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**THE POSITION OF THE INDONESIAN TRADE SAFEGUARD COMMITTEE
(KPPI) IN PROTECTING DOMESTIC INDUSTRIES FROM IMPORT SURGES**

Amelia Ayudia Yufi

Faculty of Law, Social and Political Science, University of Mataram

Email: ameliayudiyufi@gmail.com

Muhammad Sood

Faculty of Law, Social and Political Science, University of Mataram

Email: muhammad_sood@yahoo.com

Muh. Risnain

Faculty of Law, Social and Political Science, University of Mataram

Email: risnain82@gmail.com

ABSTRACT

This study aims to examine the institutional position and the effectiveness of the Indonesian Trade Safeguard Committee (KPPI) in performing its mandates, which include conducting investigations, substantiating evidence, and providing recommendations regarding trade safeguard measures. The findings indicate that KPPI operates as an independent body under the auspices of the Ministry of Trade. Nevertheless, its effectiveness is hindered by limitations in authority, institutional dependency on other governmental bodies such as the Ministry of Finance and the Ministry of Trade, and inter-agency sectoral ego. Furthermore, the complexity and length of procedural requirements affect the timeliness and efficiency of safeguard enforcement, including the imposition of import duties or quotas. Although KPPI functions within an established legal framework, persistent challenges such as trade diversion practices and resource constraints—both human and financial—continue to undermine its operational capacity. To address these issues, this research recommends expanding KPPI's authority, particularly regarding the determination of safeguard duties and import quotas, and establishing an independent trade remedy institution to minimize external intervention and enhance institutional efficiency. Strengthening KPPI's institutional capacity is expected to transform it into an adaptive and strategic economic defense mechanism capable of safeguarding domestic industries and enhancing national competitiveness in the global market.

Keywords: KPPI, Trade Remedies, Safeguard Measures, Import Surges

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1. INTRODUCTION

The intended import duties are stipulated in Article 4, Paragraphs 1 and 2 of Minister of Finance Regulation No. 193/PMK.011 /2012 which stipulates that (1) The imposition of Temporary Safeguard Measures Import Duty as referred to in Article 1 is an additional general import duty (Most Favored Nation), or an additional preferential import duty based on the applicable international goods trade agreement schemes, if imports are made from countries included in the international goods trade agreement schemes and fulfill the provisions in the international goods trade agreement schemes, (2) If the provisions in the international goods trade agreement schemes are not fulfilled, the imposition of Temporary Safeguard Measures Import Duty on imports from countries included in the international goods trade agreement schemes as referred to in paragraph (1) letter b shall be an additional general import duty (Most Favored Nation).

About the imposition of BMTPS, there are exceptions/limitations stipulated in Article 3 of Minister of Finance Regulation No. 193/PMK.011/2012 which stipulates that Temporary Safeguard Measures Import Duty as referred to in Article 1 shall be imposed on imports from all countries, except for goods as referred to in Article 1 produced from countries as listed in the appendix which is an integral part of this Ministerial Regulation. The annex in question is a list of countries exempted from the imposition of BMTPS on wheat imports, totaling 118 developing countries whose market share is less than 3% of the total import volume. The period of imposition of BMTPS has been regulated in Article 7 Paragraph 1 of Minister of Finance Regulation No. 193/PMK.011/2012 which confirms that the imposition of temporary safeguard measures import duties based on this Ministerial Regulation is valid for a period of 200 (two hundred) days from the date of entry into force of this Ministerial Regulation. Temporary safeguard measures should be taken before the implementation of permanent safeguard measures. Temporary safeguard measures are implemented since the initiation or the beginning of the investigation process, which is preceded by notification. This action is taken in the event of an emergency which, if delayed or not implemented, will cause irreparable damage.

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For example, related to the amount of wheat flour import quota, it has been regulated in Article 4 Paragraphs 1 and 2 which determine the amount of wheat flour quota, namely the quota in the framework of safeguard measures as referred to in Article 2 Paragraph (1) of 441,141 tons, with the allocation of (a) Turkey with a quota of 251,450 tons, (b) Sri Lanka with a quota of 136,754 tons, (c) Ukraine with a quota of 22,057 tons, (d) other countries with a quota of 30,880 tons. The amount of quota allocation given to exporting countries is based on the share of wheat flour imports in 2011, where quota allocation with a first-come first-served system is given to other countries outside the 3 largest exporting countries by Article 8 of the Regulation of the Minister of Trade of the Republic of Indonesia No. 23/M-DAG/PER/4/2014.

The imposition of quotas on wheat imports does not violate the principle of elimination of quantitative barriers as stipulated in Article IX of GATT 1947. Quotas are a type of quantitative barrier other than VER (Voluntary Export Restraints). This is because there is an exception to this principle which is explained in article XIX GATT 1947 that the domestic industry of the importing country that suffers serious losses due to increased imports of similar products, then the country may not be subject to this principle. In addition, wheat flour importation is also restricted as stipulated in Article 14 of the Regulation of the Minister of Trade of the Republic of Indonesia No.23/MDAG/PER/4/2014 which can only be done through ports of destination, namely Belawan in Medan, Boom Baru in Palembang, Panjang in Lampung, Tanjung Priok in Jakarta, Tanjung Emas in Semarang, Tanjung Perak in Surabaya, and Soekarno Hatta in Makassar.

The period of imposition of safeguard measures itself has been regulated in Article 21 of the Regulation of the Minister of Trade No. 23/M-DAG/PER/4/2014. The Indonesian government applies safeguards to wheat imports in the form of the imposition of quotas only within 6 months starting on May 4, 2014, and ending on December 4, 2014. By the provisions of Article 90 of Government Regulation No. 34/2011 on Anti Dumping Measures, Countervailing Measures, and Trade Safeguard Measures and

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Article 5 of the Regulation of the Minister of Trade No. 23/M-DAG/PER/4/2014, the imposition of TPP in the form of BMTP or Quota is imposed on all countries except developing countries with an import market share of less than 3% of the total import volume, or collectively the import market share does not exceed 9% as a limitation or exception to the safeguard measures on wheat imports. There are 114 countries included in the list of countries that are not subject to quota restrictions on wheat imports contained in the attachment of the Indonesian Minister of Trade Regulation No. 23/M-DAG/PER/4/2014.

Fixed safeguard measures can be set in three forms, including an increase in import duties, the establishment of import quotas, and a combination of the two forms. If the fixed safeguard measure is set in the form of a quota, the quota cannot be smaller than the average imports in the last three years. In other words, cases of quota imposition that differ from the average imports of the last three years require specific evidence or justification, as emphasized in Article 5 (1) of the Agreement on Safeguards. A country taking safeguard measures in the form of quotas may agree with the largest exporting country regarding the allocation of such quotas. In the absence of an agreement, each is determined by the export market share of each country in a given period. The Agreement permits action in special circumstances where member states deviate from the rule of nondiscrimination in imposing quota restrictions on one or more countries whose imports from that country increase disproportionately in percentage terms about the total increase in imports of goods in the representative period. In the General Provisions of the Agreement on Safeguards, it is stated that safeguard agreements apply rules for the implementation of safeguard measures, which must be interpreted as measures to be regulated under Article XIX of the GATT 1994.

The application of safeguard measures is intended to protect domestic industrial products from the surge or flood of imported products that harm or threaten the loss of the domestic industry. The conditions for the application of safeguards as explained in Article 2 of the Agreement on Safeguard, namely (1) Members may invoke safeguard

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measures on a product if the product is imported into the region in such a quantity, threatening domestic similar products, thus causing serious losses to domestic industries producing similar products or direct products, (2) Safeguard measures will be applied to imported products regardless of their source. The policy of applying safeguard measures by importing countries is carried out through several stages, including conducting investigations and gathering evidence, determining the existence of losses or threats of losses, and applying safeguard measures (Taufiq, 2021).

2. RESEARCH METHODS

To find out the problems in this research, the author uses normative legal research, namely research conducted by examining international trade law based on the results of examining legislation related to the position of KPPI as a state institution and its authority. According to Johnny Ibrahim, normative legal research is a procedure in scientific research to find the truth based on scientific logic from the normative side (Ibrahim, 2015).

3. DISCUSSION

The legal basis for the investigation of safeguard measures are the Agreement on Safeguard, Government Regulation of the Republic of Indonesia Number 34 of 2011 concerning Antidumping Measures, Countervailing Measures, and Trade Safeguard Measures, Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization, Article 13 paragraph (1) point a of Law No. 17 of 2006 concerning amendments to Law No. 10 of 1995 concerning Customs.

To become a trade security institution that has broad and independent authority, it is still hampered by several obstacles, such as:

a. Does not function as a tribunal

As has been explained, the establishment of KPPI was originally a follow-up to Presidential Decree No. 84 of 2002 dated December 16, 2002 concerning Measures to

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Safeguard Domestic Industries from the Effects of Import Surges which has been revoked and now replaced with a new legal basis, namely Government Regulation No. 34 of 2011 concerning Antidumping Measures, Countervailing Measures and Trade Safeguard Measures. The independence of KPPI which is currently still not valid as a court institution at the national level. KPPI as an institution that has special authority in the investigation of issues related to efforts to recover serious losses or threats of serious losses suffered by domestic industries as a result of the surge in imported goods still functions as a “recommendation institution”, as a result the effectiveness, efficiency and professionalism of the institution cannot be achieved optimally.¹

This can be seen in the explanation of the Trade Safeguards Committee which states that KPPI's position is fairly complicated in the event of a trade dispute with other member countries, because in practice every time a trade dispute occurs, it is KPPI who is the first party to get a lawsuit to resolve the trade dispute in court, it is not the Ministry of Trade and the Ministry of Finance that has the authority to decide or determine the amount of tariffs and the period of imposition of Import Duties for Safeguard Measures (Samuel et al., 2017).

In the general provisions of the safeguard agreement, it is stated that the safeguard agreement applies regulations for the implementation of safeguard measures, which must be interpreted as measures regulated in Article XIX of GATT 1994. The application of safeguard measures is intended to protect domestic industrial products from the surge or flood of imported products that harm or threaten the loss of the domestic industry.

The conditions for the application of safeguards as described in Article 2 of the Agreement on Safeguards are as follows:

¹ Article 2 c and Article 4 (3) of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number: 84/mpp/kep/2/2003 concerning the Indonesian Trade Safeguard Committee or Article 3 d of the Regulation of the Minister of Trade of Indonesia Number: 34/M-Dag/Per/6/2014 concerning the Organization and Work Procedures of the Indonesian Trade Safeguard Committee.

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1) A Member may invoke safeguard measures on a product if the product is imported into the territory in such quantities as to threaten domestic like products, as to cause serious injury to the domestic industry producing the like product or products directly related to it.

2) Safeguard measures will be applied to imported products regardless of their source.

The policy of applying safeguard measures by importing countries is carried out through several stages, including conducting investigations and gathering evidence, determining the existence of losses and threats of losses, and applying safeguard measures.

Such a case occurred on June 1, 2015 Vietnam, where the main importing country of products subject to Safeguard Measures Import Duty (BMTP), felt aggrieved by the lawsuit filed by the Applicant which ended with the imposition of BMTP on BjLAS products by Indonesia, filed a lawsuit at the WTO panel regarding trade security measures taken by Indonesia. Vietnam claims that the trade security measures taken are considered incompatible with: Articles I:1, XIX:1(a) and XIX:2 of the GATT 1994; and Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.1(c), 4.2(a), 4.2(b), 4.2(c), 12.2 and 12.3 of the Agreement on Safeguards (Samuel et al., 2017).

b. Dependence on other institutions

The definition of having dependence on other institutions is that KPPI as an institution established specifically to tackle the problem of import surges still does not have independent authority that covers all the authority of safeguard measures, both from investigations, the imposition of import duties and the imposition of quotas, and the authority to deal with allegations made by member countries in the event of a trade dispute. As previously known, from the aspect of the authority of the parties related to the imposition of trade security measures. Three parties have the authority, namely KPPI, the Minister of Trade, and the Minister of Finance. The authority of KPPI is in the investigation as well as evaluation of the implementation of trade security measures, the Minister of Industry and Trade in the determination of KPPI

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recommendations as a decision on trade security measures as well as the determination of quotas imposed, and the Minister of Finance in the determination of import duty rates if trade security measures imposed in the form of import tariffs.

With the existence of three institutions that have important authority in the implementation of trade security measures, this is certainly an obstacle in terms of time efficiency and certainly requires good synergy in security measures. In terms of time efficiency in implementing safeguard measures, procedurally, the Minister of Trade can only decide on trade safeguard measures after receiving a recommendation from KPPI, while the Minister of Finance can also only do so after receiving a proposal from the Minister of Trade.

The authority of the Minister of Trade in deciding trade security measures is not a problem, because he only needs KPPI's recommendation. This means that after KPPI submits its recommendation regarding the results of its investigation, the Minister of Trade can also determine the recommendation. At this stage, it appears that there are no serious procedural issues, because KPPI itself is given a time limit in submitting its recommendations. What is different is the authority of the Minister of Finance.

In order to determine the form of trade safeguard tariffs to be imposed, the Minister of Finance must first wait for a proposal from the Minister of Industry and Trade, and as mentioned earlier, the Minister of Industry and Trade will only submit its proposal after first obtaining KPPI recommendations. This can happen because there is no time limit for the Minister of Trade to submit a proposal to the Minister of Finance after receiving the KPPI recommendation. Similarly, there is no time limit for the issuance of the Minister of Finance's decision after receiving the Minister of Trade's proposal. As a result of such procedural work, it takes 10 to 15 months for a decision (in the form of a regulation) of the Minister of Finance to be issued from the time a request is declared eligible for investigation.

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c. Institutional Sectoral Egoism

Another institutional weakness is the existence of sectoral egoism, which, as is generally found in some studies on institutions, is a weakness that has been inherent in the existing government system in Indonesia. It is no secret that in departmental and non-departmental government institutions, every time there is a change of leadership, there is not only a change of policy, but also a change of personnel. Especially after reformasi, the leadership positions of government institutions seem to be determined more by the allocation of power between political parties rather than the professional ability of an individual.

This will greatly affect the functional structure of these government institutions. As a result of frequent rotations in these institutions, the human resources staff who are there almost never get the opportunity to reach the peak of competence in the fields related to the implementation of their duties. This is because the rotation of positions is not based on needs, but is more likely to be influenced by other considerations, especially considerations of certain group interests and political affiliations (Brotosusilo, 2006).

The right reason to explain the less than optimal implementation of trade safeguard measures in Indonesia is due to the limited authority of KPPI as an institution given special authority to investigate the impact of import surges that result in serious losses or threats of serious losses to domestic industries and too many institutions involved in the safeguard measures, which ultimately complicates and lengthens the procedures that must be taken by interested national industry players. Based on what has been explained previously, the implementation of trade safeguard measures in Indonesia involves four institutions at once, namely KPPI which has the authority to conduct investigations into serious losses or threats of serious losses experienced by similar domestic industries or goods that directly compete with the goods under investigation as a result of the surge in the number of imports to the authority to recommend the imposition of safeguard measures to the Minister.

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Furthermore, there is the Ministry of Finance, which has the authority to set import duties, the Ministry of Trade, which has the authority to set quotas, and the DPP, which has the authority to deal with accusations from other countries that Indonesian products are flooding the markets of those countries, causing harm.

With the number of institutions involved and the narrow authority given to KPPI, procedurally, it becomes an obstacle in terms of the efficiency of investigation time and the determination of import duties or quotas. According to Satjipto Rahardjo, establishing a state of law requires a long process (Rahardjo, 2008). Not only legal regulations must be managed properly, but a strong and sturdy institution with extraordinary and independent powers, free from intimidation or interference from the executive and legislative branches, which is carried out by human resources with good morals and tested morals so that they do not easily fall outside the scheme intended for them to realize a legal certainty that requires justice (Rahardjo, 2008).

The existence of an independent Indonesian trade remedy institution, which would function as a “court institution” or “trade tribunal”, is necessary for several reasons, namely:

- 1) As in the conventional judicial system, an independent trade remedy institution will be free from outside economic and political interference, so that the decision to impose trade safeguards is truly based on the results of an objective investigation.
- 2) As a consequence of the former, the decision-making mechanism will also be shorter, as the trade remedy authority is in charge of the entire decision-making mechanism.
- 3) A further consequence of the first and second, the establishment of a professional trade remedy authority, with full-time human resources, would be more feasible, as political economy interventions would no longer dominate.
- 4) Although independent, the trade remedy authority will not ignore national interests, as national interests will instead be considered more comprehensively (Sutrisno, n.d.).

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In this case, it does not mean that all authority is given to KPPI as an implementing agency, but what is meant here is the expansion of authority from what was initially limited to investigating serious losses or threats of serious losses experienced by similar domestic industries or goods that directly compete with the goods being investigated as a result of the surge in the number of imports to the authority to recommend the imposition of safeguard measures to the Minister, “but in this case it is expanded with the authority to make a decision whether to impose import duties and quotas” which has been held by the ministries of trade and finance. Meanwhile, those who implement the imposition of import duties remain under the authority of the Ministry of Finance and Trade. Of course, every policy made will have an impact on changes to regulations, which in this case is Government Regulation Number 34 of 2011 concerning Antidumping Measures, Countervailing Measures, and Trade Safeguard Measures.

The existence of a trade security institution that does not get sympathy from national industry players will directly affect the performance of the institution itself. If in the meantime the institution is expected to be able to carry out its function as the last bastion of the implementation of trade security in overcoming serious losses or threats of serious losses experienced by similar domestic industries or goods that directly compete with the goods under investigation as a result of the surge in the number of imports, then its function may shift to become the last bastion in the government's efforts to build a competitive national industry in the global market.

Moreover, with the government's commitment to openly declare its support for international trade as stipulated in the Agreement Establishing the World Trade Organization and all the agreed-upon rules, the government followed up by forming Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. Therefore, the existence of an independent trade security institution is one of the pillars that cannot be abandoned, in addition to other pillars in

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the government's efforts and commitment to building a better national industry in the future.

Based on the author's analysis, KPPI appears effective in carrying out its duties to protect domestic industries from import surges, supported by a strong legal framework, law enforcement activities, and facilities that are assumed to be adequate. Meanwhile, industry support and a culture of protectionism pose challenges to improving its effectiveness.

According to the author of the theory put forward by Soerjono Soekanto, the following factors can affect whether a law is effective or not:

a. The legal factor itself (the law)

The legal factor itself refers to the clarity, consistency, and adequacy of the regulations governing KPPI. Based on the information, KPPI operates under a comprehensive legal framework, including:

- 1) Law No. 7 Year 2014 on Trade, which includes trade protection and security arrangements.
- 2) Government Regulation No. 34 Year 2011 on Antidumping Measures, Countervailing Measures, and Trade Safeguard Measures, which provides the basis for safeguard measures.
- 3) MOT 15/2024 on the Organization and Work Procedures of KPPI, which regulates the structure and operational procedures of KPPI.
- 4) International legal basis such as the WTO Agreement on Safeguards, ratified through Law No. 7 of 1994.

This legal framework is in line with international standards, enabling KPPI to carry out its duties, such as investigations and recommendations of measures like the Safeguard Duty (BMTP). However, challenges such as trade diversion (increased imports from other countries after a measure is implemented) indicate potential weaknesses in the regulation to address this phenomenon, which may require further adjustments.

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The current regulation on KPPI is indeed quite effective in carrying out basic technical functions, but it is not strong enough in terms of institutional and legal legitimacy. To make KPPI truly effective and credible in the long term, regulatory strengthening is needed, ideally through the establishment of a special law that establishes KPPI as an independent institution, fully authorized and legally protected from political or administrative interventions.

b. Law enforcement factors

This factor assesses the ability and effectiveness of KPPI as an enforcer in the context of safeguard measures. Based on reports, KPPI is active in handling requests from industry, such as the case of I and H section profile steel in 2021, where they extended the investigation based on the request of PT Gunung Raja Paksi Tbk. In addition, in the case of non-porous cigarette paper and plug wrap in 2023, KPPI also conducted a BMTP extension investigation at the request of the Indonesian Pulp and Paper Association (APKI).

The effectiveness of KPPI can be seen in their ability to recommend measures to be implemented, such as BMTP on the steel industry, which, according to IISIA, effectively reduced imports from certain countries such as China during 2015-2019. However, challenges such as trade diversion to other countries (e.g., Malaysia) suggest that KPPI's ability to monitor and address the broad impact of such measures may be limited. This could be due to a lack of coordination with other authorities or limitations in global data analysis.

c. Facility factors that support law enforcement

This factor assesses the availability of resources, such as budget, staff, and technology, that support KPPI's operations. As a committee under the Ministry of Trade, KPPI likely has adequate facilities, including access to import data, investigation systems, and technical support. Specific information on budget and staff numbers is difficult to find, but based on its nature as a government agency, it can be assumed that it has sufficient resource allocation to carry out tasks, such as

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investigations that require extensive data analysis and coordination with relevant parties.

However, to increase effectiveness, further investment in technology to monitor trade diversion or staff training for more in-depth analysis may be required, especially given the complexity of international cases.

d. Community factors

The community factor refers to the domestic industry's level of awareness, support, and participation in the safeguard system. Based on reports, the domestic industry shows a fairly high awareness, as seen from the applications submitted by associations such as IISIA for steel products and APKI for paper. This shows that businesses understand and utilize KPPI to protect their interests.

However, there are challenges mentioned by Minister Gobel in July 2024, who questioned the effectiveness of the regulation as industry players have to do extensive preparation, such as data collection, to register a case at KPPI. This can be a barrier, especially for small and medium-sized businesses that may not have the resources to fulfill such requirements, thus affecting the effectiveness of the system as a whole.

KPPI's role in societal factors is indirect but significant, especially in maintaining the sustainability of domestic industries, employment, and economic independence. However, its effectiveness can be improved by expanding public socialization, involving community stakeholders in the investigation process, and maintaining a balance between industry protection and consumer interests.

e. Cultural factors

Cultural factors assess the extent to which cultural values support or hinder the implementation of safeguard measures. In Indonesia, there is cultural and political support for protectionism, especially in the context of protecting national industries from the negative impacts of globalization. This is reflected in government policies that consistently implement safeguard measures, such as in the steel and textile sectors, which are in line with the spirit of economic nationalism.

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KPPI's role in culture is indirect and functional, through the protection of industrial sectors that may contain cultural elements. However, to be truly effective in supporting culture, cross-sectoral synergies between KPPI and cultural institutions are needed to ensure that trade protection also impacts the preservation and development of national culture.

The main weakness of KPPI lies in its institutional aspects, legal basis, and limited authority. As an institution that was only established based on a Minister of Trade Regulation, KPPI does not have a strong legal standing in the national legislative system. This makes its existence vulnerable to policy changes and political interests, and reduces its legitimacy and long-term stability. In addition, KPPI is not yet structurally independent as it is still fully subordinated to the Ministry of Trade, opening up opportunities for intervention in the investigation process, which should be objective and data-driven. KPPI's authority is also limited, as it can only provide recommendations to the Minister, not final and binding decisions. On the other hand, limited socialization and public participation in the investigation process make the role of KPPI not yet fully known and utilized by small business actors and the wider community. All of these points point to the need for institutional reform and strengthening of KPPI's legal basis in order to play a more effective and credible role in the national and international trade system.

As a developing country, Indonesia tends to support the protection of domestic industries to promote economic growth and employment, which is in line with cultural values that emphasize people's welfare. However, there is also international pressure for trade liberalization, which can create a cultural conflict between protectionism and globalization.

4. CLOSING

The implementation of KPPI's duties and authorities has not been effective due to a number of fundamental obstacles. Among these are the legal basis that is not strong enough, the high dependence on other institutions, the lack of functioning of KPPI as an

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independent tribunal institution, and the existence of sectoral ego between institutions that hamper coordination and synergy in the decision-making process and implementation of trade security policies.

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