

**EUROPEAN UNION RENEWABLE ENERGY DIRECTIVE : PROTEKSIONISME
HIJAU DALAM PERDAGANGAN BIOFUEL**

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Abstract

Policies of protectionism are about non-tariff barriers and tariff barriers. The limitation of export products change into disadvantageous that could be decreased in trade sector. Nowadays, environmental issue is important to be discussed primarily for European Union that concern about the issue. Through the issue appears a new concept about protectionism, which is Green protectionism. Dependence between the European Union and developing country is the reason why green protectionism exists. Because of a raw materials such as sunflowers and crude oil be a necessary for EU. According to inability of EU is covering their regions necessity insufficiently of natural resources. Considering the EU issued a new regulation to respond about their dependence, the regulation called Renewable Energy Directive (RED). RED concerns about without damaging environment the national economy still growing up. On other hands, that regulation is hampering the economy of developing country. For example: products that will be exported to EU should have a certification. Discrimination is one of the points in the case because of developing country forecasts that for having certification had to spend much money. In the end, RED arouses a debate because of RED has against a regulation the World Trade Organization

Keywords: Protectionism, Green Protectionism, RED (Renewable energy directive)

INTRODUCTION

Free trade becomes a medium for each country to strive for their own interests. Each country has been continuously trying to protect their domestic trade so it would accomplish their own national interest widely. In this case, protectionism

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is an instrument of policy which it will protect country's domestic interests in the trade sector. Protectionism is about policies whether a non-tariff barrier or tariff barriers. Based on World Trade Organization (WTO)' principals, tariff barriers are allowed for particular products, including agriculture. On other hands, the conditions of the tariff which was enacted should be decreased until 0%. While non-tariff barriers can't be allowed because access into direct's market will be hampered or none at all. Developed country generally has been importing a raw material from developing country, directly or indirectly. It has been applying non-tariff barriers or tariff barriers as policies.

In any form, protectionism would be disadvantageous for society. Considering protectionism is a limitation of export. That could be a disadvantage to the producer; also a limitation of raw materials would be increasing the price and letting down. Nevertheless, protectionism is still going on. Nowadays there is a new perspective which considering environment is a basic of it. That's called Green Protectionism. Green Protectionism is a concept which protecting environment would be the purpose and emphasis recovering environment as a basic doing protection. The main feature of green protectionism such as there is the rate of imposition of import duty, subsidy and Imposition of product requirements¹⁰.

Entering the 21st century, two important phenomenons have been undergone in the energy sector. First, awareness of developed countries emerged because of depending on the petroleum that comes from unstable political countries. As we know that about 82% the fuel needs are imported by the Middle East countries. In 2030 the imported fuel needs would be increased about 93% and keep rising to the highest point in 2040.¹¹ The developed countries will be dependent on a foreign

¹⁰ June 2010. Green Protectionism: *The New Tool Against Forestry in Developing Countries, A World Growth Report*

¹¹ European Union Biofuels Policy and Agriculture: *An Overview*

country which means they lay on unsafe position. That makes developed country aware of exploring an alternative energy source. Next, Protocol Kyoto proposed to reduce of carbon emission about 8%. But then the countries that had signed a ratification of that literally haven't carry out yet.

Based on analysis, biofuels have less CO2 emissions than petroleum. Therefore the EU began on a biofuels policy making. Starting on the 2003 Biofuel Directive has promoted until the 2009 Renewable Energy Directive (RED). These issues explain that environment be the main issue. Through the 2003 Biofuel Directive is being imposed a tariff barriers for relating to trade protectionism. Relate to Biofuel products which the environment is the main point on demanded of EU markets as applying by the 2009 RED. It arouses a question that 'Is RED be an implementation of green protectionism?'

The EU Biofuel Policy: from the 2003 Biofuel Directive to RED

As stated by Arno Becker in his dissertation entitled Impact of the European Biofuels Policies on Global Biofuel and Agricultural Markets, the chronology of Biofuel in EU can be described, as follows:

| Reference | Policy title | Year | Main aspects regarding biofuels |
|-----------|---------------------|------|--|
| CAP | Mc Sharry Reform | 1992 | Allowance to cultivate energy crops on set aside |
| COM | White Paper: Energy | 1997 | Articulation of overall targets |

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| (97) 599 | for the future - Renewable sources of energy | | (energy supply security, reduction of GHG emissions, etc.) which should be reached by using renewable energies |
| COM (2000) 769 | Green Paper: Towards a European strategy for the security of energy supply | 2000 | “Renewable sources of energy have considerable potential for increasing security of supply in Europe. Developing their use, however, will depend on extremely substantial political and economic efforts” |
| Council meeting at Gothenburg | Communication on alternative fuels for road transport | 2001 | Agreement on a European strategy for sustainable development |
| Directive 2003/30/EC | Directive: On the promotion of the use of biofuels or other renewable fuels for transport | 2003 | Binding targets for biofuels (in % of energy in total EU27 fuel demand): 2005: 2.00% 2010: 5.75% |
| Directive 2003/96/EC | Directive: On the taxation of energy products and | 2003 | Allows Member States to exempt or reduce excise duties for the promotion of |

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|-------------------------|--|------|--|
| | electricity | | biofuel |
| Directive 2003/17/EC | Revision of the Fuel Quality Directive 98/70/EC | 2003 | Incorporation of biofuels and biofuel- blends in fuel quality specifications |
| EN 14214 | Revision of diesel norm and biodiesel quality norm | 2003 | Definition of minimum standards for biodiesel quality |
| CAP | 2003 reform | 2003 | Continuing the set aside regulation and introduction of an energy crop premium (45€/ha) |
| COM (2005) 628 | Biomass Action Plan | 2005 | Set out to foster activities in analyzing support policies, environmental standards, and global trade issues regarding biofuels. |
| COM (2006) 34 | An EU Strategy for Biofuels | 2006 | Introduction of seven strategic policy areas for the development of the production and use of biofuels: “[...]” stimulate demand for biofuels, ensuring environmental |

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| | | | benefits, developing the production and distribution of biofuels, expand Feedstock supply, enhance the trade opportunities of biofuels, support developing countries and support research and innovation.” |
| EUR 22066 | Final report of the Biofuels Research Advisory Council | 2006 | Advise for an indicative target for 2030 of 25% biofuels in EU27 |
| COM (2006) 848 | Renewable energy road map - Renewable energies in the 21st century: building a more sustainable future | 2007 | Indicative target for biofuels in 2020 of 10% |
| Directive 2009/28/EC | Directive: On the promotion of the use of energy from renewable sources and amending and subsequently repealing | 2009 | Binding target of 10% biofuels in 2020. Definition of sustainability criteria for biofuels. |

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|--|---|--|--|
| | Directives 2001/77/EC and 003/30/EC | | |
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RED is being a new policy written by EU that through the chronology could be recognized as an improvement on the previous policy (the 2003 Biofuel Directive). In 2005 a review of the 2003 Biofuel Directive has been accomplished and has improved to be Renewable Energy Directive or RED. That has targets to increase using renewable energy about 20%, included operating 10% of Biofuel in transportation sector.

There are three components of Biofuel policy. First, all the member states of EU should give a subsidy to biofuel production in their own state. The subsidies have several forms such as encouraging the R&D to direct payments in the Energy Crop Scheme, which is tax exemption for Biofuel. Then, the producers of Biofuels in EU receive supporting tariff market that depends on an imported Biofuel from foreign country. Last, through RED has been imposed a rules by EU that does duty for barriers. For example, completing the basis requirements of products had is important if want the products be accepted by EU or be eligible to become tax exemptions.

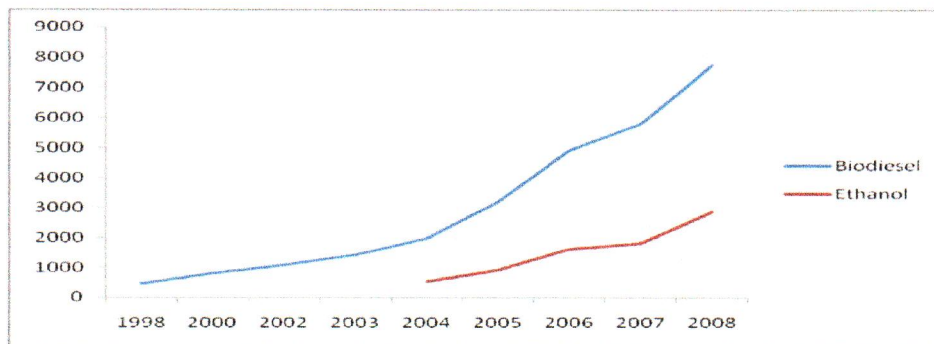
In 2003 the EU has been committing to apply RED, primarily in the transportation sector that starts with biofuels policy. The agricultural sector has been reformed to increase biofuel volumes, also rapid the production. Because of that several countries have moved the policy in agriculture sector to biofuels. There are France, Italy, and Spain that become the major producer of biofuels in Europe, also Germany as the largest. Transition to using biofuel offers large subsidy to farmers. In the 2003 Biofuel Directive, the EU insists that promote using biofuels for maintain

the sustainability of agriculture and forestry depends on the rules that could be created opportunities for the sustainable city through the market-oriented on agricultural policies.

Subsidies could do with creating a competitive market. Then, that could be increased demand on biofuels. On other hands, Ethanol and biodiesel that are imported by Brazil and Southeast Asia in the fact cheaper than their own raw materials products. Even the rules of subsidies and tariff barriers have been imposed. In actuality the productivity in the EU is not as much of in developing country, such as Brazil, Indonesia, and Malaysia. That happens because of the high labor cost and less the raw material resources.

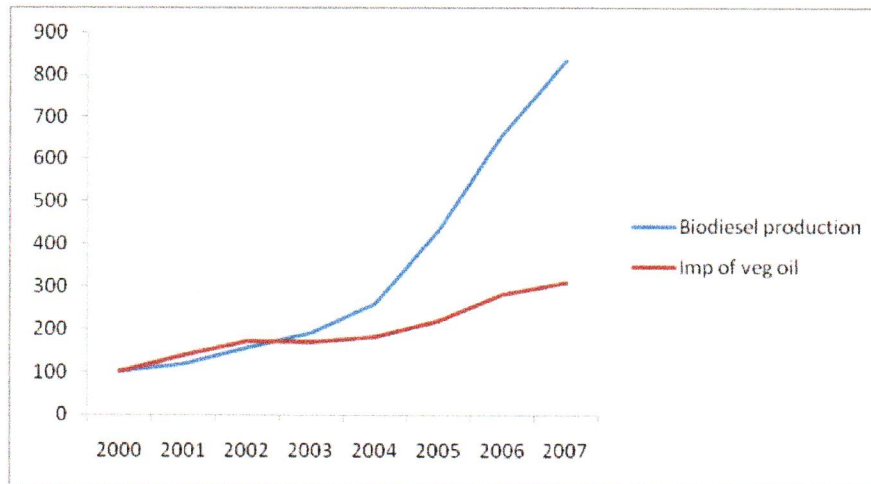
Table 1 explains the development of biofuel production in Europe. The pointed growth has occurred in recent years primarily in biodiesel production between 2007 and 2008 that these productions up to 35.7%. On other hands, biofuels trade does not rising as fast as domestic production. Table 2 explains the difference of growth rates of production and biodiesels trade. The differences increasingly significant because of vegetable oil are cheaper than European biodiesel. Moreover, developing countries that are located in tropical and sub-tropical areas have a comparative advantage in the availability of sources, which are raw materials for biofuel production.

Table 1: Biofuel Production in the European Union



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Table 2: Biodiesel Production and Imported Vegetable Oils (Index, 2000 = 100)



Source: *European Biodiesel Board; European Commission*

In 2007 almost more than 60% sunflowers oils based on palm oils have been imported to EU. The palm oils are indeed originated imports by Indonesia and Malaysia. The both countries are holding 90% of palm oil imports. Ukraine imported sunflower oil and Brazil imported soybean oil. In past two years Brazil and Ukraine already increased production for importing the sunflowers oil and soybeans oil to EU.

RED states that 20% of all energy used in the EU by 2020 should come from renewable sources. Biofuels become important part to achieve those targets. That could be happen if 10% of transportation makes use of biofuel. In addition, RED presents a new agenda that explains for the transition using fossil fuels to biofuels. This leads the EU to adopt technical rules that are referred to as standard methods and production processes. The producers who cannot follow the standards, they will not be allowed to get a tax exemption.

The sustainable criteria that used as follows¹²:

1. At least 35% of gas emissions should have save, and in 2017 up to 50%.
2. It is not allowed taking the biofuels from land that has a high biodiversity. Biodiversity means the forest has not reached by human yet. The areas have designed as preserved forest and also have high biodiversity
3. It is not derive from the land that has a high carbon, such as wetlands, forest areas and undrained peatland.
4. The EU biofuels must to fulfill the requirements environmental and agricultural as in Council Regulations. That is a single pan-European Biofuels Sustainability Scheme under section 95. Biofuel that does not fulfill the standards could still be sold and used, but not eligible for tax exemption and not counted in national targets.

Compatibility against the criterias are verified in 3 ways as follows.

1. The Company reports to EU Member States on the source of its biofuels.
2. Bilateral and multilateral agreements.
3. International and national certification schemes (The European Commission determines that such certification is sufficient to verify the sustainability of the sustainability criteria and the fulfillment of 35% of gas emissions savings)

RED has designed as calculation methods that have an influence direct effect of using land. Therefore, EU Member States will inform several areas that have not carbon emissions during the conversion of biofuels. The foreign biofuel producers should report whether there are emissions, except the article is not discuss in the bilateral or multilateral agreements.

¹² Fredric Erixon, Green Protectionism in the euroPeen union: how europe's Biofuels Policy and the renewable energy Directive Violate WTO commitments, ECIPE Occasional paper No. 1/2009

If there are bilateral or multilateral agreements that explains of emissions and the used land changes. The companies should calculate the gas emissions with biofuel production. The RED provides any calculation methodologies as well as ways of saving gas emissions on biofuels different types, whereby the companies can use those calculations. Nevertheless, the government is expected to develop its methodology and update the calculation standards. The RED criteria can apply to EU production, also importing products. That is intended to avoid de facto discrimination. A bit of debates appear on related to RED, which is NGOs are questioning the methodology of calculating the gas emissions and the lack of criteria based on human rights, the social impact of biofuel production in third world countries. And also does RED too overload the biofuel producers administratively.

RED and Violation of WTO Rules

According to Fredrik Erixon¹³, Howe Bauen¹⁴ and Daniel Gergely Szabo¹⁵, RED in the EU imposes high fees / tariffs and other barriers on behalf of the environment while products from EU countries are even subsidized in international trade rules under the principle of non-discrimination, There is no justification of any restriction or discrimination against similar products or commonly referred to as Product. On the other hand, the EU sees no discrimination against biofuels from exporting countries, because for them the products produced by exporting countries are not a Like Product, the assumption is that biofuels from developing countries are destined for edible oil instead of as transportation biofuels, Biofuels from developing countries do not use environmentally friendly technology in terms of production.

¹³ Fredrik Erixon, Green Protectionism in the euroPean union: how europe's Biofuels Policy and the renewable energy Directive Violate WTO commitments, ECIPE Occasional paper No. 1/2009

¹⁴ Howes Bauen, Assessment of Barriers to the Trade of Bioful between the European Union and Latin America, Biotrop Project 2010, Enschede.

¹⁵ Daniel Gergely Azabo, Compatibility of the EU biofuel sustainability criteria with WTO law : Analysis of the Renewable Energy Directive and the EU biofuel sustainability criteria from a WTO law perspective, Master Thesis, 2010

This then becomes a separate debate on how a product can be regarded as a Like Product or not. There are several things to consider in order for a product to be referred to as like product, such as:

1. The final product is used in the market.
2. Consumer tastes and habits
3. The nature of the product and the quality
4. Classification of tariff products.

While the division / classification of products based on how they are produced is still unclear. Then it sees the way how each biofuel is produced. Biofuels are from developing countries that have been exported to the European Union are included in the category of Like Product because of fulfilled the all considerations. Therefore, in this case RED has violated the provisions of international trade.

In addition, RED has violated the provisions applicable in the WTO, among others:

1. Article 1. Regarding the rules under which the MFN State shall ensure the continuity of similar products (Like Products) of other WTO member countries. As a member of the WTO MFN, the EU must guarantee the existence of the products of the country that has been the EU biofuel exporter.
2. Article 3. Concerning the national treatment in which the State shall consider the existence of imported products with no less favorable than equivalent products (like Products) produced domestically. As a member of the WTO, the EU considers and gives equal treatment to its importer countries with its domestic producers.
3. Article 20. On the exception of the above rules under certain conditions, some of them: To protect human, animal, plant; With regard to the conservation of

Renewable Energy Directive (RED) and apply sustainable principles. Certification requires a high cost considering 50% of oil palm plantations in Indonesia are owned by farmers. In addition, the CO₂ level "released by biodiesel from fossils throughout the country must be at least 35% and according to EU calculations, Indonesia is only 19% so it is not eligible. According to www.deforestationwatch.org, Indonesia along with Malaysia will bring discrimination issues in RED to the WTO level. The two countries will jointly seek legal opinion from the WTO on the EU's protectionist policy in the field of biofuels.

Conclusion

1. The European Union creates a Biofuel policy relating in order to seek alternative energy sources to decrease dependence on imported petroleum from countries that refer to conflicting area, thus it could be threaded the energy availability in the EU.
2. EU biofuels policy as green protectionism is not relating on articles 1, 3, and 20 GATT
3. These policies are slow down the transition from non-renewable oil because of it hampers the entry of oil products from outside the EU while there is high cost of domestic production so that consumers will get a high price.

Natural Resources with effective measures in the limitation of production; For the protection of state's artistic assets as well as having historical value. In this case exceptions cannot be given to the EU because the true products exported by countries such as Indonesia, Malaysia and Brazil precisely for the sake of human survival

On other hands, Fredric Erixon also stated that the standard taxonomy based on environmental considerations in the EU, RED is initiated by developed countries and based on the profile of development and technical capacity of developed countries. Just the developed countries can adapt to these standards without having to colonize their own economy. While developing countries certainly will not adjust to the standards set by RED because it is too expensive and burdening the economy.

The Canadian Canola Industry, for example, has chosen to use the International Sustainability and Carbon Certification (ISCC) System as the first system to certify canola for the EU market. While Indonesia and Malaysia complained about the policy as a protection because of the high cost of certification is not affordable by Indonesian producers who are average farmers. This may encourage producers from developing countries to shift their exports to other countries that do not impose similar standards and have implications for rising prices in the EU market and falling prices in new markets.

The Country who responses of exported Biofuel to RED

The Indonesian government is urged to hold talks through World Trade Organization on technical barriers to trade (TBT) with Europe. The obstacle is a policy of protectionism of biofuels in Indonesia. Secretary General of the Association of Indonesian Biofuels Producers (Aprobi) Paulus Tjakrawan rate, the policy imposed by Europe is very unfair. In the policy, Europe uses a lot of calculations, including a number of technical reasons related to environmental issues. Europe requires that crude palm oil (CPO) entering must be certified in accordance with the

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