



Safeguard Measure Application As Asean Sustainable Framework To Recover From The Post-Covid-19 Pandemic Crisis

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Abstract

The Covid-19 Pandemic has been viewed as a multisectoral crisis. One of the sectors harmed by this pandemic is the international trade sector. This research aims to discuss how ASEAN shall respond to the post-economic turmoil caused by the Covid-19 Pandemic. Furthermore, this research also examines how ASEAN applies the safeguards measured under the World Trade Organization (WTO) agreement to recover its member states' economies. This research uses normative methods by applying doctrinal or statute and conceptual approaches. From the discussions, the authors conclude that ASEAN should respond wisely to the WTO's suggestion to conduct free trade in the post-crisis situation. Furthermore, this article suggests that ASEAN may adopt a treaty regarding safeguards measures or a gentlemen's agreement to apply the WTO agreements regarding safeguards. Finally, this research is conducted to contribute to developing international trade law, especially using such a law to achieve sustainable development goals.

Keywords: International Trade Law, WTO, Safeguard, Covid-19 Pandemic, ASEAN

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I. Introduction

The validity of temporary import prohibition policy has always been debated in the International Trade Law (ITL) practice. In the dispute between Argentina and the European Community (EC) caused by the safeguard mechanism invoked by Argentina to the EC's exported Footwear Product, for instance, the Appellate Body (AB) of the case set a high threshold determining the validity of the temporary import prohibition policy (Bossche & Zdouc, 2022). The AB opined that the import restrictions imposed on products of exporting members when a safeguard action is taken must be seen as extraordinary, and the prerequisites for taking this action shall be taken into account their extraordinary measures. In examining this case, the AB accordingly justified that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury (Bossche & Zdouc, 2022).

The dispute was an ongoing case from 1998 to 2000 (WTO(h),2023). However, on February 11th, 2000, Argentina informed the World Trade Organization (WTO)'s Dispute Settlement Body (DSB) that this measure would only be applied until February 25th, 2000 (WTO(h),2023). Therefore, in this case, a temporary import restriction policy, also known as a safeguarding policy, should be understood as a permitted policy under a high threshold and a strict grace period. Such thresholds and grace periods are regulated under the ITL.

Despite its debatable definition and scope of application, ITL has always been viewed as a law regulating the relations between states and private persons in conducting trade and other commercial activities. The premise is based on Adolf's explanation based on Sanson's Doctrine, expressing that ITL consists of public ITL regulating states' trade relations and private ITL, which regulates relations between private individuals

conducting trades (Adolf,2014). Furthermore, in quoting Boosyen's view, Aprita, and Adhitya explained that ITL is an exclusive branch of public international law regulating trade in goods and services and protecting intellectual property rights based on national law (Aprita & Adhitya, 2020). One of the critical matters of this jurisprudence is the application of trade measures based on WTO Agreements.

This article discusses measures related to trade protection as a mechanism for protecting states from economic crises. This measure is also known as a safeguard, as above-mentioned. Regulated in Article XIX GATT, safeguard has been perceived as an exception on quantitative measures in the form of imports prohibited under Article XI GATT (WTO (d),2022). Furthermore, the measure is complemented by the safeguard committee as the monitor of this institution regulated under Safeguard Agreements in Annex 1A WTO Agreement (WTO (e),2022).

In practice, this legal product is applied in several circumstances, including crises related to trade aspects. For example, the Covid-19 Pandemic has caused a multisectoral crisis in the international communities. This pandemic emerged due to the outbreak in Wuhan, Hubei Province, China, on November 17th, 2019 (Davidson, 2019). On March 11th, 2020, the World Health Organization (WHO) decided to address this outbreak by stating Covid-19 as a Pandemic (WHO,2022). This crisis has been viewed as a multisectoral crisis which also consists of injuries in international trade sectors.

By understanding this situation, one may infer that the WTO member states, as members of international communities, are chained due to the emergence of the Covid-19 Pandemic and the free trade ambition crafted under the WTO Agreements. This chain is caused by the necessity of each WTO member state to invoke a protectionist measure to recover their economy on one side. Moreover, this chain is also caused by the purpose of free trade, which is to abolish both tariffs and non-tariff barriers between states (Wijatno & Gunadi, 2014). Therefore, this situation shall be seriously measured under measures regulated under the ITL regime at both the international and regional levels.

On the other side, the Sustainable Development Goals (SDGs) as multisectoral goals have always been viewed as hope in creating this world a better place from generation to generation (UNDP, 2022). Unlike the ITL regime, this part of international law is constituted by the United Nations (UN). The initiative of creating global goals was started and addressed in the Stockholm Declaration, which discussed the urgency of international environmental law adoption for the first time in 1972 (Hossain & Rahi, 2018). Furthermore, by adopting the UN Convention on Biological Diversity and other international environmental law treaties, the initiative emerged and became necessary consent for the international communities (Hossain & Rahi, 2018). Eventually, in 2015, the UN declared the SDGs consisting of 17 Global Goals that states shall transpose into their political commitment (UNDP, 2022).

The United Nations Department of Economic and Social Affairs (UNDESA) also expressed that the 17 Global Goals were meant to be achieved in 2030. However, due to the Covid-19 Pandemic, the international communities through the UNDESA then decided to adjust these goals to the current situation (UNDESA, 2022). Therefore, due to Covid-19, the international communities need to catch up in applying these 17 Global Goals (UNDESA,2022). Therefore, like the free trade ambitions under the WTO Agreements, this international institution has a challenge dealing with the pandemic.

An international scholar, Radi, expressed that international economic law may be applied in harmonic nature with other international regimes, such as international environmental law and international law concerning labor rights (Radi, 2021). Other scholars, such as Hossain and Rahi (2018), explain that one shall give extra effort into conciliating international economic laws, including ITL, with other international law regimes, such as international environmental law.

It is undeniable that the Covid-19 Pandemic is a multisectoral issue. Furthermore, this issue has affected the international community and regional governmental organizations such as the Association of Southeast Asian Nations (ASEAN). Even though vaccines can control the spread of the Covid-19 Virus, the economic problems caused by Covid-19 are far from over. Therefore, this article discusses the application of ITL norms to respond to the Covid-19 Pandemic at the regional level, particularly in Southeast Asia. To find a solution to reconcile this tiresome and challenging situation, this article thereby seeks solutions to solve research questions, including: (1) how shall ASEAN respond to the post-economic crisis due to the Covid-19 Pandemic and (2) how shall the safeguard measures be applied as a regime for ASEAN countries recover from the economic crisis?

Theoretical Frameworks

This article uses International Regime Theory (IRT) to address the first question. Krasner (1983) defines IRT by stating that international regimes are principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue. Dematar (2019) explains that successful regimes maintain the multilateral agreement without adhering to a significant punishment as an instrument. The relevancy of this theory is proven by the existence of international economic institutions such as the General

Agreement on Tariffs and Trade (GATT), the WTO, the International Monetary Fund (IMF), and the World Bank (Dematar, 2019).

International regimes might also be understood as institutions with explicit rules agreed upon by governments that pertain to particular sets of issues in international relations (Hasenclever et al., 2002). Therefore, international regimes are demanded due to the urgency of the international community to construct norms that they may generally accept or develop in transnational relations (Keohane, 2009). This theory confirms why ASEAN should transpose the safeguard measures under the WTO agreement as their mechanism to recover from the Covid-19 Pandemic.

In answering the second question, the authors apply the General Consent Theory. Argent (2021) confirms that international law is created through the consent of states. This theory is the antithesis of the will of the state, expressing that international law is created through the will of a single state (Diantha & Putra, 2017). By identifying the state's "consent" or "will," this theory has a positivistic nature (Argent, 2021). Such consents have relevancies in the practice of free trade agreements.

Subedi (2021) quoted Bossche's opinion stating that "*if goods do not cross frontiers, soldiers will.*" This sentence confirms that trade protectionism often becomes a source of international armed conflicts (Subedi, 2012). In addition, having the purpose of achieving political stability, Guan (2020) justifies that the existence of a free trade agreement such as the WTO agreement is to protect the legal and economic benefit of all WTO member governments and their citizens all over the world. Finally, the common will theory is applied to explain how the safeguard measures are applicable at the ASEAN level to recover from the Covid-19 crisis.

This article also applies the absolute advantage doctrine and the comparative advantage doctrine. In explaining the absolute advantage doctrine, Adam Smith stated that each nation should apply a labor division, international specialization, and production efficiency to achieve an absolute advantage through international trade (Aprita & Adhitya, 2020). Meanwhile, David Ricardo explained his antithesis to Smith's view by expressing that each state shall conduct a production allocation on a specific commodity since each state has its weight of production capacity (Mankiw, 2009). These doctrines explain the correlation between safeguarding decent work and economic growth as sustainable development goals.

International trade law (ITL) has a debatable scope of application according to jurisprudence. Scholars like Schmittoff explain that such a law shall be divided from public international law, which constitutes trade under the private law regime (Aprita & Adhitya, 2020). On the other hand, Boosyen argues that this subject is the *lex specialis* of public international law (Aprita & Adhitya, 2020). To facilitate both, Sanson then describes this law as divided into two sub-branches; the public and private international trade law (Aprita & Adhitya, 2020). In this article, Boosyen's definition and one of Sanson's sub-branches are applicable since it discusses how ASEAN member states shall transpose WTO regulations to recover from the Covid-19 Crisis.

As an international organization, WTO was established based on the Uruguay Round in September 1986 (WTO (a), 2022). Since then, the WTO has been the only global organization for international trade. The WTO Agreement tends to overcome tariff and non-tariff barriers (WTO (g), 2022). Furthermore, the most important norm of this organization is the GATT 1994 as the replacement for the GATT 1947 (WTO (g), 2022). Therefore, GATT 1994 and norms within Annex 1A WTO Agreements are applied to solve the research problems in this research.

Similarly, the Association of South East Asia Nations (ASEAN) is an inter-governmental organization established on 8 August 1967 with Indonesia, Malaysia, Philippines, Singapore, and Thailand as their founding members (ASEAN (b), 2022). As a regional organization, ASEAN has three pillars: the Political-Security Community, the Economic Community, and the Socio-Cultural Community (ASEAN (b), 2022). In this research, the safeguard institution is applied as a normative framework that ASEAN shall apply.

Regarding the safeguard measures, Jackson states that such a policy is applied by waiving the strict free trade agreements clause under a reasonable period through import restriction (Adolf & Suryawinata, 2018). It is applied as regulations under GATT and WTO Agreements regarding Safeguards. Therefore, the technical substance under Article XIX GATT and Annex 1A WTO Agreements regarding the Agreement on Safeguards is the central premise of this research.

II. Methods

The research applies a normative method of gathering secondary data to answer formulated legal issues (Amiruddin & Asikin, 2018). This method is applied through the transposition of law in the book to actual issues existing in the societies. In addition, this research also applied the statutory and conceptual approaches. The statutory approach is applied by gathering favorable laws consisting of regulations issued by international organizations and international treaties (Amiruddin & Asikin, 2018). The conceptual approach is applied through the transposition of theories, principles, and doctrines on formulated legal issues (Amiruddin & Asikin, 2018). Furthermore, the authors collect secondary data consisting of (1) Primary legal sources in the form of unfavorable laws consisting of international treaties adopted by ASEAN and WTO, (2) Secondary legal sources

in the form of theories, doctrines, and legal principles explaining the application and the interpretation of primary legal sources; and (3) Tertiary Legal Sources in the form of both primary legal sources and secondary legal sources explanation, in the form of law dictionaries.

III. Results and Discussions

The Urgencies of Safeguard Measures as a Respond to the Post-Pandemic Crisis

After World War II, an economic crisis triggered the international communities to establish international organizations to balance free trade and protectionism (Fahrazi, 2019). The international communities then established the General Agreement on Tariffs and Trade (GATT) in 1947, a treaty to achieve balance and reduce tariffs and non-tariff barriers (Ortino, 2009). However, due to some political consent, especially from the United States (US) for not participating in an international summit in establishing the International Trade Organization (ITO), the international trade regime was left with the GATT, without having any international organization in settling international trade disputes and ensuring the conduct of free trade (Fahrazi, 2019).

This situation was changed after the Uruguay Round in 1994, resulting in the World Trade Organization (WTO) establishment. According to the preamble of the Uruguay Round Treaty, WTO was meant to achieve reciprocal relations and mutual advantages to reduce tariff and non-tariff barriers and reduce discrimination in international trade (WTO (a), 2022). Through WTO, states and regional organizations (such as the European Union) have a forum for discussing measures of international trade and its related aspects. This forum has also settled interstate disputes regarding tariff and non-tariff barriers (Subedi, 2012).

Regarding interstate disputes and economic crises, there are safeguards measures in Annex 1A WTO Agreement, adopted during the Uruguay Round. Such measurement is constituted under the GATT regime titled the Agreement on Safeguards (WTO (e), 2022). In the GATT regime, the safeguard measure is constituted under Article XIX (WTO (d), 2022). The safeguard may also be invoked if any product is imported into the territory of contracting parties that might cause or threaten serious injury to domestic producers. As stated in paragraph 1b, *“the subject of a concession is being imported into the territory of a contracting party, to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which received such preference, the importing contracting party shall be free, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.”* (WTO (d), 2022).

Furthermore, the ITL institution was also formulated in Annex 1A WTO Agreement regarding the Agreement on Safeguards. It explains that the safeguard institution is an institution explained in Article XIX GATT (WTO (e), 2022). Similar to GATT, Article 2 paragraph 1 of this agreement explains that WTO member state may invoke safeguard measures only if that member imports the product into its territory in such increased quantities and other such conditions that may cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products (WTO (e), 2022). As regulated in Article XIX paragraph 1 GATT, the circumstances that may permit a member state to invoke safeguards are: (a) serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry; (b) the threat of serious injury shall be understood to mean imminent serious injury.

From these norms, we might construe that safeguards are a specific legal regime applicable to protect a WTO member state from actual and imminent threats that may cause serious injury to its economy. Despite its protectionist nature, safeguards justify states to determine their decision in exercising their rights and obligations as WTO members. Such safeguards may also be applicable to set WTO member states free from the pandemic faced by the international community.

The International Institute for Sustainable Development addressed that WTO expected world trade would fall by 13% to 32% in 2020 due to the pandemic (ISSD, 2022). During the trade forecast press conference on April 8th, 2020, WTO Director-General, Azevêdo stated that the pandemic had forced WTO member states to invoke unprecedented measures to protect people's lives (WTO (f), 2022). While the trade volume growth has slowed down due to several issues, including the lockdown in China, and the international armed conflict in Ukraine, the Director-General of WTO, Ngozi Okonjo-Iweala, confirmed that international trade must go on to ensure the stability and equitability access to necessities (WTO (b), 2022). He assumed trade restrictions would threaten businesses and complicate settling economic recovery from Covid-19 (WTO (b), 2022).

Effendi, a researcher from the University of Technology Sydney, also concluded that states should waive their import tariffs and quotas in response to this global crisis (Effendi, 2020). By this action, WTO member states shall ensure other WTO member states conduct the same means. In response to this, as inferred from the WTO explanations on the application of the Sanitary and Phytosanitary Agreement and the Technical Barriers to Trade Agreements during the Covid-19 Pandemic, international trade shall be conducted to ensure the distribution of medicine saves human lives as well as conduct (WTO (b), 2022).

Despite such notions, international trade shall not be conducted through any means in which the pandemic does not exist. However, these statements shall be wisely responded to as guidance for WTO member states to determine which trade sector shall be safeguarded and which does not need additional protections. The WTO classifies trade sectors into four main trade sectors, including agricultural products, mining products, manufacturing products, and commercial services products (WTO (c), 2022). By these classifications, WTO member states in Southeast Asia may determine which trade sector activities shall be limited in recovering the economy from Covid-19 and which sectors must go on. In explaining this trade sector, a table regarding the trade sectors above-mentioned and how ASEAN shall respond to those classifications is presented below.

Table 1. WTO Trade Sectors Classifications and ASEAN Response

Trade Sectors	Sub Sectors	ASEAN Response
Agricultural Products	Foods	Strictly Negotiated
Mining Products	Fuels	Negotiatable
Manufactures Products	Iron and Steel	Negotiatable
	Chemicals	Safeguarded
	Machinery and Transport Equipments	Negotiatable
	Office Machines and Telecom Equipments	Negotiatable
	Automatic Products	Negotiatable
Commercial Services	Transportation Services	Negotiatable
	Travel Services	Negotiatable
	Other Commercial Services	Negotiatable

Source: Trade Sectors Classification (in WTO (c) 2022)

From this table, we can see that the safeguard measurements are an aspired law to be applied to each trade sector, and its sub-sectors shall be conducted wisely or under a precautionary approach. Such an approach is required to ensure that the safeguard can be applied in line with the SDGs. Therefore, the application of agricultural products shall be negotiated by considering SDG Number 2 regarding zero hunger or the global goal to abolish hunger and achieve food security, good nutrition, and sustainable farming (UNDESA, 2022). Furthermore, the manufacture of products in the form of chemical products shall not be restricted under safeguard measures or shall not be waived since this type of product has a vital role in medicine distribution. The rest of the trade sectors above shall be negotiated by ASEAN to determine whether they shall use safeguard measured or not based on the existing situation at the ASEAN level.

In response to the Covid-19 pandemic disruption, the UN expressed that the international community shall expose the failure addressed in the 2030 Agenda for Sustainable Development (UN, 2022). Therefore the UN will conduct a readjustment by invoking a systemic shift to a more sustainable economy that works for both the people and the planet. There is also an optimistic view about the UN since all UN member states remain to uphold their commitments to achieve global goals by 2030. (UN, 2022).

From the above explanation, we understand that WTO and the UN, through its Department of Economic and Social Affairs, are dealing with the Covid-19 Pandemic disruption, particularly on economic issues. However, ASEAN might see these issues as an opportunity to correlate the application of safeguard institutions under WTO with the application of SDGs as the political commitment of the international community. Therefore, ASEAN member-states remain committed to implementing the 17 Global Goals, as discussed below.

As ASEAN member states are also WTO member states, ASEAN might have its consent to transpose and apply the safeguard measurements in the region. It is compatible with Article 1, paragraph 5, ASEAN Charter expressing that one of its purposes is “To create a single market and production base which is stable, prosperous, highly competitive, and economically integrated with effective facilitation for trade and investment in which there is a free flow of goods, services, and investment,” and paragraph 6 “To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation.” (ASEAN (a), 2022).

ASEAN may utilize the safeguard measures under WTO to set it free from tariff and non-tariff barriers. Therefore, by applying regime theory, ASEAN might conduct a summit as a regional organization to discuss this issue and establish its safeguard institution. It is to ensure the conduct of international trade and economic recovery simultaneously at the ASEAN level. By this, all ASEAN member-states might reduce their rights to apply quantitative restrictions only to specific sectors freely. Such a safeguard regime makes ASEAN member states bound by WTO norms, although it does not attribute with a direct sanction. This mechanism is also compatible with the operation of the ASEAN Summit under Article 7 ASEAN Charter. Moreover, the ASEAN Summit has the authority as the supreme policy-making body to address emergencies affecting ASEAN by taking appropriate actions (ASEAN (a), 2022). Therefore, ASEAN might cooperate in implementing the ITL norms.

The Application of Safeguard Measures for ASEAN's Recovering from the Economic Crisis

SDGs have been viewed as an interconnected political commitment to share peace and prosperity for people and the planet for this generation and the next generations (UNDP, 2022). This article discusses Goal Number 8 regarding decent work and economic growth. Ultimately, this goal is to deal with the 2008 economic recession and the fact that 204 Million People lost their jobs during the crisis. Since each SDG is interconnected, a mechanism for how Goal Number 8 can be applied along with the other global goals through the safeguard measures shall be explained (UNDESA, 2022).

The regime of safeguard under GATT and Annex 1A WTO can be viewed as general consent and a tool to strike a balance if free trade ideology and protectionism conflict. For this reason, there are five elements of safeguard measures to understand (Fahrizi, 2019), including (1) Measure Conducted by the government; (2) Serious injury or threat of serious injury, which means an actual and upcoming injury suffered by a domestic industry due to the large quantities of imported products flooding the domestic market; (3) The purpose of this measure is to protect the domestic industry or to recover; (4) The existence of similar products; and (5) Directly competing products, when the goods produced by the domestic are in direct competition with the imported goods, or the imported goods have a role as substituting goods for the imported goods.

Annex 1A Agreement on safeguards also explains that it is invoked under a limited grace period and shall be reported to the Safeguard Committee (WTO (e), 2022). The grace period matter is regulated under Article 7, explaining that the safeguard may not be invoked for more than four years, and it may be extended to eight years since the invocation date if such extension is granted by the safeguard committee (WTO (e), 2022). The authority of the Safeguard Committee in receiving safeguard applications by a WTO member state is constituted under Article 12 1. c. Agreement on Safeguards as part of Annex 1A WTO Agreements (WTO (e), 2022).

This article argues that the safeguards, as an institution, have both free trade and protectionist nature. Free trade can be seen by understanding that this measure can only be applied to limited types of goods and in a limited grace period. Meanwhile, the protectionist nature of the safeguard lies within this measure, which limits the import quantity of a member state. By these natures, the safeguard measure shall be applied in achieving SDG No. 8 regarding Decent Work and Economic Growth. As a result, ASEAN may provide decent work and economic growth for its communities. Decent work as domestic laborers may not lose their opportunities to work due to the indirect effect of domestic industries' incapability to compete with imported products. Economic growth from domestic industries may have time to recover and compete internationally.

The absolute advantage doctrine can explain the correlation between safeguard and decent work by Adam Smith and the comparative doctrine by David Ricardo. However, suppose it is transposed into international trade practice. In that case, Smith's opinion can be explained under an expression where each ASEAN member state shall conduct the division of labor to gain an absolute advantage through international trade. Meanwhile, Ricardo's point of view can be as a concept where the state must conduct an allocation on each of their industries, since each ASEAN member state may achieve their advantage once their laborers produce goods with a lower opportunity cost than other member states (Mankiw, 2009). Despite conflicting concepts, this article applies these theories to understand how safeguard measures might be perceived as an incentive for ASEAN laborers in several sectors and produce goods for international trade and at the domestic level.

Understanding that an import quantity brings more goods than harm to a particular sector may achieve stability due to the supporting law or measures. Therefore, such a safeguard application may provide aid for domestic industries to recover from the pandemic and avoid suffering. Furthermore, related to SDG number 8, this application may also create an interrelation with other global goals. These explanations are addressed since the 17 Global Goals have an interlinked nature (UNSTATS, 2018):

First, the safeguard regime under Article XIX GATT and Annex 1A WTO Agreement will align with Goal Number 2. By understanding that this goal can be considered during the ASEAN policy-making process, the food crisis can be recovered from the issue (UNDESA, 2022).

Second, the safeguard measure will align with Goal Number 3 regarding good health and well-being, as the application of safeguards in particular medical products might help ASEAN to overcome the disrupted health services in 92% of countries by the end of 2021 (UNDESA, 2022).

Third, this measure will align with Goal Number 9 regarding innovation and infrastructure since the measures become an incentive for small-scale industries, due to their lack of capability, to recover from the Covid-19 crisis and compete internationally (UNDESA, 2022).

Fourth, safeguards will align with Goal Number 10 regarding reduced inequalities (UNDESA, 2022). This institution's application may reduce trade inequalities within ASEAN member states.

Sixth, the safeguards are aligned with Goal Number 16 regarding peace, justice, and strong institutions. Sefriani (2016, 233) states that applying WTO norms at regional and national levels may help states achieve clean governance.

Seventh, if this safeguard institution is transposed to the ASEAN level, ASEAN member-states may cooperate in achieving the goals through a trade cooperation framework (UNDESA, 2022). This ambition is compatible with Goal Number 17 regarding Partnership for the Goals.

To establish the safeguard at the regional level, ASEAN should either adopt a specific treaty regarding this subject or adopt a gentlemen's agreement containing the commitment of ASEAN member-states to apply the safeguard measure constituted in GATT and Annex 1A WTO Agreement. ASEAN has the right to adopt a treaty with the Most Favoured Nations Principle. This principle expresses that WTO member states shall not conduct a discriminative practice with other WTO member states vis-à-vis third member states (Adolf & Suryawinata, 2018). However, the principle has its exception, including when states have a regional-level trade agreement applicable to them (Argent (b), 2021). Therefore, such a principle has exceptions in the practice of ITL at the regional level due to the enforcement of regional free trade areas. By this principle, ASEAN member-states have a right to adopt a treaty regarding safeguarding as its mechanism for protecting their economy in a reasonable time.

Moreover, the gentlemen's agreements have no binding effect on states as an international law subject. However, this practice is often applied in international relations on specific issues such as poverty by the G8 Forum (Argent (a), 2021). Therefore, it can be construed that if ASEAN member states apply this type of commitment, the binding effect does not lie within their commitment. Instead, the binding effect will stem from the WTO Agreement, and each ASEAN member state shall comply with those norms to properly utilize for trade activities within the region.

The safeguard measure as an institution under the ITL regime may have its role as a law providing for each ASEAN member state. By applying the General Will Theory, the legal substances in GATT regarding safeguards and the Agreement on Safeguards may have their role as one of the states' consent to achieve economic stability and welfare. The relevancy of the premise is also supported by the relation between this idea with the SDGs explained above. Therefore, not only that this measure will support an economic recovery based on the free trade paradigm, but also help ASEAN in achieving the SDGs. Therefore, it is essential to note that safeguard measurement is necessary for the following research regarding the classification of industries in ASEAN. Such research may give a detailed framework of law for ASEAN regarding temporary protection in the trade.

IV. Conclusion

International Trade Law is not entirely isolated from other international law regimes, such as the SDGs, and is part of international environmental law subject matters. This article provides an opinion stating that ASEAN shall accept this idea to have its regional norms regarding temporary protection to recover from circumstances that may damage its member states' economies. This article concludes that ASEAN should respond wisely to the WTO's instructions regarding free trade while recovering from the Covid-19 Pandemic, as not all sectors can quickly recover from the crisis. Therefore, the authors argue that ASEAN should apply the safeguard measure under GATT and Annex 1A WTO Agreement with precautionary measures. This can be done by determining which trade sectors or industries should be applied by this institution and which trade sectors shall continue their activities under the free trade spirits. By applying this institution, ASEAN may be free from the free trade barriers and post-crisis recovery.

This article also provides an opinion stating that ASEAN may adopt a treaty regarding the transposition of safeguard institutions under WTO as all ASEAN member-states are also WTO member-states. Therefore, the adoption of a gentlemen's agreement reflecting the commitment of ASEAN to apply GATT and Annex 1A WTO Agreement is needed. With these alternatives, ASEAN member-states may create a law that may help them to achieve economic stability and provide welfare for their citizens.

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