

**Article XX GATT 1994 Defense Blanket and Its Implications for Indonesia as
a Developing Country: A Case Study of EU Carbon Border Adjustment
Mechanism (CBAM) Compliance**

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ABSTRACT

Non- European Union (EU) countries are expected to obtain the carbon border adjustment mechanism (CBAM) certificate as a pre-requisite for conducting environmentally sustainable trade when using EU CBAM. As a result, it sparked disagreement among its trading partners, considering the system appears to violate the EU commitments to the World Trade Organization (WTO). This legal research therefore analyzes the EU CBAM compliance on most favored nation (MFN) and national treatment obligations to the extent of Art. XX GATT in justifying them, as well as initiatives that Indonesia could consider in facing EU CBAM.

A doctrinal analysis is utilized in this legal method as to treat the law as a closed system to answer to the research question as well as through utilized the qualitative research method by referring to non-numerical data such as books, journal articles, news, and other scholar writings as supportive literal sources.

This legal research discovered first, the EU CBAM arguably violates the previous two WTO obligations; second, the application of Art. XX GATT failed as no compliance on two-tier test to be found; third, there are three efforts that can be offered to Indonesia in facing the EU CBAM consisting file a complaint under the WTO, establish a national regulation, and establish a bilateral agreement between the EU and Indonesia in regards to their right to compete within the EU market.

Keywords: EU CBAM, GATT, WTO Compliance, Trade and Environment

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Pembelaan Pasal XX GATT 1994 dan Implikasinya bagi Indonesia sebagai Negara Berkembang: Studi Kasus Kepatuhan Carbon Border Adjustment Mechanism (CBAM) UE

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INTISARI

Negara non-UE diharapkan dapat memperoleh sertifikat CBAM sebagai prasyarat untuk melakukan perdagangan yang ramah lingkungan ketika menggunakan CBAM UE. Akibatnya, terjadi kontroversi di antara mitra dagangnya, mengingat sistem ini tampaknya melanggar komitmen UE terhadap WTO. Maka penelitian hukum ini menganalisis kepatuhan CBAM UE terhadap kewajiban MFN dan national treatment hingga tingkat Pasal XX GATT untuk membenarkan mereka, serta inisiatif yang dapat dipertimbangkan oleh Indonesia dalam menghadapi CBAM UE.

Analisis doktrinal digunakan untuk memperlakukan hukum sebagai sistem tertutup serta metode penelitian kualitatif dengan mengacu pada data non numerik seperti buku, artikel jurnal, berita, dan tulisan ilmiah lainnya sebagai sumber pendukung.

Temuan pertama CBAM UE secara kontroversial melanggar dua kewajiban WTO sebelumnya; kedua, kegagalan pengaplikasian Pasal XX GATT melalui two tier test; ketiga, ada tiga upaya yang dapat ditawarkan kepada Indonesia dalam menghadapi CBAM UE, yaitu mengajukan pengaduan berdasarkan penyelesaian sengketa WTO, menetapkan regulasi nasional, dan menetapkan perjanjian bilateral sehubungan dengan hak bersaing mereka di pasar UE.

Kata Kunci: EU CBAM, GATT, Kepatuhan WTO, Perdagangan dan Lingkungan

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