade Law and Policy

Volume 22, Issue 1, Pages 15 - 32 • 8 May 2023

Document type
Article
Source type
Journal
ISSN
14770024

DOI
10.1108/JITLP-07-2022-0026

View more ➤

# Indonesia's nickel export restriction policy: alternative on environmental approach for Article XI:1 GATT justification



### Abstract

Author keywords

Sustainable Development Goals 2023

SciVal Topics

Metrics

## Abstract

Purpose: This paper aims to analyse the aspects of the demonstration process of Indonesia's regulation on nickel export restriction for its eligibility to be excluded from Article XI:1 GATT. It also analyses the possibility of the use of an environmental approach in the demonstration process and for an alternative measure in its implementation. Design/methodology/approach: The paper uses a normative research method in conducting its analysis. It analyses Indonesia's nickel export restriction policy based on the European Union's claim regarding quantitative restriction, with the international trade governance in the WTO framework, and certain international trade principles. The study also involves certain WTO jurisprudence to give a comprehensive analysis to the case. Findings: This paper finds that Indonesia still needs to provide a complete and comprehensive demonstration to prove its eligibility for exclusion from Article XI:1. Demonstrating merely based on an economic approach is inadequate to convince the panel in Indonesia - measure relating to raw material for justification under Article XI:2. This study further finds that both parties generally focus on the economic aspect, which leaves room for conflict of interest. Other aspects with a lower probability of conflict of interest, such as the environmental approach, could be an alternative for the implementation. Originality/value: This paper fulfils the need to provide a scientific analysis of the application of Indonesia's nickel export restriction policy, including its proceedings in WTO's dispute settlement body, which is essential for international trade governance enforcement. © 2023, Emerald Publishing Limited.

# Cited by 0 documents

Inform me when this document is cited in Scopus:

Set citation alert >

### Related documents

Examining the Effect of Export Restrictions on Medical Products under WTO during Covid-19 Pandemic

Singh, A.K. (2021) Qubahan Academic Journal

Beyond effectiveness—the adversities of implementing a fortification program. A case study on the quality of iron fortification of fish and soy sauce in Cambodia

Laillou, A., Pfanner, S., Chan, T. (2016) Nutrients

Ethics, domestic food policy and trade law: Assessing the EU animal welfare proposal to the WTO

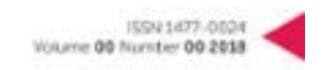
Hobbs, A.L., Hobbs, J.E., Isaac, G.E. (2002) Food Policy

View all related documents based on references

Find more related documents in Scopus based on:

Authors > Keywords >





Journal of



# Journal of International Trade Law and Policy

Submit your paper

### Table of contents

# Author guidelines

# Editorial team

# Co-Editor

leila.choukroune@port.ac.uk

Professor James Hartigan University of Oklahoma - USA hartigan@ou.edu

# Commissioning Editor

Ciara Boardman Emerald Publishing - UK cdboardman@emerald.com

# Journal Editorial Office (For queries related to pre-acceptance)

Ruchita Dattaram Chavan Emerald Publishing ruchita.emerald@kwglobal.com

# Supplier Project Manager (For queries related to post-acceptance)

Uday Bhan Emerald Publishing
udaybhan.emerald@kwglobal.com

# Editorial Board

Eric Bond

Vanderbilt University - USA

Chad Bown

Peterson Institute for International Economics - USA

We are using cookies to give you the best experience on our website, but you are free to manage these at any time. To continue with our standard settings click "Accept". To find out more and manage your cookies, click "Manage cookies"

Mereural Crowley

University of Cambridge - UK

Melaku Desta De Montfort University - UK

Bob Feinberg

American University - USA

James Gathii

Loyola University of Chicago - USA

Keith Maskus

University of Colorado Boulder - USA

Petros Mavroidis European University Institute, Italy and Columbia University, - USA

Joe McMahon

University College Dublin - Ireland

Carlo Perroni

Warwick University - UK

University of Hong Kong - Hong Kong

Prabhash Ranjan

South Asian University - India

Joanne Scott

University College London - UK

Tania Voon University of Melbourne - Australia

lan Wooton University of Strathclyde - UK

UPDATE PRIVACY SETTINGS

Accept all cookies Manage cookies

Welcome Guest user

Enter your search terms here

Advanced search

Home / Journals / Journal of International Trade Law and Policy / Volume 22 Issue 1

# Journal of International Trade Law and Policy:

Volume 22 Issue 1

Subjects: <u>Strategy</u> > <u>International business</u> > <u>International</u>

business law

Subscribe to table of contents alerts

⋒ RSS feed

# Table of contents

# How "safe" is the WTO "safe haven"? A need to modernise disciplines for officially supported export credits

Bob Jennekens, Andreas Klasen

This paper aims to draw attention to an urgent need for reform of the regulatory framework of the broader export credit system to ensure a new and comprehensive "safe haven" for...





# Indonesia's nickel export restriction policy: alternative on environmental approach for Article XI:1 GATT justification

Rainer Marampa Bari, Nanik Trihastuti, Pulung Widhi Hari Hananto

This paper aims to analyse the aspects of the demonstration process of Indonesia's regulation on nickel export restriction for its eligibility to be excluded from Article XI:1...

# **Editor:**

Dr James Hartigan

HTML

Further Information

PDF (188 KB)
About the journal

Editorial team 🗇

• Write for this journal

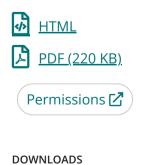
• Pranchiase information



# Legality of export restrictions imposed during COVID-19 in international economic law

# <u>Ahan Gadkari</u>

This paper aims to examine options under the General Agreement on Tariffs and Trade (GATT) for exempting or justifying export restrictions or prohibitions that are in principle...





The current issue and full text archive of this journal is available on Emerald Insight at: https://www.emerald.com/insight/1477-0024.htm

# Indonesia's nickel export restriction policy: alternative on environmental approach for Article XI:1 GATT justification

Indonesia's nickel export restriction policy

Rainer Marampa Bari, Nanik Trihastuti and Pulung Widhi Hari Hananto

Faculty of Law, Diponegoro University, Semarang, Indonesia

Received 19 July 2022 Revised 8 November 2022 7 March 2023 Accepted 14 March 2023

### Abstract

**Purpose** – This paper aims to analyse the aspects of the demonstration process of Indonesia's regulation on nickel export restriction for its eligibility to be excluded from Article XI:1 GATT. It also analyses the possibility of the use of an environmental approach in the demonstration process and for an alternative measure in its implementation.

**Design/methodology/approach** – The paper uses a normative research method in conducting its analysis. It analyses Indonesia's nickel export restriction policy based on the European Union's claim regarding quantitative restriction, with the international trade governance in the WTO framework, and certain international trade principles. The study also involves certain WTO jurisprudence to give a comprehensive analysis to the case.

**Findings** — This paper finds that Indonesia still needs to provide a complete and comprehensive demonstration to prove its eligibility for exclusion from Article XI:1. Demonstrating merely based on an economic approach is inadequate to convince the panel in Indonesia — measure relating to raw material for justification under Article XI:2. This study further finds that both parties generally focus on the economic aspect, which leaves room for conflict of interest. Other aspects with a lower probability of conflict of interest, such as the environmental approach, could be an alternative for the implementation.

**Originality/value** — This paper fulfils the need to provide a scientific analysis of the application of Indonesia's nickel export restriction policy, including its proceedings in WTO's dispute settlement body, which is essential for international trade governance enforcement.

**Keywords** Indonesia-EU trade dispute, Indonesia's nickel export restriction, Quantitative restriction justification

Paper type Research paper

### 1. Introduction

Indonesia has become one of the most potential countries in natural resource reserves, leading the country to advantage in energy commodity trade. One of the leading natural resource commodities in Indonesia is nickel, which also has made Indonesia the biggest nickel producer in the world, with 52% of the world of nickel reserves located in Indonesia (Indonesian Ministry of Energy and Mineral Resources, 2020). With technological advances and the increasing of electrification demand, nickel demand in the market rises as it becomes one of the core components of lithium battery used in various electronic devices, including the electric vehicle (Lim, 2021). One of the reasons that lead to the increasing nickel demand for lithium battery purpose in electric vehicles is because of energy transition reason specifically in transportation, which leads to massive development of EV industry.



Journal of International Trade Law and Policy © Emerald Publishing Limited 1477-0024 DOI 10.1108/JITLP-07-2022-0026 Enter your search terms here Q Advanced search

<u>Home</u> / <u>Journals</u> / <u>Journal of International Trade Law and Policy</u> / <u>Volume 22 Issue 1</u>

/ How "safe" is the WTO "safe haven"? A need to modernise disciplines for officially supported export credits

To read this content please select one of the options below:

Access through your institution

Access and purchase options

# How "safe" is the WTO "safe haven"? A need to modernise disciplines for officially supported export credits

Bob Jennekens (Faculty of Law, Maastricht University, Maastricht, The Netherlands)

<u>Andreas Klasen</u> (Institute for Trade and Innovation, Offenburg University, Gengenbach, Germany and Institute for Systemic Management and Public Governance, University of St Gallen (HSG), St Gallen, Switzerland)

Journal of International Trade Law and Policy

ISSN: 1477-0024

Antematianaltion date: 8 December 2022

Standard
Serial

Serial

Number Dication date: 8 May 2023

DOWNLOADS



# **Abstract**

# Purpose

This paper aims to draw attention to an urgent need for reform of the regulatory framework of the broader export credit system to ensure a new and comprehensive "safe haven" for officially supported export credits. The purpose is to analyse the complex debate on disciplines of the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD), creating a point of reference for future analysis of and debates around the "carve-out clause" of the Agreement on Subsidies and Countervailing Measures (ASCM) and a "safe haven" in a broader sense.

# Design/methodology/approach

This paper takes inspiration from legal, economic and political science literature on subsidies and officially supported export credits, as well as on legal documents related to the WTO and the OECD. It examines the WTO subsidy and the OECD export credits framework, focusing on main legal and economic governance aspects. Then, it gives a critical analysis how "safe" a "safe haven" in a broader sense might be, assessing frictions of and solutions for the fundamentally different set of disciplines, limitations, financial instruments not covered by OECD regulations, as well as new challenges related to climate finance.

# Related articles

How "safe" is the WTO "safe haven"? A need to modernise disciplines for officially supported export credits

Bob Jennekens et al., Journal of International Trade Law and Policy, 2022

Chapter 10 Agricultural Trade Disputes in the WTO Tim Josling, Journal of Documentation, 2009

Climate change and trade policy: from legal complications to time factor

Khalid Ahmed et al., Journal of International Trade Law and Policy, 2013

A climate policy framework to deal with existential climate risk

by International Institute for Applied Systems Analysis, Phys.org, 2021

Opinion: The UK needs a new industrial strategy or it will lose the global green subsidy race by Phil Tomlinson et al., TechXplore.com, 2023