

The Analysis of Trade Circumvention, Threats and Risk to the Duties and Functions of the Directorate General of Customs and Excise (DJBC) Indonesia

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Abstract

One of the threats from international trade is trade circumvention (TC) schemes with the aim of avoiding antidumping rules or restrictions on the number of incoming goods (quotas). This paper tries to explore the phenomenon of TC in Indonesia through a qualitative approach. Using the literature study method by studying the literature and related documents, this paper analyzes the threats and risks of TC to Indonesia from the perspective of law enforcement intelligence. The results of this study indicate that Indonesia's main threat is being dragged into a situation as a third country or destination country in the TC cycle. The risks faced are not only detrimental from an economic perspective related to trade and state revenues, but also Indonesia's bilateral relations with other countries. Meanwhile, in terms of law enforcement intelligence, prevention of TC in Indonesia requires appropriate laws or regulations to make it easier for relevant agencies or institutions to take action against TC practices. Data integration between related agencies or institutions is also very decisive in preventing TC practices in the future.

Keywords

trade circumvention;
intelligence; law enforcement
intelligence; customs and excise



I. Introduction

International trade does not only have a positive impact on a country, the negative side also cannot be separated from international trade practices. The dynamics of international trade which applies the application of anti-dumping import duties, quotas (a certain amount that can enter a country at a certain time) and the existence of a trade war have resulted in the phenomenon of trade evasion schemes or known as the Trade Circumvention (TC) concept to avoid sanctions and take advantage of mutually beneficial bilateral cooperation. owned by trading partner countries.

In simple terms, TC is defined as an attempt to modify or change the physical form, production, or delivery route of a product to avoid the imposition of anti-dumping duties or import duties in a country. (Yu, 2008; Alhayat et al, 2016). Previously, this TC practice was defined in a limited context as the avoidance of anti-dumping duties. However, in its later development, the Organization for Economic Cooperation and Development (OECD) defined TC to be more complex by including the context of avoiding quotas and other restrictions applied where one way is to change the country of origin of a product.

Actions like this, like other illegal actions that benefit the perpetrators but can be a threat and pose a risk to the state. Indonesia was dragged into this situation and used as a third

country or destination country in the TC cycle in international trade. TC does not only have an impact or become a threat to one or two aspects from the side of Customs and Excise in Indonesia, but also to the economic aspect in a broad sense. Furthermore, the TC, which is related to the circulation of goods flowing out and into the territory of Indonesia, is of course directly related to the duties and functions of the DJBC. So that DJBC's understanding of the threats and risks that can arise from the TC phenomenon,

Because of these problems, this paper simply analyzes the vulnerability of Indonesia as a third country or destination country in the TC cycle, analyzes the impact of TC threats and their risks on the main functions of DGCE (Revenue Collector, Community Protector, Trade Facilitation and Industrial Assistance). And how the intelligence function at DJBC plays a role in dealing with this TC threat.

II. Review of Literature

2.1 Law Enforcement Intelligence

Quoted by Prunckun (2010), Law Enforcement Intelligence is part of a form of intelligence that aims to increase the accuracy of decisions made by a leader. Intelligence gives consideration to leaders in order to make the right decisions in tackling criminal acts that generally go undetected until they eventually become a problem in the community. Further, institutions that carry out intelligence functions are not only the police or agencies that carry out law enforcement functions (Prunckun, 2010; Carter, 2005), but rather such as immigration, customs services, and prison intelligence units (Prunckun, 2010). So Law Enforcement Intelligence also includes agencies that fight threats from foreign and internal state subversion, espionage activities, sabotage to terrorism. . In other words, the potential for the birth of terrorist acts that are identical to bombings, suicide bombings and criminal acts such as robbery is a necessity (Priadi, 2018). Terrorism being a reality everywhere in the world, focusing on a historical and sociological approach (Dione, 2018). Thus terrorism can be an ideology that likes intimidation such as acts of violence against innocent people in a country with certain motives (Munawir, S. 2020).

This is particularly the case for agencies such as immigration and customs services, whose task is to protect national security and foreign policy interests by enforcing export and import regulations relating to restrictions on the use of prohibited goods, such as certain hardware technologies, software, chemicals, and nuclear material. Prunckun (2010) also explains that the approach Law Enforcement Intelligence cannot be separated from the following basic characteristics: 1. Decision makers must be based on intelligence, not only on certain information; 2. Intelligence production must be timely; 3. Intelligence must be as accurate as possible in order to be trusted by decision makers; 4. Intelligence must be usable; and 5. Intelligence products must be able to provide sufficient insight or knowledge to enable decision making.

2.2 Trade Circumvention

As previously stated, circumvention is defined in a limited way as an effort taken to avoid anti-dumping import duties. Meanwhile, a more complete definition calls circumvention as an action or activity carried out by exporters to avoid quotas and other restrictions including the application of import duties either in whole or in part by changing the country of origin of a product (Kholfi & Primadista, 2021; Zhou, 2016).

The existence of circumvention measures has resulted in anti-dumping efforts or measures such as the imposition of anti-dumping import duties (BMAD) to be no longer effective. This results in an additional potential surplus for procedures due to anti-dumping

policies that cannot be obtained (Alhayat, Muslim, Sari, & Wulandari, 2016). On the other hand, for the state, this is certainly a detrimental problem. Quoting Yu's statement (2008 in Alhayat, Muslim, Sari, & Wulandari, 2016) that the issue of circumvention and anti-circumvention creates pros and cons (conflicts) at a certain level related to certain parties. This conflict has an impact on the implementation of anti-dumping measures as well as international trade at large. This is an obstacle in the application of circumvention regulations in a country.

III. Research Methods

This article is a paper that uses a qualitative approach, while the method used is the analysis of literature studies or related documents. Citing the statement of Zed (2008), explaining literature study as a research method that uses a series of library data collection, reading and taking notes, and managing research materials. Based on these quotes, this paper uses secondary data obtained from previous writings/research, as well as documents from related agencies or institutions.

Qualitative data related to reports or institutional information, namely DJBC, Ministries/Institutions related to trade and industry which are also related to TC activities. While the analysis used is descriptive analysis (in the form of a process of describing, describing, analyzing and summarizing the events or phenomena studied).

IV. Discussion

4.1 Threat of Trade Circumvention on Indonesian International Trade

Basically, trade circumvention (TC) activities are carried out in order to avoid antidumping regulations or to avoid restrictions on the number of incoming goods (quotas) imposed by a country. The mode or method that is usually done in TC practice is usually in the form of rerouting or rerouting. This rerouting action is more or less the same as re-exporting or transshipment, because all these concepts are like indirect legal exports carried out by involving intermediaries in third countries (Kholfi & Primadista, 2021).

However, the difference between these three activities is that neither re-exporting nor transshipment involves changing the certificate of origin (C/O). On the other hand, TC performs rerouting actions in this context, which means indirect types of exports by changing C/O illegally from the country of origin to a third country with the main objective of avoiding the import duty rates set (Kholfi & Primadista, 2021). In practice, TC actions or practices are divided into four forms/modes (Vermulst, 2012; Alhayat, Muslim, Sari, & Wulandari, 2016, Olsson in Kholfi & Primadista, 2021; Zhou, 2016), namely:

1. *Product alternation* or minor modifications. Avoidance in this form is carried out by the perpetrators by exporting a product by making a few or several changes, either in the form of the product or only in certain compositions of the product (modification),
2. *Importing country circumvention* or assembly operations. Avoidance in this mode is done by entering the product (imported) separately or in the form of parts and then assembled in the destination country, usually in a third country,
3. *Third country circumvention*. This form of evasion is included in the form of transshipment, where the export of products with minor changes (modifications) through a third country intermediary or often also by assembling the product in a third country,
4. *Lower duty rate company circumvention* or incorrect customs declarations. This type or form of evasion is carried out by utilizing companies that are subject to the lowest anti-dumping/anti-subsidy import duties as a means of export. Or it is usually done by

making an incorrect (false) customs declaration regarding the origin, tariff classification or value of an imported good.

Talking about the context of circumvention in Indonesia, Indonesia's current position is often "used" as a third country in the circumvention scheme or route. Indonesia's position as a transit country in the trade circumvention of trading partner countries creates threats that can risk harming Indonesia in many aspects. The threats that lurk in Indonesia regarding this circumvention practice are as follows:

1. Indonesia became the third country/strategic transit that was “used” in the circumvention cycle.

This threat includes a threat that is quite worrying in the circumvention scheme. In this context, Indonesia is used as a transit country to change the country of origin by having a C/O Certificate of Origin Indonesia, so that exporters will avoid anti-dumping duties or retaliation from the destination country.(Kholfi & Primadista, 2021).

To demonstrate the existence of this threat, a real example that is currently happening is Indonesia's position in the middle of a trade war with countries such as China/China with the United States (US). As is known, the trade war between China and the US has resulted in the US imposing high import duties on products from China. This is the trigger for China to practice circumvention of a commodity to the US through third countries(Liu & Shi, 2018), where one of them is Indonesia.

Amid the US-China trade tensions, many commodities such as wood, electronics and machinery from China are subject to additional duties when exported to the US. Wood products from China will receive an additional 25% import duty for imports into the US(Kholfi & Primadista, 2021). The scheme used in China's circumvention practice to the US is that Chinese exporters send their products/goods to Indonesia first, then from Indonesia the goods are exported to the US using Indonesian C/O illegally, so the country of origin listed is Indonesia.

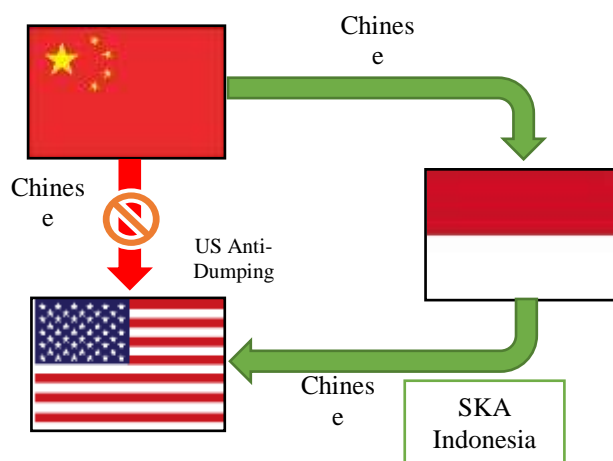


Figure 1. Circumvention Cycle: Indonesia as a Third Country (DJBC, 2021)

Based on Figure 1, Indonesia is "used" by exporters from China as a transit point to change the country of origin by having a C/O Certificate of Origin Indonesia, so that exporters will avoid anti-dumping duties or retaliation from the destination country, namely the US. With this action, exporters from China will certainly benefit in terms of cost reductions caused by anti-dumping regulations that the US applies to every product from their country.

2. Indonesia as a destination or target country for trade circumvention.

Indonesia's regulation of anti-circumvention measures is still weak, making Indonesia a country that is prone to becoming a destination for the entry of products/goods with circumvention schemes from trading partners. Quoting Alhayat's (2017) article, which states that the legal basis for circumvention used to prevent or reduce it has not been accommodated properly in Indonesia. Currently the only basis that can be used is Government Regulation (PP) No. 34/2011 on Antidumping Measures, Compensation Measures, and Trade Safeguard Measures (Alhayat, 2017; Puccio & Erbahar, 2016). Regarding this regulation, the circumvention cycle that threatens Indonesia as an export destination can be seen in the following figure:

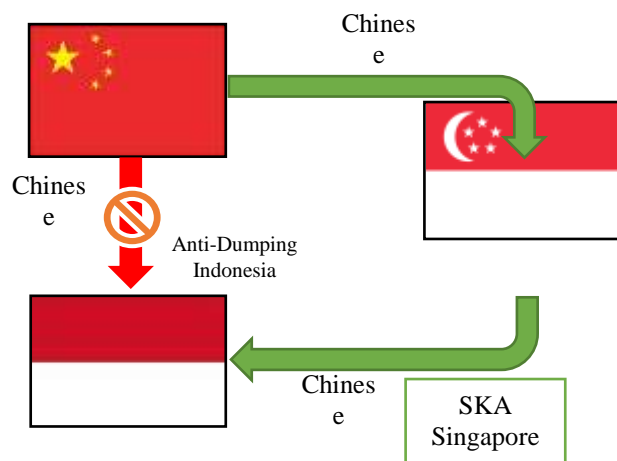


Figure 2. Circumvention Cycle: Indonesia as a Destination Country (DJBC, 2021)

Because there is still no strong legal basis that forms the basis for taking action against circumvention practices for the imposition of anti-dumping measures in Indonesia. (Alhayat AP, 2017), so that until 2015 Indonesia had not been able to/ever made accusations of circumvention against trading partner countries (Alhayat, Muslim, Sari, & Wulandari, 2016). Although based on data from the WTO (2015) it is stated that Indonesia in the 1996-2014 period was recorded as having 122 accusations of dumping, of which 54 cases were proven to have violated dumping rules and were subject to Anti-Dumping Duties (BMAD).

Interestingly, in the cycle of Indonesia as a destination country, many forms of circumvention are found in the form/modification of certain parts or products. Based on Alhayat (2017) the circumvention action by making slight changes is intended so that the products to be exported do not fall into the product category that is subject to BMAD. The scheme carried out in this circumvention mode can be seen in the following figure.

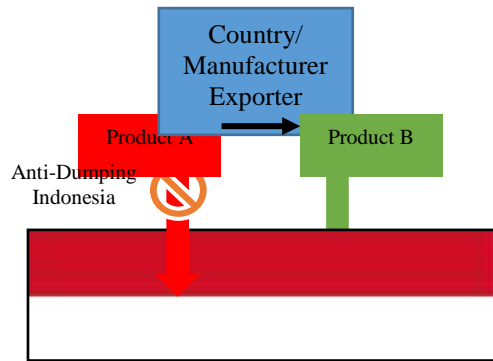


Figure 3. *Circumvention Cycle: Indonesia as a Destination Country for Minor Modifications (Alhayat, 2017)*

So, based on the description of Indonesia's main threats related to circumvention practices, it is related to two circumvention schemes, namely Indonesia as a transit country/third country in the trade/export route of an item. The two threats to Indonesia as a circumvention destination country can occur with the mode of transit scheme or slight modification before entering the territory of Indonesia. The second risk of this circumvention problem is enough to become a polemic and pressure for Indonesia to formulate rules or legal basis to take action and limit this practice in the future.

4.2 Risk of Trade Circumvention to the Duties and Functions of DGCE

Based on the threats that occur in Indonesia's international trade, Indonesia has the potential to face several risks, both in terms of economy and national security. Specifically in this paper, the context of the risks that can be obtained by Indonesia is limited in the context of customs and excise according to the duties and functions of the DJBC, namely *Revenue Collector, Community Protector, Trade Facilitation* and Industrial Assistance. Based on the analysis of circumvention practices related to the context of customs and excise, the following are some important points regarding the risks of circumvention practices, especially those that occur in Indonesia.

In relation to the revenue collector function, DJBC carries out the task of collecting BMAD. The existence of this BMAD collection is the main thing that is avoided by circumvention practitioners which is basically done to avoid anti-dumping rules. Circumvention of the imposition of BMAD is a contemporary problem of anti-dumping regulation and implementation in many countries (Alhayat, Muslim, Sari, & Wulandari, 2016). In this regard, the potential effectiveness of DGCE's performance related to revenue collection is constrained.

An example of a case that illustrates the potential loss of state revenue due to circumvention practices can be seen in the case of a modification to the import of cold rolled coil (CRC) from China through Singapore in 2010. Based on a report from the Ministry of Trade, Indonesia's potential loss from circumvention practices in the form of product alternation or minor modifications is estimated at US\$ 130.4 million to US\$ 151.3 million, of which the volume of imports recorded under this circumvention practice is 173,900 tons of CRC (Kholfi & Primadista, 2021). Other Indonesian countries/trade partners indicated to carry out the same practice on CRC products are South Korea in 2013-2015, Taiwan during 2013-2015 and Japan in the 2013-2015 period (Alhayat, Muslim, Sari, & Wulandari, 2016). The practice of circumvention on CRC products is also carried out in the form of using third country routes.

Indications of loss of state revenue due to circumvention practices also occur in several other commodities subject to BAMD levies from trading partner countries. Based on research

from the Ministry of Trade, circumvention practices in the form of product alternation or minor modifications are indicated to occur in the import of products from Hot Rolled Plate (HRP) products in 2013 and H & I Section products in the period 2011-2014 from China.

Apart from state revenues, the threat of circumvention practices to Indonesia also poses a risk to the community protector function of DJBC. In this context, massive circumvention of the entry of products/goods from other countries will result in the “death” or loss of domestic parties/communities/companies due to price competition. Several circumvention practices on steel products from China, South Korea, Taiwan and Japan between 2010-2016 are considered one of the reasons why domestic companies have difficulty penetrating the market, even within their own country.

PT Krakatau Steel is a direct example which has recorded a net loss in recent years due to the large number of imports of similar products (steel). This also applies to other industries and even small industries or agricultural products due to the entry of products such as Cavendish Bananas or other products such as ceramic products, aluminum to yarn as raw materials for textile products. DJBC as a community protector certainly understands this risk to the community or interest groups or related to imported products that are included in this circumvention practice scheme. It can be concluded, planning for the proper handling of circumvention practices will certainly be an effort to reduce the risk of loss to domestic parties.

Lastly, circumvention practices that are not handled properly will pose a risk to state functions through DGCE in terms of trade facilitation and industrial assistance. Regarding this function, the existence of circumvention practices, especially those involving Indonesia as a third/transit country in a cycle, will result in Indonesia bilaterally being under pressure from countries/trading partners that have been importing products from Indonesian producers.

In this regard, the direct risk that Indonesia has experienced is the application of Safeguard Duty from Indonesia's trading partner countries, to the potential ban or application of BMAD from European countries on products originating from Indonesia. The first is the case of the export of solar panels made by manufacturers from Indonesia who were subject to the imposition of Safeguard Measures (BMTP) or safeguard duty by the Government of India in 2018.(Septyaningsih, 2020). Although the policy was revised by the Government of India in mid-2020, this policy can be an important note for Indonesia to pay attention to regulations or anti-dumping efforts of trading partner countries. So that producers or exporters from Indonesia can be protected from problems such as BMTP or even export bans.

The next case example is the problem that hit bicycle manufacturers from Indonesia when the exported products are suspected or accused of practicing circumvention by the European Union (EU). As reported by the media in Indonesia, Indonesian bicycle companies, namely PT Inera Sena with Polygon products, PT Terang Dunia Internusa, bicycle manufacturer United and PT Wijaya Indonesia Makmur Bicycle Industry, the bicycle manufacturer WIM Cycle, are suspected of practicing circumvention in connection with bicycle manufacturers from China in 2011.(Detik.com, 2013).

In this case, it is suspected that a company from Indonesia is the company that is "used" as a package for products produced by manufacturers from China. At that time, the EU imposed a BMAD on Chinese bicycle manufacturers which had been in place since 1993. Although in 2013 the EU decided that these three Indonesian companies were declared not involved with China's circumvention efforts, this case has also become a concern for the Indonesian government to make efforts that are better avoid circumvention Indonesia as a third country. Through efforts to avoid circumvention, this will ensure that producers from Indonesia will thrive in the international market, because they will be competitive in terms of

quality as well as competitive in terms of product selling prices which are not too high due to the large BMAD.

4.3 Overview of the DGCE's Intelligence Function in Facing the Threats and Risks of Trade Circumvention

Early detection of any threat that could damage or become a problem for the country is an important thing that must be done. From the point of view of law enforcement intelligence, agencies/institutions that have important responsibilities in preventing external interference need to carry out intelligence functions like the police or law enforcement in general (Prunckun, 2010; Carter, 2005). In this context, DJBC as the institution responsible for customs services, requires several things in order to carry out its maximum intelligence function in overcoming the threat and risk of circumvention.

1. Learn from other countries: legislation as a legal basis for anti-circumvention

Indonesia needs to properly prepare the legal basis on anti-circumvention to complement and strengthen the existing anti-dumping regulations. This is very necessary because many countries have anti-circumvention laws due to avoid the losses that can be caused. So far, countries that have implemented anti-circumvention include the United States with the 2015 Trade Facilitation and Trade Enforcement Act (TFTEA), as well as Australia, the European Union, Argentina, Brazil, India, Mexico, South Africa, and Turkey.(Alhayat, Muslim, Sari, & Wulandari, 2016).

The obstacles faced in preparing the legal basis are of course very complex (Zhou, 2016). Furthermore, Zhou's research (2016) describes the complexity and controversy of preparing anti-circumvention regulations, namely the difficulty of defining the complete scope of circumvention, the difficulty of distinguishing circumvention activities from legal business activities, and the difficulty of related parties in determining the elements of anti-circumvention investigations as well as prerequisites for the required action. It is these challenges or obstacles that the WTO has not been able to solve for a long time or almost three decades (Yu SY, 2007; Zhou, 2016).

Furthermore, if you look at the implementation of existing anti-circumvention rules, generally anti-circumvention refers to actions or policies to expand the application of BMAD for new imports or imports of certain products indicated related to circumvention activities (Zhou, 2016). If this expansion is implemented in Indonesia, particularly in supporting the functions and duties of the DGCE, it must include an expansion of a comprehensive anti-dumping policy.

Comprehensive in the sense of being able to define a complete scope of violations that are considered a circumvention practice, clear criteria that provide certainty for officers or authorized institutions in concluding that activities enter into circumvention practices or legal business in general, and the most important thing is to determine the elements or factors -Factors that become objects in the investigation as well as prerequisites for action that are ultimately needed or need to be carried out.

With this clarity, the intelligence function, especially at DJBC, will easily determine variables in conducting observations and collecting important data for decision making on actions that need to be carried out related to circumvention.

2. Early detection: strengthen DGCE's intelligence function and intelligence data development

Intelligence activities cannot be separated from activities or actions or processes used to generate knowledge, how that knowledge is generated, organizations dealing with how to seek knowledge and an effort to produce reports and directions from these activities.(Prunckun, 2010). Therefore, DGCE and its intelligence unit as the agency

or agency responsible for circumvention practices need to develop a system that generates data for strategic knowledge needs related to circumvention practices. Processing data and information about circumvention into strategic and precise knowledge in mapping circumvention violations in Indonesia requires a lot of data from both internal and external DJBC. The internal data here includes direct data from transactions contained in DJBC as well as through data exchange within the Ministry of Finance's internal environment as follows:

- 1) Import and export data in a free area or also known as the Free Trade Zone (FTZ) owned by DJBC which is managed by the Directorate of Customs and Excise Information;
- 2) HS reference data that has facilities or not is obtained from the internal environment of the business process owner, namely the Directorate of International and Inter-Agency Customs and the Technical Directorate of Customs;
- 3) Data on trade circumvention cases that have been handled by DJBC from the internal environment, namely the Directorate of Enforcement and Investigation;
- 4) Data on the person in charge and shareholder obtained from the corporate SPT report in the Ministry of Finance's internal environment sourced from the Directorate General of Taxes;
- 5) Data on the utilization of the use of e-SKA obtained from LNSW.

Meanwhile, external data comes from data exchange between Ministries and or Institutions or other sources consisting of:

- 1) NIB/Online Single Submission (OSS) data which is registration data for business actors engaged in import and export owned by the OSS Institution - the Investment Coordinating Board (BKPM).
- 2) Population data owned by the Directorate General of Population and Civil Registration - Ministry of Home Affairs.

The internal and external data must have a mechanism or system for processing data or intelligence information to be able to function as an effort in early detection as well as intelligence functions. So that in the end law enforcement on the basis of existing data is easier to do and more targeted.

3. Prevention and enforcement collaboration: intelligence fusion center for data integration between related agencies or institutions.

As previously stated, one of the biggest obstacles in preventing or enforcing circumvention is the difficulty of distinguishing circumvention activities from legal business activities (Zhou, 2016), as well as the difficulty of related parties to determine the elements of anti-circumvention investigations as well as the prerequisites for the required action. This problem can only be overcome with a good information system and data sharing among related agencies or institutions.

Collaboration is the key to preventing and enforcing circumvention between government agencies. This can be done through the exchange of data and information related to circumvention indications, especially to detect the flow of goods, corporate entity relationships, company management relationships, and cash flows when the suspected company has detected evasion in its transactions.

The collaboration is expected to run effectively by building an intelligence fusion center as the best way to create a mechanism for sharing information between law enforcement agencies or institutions (Carter & Carter, 2009). Building this fusion center mechanism will be a way to increase the effectiveness of intelligence in related agencies or institutions such as DJBC in terms of taking action against circumvention violations.

Fusion center which contains important data related to allegations of circumvention that will improve the interaction relationship between stakeholders in prevention efforts, the fusion center also strengthens the applicable rules in efforts to take action if there are strong indications of a circumvention case and from the intelligence approach of law enforcement the fusion center is an important part so that all law enforcement intelligence efforts can work as expected.

V. Conclusion

International trade or global trade presents many businesses and interests with enormous challenges due to differences in language, exchange rates, customs, trade laws and regulations imposed by each country (Sundseth, Hines, & Swinker, 1999). One of the challenges of this difference is that it gives birth to the practice of trade circumvention which creates a paradox where it will benefit one party, at the same time it will harm the other party.

Trade circumvention become a threat to Indonesia in the form of "utilization" of Indonesia as a third country/transit cycle of circumvention and Indonesia as a target in order to avoid BMAD regulations. The modes of these two threats that are often encountered have an impact on risks, especially in the context of the duties and functions of DGCE in the customs and excise sector, to the risk of damaging Indonesia's bilateral relations with certain countries/trading partners.

First, DJBC as a revenue collector, will have an economic impact on Indonesia. The threat of circumvention directly increases the risk of decreasing the amount or amount of state revenue due to the perpetrators' efforts to avoid BMAD levies from a country. Second, from the responsibility of the community protector from DJBC, the threat of circumvention will cause a flood of imported products with low cost in the Indonesian market. This will risk the decline in the competitiveness of domestic products, especially in price competition. This means that circumvention will pose a direct risk to the business continuity of domestic producers. Third, DGCE as a trade facilitation and industrial assistance must face the risk of the threat of circumvention in the form of relationships bilateral relations with trading partner countries which have implications for the export of products from Indonesian producers. In this regard, the risk of circumvention may result in a decline in the competition for domestic industries and products in the international market.

Lastly, the efforts that DJBC must maximize in preventing and reducing the threat of circumvention. In context law enforcement intelligence there must be some effort made, such as preparing legislation as a legal basis for anti-circumvention as has been done in Australia, the European Union, Argentina, Brazil, India, Mexico, South Africa, and Turkey. In addition, DGCE also requires strengthening of the early detection function through the intelligence function and the development of intelligence data in various forms of data and information. Lastly, is the creation of collaborative prevention and prosecution efforts, in particular by building a fusion center for data integration between related institutions, especially DJBC with the Ministry of Trade, Industry and the Indonesian Police.

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