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

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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.

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

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Indonesia's
nickel export
restriction
policy

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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.



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

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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.

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