Cross Border Cartel in International Trade: An Indonesia Case Study

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Abstract: International trade law is based on several basic principles, these are the fairness and transparency principles. Fairness principles ensures that all WTO members obtain similar treatment. Likewise, the transparency principles aim at providing predictability to interests group in international trade. However, trade may be distorted by an unfair practice. The exchange of goods may sometime be controlled by a limited number of goods producers/suppliers. International traders may control the amount of exported or imported goods to another countries. With this ability, international traders may have the ability to control the price and availability of product in a particular market. The Indonesian fair competition law prohibits cartel practices. Unfortunately, there are issues in a cross-border cartel practices. This article examines how cross-border cartel practices may occur in international trade activities that will disturb Indonesian market. Further, it also examines legal problems in tackling cross-border cartel practices. It argues that jurisdiction is the most problematic issue that need to be resolved. Cooperation between Indonesia and its major trading partners may prevent cross-border cartel.

1 INTRODUCTION

In order to receive the maximum income, undertakings tend to make a lot of strategies to conduct their business. One of the strategies is to make business agreement with other undertaking, including its competitors. To avoid unfair business practices, agreements made by undertakings should be in line with the Law Number 5 Year 1999 regarding prohibition of monopolistic practices and unfair business competition (hereinafter referred to as Indonesia Competition Law). One type of agreements prohibited by Indonesia Competition Law is cartel agreement.

Until today, Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha, hereinafter referred to KPPU), has settled some cases of cartel activity. Some of them are cartel activity on importation product for food. Until 2018, KPPU has not yet settled any cross-border cartel activity. The absence of KPPU settlement on cross-border cartel does not mean that there was no cross-border cartel activity in Indonesia. The cross-border cartel activity could have happened with some difficulties to apprehend and settle the case.

2 CARTELS AND POTENTIAL CROSS-BORDER CARTELS IN INDONESIA

Legal Economic Dictionary ELIPS defines cartel as conspiracy or alliance among some producers of similar products in attempt to control production, price, and selling to gain the monopolistic position (Usman, 2011). Cartel is also defined as syndicate which is a written agreement among some similar producers to rule and control things, such as price, marketing area, and others in order to suppress competition and/or to benefit the business competition (Purba, 2014). Cartel agreement IN Article 11 Indonesia Competition Law is an agreement made by undertakings to control the price, supplies, or marketing strategies to suppress or even to negate the competition. Komisi Pengawas Persaingan Usaha (The Business Competition Supervisory Commission, hereinafter referred to as KPPU) succeeded to enforce the Article 11 of Indonesia Competition Law in order to settle some cartel case that involved domestic undertakings.

In Article 11 of Law No. 5 Year 1999, cartel can be conducted through price, production, and

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marketing area. Price cartel is conducted by cartelist through determining price of goods and/or services. Production cartel is the form of cartel that control the product supply by agreeing both quantity and quality of the goods and/or services among the cartelists. The other form of cartel is by determining market strategies including the marketing area.

There are damages of cartel agreements:

1. The occurrence of monopolistic practices by the cartelists caused macro result in inefficiency of resource allocation. Therefore, it can lead to deadweight loss which usually caused by policy to restrict production by the monopolists to keep the high price (Nugroho, 2015).
2. Consumers will lack of choice, price, quality, and proper goods and/or services (Nugroho, 2015).

If there are only few undertakings that dominate the market in the industry, they will tend to escalate price and to restrict production. That actionis taken to avoid unbenefited competition of each undertaking, so that it can increase the benefit, distribute marketing area, and determine the price. In practice, this type of action is manifested in the form of association. As the member of an association, undertaking can make agreement regarding the price, marketing area, or production level which later can lead to monopolistic practice and unfair business. Those kind of business practices can harm the consumers because the lack of product quantity in the market. It can also lead to significant price changes of the product. Cartel practice gives the opportunity to undertakings to unfairly increase the price and creates barrier for potential competitors to enter the market. While for consumers, this practice can cause lack of product choices of goods and/or services in the market.

Another example of cartel practice is when the supplier set up a single selling agent to by all of the output with an agreed price and to make arrangements to market the products with coordination. Other form is when the supplier make an agreement with determining the same price to all of its products so that it can eliminate price competition and use product differentiation strategy to dominate the market. The more comprehensive form of cartel is application. Not only the same selling price and joint marketing, but also limiting the amount of production including quota system for each supplier and adjusting coordinated capacity whether reducing the over-capacity or expanding capacity based on coordination. Cartels are usually done for the purpose of utilizing the mutual market forces of the suppliers to gain monopoly profits as well as to defend against existing competition (Nugroho, 2015).

Cross-border cartel has no specificity in terms of meaning. When it is connected to international market, the cartel which was originally a domestic anti-competitive activity would turn into a transnational anti-competitive action that can harm a particular country. Cross-border cartel conducted by undertaking in a particular country that can cause negative impact to other undertaking in other country and even affect cross-border consumers.

Cross-border, according to Oxford Dictionary defined as “Passing, occurring, or performed across a border between two countries”. In a broader meaning according Cambridge Dictionary, cross-border is defined as action between different countries, or involving people from different countries. When it is associated with legal practice, cross-border can be understood as something that goes beyond the jurisdiction of a country, relating to other countries.

Cross-border cartel has the same meaning with the regular cartel. The different scope of area in cross-border cartel is different jurisdictions of the cartelists. It can also be defined as an anti-competitive action conducted by undertaking from a country or undertakings from different countries to control the amount of production and the price so that it can affect the market outside the origin of undertakings. The types of cross-border cartel are the same with the regular/domestic cartel. The only thing that differentiate cross-border cartel from domestic cartel is the international dimension involved in its cartel activity. The activity of cross-border cartel, it can contribute negative impacts to the relationship among countries whether direct or indirect. This can also affect the fair competition occurred in the global market and negate the competitiveness of other competitors which not incorporated in the cartel.

Cross-border cartel involves export and import of goods and/or services. In other words, cross-border cartel can also understood as export cartel. Export cartel usually happens in developing countries with weak law enforcement and protection of business competition law (Hufbauer, 2008). Export cartelists usually choose other countries so that it cannot jeopardize their country of origin. Another reason to conduct cross-border cartel is to gain maximum benefit from product distribution of goods and/or services in the larger geographic scope of market and to eliminate the competition. The cross-border cartelists are fully aware that the competition authority will find difficulties to apprehend them. strongly encourage authors to use this document for the preparation of the camera-ready. Please follow the instructions closely in order to make the volume look as uniform as possible (Moore and Lopes, 1999).

2.1 The Cases of Importation of Food Cartel in Indonesia

Several cases of food cartel which indicated involvement of cross-border undertakings have been handled by KPPU. For example, cartel on garlic importation, and cartel on beef importation.

Cartel is more than just activity conducted by undertakings. In some events, cartel can be facilitated by regulations issued by the government. The policies related to import quota and permit issued by the government for importers can open opportunities for affiliated undertakings either openly or discreetly to practice cartel. Food cartel activity which involved import aspect can enable licensed domestic undertakings as importers of specific product, such as garlic from China, or beef from Australia. The importers have great opportunity to make cartel agreement with the undertaking from the food country of origin. Two cases that are appropriate to be cross-border cartel laboratory are cartel on garlic and beef.

2.1.1 Garlic Cartel Case

The import control policy is the mandate of Law Number 13 Year 2010 on Horticulture. As it is stated on Article 88, import can be conducted when domestic product is not sufficient. Therefore, this law followed by Regulation of Ministry of Agriculture No. 60 Year 2012 and Regulation of Ministry of Trade No. 60 Year 2012. Garlic supply in Indonesia is lower than other countries such as China. China can produce 20 tons garlic per hectare, meanwhile Indonesia can only produce 5 tons per hectare. Meanwhile, garlic as the number one horticulture products, currently could not meet the domestic market. KPPU decided 19 undertakings as guilty by conducted cartel (KPPU decision No. 05/KPPU-I/2013, page: 283). Cartel activity conducted by those 19 undertakings were declared violate the Article 11 about Cartel, Article 19c about Supply Restriction, and Article 24 about Conspiracy of Indonesia Competition Law. They were allegedly made agreement to agree on garlic price.

Because of that cartel practice, the price of garlic was increasing simultaneously in November 2012 to March 2013.Those 19 undertakings are affiliated in three different groups. Each groups of undertakings coordinately set up the domestic garlic supply by setting up the import period of each group. Therefore, that action violated Article 19 of Indonesia Competition Law regarding behavior on market control. Besides those 19 undertakings, Minister of Trade, Directorate General of Foreign Trade in Ministry of Trade, and The Head of Quarantine Agency of the Ministry of Agriculture were also reported. The Directorate General of Foreign Trade had issued the prolongation of Import Permission Letter not transparently and discriminatively. The permit was not in accordance with its regulation of Minister of Trade No. 30/M-DAG/PER5/2012. KPPU Investigators categorized the action of those undertakings as a form of conspiracy with Ministry of Trade to obstruct production and/or distribution of goods and/or services from Group I undertakings so that it violated the Article 24 of Indonesia Competition Law regarding abuse of dominant position.

In the interview with Head of KPPU Office in Surabaya, Dendy Sutrisno, and Vice Chairman of KPPU Commissioner, Sarkawi Rauf, stated that from dozens of garlic importers can be grouped in to three groups of undertakings. Each group dominated fifty percent garlic import from China to Indonesia. The few numbers of garlic importers in Indonesia not only can create potentially cartelized oligopoly market but also open the opportunity for them to coordinate with cross-border undertakings. The coordination of garlic importers and exporters from its country of origin can possibly create cartel. If only three percent garlic demands are from domestic agriculture and almost ninety percent garlic demands in Indonesia imported from China (KPPU, 2017), then China has to provide approximately 480,000 tons per year (Rauf, 2017). This condition is enough to make the undertakings as the controller of supply and price in the market.

2.1.2 Beef Cartel Case

In the same way as the garlic, food policy on beef self-sufficiency also generates polemic. Beef-Buffalo Meat Self-Sufficiency Program in 2014 encouraged the government to restrict beef and/or beef offal gradually from 2010 to 2014. The import beef restriction, in the contrary, caused beef scarcity in the market. There were about 20-30 per cent of supply shortage which caused the price to increase to about 30 per cent (KPPU, 2013).

Moreover, this condition created an opportunity to associated undertakings to double their profit with setting up the price. The KPPU Decision No. 10/KPPU-I/2015 on the alleged cartel practices on imported cattle trade in Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek) 2013-2015, stated that 32 (thirty two) of reported suspects were proven legally and convincingly as guilty of violating Article 11 and Article 19c of Indonesia Competition

Law (KPPU decision No. 10/KPPU-I/2015, page: 957). The member KPPU assembly found the facts about the deal agreed and facilitated by Indonesia Beef Producers Association (APFINDO) through a series of meetings that ultimately demonstrate the similarities of the actions of the Reported Party, the rescheduling sales categorized as containment of imported beef cattle in the Greater Jakarta (Jabodetabek) area and/ or marketing arrangements that result in an unfair price increase that is detrimental to the public interest. The act of supply containment conducted by the Reported Party uniformly by not realizing the amount of cattle import quota which has been set by the Government.

Another beef cartel case was apprehended in 2016 in North Sumatera. The findings by KPPU in North Sumatera is almost the same with the case happened in Jabodetabek area that the local beef supply was too low so the price was high in the market. Thus, the government allocated the cattle import quota from Australia. This cattle import quota from Australia encouraged the occurrence of cartel practices conducted by beef importers.

In the imported beef cartel cases settled by the KPPU, it never dragged the exporters or the undertakings from the country of origin. Whereas if it refers to legislation regulating livestock and animal health, it will only provide a narrow opportunity for other countries to export beef to Indonesia. The Article 59 of Law Number 18 Year 2009 regarding livestock and animal health, used country based approaching for livestock. If it is for beef, so only countries which considered livestock disease free based on the regulations set by the government can only export beef to Indonesia. This regulation is only applied for Australia to fulfill the needs in domestic market. The policy using country-based as its approach gives bigger opportunity for Indonesian importers to conduct such agreements with Australian beef exporters. This situation also induce cartel practice, this is because there are only a limited numbers of importers. Once again, in order to maintain a high selling price of beef to consumers, these importers tend to control the supply of beef to the market. They tend to stop supply when there is a high demand, and supply when the demand is low.

The worse scenario is when the exporter of beef in Australia is linked or connected to the importer of beef in Indonesia. Indeed, it is not difficult for an Australian company to establish a subsidiary company or an affiliation company in Indonesia. In this situation a cross border cartel is more likely to occurs, this is because the exporter and importer is actually a single entity. This entity has more power to control supply and to maintain the price.

Both garlic and beef cartel cases have the similarities, which are the existence of import quota which give the opportunity to conduct cartel instead, there were only few undertakings in that field of business, involving foreign undertakings, market controlling that led to price control, and also give disadvantageous to the society with restricting the supply and increasing the price.

A similar situation also may take place in other product like salt and garlic. A huge proportion of imported salt is originally from Australia. Likewise, China is the main exporter of garlic to Indonesia. The limited source of import of beef, garlic and salt has been causing a number of problems. The most serious problem is the rise of price, and the scarcity of product in the market. There is a strong indication that this problem is caused by CROSS BORDER CARTEL.

2.2 The Intersection between International Trade Law and Fair Competition Law

One of the main principles of international trade law adopted into the WTO Agreement is fairness. This principle implies that the benefits derived from international trade should be felt equally among all international trade actors. It is also preventing the partial process in the rules and procedures of the multilateral trading system, resulted by diverse interests and bargaining power of each country. In principle, fairness focuses on the extent of trade actors respect each other's autonomy, engage willingly in reciprocal exchange of benefits and equal distribution of rights and obligations that constitute in the WTO trading system (Stern, 2010).

In addition, another principle in international trade is non-discrimination. It means that any regulations issued by the state to set the conduct of international trade actors should be treated equally, regardless of the origin of the country and its products. In some cases there are exceptions, but this basic principle of non-discrimination is considered the heart of the current world trade system in the matter of protectionist trade policies caused by market distortion. The importance of eliminating discrimination is reflected in the Preamble of WTO Agreement, where the elimination of discriminatory treatment in international trade relations is identified as one of the main objectives of WTO (Bossche, 2005).

Another principle that is equally important in international trade law regimes is transparency. This principle encourages countries to use transparent instruments in drafting and operating trade policies. Transparency principle has three extensive sets of meaning: (1) the legal instruments governing international trade are known, clear and comprehensible to the trade actors; (2) the objectives and purposes of the treaty are reflected adequately in its text; and (3) the objectives and purposes of the treaty are respected and achieved sufficiently in its application and implementation (International Trade Centre, 2010). This principle also encourages the realization of predictability, an indispensable condition in business processes. Providing security and predictability to the rule-oriented multilateral trading system reflects under Article 3.2 Dispute Settlement Understanding (DSU) as in the interest of the stability, legal certainty, consistency, and an increased persuasive power of the reports, it is required by the function of the dispute settlement system to provide security and predictability (Weiss, 2003).

The above three principles, namely fairness, non-discrimination and transparency are further set forth in some of the more specific norms in the WTO Agreement. This norm is the provision of Most Favoured Nations (MFN) and National Treatment (NT). Under the terms of the MFN, each WTO state member shall accord equal treatment to all other WTO member states. When a WTO member grants certain favourable treatment to one country shall grant the same favourable treatment to all WTO members (Bossche, 2005). MFN obligation is not only concerning any advantages granted to other WTO members, but also any advantages to all other countries including non-WTO members (Bossche, 2005).

Article I.1 General Agreement on Tariffs and Trade (GATT) regulates that any advantages, favours, privileges or immunities granted in one country, shall immediately and unconditionally be offered to the like-products of all WTO members. In short, the scope of advantages, favours, privileges or immunities granted are: (1) custom duties, other charges on imports and exports and other customs matters; (2) internal taxes; and (3) internal regulation affecting the sale, distribution and use of products. Furthermore, the term ‘immediately’ means that there must be no delay in extending any advantage granted to all WTO members (Mitsuo Matsushita, 2006). While the term ‘unconditionally’ means that it is not limited by or subject to any conditions such as requirement of compensation (Mitsuo Matsushita, 2006), asking something in return or paying for the advantage (Bossche, 2005).

While NT requires all WTO members to treat foreign products and/or services not less favourably than the treatment of like domestic products and/or services. It means that states shall provide equal treatment in sales, taxation and regulation of imported goods/services and domestic goods/services (Bossche, 2005). The provision of NT is set forth in Article III GATT implies that no law, regulations or taxation condition may adversely differentiate the conditions of competition between like foreign and domestic products in the domestic market (Mitsuo Matsushita, 2006). This article has purpose to limit national protective measures to border controls and secures equality of opportunity for imported products to be competed with domestic products (Mitsuo Matsushita, 2006). Article III.1 regulates the scope of NT application: (1) internal taxes and charges; (2) laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products; and (3) internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions.

In relation to transparency, the WTO Agreement encourages state members to use tariff barriers to control the flow of goods and services. Similarly, any regulatory changes should be accessible and understandable by international trade actors to avoid misunderstanding as it is reflected under the preamble of WTO Agreement that in pursuing the objectives, WTO members enter into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade.

One of the basic purposes of GATT is to reduce and bind tariffs by put it in Schedule of Concession. Article II.1(a) of GATT is established to protect the tariff bindings, obligating WTO members to accord tariff treatment no less favourable than that provided in their Schedules. While Article II.1(b) regulates that there must be no ordinary customs duties and all other duties in excess of those notified in the submitted schedule (Bossche, 2005). Other instruments such as quotas and import licenses (non-tariff barriers) are still allowed but not recommended because they are often be changeable and unpredictable in both time and quantity. Tariff remains important trade barriers because most developing-country members still apply high custom duties because it can increase the economic development. Moreover, in very competitive markets between neighbouring countries,

a very low duty may still constitute a barrier (Bossche, 2005).

From these two provisions, in principle international trade in the WTO regime encourages the creation of fair business competition. The MFN principle, for example, prevents a country from providing convenience, facilities or enjoyment to one or more specific countries (privileges). This action will lead to unhealthy trade competition because countries are gathered in exclusive groups. This situation can affect the supply of goods/services and ultimately will affect the price.

Likewise, NT is intended to prevent the state from protecting the goods/services of domestic production. If foreign goods/services have been granted access to entry into the market of a country, then it should be treated equally with local products. Protection of local products may result in lower supply of goods of better quality at competitive prices. Therefore, the principle of transparency encourages countries to make protection through tariff mechanisms, this mechanism is considered to encourage more positive competition among producers of goods/services to be more efficient and provide quality products.

Unfortunately, the above principles and norms in the WTO Agreement do not always prevent the occurrence of violations. Some conditions such as scarcity of goods/services are exploited by international trade actors for profit. With its ability to know the position of supply and demand in a particular market, producers can take unfair action and distort international trade.

Herein lies the intersection between international trade law and fair competition law. International trade aims to improve prosperity through the process of production and exchange of goods and services between countries, whereas fair competition law aims to ensure the process of exchange of goods and services provides maximum benefits to consumers widely.

However, international trade actors can often take advantage more than they should (rent seeking), by exploiting weaknesses in international trade regulations. Among the examples of this condition is by utilizing the scarcity of a particular product/service, either because the amount is small, or because of its special nature.

In some industries/sectors, providers of certain goods/services are very limited in number in the world. Due to differences in climate and geographical conditions, some natural resource products are produced more efficiently in some countries. Some advanced technology and production methods (know-how) are only owned by business actors from certain countries only. Likewise the products of long and complicated research such as medicines and plant seeds are owned by only a few countries. Thus business actors in these countries have the potential to control and manage the time and amount of supply of certain products/services.

Another condition that triggers unfair business competition is from the demand side itself. Because the number of population, culture and knowledge of the people in certain countries so that the need for increasing certain products. Unfortunately, the high demand for certain products is not balanced by the acceleration of domestic production. So the steps taken are often temporary just to meet the demand by importing. At some point, if long-term measures to prepare domestic producers are not taken, it can lead to dependence on imports. The high demand and dependence on imports can be utilized by business actors both in the level of domestic and foreign.

Some may regard international trade law as unlikely to be intersected with competition law, that is, because both work on different levels. International trade law regulates countries at the international level, and competition law regulates business actors at the national level. But this opinion may not be entirely correct.

First, international trade law governs the behaviour of the state to be more open in international trade. Yet international traders remain producers, exporters and importers, who are actually business actors themselves. Second, business activities of business actors can be done cross-border. Business actors can make direct investments in other countries, establish subsidiaries, conduct production processes and carry out export and import activities. Thus business actors are now multi-national, not only subject to the national law of their country, but also on international law.

Two reasons above shows the ability of business actors at the same time affecting international trade and business competition as well. Business actors from the same country for example can control the state of supply and demand of goods products in two different countries. For example, rare drug manufacturers in certain countries limit their supply to countries in dire need of such drugs. Or this company establishes a subsidiary in a particular country as importer of its own products. Thus, it can affect the price in the market.

To conclude, the objective of international trade law is to liberalize international trade by reducing barriers so as to improve prosperity. However, this situation cannot be realized if there is unfair business competition practices. Unhealthy competition will

distort trade and reduce the expected benefits arise, maybe even the opposite it will negatively affect the welfare.

2.2.1 Ideas Facing Cross Border Cartel

Based on the practices, cross border cartel tends to occur in products imported under quota regulation. GATT Article XI.1 prohibits quotas, import and export licenses or other measures that restrict trade other than duties, taxes, and other charges. But there are three exceptions to the prohibition on quotas and other measures: (1) in preventing or relieving critical shortages of foodstuffs or other products essential to the exporting (Article XI.2(a)); (2) in related to the application of standards/regulations for the classification, grading or marketing of commodities in international trade (Article XI.2(b)); (3) import restrictions on any agricultural or fisheries product, imported in any form necessary to the enforcement of governmental measures (Article XI.2(c)). Another exception is contained in Article XII GATT that allows restriction to safeguard balance of payment, additional exceptions in Article XX (General Exceptions) and XXI (Security Exceptions) GATT (Mitsuo Matsushita, 2006).

Instead of using tariff, the Indonesian government tends to use quota regime on food and agriculture products. This is the situation true in the importation of cattle and meat products, garlic and salt. In the importation of beef for instance, the origin of beef is from Australia. The largest amount of beef/meat is imported from this country, with only a small amount from the US and Japan. Thus, the source of import is limited to one source. This situation may induce cartel practice, the producers of meat products in Australia may set their quantity of export in order to maintain price. If they do not control the quantity, the price may fall.

On the other side, the number of beef importers in Indonesia is also limited. These importers must compete to get an import licenses from the government. The provision of import license is regulated under Agreement on Import Licensing Procedures which established to minimize the impact of the procedural aspects of licensing that is permitted under GATT. Under Article 1.3, this rule shall be neutral in application and administered in a fair and equitable manner.

Every year the government issues a regulation on import quota. This regulation sets the quantity of import allowed within a year. A number of importers enter into a bidding process. After an assessment process, the government announces the bid winner, the successful bidder will be granted with import license.

2.2.2 Preventing Cross Border Cartel

Based on the above assumption, there are a number of ways to prevent cross border cartel. First, to import from various number of countries. Second, to use tariff measures instead of quota. Third, to have a stronger corporate law on the disclosure of affiliation and/or beneficiary owners.

Having more sources of import would more likely to prevent cross border cartel. Producers from different countries may compete to offer lower price. Likewise, having different sources of import will stabilize the continuity of supply. In this matter, the government realized that with using country-based policy can narrow down the imported beef market. Therefore, in 2016, the government changed its approach from country-based to zone-based which regulated in Government Regulation (PP) Number 4 Year 2016. The zone-based approach gave opportunities to other countries to export their beef to Indonesia. Application of this regulation in 2017 gave the opportunity to India and New Zealand to export their beef to Indonesia. This change hopefully can create barrier for both domestic and foreign undertakings to conduct any cartel practices.

The government should also consider to change its import regulation from quota to tariff. The use of quota regime will only benefit a limited group of importers who hold import license. Likewise, the government may not be able to control the supply of products in the market, because the supply is controlled by these importers. On the other hand, by using tariff barriers the government has a full control on the number of product which will enter into Indonesian market. The only difficult task for the government is to set an appropriate tariff. The government should balance the need of consumers for affordable food, and to protect local food producers.

Finally, the government may also use corporate law to prevent cross border cartel. The exporters and importers should not be linked or affiliated as single business entity. The government should have a regulation for Indonesian importers to disclose their affiliation with foreign exporters.

3 CONCLUSIONS

There are some aspects that cross-border cartel practices may occur in international trade activities, first, a huge proportion of imported product is

handling by a few undertakings (from host country or from the country of origin of the product). Second, the regulation regarding imported product not in line with competition law.

The legal problems in tackling cross-border cartel practices are the lack of adherence to the principles of trade international law, namely fairness, non-discrimination, and transparency.

Since the law enforcement for cross border cartel is weak, prevention efforts are needed. First, to import from various number of countries. Second, to use tariff measures instead of quota. Third, to have a stronger corporate law on the disclosure of affiliation and/or beneficiary owners.

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