JLPH:
Journal of Law, Politic and Humanities
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
E-ISSN: 2962-2816
P-ISSN: 2747-1985

DOI: https://doi.org/10.38035/jlph.v6i4
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Uncertainty of Dumping Imposition nn 'Like Product' of Hot-Rolled Coil Alloy Imports From China

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Abstract: This study examines the uncertainty of the norm of 'like product' in Article 1 Number 10 of Government Regulation No. 34 of 2011 and its implications for the validity of legal standing in Indonesia's anti-dumping investigation, with reference to the case of the import of Hot Rolled Coil Alloy (HRC Alloy) from the People's Republic of China. The omission of explicit conditionality in Article 1 Number 10 of Government Regulation No. 34 of 2011, as a ratification of Article 2.6 of the WTO Anti-Dumping Agreement turns out reduces textual clarity regarding the priority of identical products over closely resembling products to classified 'like product'. This interpretive gap, undermine the objectivity of KADI's legal standing verification and may expose Indonesia's anti-dumping methodology to procedural challenges in the WTO DSB forum. As a result, KADI relies on the margin of appreciation through a teleological interpretation that is vulnerable to being sued as protectionism in the WTO DSB forum. This normative juridical research concludes that the reconstruction of norms is needed through the revision of Article 1 Number 10 of Government Regulation No. 34 of 2011 and the addition of technical criteria in Minister of Trade Regulation No. 76 of 2012, including physical characteristics, final functions, and relevant markets, so that the methodology of the KADI investigation stands on normative parameters that are transparent and in line with the WTO ADA.

Keywords: Like product, Anti-dumping, Ratification

INTRODUCTION

International trade is one of the main pillars that sustain the country's economy. Cooperation in international trade is closely related to political dependence between countries so that fraud is often found in its continuity. Dumping behavior is a form of fraud in international trade cooperation. Dumping is a condition in which a country sells imported goods at a lower price than the domestic market, so that domestic producers experience collapse and losses (Erawaty A. F., & Badudu J. S.1996). A country's form of protection in protecting its domestic industry from dumping activities is referred to as an anti-dumping measure (Gegan & Nasywa, 2025).

Indonesia as a member country of the World Trade Organization (WTO) has ratified the General Agreement on Tariffs and Trade (GATT) into Law Number 7 of 1994 concerning the Agreement on the Establishment of the World Trade Organization. The WTO has comprehensively regulated anti-dumping measures within the legal framework of the Agreement on Implementation of Article VI of the GATT or hereinafter referred to as the Anti-Dumping Agreement or ADA (Hata, 2012). The regulation has been ratified into Government Regulation No. 34 of 2011 concerning Anti-Dumping Measures, Countervailing Measures, and Trade Safeguard Measures on amendments from Government Regulation No. 34 of 1996 concerning Antidumping Import Duties and Countervailing Import Duties.

Starting from PT Krakatau Steel as an Indonesian Hot Rolled Coil producer who submitted an investigation into the alleged dumping of imported products belonging to the China, namely HRC Alloy, to the Indonesian Anti-Dumping Committee (KADI). After going through various series of investigations, it was found that the results of the calculation of the dumping margin/price difference between domestic products and imported products are 7.2%-50.2%, while the threshold for the imposition of dumping restrictions is if the product margin is less than 2% (Barutu, 2007). The import consumption of HRC Alloy always increases every year, in the first year of the production of goods that entered 100 and then in the last year the increase in imported production goods reached 20% or around 120 and resulted in a decrease in market share in demand from 100 to only 83. In the process of this investigation, the China Iron and Steel Association (CISA) provided further response in letter No. 346/KADI/IX/2020. CISA is of the opinion that KADI's claim is inappropriate because the type of HRC Alloy product is not produced by PT Krakatau Steel and has a different content from the HRC produced by the claimant. KADI tried to break the argument with Article 2.6 of the ADA and Article 1 number 10 of Government Regulation No. 34 of 2011.

And so, KADI's response to using Article 1 number 10 of Government Regulation No. 34 of 2011 as the basis for prosecution is an interesting matter to be studied. Because the definition of 'like product' in this article is textually narrow and lack of explicit procedural criteria. Although the source of the ratification which is Article 2.6 of the ADA itself has room for interpretive discretion by a flexibility recognized by WTO panels, the Indonesian ratification shouldn’t erase the conditional hierarchy that distinguishes identical from closely resembling products. This omission of the ratification brings a normative gap that goes beyond what interpretive discretion can adequately fill.

Previous research by Grasia Kurniati and Maruli Adam Tampubolon discussed the procedure for imposing anti-dumping on 'like goods' under the provisions of the GATT and its dispute settlement mechanism, but was limited to aspects of the technical anti-dumping procedure without critically examining the qualification of 'like goods'. Anggoro Aji Nugroho's research discusses the development and challenges of Indonesian anti-dumping law within the framework of the WTO, but is limited to analyzing the difference in interpretation between Government Regulation No. 34 of 2011 and the WTO ADA without touching its application to specific cases. Tio Sinta Panggabean's research discusses the supervision of dumping by the Directorate General of Customs and Excise on 'like product', but is limited to efforts to establish new legal instruments to protect domestic producers without touching on the issue of the definition of 'like product' as the root of the problem.

Based on the recommendations of the results of the KADI investigation report, the Ministry of Finance issued No. 15/PMK.010/2022 concerning the Imposition of Anti-Dumping Import Duties on the Import of Hot Rolled Coil Alloy (HRC Alloy) Products from the People's Republic of China (Dahono, Y, 2022). Although in this case the China has been proven to have dumped, the discussion of the definition and regulation of 'like goods' remains crucial in the interests of legal precedent and the sustainability of trade policy. This case is an important jurisprudence because it establishes a new standard whereby domestic producers who do not

produce identical products can still file anti-dumping petitions against 'similar' goods. This needs to be studied in depth because it can affect similar cases in the future by paying attention to the WTO Anti-Dumping Agreement that has been ratified, the General Agreement on Tariffs and Trade (GATT), as well as the Appellate Body decisions that are relevant to the juridical analysis carried out.

METHODS

This study uses normative juridical law research methodology. The normative juridical research method was chosen by the author because this method applies an analysis system to the principles, systematics, and synchronization of law (Ali, Z, 2009). By using the legislative approach as the subject and the case approach as support, it is sourced from primary legal materials in the form of laws and regulations (Muhamin, 2020) and official legal documents, as well as secondary legal materials in the form of literature, journals, and expert opinions. This study focuses on the analysis of the definition of 'like product' in Article 1 number 10 of Government Regulation No. 34 of 2011 by referring to the case of KADI's investigation on imports of HRC Alloy from China as its unit of analysis. Data were collected through a literature review and qualitatively analyzed to produce prescriptive conclusions regarding the need for harmonization of norms of the definition of 'like goods' in the context of anti-dumping.

DISCUSSION

Uncertainty of the 'Like Product' Norm and Its Implications for Indonesia's Legal Standing Anti-Dumping

An investigation conducted by KADI into the alleged dumping filed by PT Krakatau Steel resulted in the conclusion that the China was proven to have dumped HRC Alloy steel products. Several factors were found to support KADI imposing BMAD tariffs on the China, including; price undercutting , i.e. the price of Chinese imports is lower than the domestic selling price with a difference of 27 USD lower than IDN; price suppression as a result of lower import price pressure than IDN, which made the HPP increase by 21% while the domestic selling price only increased by 10%; the increase in the volume of imports of China by 24% from 298,745 MT to 461,548 MT which caused the import market share to increase from 21.3% to 25.6% accompanied by a decrease in IDN's market share. All the results of the investigation are decisive for KADI to impose BMAD on the China because of the magnitude of the losses suffered by IDN. The execution of the imposition of BMAD through KADI which is authorized to conduct an investigation into alleged dumping both on its own reporting and initiative (Siregar N O, 2022). KADI has the right to counteract the importation of dumped goods starting from investigating the cause and effect and losses due to dumping, proving suspected dumping, making and reporting the results of investigations with recommendations for the imposition of appropriate BMAD to the Ministry of Finance (Barutu C, 2007).

But on the other hand, CISA as the China's steel producer association feels burdened by the alleged dumping filed by KADI. One of the strongest factors that incriminated the China in the investigation process according to CISA is the alleged dumping of 'like product' which is one of the reasons why KADI imposed BMAD HRC Alloy against the China. This factor is supported by the condition that PT Krakatau Steel as the applicant representing the IDN producer itself is unable to produce similar goods that are the object of dispute in the investigation. In response to this, CISA repeatedly asked KADI to be able to prove the legal standing of PT Krakatau Steel.

However, KADI's normative basis for classifying 'like product' is limited to the brief general definition in Article 1 Number 10 of Government Regulation No. 34 of 2011 (Syahyu, Y, 2022). While this does not render KADI's authority legally invalid, know that Article 17.6(ii) of the ADA expressly permits interpretive discretion, but still, the absence of explicit

procedural criteria creates a normative ambiguity that must compensate through teleological interpretation by KADI.

Not only that, Article 1 Number 10 of 2011 is also considered weak because there is a grammatical difference between Article 1 Number 10 of Government Regulation No. 34 of 2011 and Article 2.6 of the ADA which is the object of ratification. This is so because the ADA essentially separates two levels in classifying 'like product'. The first level is identical products or identical or exactly the same goods. The second level is closely resembling or goods resembling new ones that can be applied in the absence of such a product. This means that closely resembling is only an option that can only be applied if there are no identical items at all (Çokgezen M., & Bahcekapili C, 2007). Meanwhile, in its adoption, Government Regulation No.34 of 2011 eliminates conditional conditions in the absence of such products. This regulation mentions identical or similar goods. The connecting word 'or' equalizes the two and similar goods cannot be chosen without any conditions (Matanggui J H, 2022).

KADI is faced with a complicated situation, apart from being able to classify dumping of 'like product' through a single paragraph, KADI also has to face the fact that Indonesia's ratification results weaken the meaning of the ratified parent article. This is stated in KADI's response numbers 54, 55, and 58 in the report on the results of the investigation of this case.

In exercising its investigative authority, KADI operated within the interpretive space recognized under Article 17.6(ii) of the ADA, which permits domestic authorities to apply any permissible interpretation where a provision "admits of more than one permissible interpretation", then the authority can interpret the law (Jung N, 2025). This standard reflects a WTO-specific deference to national authorities which distinct from the margin of appreciation doctrine and does not confer unlimited discretion, but rather authorizes reasoned interpretive choices within the boundaries of the ADA.

To fill the normative gap in Article 1 Number 10 of Government Regulation No. 34 of 2011, KADI employed an interpretation guided by the object and purpose of the ADA as required under Articles 26 and 31 VCLT. Article 26 VCLT regarding compliance with the agreement which also includes compliance with ratification (Lekkas S I & Tzanakopoulos A, 2014), should have complied Indonesia to adjust the contents of its ratification. Normative inconsistency at the ratification stage as the foundational step of legal implementation, can lead to technical weaknesses that inevitably manifest in practice.

However, under Article 31 VCLT, teleological and textual interpretation are complementary rather than competing (Peat D, 2022), treaty object and purpose clarify ambiguity in the text cannot extend beyond what the text permissibly supports. This freedom is applied through the teleological interpretation method by KADI with the aim of establishing norms to bridge written norms with the needs of social conflicts (Manullang E, 2019). In its application, KADI refers to the ADA, to maintain fair trade competition and prevent dumping practices that are detrimental to the domestic industry (Syahayu Y 2004). By prioritizing the ADA's systemic objective and effective trade protection without disguised protectionism, KADI determined that product similarity should be assessed substantively rather than purely through tariff classification. Although its methodologically legitimate, the absence of formal documentation of this interpretive reasoning creates a transparency deficit that may be challenged in WTO dispute settlement proceedings.

So that through this step, business reasons and risks were found that supported the alleged dumping of HRC Alloy 'like product' by the China.

KADI's findings on the difference in the HS Code that did not remove the status of 'like product' provided protection for PT Krakatau Steel. Based on the principle of substance over form economic law, HRC alloy classified as alloy steel in HS Code 7225 remains a 'similar item' to IDN's non-alloy HRC, because the additional elements that make it different exist in very small quantities (Sulistiyo A, 2014). The WTO's Appellate Body in determining 'like

product' states that physical factors must also adjust to the final function of the product. Therefore, KADI determined that the difference in steel tariff posts only distinguishes the category, not the substance of its nature and mechanism. If this is not the case, foreign exporters can easily pass the dumping product by simply modifying the composition of the material in very small quantities to get different tariff posts to avoid BMAD.

Based on Article 3.2 of the ADA, the investigating authority should consider the impact of the import price on the price of similar products in the IDN market. In its findings, KADI stated that the increase in the China's import market increased by 4.3%, while PT Krakatau Steel actually experienced a decrease in market share. As a result, inevitably PT Krakatau Steel has to reduce prices even though capital and market interest are not comparable. Based on the WTO Appellate Body ruling WT/DS135/AB/R, similarity of end-uses affecting the same market is a valid indicator in the determination of 'like product'.

Finally, the inquiry application must contain adequate product specifications. KADI in this case provides a minimum B specification of 0.0008 and a maximum of 0.003 (with or without Ti ≤ 0.025) to limit the scope of the goods under investigation. So that IDN gets proportionate protection according to the product segment that is truly competitive.

Although in the end this procedure was considered legitimate and domestic producers were successfully protected in this case, it is undeniable that existing normative weaknesses provide loopholes for similar cases in the future. The proof is that in early 2026, KADI has conducted a sunset review of China's HRC Alloy on an investigation request submitted by PT Krakatau Posco (Rachman A, 2026). The same cases and conflicts have occurred again, meaning that the China has not received a deterrent effect even though KADI has imposed BMAD tariffs. Foreign exporters, domestic importers, and downstream users cannot know what types have the potential to be the object of BMAD, because the boundaries between 'like product' and "identical goods" are determined through an approach that is not formally documented and difficult to predict.

This condition can directly increase the uncertainty cost that will be taken into account by investors in assessing business risks in Indonesia. With so much chance of an economic decline due to reduced investor support for IDN. Furthermore, the Appellate Body decision WT/DS184/AB/R shows that weaknesses in the analysis of like products and domestic industries can lead to the cancellation of all anti-dumping measures, regardless of the quantitative strength of the dumping evidence. KADI's interpretive methodology in determining 'like product' is not formally documented in written procedures, so this carry an elevated risk of being challenged as lacking transparency under Article 3 of the ADA. Although KADI's substantive conclusions in this case appear consistent with WTO jurisprudence, the procedural informality creates a vulnerability, especially in the future cases where the factual basis may be less clear-cut. This situation could expose Indonesia's anti-dumping measures to challenge in the WTO DSB forum.

Therefore, a legal instrument is needed that explicitly regulates the procedure for determining similar goods, including measurable technical criteria, transparent verification procedures, and a mechanism for the complainant to test the methodology from the initial stage. Without it, Indonesia risks only being able to maintain the formal validity of the investigation, but not with its substantive force in international legal forums.

Reconstruction of the Norm of Determining 'Like Product' for KADI Investigation Procedures

The losses suffered by PT Krakatau Steel due to price suppression and price undercutting of imported products from China are an important highlight because PT Krakatau Steel controls 50% of the domestic steel industry in its criteria. So, in its investigation, KADI bears a great responsibility in the effectiveness of the imposition of BMAD tariffs on the China.

Article 1 Number 10 of Government Regulation No. 34 of 2011, which weakens the meaning of the source of its ratification, namely Article 26 of the WTO ADA, creates a normative ambiguity, without a consistent application, risks undermining the credibility of Indonesia's anti-dumping framework for domestic producers and investors alike. Not only harms domestic producers, but also distorts the structure of the national steel market as a whole. Trade policy uncertainty can affect investment decisions when market entry costs are sunk (Handley K & Limao N, 2015). For the domestic steel-producing industry, this has led to delays in the expansion of production capacity because there is no adequate regulatory guarantee that their products will be protected from unfair competition in the future.

The ratified Anti-Dumping Agreement indicates that Indonesia agrees to carry out the agreed agreement. Therefore, it is appropriate that in ratifying, the government should pay attention to the compatibility between the source of ratification and the results of ratification (Kusuma W & Hutapea S A, 2022). Article 18.4 of the ADA requires the conformity of domestic law with the provisions of the agreement. Legal norms are structural, meaning that they have their own hierarchy of lower norms subject to a higher parent as the main reference (Muhtar M, 2024). A regulation can be considered good if it meets three criteria cumulatively, namely legality, community needs, and ease of implementation (Sadiawati D 2015). So that to achieve these goals, through its newness the government must; separating the definition of similar goods from identical goods and providing an exception for similar goods, which can only be used as an option when identical goods are nil, provided that they have very similar characters and can replace the function of identical goods.

This novelty will help KADI provide a definite legal standing in classifying 'like product' during the investigation process. This is because the amendment of this article eliminates the equalization of meaning between 'like product' and similar goods as a substitute for 'like product'. Adjustments to the content of this article need to be made because no matter how small the change in the results of ratification even though the conceptual and differences seem minimal, it is likely to cause problems when interpreted in practice (Panjaitan A, 2022).

Not only that, the legal vacuum regarding the procedure for determining 'like product' in the KADI investigation is also one of the factors for IDN, exporters and downstream users to suffer losses. This situation makes it difficult for IDNs to estimate the protection of BMAD for their products and long-term investment strategies for the product, as there are no norms governing the procedure yet. In addition, investigation methodologies that are not formally available increase the perception of business risks in Indonesia, which can erode investor confidence in the stability of industry regulations (Sidabutar A Y, 2025).

Reconstruction is needed in the Regulation of the Minister of Trade (Permendag) Number 76 of 2012 concerning Investigation Procedures in the Context of the Imposition of Anti-Dumping Measures and Reward Measures. Because Article 4 of the regulation only regulates the requirements for the amount of production of 'like product' by producers, and has not explained how the technical determination of 'like product' by KADI in its investigation. Referring to the methodology of the WTO Appellate Body in the ruling WT/DS/8/AB Japan-Taxes on Alcoholic Beverages, there are several conditions that must be met in the classification of 'like product' including; physical characteristics; final function; and distribution channels or markets.

The government must include clarity on the requirements, physical criteria, and material composition of the goods being investigated in the reconstructed norms. Thus, it can be emphasized that imported products that are substantially identical cannot escape the reach of BMAD only through minimal modification of the chemical composition. As a consequence, the domestic industry loses protection not because there is no dumping, but because of regulations that are technically easily outsmarted.

If an imported goods are in a different market but have the same end function, it will certainly be detrimental to IDN if the exporting country secretly sells it at a much lower price. Therefore, the relevant market or conditions where business actors compete with each other for products that are considered to be interchangeable, is also an element that needs to be considered in reconstruction.

Hans Kelsen's Stufenbau theorie states that legal norms begin with the existence of the highest basic norm (Asshiddiqie J, & Safa'at, M A 2006). The basic norm is seen as abstract for its derivative rules (Muhtar M, 2024), what was originally just a theory of "should", re-detailed its realization through the norms below it into something "doable" (Fanggi P A 2025). The WTO applies it in the decision WT/DS/184/AB US-Japan: "WTO Members are free to structure their anti-dumping systems as they choose, provided that those systems do not conflict with the provisions of the Anti-Dumping Agreement". This means that in this case, ADA as a higher basic norm becomes a floor, not a ceiling for Indonesia in ratifying. Indonesia is given the freedom to complete more detailed regulations, as long as it complies with the ADA. The regulation states that any country that finds dumping practices by other countries against its country, has the right to impose anti-dumping import duty sanctions to protect the domestic industry and reduce losses incurred (Rizmawati D, 2021). The liberalization of the concept of free trade in the WTO gave birth to the doctrine that free trade also protects the rights of domestic industries by considering the quality of goods that are suitable for competition (Suherman A M, 2014). The ADA, however, is not intended to restrict freedom of trade and only become protectionism (Pham Duy A H, 2022) but also regulates the authority of the state in the imposition of dumping sanctions, and restrictions on the implementation of the agreement.

The realization of the revision of Article 1 Number 10 of Government Regulation No. 34 of 2011 is fully within the authority of the President as per Article 5 paragraph (2) of the 1945 Constitution, while the addition of articles in Permendag No. 76 of 2012 is the authority of the Minister of Trade based on Article 17 of the 1945 Constitution. Through the reconstruction of these norms, the authority of the KADI in determining 'like product' no longer depends on broad interpretation, but rather stands on clear normative parameters and is in line with the principles of the WTO. This effort must be made immediately for the sake of measurable legal certainty and the resilience of Indonesia's position in international trade forums.

CONCLUSION

The difference in the results of the ratification of the definition of 'like product' between Article 1 Number 10 of Government Regulation No. 34 of 2011 and Article 2.6 of the ADA has been proven to weaken the validity of legal standing in anti-dumping investigations. The omission of conditional hierarchy in Article 1 Number 10 of Government Regulation No. 34 of 2011 that deviating from Article 2.6 of the ADA, reduces textual clarity between identical and closely resembling products. Also, the absence of explicit procedural criteria, build a normative gap requires KADI to exercise broad interpretive discretion in verifying legal standing. Although procedurally permissible under Article 17.6 (ii) of the ADA, lacks the formal documentation necessary to ensure consistent and transparent could bring out detrimental impact across future cases. As a result, KADI is forced to rely on the margin of appreciation through teleological interpretations which, although procedurally valid, are not formally documented and are vulnerable to being sued as veiled protectionism in the WTO DSB forum. Not only that, as a result of the weak norms that apply, it was found that the China continues to dump HRC Alloy repeatedly until now even though it has been imposed on BMAD tariffs by KADI.

The reconstruction of norms on the classification procedure of 'like product' needs to be carried out through the harmonization of national regulations with the WTO Anti-Dumping Agreement. Referring to the Stufenbau Theory by Hans Kelsen, the ADA functions as a floor, not a ceiling, so that Indonesia has full authority to reconstruct existing regulations, as long as it does not conflict with the WTO's ADA. The revision of Article 1 Number 10 of Government Regulation No. 34 of 2011 must re-separate the hierarchy of identical products and closely resembling according to the source of ratification, namely Article 2.6 of the ADA, while the addition of technical details of the investigation in Permendag No. 76 of 2012 needs to formulate criteria for determining 'like product' which include physical characteristics, final functions, and the relevant market in a measurable manner.

ADVICE

Thus, the Government needs to revise Article 1 Number 10 of Government Regulation No. 34 of 2011 by restoring conditional conditions in the absence of such product in accordance with Article 2.6 of the ADA so that the hierarchy of identical and closely resembling products is reaffirmed in accordance with the essence of its meaning in the source of ratification, namely the WTO ADA. And the Government needs to add an article in the Minister of Trade Regulation No. 76 of 2012 which explicitly regulates the technical criteria for determining 'like product' including physical characteristics, final functions, and relevant markets in order to fill the legal void and provide certainty in the classification of 'like product' on investigations conducted by KADI. This step needs to be taken so that KADI's methodology stands on normative parameters that are transparent, can be tested by the complainant from the early stages of the investigation, and are substantively held in international trade forums.

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