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## The Urgency of Regulating Anti-Circumvention Rules in Indonesia and ASEAN: The Case of Alleged Circumvention of Indonesian Refined Sugar to Vietnam

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**Abstract:** Anti-dumping rules are vital to maintain the fairness of trade in today's world. Unfortunately, circumvention activities undermine the effectiveness of anti-dumping measures. This study examines the implications of the absence of anti-circumvention rules in ASEAN on the circumvention of anti-dumping measures as seen in the Indonesia-Vietnam case, and determines the urgency of regulating anti-circumvention rules in ASEAN to prevent the circumvention of anti-dumping measures in Indonesia and ASEAN. The method used is normative juridical, with a case study of the case of the alleged Indonesia-Vietnam circumvention, as well as comparing various anti-circumvention legal instruments in Vietnam, the European Union, and the United States. The results show three implications: legal uncertainty over Vietnam's unilateral measures, procedural fragmentation that hinders cooperation, and the failure to set a binding precedent. The comparison highlights that a clear regional rule (clear definitions, objective testing, structured procedural standards, exemptions for genuine operators, and strengthened rules of origin) enhance legal certainty while limiting abuses. The conclusion that can be drawn is that ASEAN needs to regulate anti-circumvention rules, along with strengthening rules on origin certification. Progressive implementation at the intra-ASEAN level builds regional habits and common ground, protects domestic industries, and reduces legal and trade friction.

**Keyword:** International Trade Law, Anti-dumping, Circumvention

### INTRODUCTION

The current landscape of international trade has made anti-dumping rules one of the most vital legal instruments, ensuring that the activity remains fair and free from any dumping practices (Sood et al., 2024). Indonesian anti-dumping rules existed in Government Regulation No. 34 of 2011 concerning Antidumping Measures, Countervailing Measures, and Trade Safeguard Measures (hereinafter GR No. 34/ 2011). Anti-dumping duties, as the anti-dumping measure taken by the government, are regulated in this law. The purpose of imposing the measure is so that the dumped goods are no longer competitive in the export destination market

due to the imposition of high import duties (Dewanty R.K., 2012; Islam, 2024). Unfortunately, such rules are yet to be effective in their application. One reason is circumvention (Pistikou & Ketsetsidis, 2023). The exporters use the gap in the regulation to circumvent the anti-dumping duties that are being imposed on the dumped goods. It defeats the objectives of anti-dumping measures, and the initial harms remain (Alhayat et al., 2016). Circumvention is a way of circumventing/ avoiding the current anti-dumping duties being imposed on a certain dumping product by entering it through another country that is free from such duties (Alhayat et al., 2016; Mirza & Lailah, 2025). Circumvention in the context of anti-dumping practices is an action taken by a foreign exporter to circumvent the anti-dumping duties imposed by the importing country (Yu, 2008).

Circumvention itself is not a new problem that is being faced by the international trade law, whether it is internationally or inside the Association of Southeast Asian Nations (hereinafter ASEAN) and Indonesia. However, circumvention remains to be a persistent issue, and the increasing globalized world has decreased the costs of circumvention (Willems & Natens, 2016). This threat of circumvention can be divided into two (Primadista & Runturambi, 2022). First, Indonesia is the third country where it is being used as a transit point in a circumvention cycle. Second, Indonesia becomes the main target of circumvention. The main reason for this is because there are no laws regulating the matter of circumvention until now in Indonesia (Primadista & Runturambi, 2022). Traditional anti-dumping law has yet to have an efficient and effective mechanism to tackle the problem of circumvention (Yu, 2008). GR No. 34/ 2011 does not contain specific rules about anti-circumvention. At the time it was being drafted, the Indonesian government only focused on the basic trade protection framework that reflects Indonesia's commitment under the World Trade Organization (hereinafter WTO) Anti-Dumping Agreement (hereinafter ADA) (Prasetyo & Wiryaningsih, 2025).

The absence of a legal basis to combat circumvention is causing Indonesia to never propose a circumvention allegation towards its trade partner countries (Alhayat & Muslim, 2017). The role of KADI (Komite Antidumping Indonesia) is also limited to addressing issues related to attempts to decrease the importation of dumped goods and subsidized goods, as stated in Article 3 of Trade Minister Regulation No. 14 of 2024 concerning the Organization and Work Procedures of the Indonesian Anti-Dumping Committee. On the other side, there are no specific regulations regarding circumvention in the WTO. Despite that, many of its members have adopted anti-circumvention rules in their national law (Alhayat, 2017).

The essence of circumvention is circumventing the imposition of anti-dumping measures that is usually done by altering the dumped goods' country of origin. This kind of act is called "illegal transshipment" (Dewanty R.K., 2012). This demonstrates the issue of circumvention is not a mere single country problem. The seriousness of addressing it must be shown and done not only by one country but also by all countries. Unfortunately, until now neither WTO nor ASEAN have reached a consensus on anti-circumvention provisions.

The lack of robust disciplines on transshipment and rules-of-origin manipulation remains a major weakness in the WTO (Gao & Zhou, 2025). ASEAN Trade in Goods Agreement (hereinafter ATIGA) also does not possess any rules regarding circumvention, even though it is also ATIGA that eliminates almost every tariff amongst member nations. The previous Head of Komite Antidumping Indonesia (hereinafter KADI), Donna Gultom, mentioned in her interview in 2024 that this transshipment type of circumvention is typically done through neighbouring ASEAN member states that have the ATIGA pact (Hasiana, 2024). The absence of such rules can pose a threat to the ASEAN member states being exploited in the circumvention cycle as circumvention hubs, resulting in sanctions and a decline in trust among international trading partners (Sukegawa, 2025).

Indication of trade circumvention's existence in Indonesia can be seen as far as the anti-dumping measures data during the period of 1996-2010 (Alhayat, 2017). It is shown once more

by KADI's Report in 2023 that there is a suspicion of the existence of circumvention of HRC Alloy originated from China (Komite Antidumping Indonesia, 2023). After the imposition of Anti-dumping duties on Chinese HRC (Hot Rolled Coil) Alloy, there is a significant increase in the importation of the same goods originating from Japan, Taiwan, and Vietnam. This occurred despite a 27% decline in HRC alloy imports from China in 2020-2022 (Komite Antidumping Indonesia, 2023). One of the most important cases of alleged circumvention in ASEAN happened in 2021 when Vietnam accused Indonesia of circumventing refined sugar products to avoid the anti-dumping and countervailing duties imposed on sugar imports from Thailand (Case Reference No. 8822ID) (ASEAN Secretariat, n.d.). The case, though classified as resolved by the ASEAN Secretariat, remains as one of the most interesting parts in an attempt to see how the legal vacuum on matters of anti-circumvention in ASEAN and Indonesia might cause confusion and uncertainty in its legal enforcement.

The lack of anti-circumvention rules in both Indonesia and ASEAN resulted in inconsistent handling and law enforcement. Indonesia finds it difficult to see the case as more than just a barrier to trade. The absence of an agreed standard on anti-circumvention measures only left a party like Vietnam to base its action on its own national law. This happens without much consideration of how such a basis can be difficult to relate to and comply with, moreover by another country. It leaves such disputes with many more questions rather than answers, though the ASEAN secretariat classified it as resolved. This case serves as an important starting point for reviewing the potential adoption of anti-circumvention rules in Indonesia and ASEAN.

The purpose of this article is to examine the implications of the absence of anti-circumvention rules in ASEAN on the circumvention of the anti-dumping measures, as reviewed from the Indonesia-Vietnam anti-circumvention case, and to determine the urgency of regulating anti-circumvention rules in ASEAN in an effort to prevent the circumvention of anti-dumping measures in Indonesia and ASEAN. This is meant not only as a solution for Indonesia, but also a collective commitment between the member states of ASEAN to protect themselves from the potential circumvention activities that are detrimental to domestic industries and create a fair, transparent, and sustainable trading environment. This regulation is expected to increase the effectiveness of policies reflected in each country's international trade laws, prevent unfair trade practices, and build a solid and highly competitive ASEAN trade region amidst the dynamics of global international trade.

Based on the introduction above, the following is the problem formulation of this research:

1. What are the implications of the absence of anti-circumvention rules in ASEAN on the circumvention of anti-dumping measures as reviewed from the Indonesia–Vietnam Anti-circumvention case?
2. What is the urgency of regulating anti-circumvention rules in ASEAN in an effort to prevent the circumvention of anti-dumping measures in Indonesia and ASEAN?

## **METHOD**

The research will use a normative juridical method. The method is done by analyzing primary legal sources, secondary legal sources, and tertiary legal sources normatively based on the conceptual approach and legislation or other approaches that are appropriate to the problem formulation (Widiarty, 2024). The primary legal sources that will be used in this research are the General Agreement on Tariffs and Trade (hereinafter GATT), the Anti-Dumping Agreement, the ASEAN Trade in Goods Agreement, and Government Regulations No. 34 of 2011. These sources will be used to understand the potential gaps of circumvention activities so far in Indonesia and ASEAN, and to determine the urgency of adopting anti-circumvention rules as a solution for anti-dumping measures circumvention.

The legal sources will also be used to identify the strengths, weaknesses, opportunities, and threats in the adoption of anti-circumvention rules in Indonesia and ASEAN. ATIGA will serve as the main legal instrument for conducting reviews in the context of ASEAN, regarding compliance with commitments under the GATT and the Anti-Dumping Agreement. GR No. 34/ 2011 will be referred to as the legal base of anti-dumping regulation in Indonesia.

The anti-circumvention case between Indonesia and Vietnam will be the main focus and starting point in discussing the issues in this research. The case was chosen because it clearly demonstrates the uncertainty of international trade law in ASEAN, particularly regarding the uniformity of attitudes toward the issue of the circumvention of anti-dumping measures. Specifically, this case is used to examine the implications of the lack of anti-circumvention rules in ASEAN on the circumvention of antidumping measures. The classic Screwdriver Case between the European Economic Community (hereinafter EEC) and Japan in 1990, which discussed the EEC's early anti-circumvention rules embedded in its anti-dumping regulation, will also be used as an additional study case to be reviewed. Japan successfully contested the imposition of EEC's anti-circumvention duties on the alleged screwdriver assembly operations that were being assembled in the European Union (hereinafter EU) from nearly-finished Japanese parts. The conclusion and reasoning of the panel of the case, how the EU regulation evolved from it, and how Indonesia and ASEAN can avoid the same mistake will be analyzed.

In addition, a comparative study will be conducted on best practices used by trading partner countries in addressing anti-dumping circumvention measures. Vietnam Law on Foreign Trade Management No. 05/2017/QH14, Decree No. 10/2018/ND-CP (Vietnam), Regulation (EU) 2016/ 1036 of the European Parliament and of the Council of 8 June 2016, 19 U.S.C. § 1677j, and 19 CFR 351.226 (the United States of America (hereinafter the U.S.)) will be utilized as comparisons on how the anti-circumvention rules adopted by various partner countries (Vietnam, European Union and the United States) and its potential application in Indonesia and ASEAN. Regulation (EU) 2016/ 1036 will be used particularly as a comparison of how anti-circumvention rules can be applied across a wider region and how they can also be applied in ASEAN. Although the EU and ASEAN have different characteristics, the regulation can still be one of the references on how anti-circumvention rules can be adopted by multiple countries in a region simultaneously and can protect each other, both internally and externally.

## **RESULTS AND DISCUSSION**

### **The Implications of The Absence of Anti-Circumvention Rules in ASEAN on The Circumvention of Anti-dumping Measures as Reviewed from the Indonesia-Vietnam Anti-circumvention Case**

Vietnam through the Decision No. 2171/QD-BCT dated 21 September 2021 by Vietnam's Trade Remedies Authority, initiated an investigation on the alleged sugar export circumvention that was done by Cambodia, Laos, Myanmar, Malaysia, and Indonesia to avoid anti-dumping duties and countervailing measures imposed on sugar imports from Thailand (ASEAN Secretariat, n.d.). Indonesia then reported this as a trade barrier, arguing that Vietnam's actions lacked a legal basis in either the WTO or ATIGA, and that there was no evidence of injury to Vietnam's domestic sugar industry. On the other hand, Vietnam countered that its actions were not prohibited, noting that many of the WTO members also did it (ASEAN Secretariat, 2023). However, the debate remained inconclusive. Indonesia attempted to cooperate but was faced with new obstacles. The instructions and mechanisms on the interim review that previously had been inquired by Indonesia were difficult to follow, particularly noting that some documents were to be exchanged in Vietnamese. Vietnam, though, stood firm in its principle that its national law does not require Vietnam to exchange documents in English (ASEAN Secretariat, 2025). The protracted and procedurally fragmented dispute serves as a

tangible illustration of the concrete implications that stem from the absence of anti-circumvention rules within the level of ASEAN.

There are at least three implications of the absence of anti-circumvention rules in ASEAN seen through the case above. First, its lack of regulation means that there are no agreed shared legal definition and procedural standards for anti-circumvention and anti-circumvention measures in ATIGA. This resulted in legal uncertainty. Indonesia based its objection in the claim of Vietnam's actions has no legal basis under the WTO law and ATIGA (ASEAN Secretariat, n.d.). Yet Vietnam believed that even though such measures not provisioned, it is also not explicitly prohibited. Some WTO members have also added anti-circumvention rules in their anti-dumping regulations. The stalemate between Indonesia and Vietnam uncovers much deeper reflection on anti-circumvention rules. Anti-circumvention rules are not explicitly mentioned and regulated in the ADA. During the Uruguay Round Negotiations, Japan and Korea were the two parties that opposed any of the addition of anti-circumvention provision to the existing ADA. Even though at the end the negotiation round did not reach a conclusive mutual understanding, a Ministerial Decision acknowledging this issue decided to refer this matter to the WTO Committee on Anti-Dumping Practices. Despite the intensive discussions on the definition and responses to circumvention, there is very little substantial development (Yu, 2008).

ATIGA in its Article 87 Paragraph 1 mentions that the member states affirm their rights and obligations with respect to each other in relation to the application of anti-dumping under Article VI GATT and ADA. ATIGA relies and aligns with the anti-dumping provision mentioned and explained in Article VI GATT and ADA, which does not contain any anti-circumvention provisions. The lack of regulation within ATIGA must be interpreted in good faith in light of its object and purpose under Article 31 of the Vienna Convention on the Law of Treaties (Perez, 2024). ATIGA's main purpose is to liberalize and facilitate intra-ASEAN trade. When a trade remedy is being imposed without a clear mandate and legitimization, such measures' compliance with ATIGA's core obligations is debatable. The case clearly shows that when there are no common standards and rules (working language, in this context), each party acts unilaterally and it is almost impossible to achieve meaningful cooperation.

The confusion shown in the case revealed how the legal uncertainty is affecting the enforcement. When attempting to cooperate with the interim review mechanism, Indonesia instead faced difficulty. The case is stuck in this phase without much progress, while Vietnam insists on the enforcement of its own national law. If a common procedural standard had existed beforehand, it could have prevented cooperation from being disrupted by purely administrative matters and added a new trade barrier apart from the initial one.

The dispute in the case was labelled as "resolved" around 2025 after its initial chain of events began in 2021. The lack of reasoning and binding precedent on the matter of unilateral action of Vietnam amidst the absence of international-level circumvention rules only adds to the confusion. The closure does not clarify whether such anti-circumvention measures are permissible to be done unilaterally by Vietnam without clear justification in international trade law. It does not preclude such actions in the future that could be equally disruptive. Without a clear result and legal basis, it would only encourage importing countries to impose such unilateral measures without clear boundaries. It would also discourage exporting countries from doing their trade activity without clear and predictable legal risks and costs. Hence, the vacuum of anti-circumvention rules in ASEAN has created gaps that left disputes such as the case being reviewed devoid of a meaningful conclusion.

The European Union regulates its anti-circumvention rules within Regulation (EU) 2016/ 1036 of the European Parliament and of the Council of 8 June 2016 (EU Anti-dumping Regulation), specifically its Article 13. The regulation provides clear definitions of circumvention, methodical investigation procedure, the rights and obligations of interested

parties, and its safeguard mechanism to prevent factual inaccuracy and error of implementation. A clear legal basis creates predictability in international trade (Choi, 2023) despite the ongoing debate and controversy over its WTO consistency. ASEAN, though admittedly difficult to simply adopt such uniform rules, remains particularly vulnerable to circumvention disputes due to the lack of a comparable mechanism. All of this will happen in the middle of the increasing complexity of international trade in a more globalized world. The Indonesia-Vietnam case is thus not a single isolated incident. It is a warning that similar conflicts may happen again and further erode ASEAN's reliability and integrity as the single market and production base ATIGA seeks to create.

### **The Urgency of Regulating Anti-Circumvention Rules in ASEAN in An Effort to Prevent the Circumvention of Anti-dumping Measures in Indonesia and ASEAN**

The reality of the matter that was being examined in the case above is beyond a bilateral dispute. It involves ASEAN as a region that has recently been more scrutinized than ever by its trading partners, especially from the U.S. (Medina, 2025). Reza Pahlevi Chairul, the Director of Trade Security of the Indonesian Trade Ministry, when he was being interviewed on October 18<sup>th</sup>, 2025, mentioned that at that time Indonesia was facing 41 trade remedies (DDTC News, 2025). The increasingly globalized international trade will only aggravate the problem. None of the existing international trade regulations (GATT, ADA, and ATIGA) provides clear definitions of circumvention, thus forcing the member states to act based on their own interpretation.

The data, particularly from the U.S., depicts ASEAN as a region increasingly exploited as a transit hub in a circumvention cycle. The U.S. Customs and Border Protection alleged over \$400 million in duty evasion, with almost two-thirds of such cases involving Chinese shell companies rerouting goods through ASEAN nations in 2025 alone (Tannenbaum et al., 2025). The number of cases involving member states rose from six in 2021 to twenty in 2024 (Medina, 2025). This pattern is no coincidence. By the second quarter of 2025, China's share of goods fell from about 21% in 2018 to just 8 %, while ASEAN's share doubled from 7% to 14 %; Between February and July 2025, China's goods exports to the U.S. fell by a cumulative 41 % year-on-year, while China's exports to ASEAN rose by 43 % over the same period (Tannenbaum et al., 2025). This trade re-orientation is noted and concluded by IMF researchers as closely related to the reciprocal tariff increases in April and May that caused shipments to the U.S. to fall sharply (Lu & Milkov, 2026).

The rising trade tensions between China and the U.S. have fueled the "China Plus One" policy, which diversifies manufacturing bases away from China and many end up in ASEAN, with Vietnam being the biggest beneficiary of the trend (Woon, 2024). ASEAN has listed the U.S. as its top export destination while China is the top import source by 2024 (ASEAN Secretariat, 2025). The policy has been one of, or even the main reason, for the U.S.'s scrutiny and massive tariffs against several ASEAN member states that are part of China's supply value chain at the beginning of the current administration, which no longer prioritizes China-focused trade actions (Medina, 2025). The enormous volume of trades flowing into, passing through, and leaving ASEAN urges them to be cautious. The development of a harmonized anti-circumvention framework will prevent ASEAN from being abused with unfair trade practices while also enhancing the integrity and trust of the trading partners.

The economic impact of trade circumvention cannot be underestimated. The initial dumping injury transformed and seeped through the regulatory gaps caused by the absence of anti-circumvention rules. The market access for the region's exports will also be disrupted amidst anti-circumvention regulations. China, driven by the significant tariff increase and a decrease in demand in the U.S., is seeking to offset the decline by increasing the dumping of goods into alternative markets, including Indonesia (Chairul & Anrina, 2025). This situation,

with the undermined effects of trade remedies caused by circumvention, poses a serious risk to domestic industries, weakening competitiveness, and eventually could result in the loss of many jobs (Chairul & Anrina, 2025). Simply put, without proper rules to address circumvention, it will negate the correction being applied by anti-dumping measures. Thus, its economic impacts are interlinked with anti-dumping, which, if ignored, will harm the domestic industry and market in general.

Many ASEAN members are involved in circumvention activities done by both their regional neighbors and/or distant trading partners. Such activities are actively exposing the absence of a collective stance against circumvention. For example, the Indonesia-Vietnam Circumvention case discussed above illustrates the complexity of implementing and enforcing anti-circumvention rules that are not multilaterally regulated. The role of anti-circumvention measures to lubricate the gears of the anti-dumping law (Yu, 2008) is hampered by the legal uncertainty of the measures themselves. The existence of anti-circumvention measures in a robust and effective anti-dumping system would provide adequate protection for domestic industries at a lesser expense (Yu, 2008). Had these anti-circumvention measures been regulated and legally sanctioned by ASEAN, the case would likely have proceeded faster and moved on to whether a circumvention actually occurred. That case alone has illustrated the vulnerability and suspicion of ASEAN members to each other, with Vietnam accusing Cambodia, Laos, Myanmar, Malaysia, and Indonesia of circumventing anti-dumping duties and countervailing measures imposed on sugar imports from Thailand. Furthermore, cases such as Chinese MSG that was finished and exported from Malaysia to the U.S. (Enforcement and Compliance, 2025), solar cells and modules parts and components from China that was completed in several ASEAN countries (Cambodia, Malaysia, Thailand, and Vietnam) then exported to the U.S. (Enforcement and Compliance, 2023; Yen et al., 2025), and alleged circumvention of tires that were imported to South Africa from various ASEAN countries (Vietnam, Thailand, and Cambodia) that now has been cleared of circumvention (VNS, 2026); these cases shows how vulnerable ASEAN from being exploited as a circumvention hub or at least heavily suspected of being one.

The legal uncertainty is causing member states to manage the allegations in an inconsistent manner. They defend themselves under someone else's laws, while simultaneously eroding the region's reputation as a legitimate manufacturing base. ASEAN, lacking a collective stance on circumvention, has endangered itself as a transshipment corridor in a circumvention cycle. The ability of members to act collectively to prevent, detect, and/or defend against such flows is directly affected by the absence of a harmonized anti-circumvention framework. This vulnerability provides the urgency for developing ASEAN-wide rules capable of defining circumvention, establishing clear standards, and, where necessary, protecting the genuine operators from the threat of blanket accusations. Therefore, a collective commitment to regulate anti-circumvention rules in ASEAN will directly and indirectly prevent, overcome, and tackle anti-circumvention problems not only in the ASEAN region but also in Indonesia.

If properly formulated, anti-circumvention rules close the gaps in enforcement that unilateral actions inevitably create. They change an uncertain situation into a predictable, rule-based environment, reducing both the encouragement to circumvent and the scope for blanket accusations. The rising trend of a highly integrated and cohesive economy to facilitate a more unified market in ASEAN (ASEAN Secretariat, 2015) provides the perfect anchoring point for manifesting such commitments. Several ASEAN member states have also adopted anti-circumvention rules, namely, Vietnam and Thailand. Malaysia is in process of approval (La Defense, 2025; Sriwat et al., n.d.; Yiau, 2025). Indonesia is currently discussing the Draft Government Regulation on Safeguard Measures, Anti-Dumping Measures, and Countervailing Measures, though in the particular meeting on 31<sup>st</sup> July and 1<sup>st</sup> August, 2025, the circumvention

issues that were being discussed are focusing on safeguards duties one (Secretary General, 2025). The question, from this point on, is no longer whether anti-circumvention rules could work in ASEAN, but whether the political will and cooperation can be mobilized to birth it into reality.

The main weakness of anti-circumvention rules is that the shadow of controversy will never disappear unless the WTO forms anti-circumvention rules first. This can be seen in the classic “Screwdriver Case”. This case debated whether anti-circumvention measures and anti-circumvention duties imposed on alleged screwdriver assembly operations in the EU from nearly-finished Japanese components were consistent with the commitment under the GATT. The panel concluded that the duties imposed by the EEC under Article 13:10 of Council Regulations No. 2176/84 and 2423/88 on products assembled or produced within its territory by companies associated with Japanese manufacturers of products subject to anti-dumping duties were inconsistent with Article III:2 GATT and could not be justified by Article XX(d) GATT. The imposed duties cannot be seen as measures to secure compliance in accordance with the law and regulations, but rather to enforce the objectives of the law and regulations in the agreement. The panel’s interpretation of Article XX(d) covers only measures in relation to the enforcement of obligations under laws or regulations consistent with the GATT (the Panel, 1990). The broader interpretation of securing the objectives of the law and regulations will only result in inconsistency of its implementation by the contracting parties because they can take actions that are inconsistent with the GATT, arguing that such actions were taken to secure the objectives of laws or regulations of the GATT. However, it has to be admitted that it is difficult to unite efforts to tackle the issue of circumvention in ASEAN. Each country has its own national interests and stances. The primary reason for the limited developments on international anti-circumvention rules following the Uruguay Round Negotiations is the divergence of stances among countries. Nearly a decade after the initial negotiation, there has been no consensus on major issues, which is why many members have made little effort in the negotiations since 2004 (ZHOU, 2016).

Another weakness of anti-circumvention rules is that if not invoked carefully, they may be transformed into a form of abuse that ultimately undermines development through investment (Crochet & Zhou, 2023). Legitimate internationalization of production activities is a business phenomenon that will be triggered once it reaches a certain size domestically. It has been done by many developed countries for decades, started by the U.S. The anti-circumvention rules might be used discreetly to expand the scope of the ADA to constrain normal and legitimate commercial activities. Such weaponization of anti-circumvention instruments to target legitimate internationalization of production activities may also harm the host countries economically. These internationalizations, though criticized, have led to the creation of jobs, more tax revenue, and the increase of investment through infrastructure and technology transfers in host countries. The overextending scope of anti-circumvention instruments forced the establishment of a fully vertically integrated plant that does not depend on inputs from the country of the mother company. It is costlier for the investors, and not every host country will be able to immediately meet such requirements, thus excluding them from investment opportunities. Interestingly, this may also stem from the absence of anti-circumvention rules themselves. The lack of international rules can lead to abuse of anti-circumvention instruments that are not subject to international oversight (Crochet & Zhou, 2023).

The opportunity of implementing anti-circumvention rules in ASEAN lies in their absence. With no fixed standards on how anti-circumvention rules should be formulated and applied, ASEAN and Indonesia can look to the best practices from other countries as long as they do not violate the GATT, ADA, and ATIGA. The panel on the Screwdriver Case also

stated that they were unable to create new rules for GATT/WTO members and were limited to applying the existing rules to a specific case (the Panel, 1990; Yu, 2008).

For instance, we will briefly review the anti-circumvention rules of Vietnam, the U.S., and the EU from these legal instruments Vietnam Law on Foreign Trade Management No. 05/2017/QH14, Decree No. 10/2018/ND-CP (Vietnam), Regulation (EU) 2016/ 1036 of the European Parliament and of the Council of 8 June 2016, 19 U.S.C. § 1677j, and 19 CFR 351.226 (the U.S.). For the most part, the anti-circumvention rules from these three are similar. The EU, which is a regional organization or rather a supranational organization, allows its member states to request the initiation of investigation; meanwhile, Vietnam and the U.S., as a country in a traditional sense, initiate an investigation at the request of an interested party and/or the authority (Secretary of Commerce for the U.S.). Intriguingly, the assembly threshold standard set by these three entities differs slightly. Vietnam's threshold for imported parts from the target country accounted for more than 60% of the total value of the parts. It is the same in the EU, where 60% is the threshold, unless the value added in assembly exceeds 25% of the manufacturing cost. The U.S. does not have a fixed quantitative threshold and focuses solely on whether the assembly process is minor or insignificant and whether the value of the parts constitutes a significant portion. Furthermore, the U.S. has an International Trade Commission that advises on whether circumvention findings are inconsistent with the original injury determination, while Vietnam and the EU do not have such a commission. Finally, when the investigated goods are determined to be circumventing, all three of them have similar measures that extend the existing trade remedy to the circumventing goods for ensuring the payment of anti-dumping duties. Therefore, their measures are more or less compliant with the findings of the Panel in the Screwdriver Case.

These measures are technically compliant and justified by Article XX(d) of the GATT, which the measure itself aims to secure and enforce the payment of the anti-dumping duties without introducing and imposing new duties not provided previously by the GATT. The precedent in the Screwdriver Case did not outrightly ban anti-circumvention provisions, but forbade the imposition of measures that do not enforce compliance with laws and regulations under the ATT. Although the panel commented that it would be desirable if the EEC withdrew the anti-circumvention provision from the perspective of the overall objectives of the GATT. This also means their anti-circumvention measures' purpose technically cannot be mentioned to prevent circumvention. However, its effects in preventing the activities cannot be denied.

Legitimacy is still the main threat to anti-circumvention rules. There are no international rules that explicitly prohibit them, yet none also explicitly allow them. This places anti-circumvention rules in an uncomfortable area, at least until an international rule is formed, where their legality depends entirely on how they are drafted, intended, and implemented. However, the remaining uncertainty surrounding the rules means that no matter how carefully drafted ASEAN's anti-circumvention instruments are, they are still susceptible to challenge at the WTO (Sok & Chinket, 2022). When the provision is challenged, the dispute panel could reach conclusions similar to those of the Screwdriver Panel. It might be ruled as going beyond the existing rights and obligations under the GATT. Politically, these commitments could be seen as an escalation of protectionism by other countries. Internally, the rules could be used by import-competing industries to curb legitimate competition. Their use as a weapon would ultimately harm the very market integration the ASEAN Economic Community seeks to promote.

Further threat to anti-circumvention rules lies in the complexity of circumventions themselves. It can be argued that the foreign exporters accused of dumping are almost always at a disadvantage in an anti-dumping investigation against the government, the whole industry, and/or, in some context, the whole society of the importing country. This prompted them to bypass anti-dumping duties imposed to overcome such barriers by engaging in circumvention

activities (Yu, 2008). On the other side, non-economic factors might also trigger circumventions. Anti-dumping measures function as a corrective instrument to prevent the introduction of imported goods at below domestic market prices that potentially harm the domestic industries (Humonggio, 2025). But what if the dumped goods are of higher quality than the ones that were produced by the domestic industries, and the imposition of such duties led to an increase in the price of the import and a decrease in its use in the market? Indeed, the domestic industry must be protected from dumped imports, but the public also deserves products of higher quality. The imposition of anti-dumping measures without any consideration of the non-economic factors of the activities may encourage circumventions (Yuliia & Vermulst, 2019).

Nevertheless, anti-circumvention rules cannot be discouraged by the weaknesses and threats mentioned above. The complexity and unique natures of circumvention require the creation of appropriate rules and legal frameworks that differ from the traditional anti-dumping rules (Sud, 2016; ZHOU, 2016). The fundamental necessity for anti-circumvention rules for ASEAN remains unchanged. A transparent and predictable legal framework is far superior (Vermulst, 2015) to the current vacuum of no rules governing the behavior, which the preceding data has shown to be accelerating (Kobayashi, 2014).

The future development of an ASEAN anti-circumvention instrument should proceed with ambition and caution. It should be drawn from the best and most suited practices demonstrated by other jurisdictions. The instrument should, at least, include clear definitions of circumvention, unambiguous and consistent procedures and standards, a mechanism of exemption reserved for genuine actors, and safeguards against abuse of implementation. It should also remain consistent with the GATT, the WTO Anti-Dumping Agreement, and ATIGA. Moreover, the adoption and implementation of anti-circumvention rules cannot be achieved in isolation (Ostoni, 2005). This must be accompanied by strengthening the infrastructure of certificates of origin and rules of origin, which serve as the frontline against transshipment and upon which serves as the evidentiary basis for anti-circumvention investigation (Chairul & Anrina, 2025; Dewanty R.K., 2012).

The addition of anti-circumvention rules to intra-ASEAN free trade can be used as the starting point for their implementation. It can be used to break the consensus deadlock at the WTO level (Gao & Zhou, 2025). Such rules (trade remedies) within the FTA corridor are permitted due to concerns about the harmful impacts of these agreements on the domestic manufacturing industries (Deng et al., 2025; Phan & Lee, 2025). This would also allow member states to accumulate practical and legal experience with anti-circumvention measures in a much more measured, politically consensus-based environment, establish a structure of regional precedent, and gradually familiarize the members with a common stance against circumvention. This foundation will provide a stable base for the eventual full integration of anti-circumvention rules in ATIGA itself, turning its current vulnerability into its strength.

## CONCLUSION

Anti-circumvention rules remain as one of the most discussed topics in international trade law. Many developments as well as stagnation occur around the topic, despite its urgency. Therefore, from the results and discussions above, the conclusions that can be drawn are: 1. The absence of anti-circumvention rules in Indonesia and ASEAN reduces the effectiveness of the current anti-dumping measures. It left gaps through which insincere operators used to circumvent the anti-dumping duties imposed on them. The absence is resulting in an uncertain legal environment, divided procedural methods, and weak-to-none precedent that supports unilateral and inconsistent actions. The Indonesia-Vietnam circumvention case precisely depicts how the silence of regulations resulted in diverse interpretations of rights and obligations, disrupting cooperative action during investigations, and leading to dispute cases

without a clear, conclusive end and reasoning. The comparative review done on the anti-circumvention rules within Vietnam, the E.U., and the U.S., when designed to be consistent with GATT/WTO rules, shows that a well-drafted anti-circumvention instrument consisting of clear definitions of circumvention, methodical investigation procedure, the rights and obligations of interested parties, and safeguard mechanisms can enhance international trade predictability and the effectiveness of anti-dumping measures while limiting abuse on the implementation of anti-circumvention rules without international supervision.

2. The data available has evidently shown that the region of ASEAN is being used as a transshipment hub in the middle of the shifting global supply chain and rising trade tensions. Thus, it is an urgent need for ASEAN to adopt anti-circumvention rules. A regional framework addressing circumvention would eventually close the gap caused by unilateral actions, protect legitimate trade activities, and promote ASEAN's integrity as an integrated market and manufacturing base. ASEAN future instruments should be drawn from the best practices done by other countries while maintaining consistent compliance with the existing international rules, such as the GATT, the WTO ADA, and ATIGA. Its implementation should be accompanied by the strengthening of the regulation of rules of origin and the certificate of origin. Implementing it first at the intra-ASEAN level would allow member states to build practical experience and regional precedent, reduce the risk of challenging the WTO, and enable more coordinated action against future circumvention.

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