

## **Indonesian Government Policy Guidelines; Implementation of Fit For 55 Policy, Emission Trading Systems, and Fuel Quality Directive Based on TBT Agreement**

**Salwa Salsabila**

Padjadjaran University, Indonesia  
Email; [salwa20004@mail.unpad.ac.id](mailto:salwa20004@mail.unpad.ac.id)

**Atip Latipulhayat**

Padjadjaran University, Indonesia  
Email; [atip.latipulhayat@unpad.ac.id](mailto:atip.latipulhayat@unpad.ac.id)

**Garry Gumelar**

Padjadjaran University, Indonesia  
Email; [garry.gumelar@unpad.ac.id](mailto:garry.gumelar@unpad.ac.id)

### **Abstract;**

The European Green Deal is a strategic initiative from the European Union which aims to make the European Union carbon neutral by 2050. One of its main commitments is to reduce greenhouse gas emissions by 50 to 55 percent by 2030, compared to 1990. The TBT Agreement regulates such that regulations, standards, testing techniques and certification procedures at the domestic level do not constitute obstacles to international trade. Standards in the biofuel trade have an important role in the manufacturing industry, apart from that they greatly influence the sales of a product in national and international markets. The Indonesian government has taken steps to address these environmental concerns through the development and strengthening of Indonesian Sustainable Palm Oil (ISPO) certification. This certification aims to increase sustainability in the palm oil industry by implementing standards that ensure palm oil production is carried out in a way that minimizes environmental impacts, protects peatlands, reduces greenhouse gas emissions, and improves the social conditions of workers and local communities.

**Keywords;** *Palm Oil, TBT Agreement, European, and Green Deal.*

## INTRODUCTION

The European Parliament's resolution on Palm Oil and Deforestation of Rainforests in 2017 shocked palm oil-producing countries such as Indonesia. There have been various attempts to cancel this resolution, one of which is palm oil diplomacy carried out by Indonesia towards European Union member countries. At that time, the European Union did not provide a good response until finally in 2018 it issued the Renewable Energy Directive II. Issuing this resolution is a challenge for Indonesian palm oil products, especially those that will enter the European Union market. The resolution states that oil palm plantations in Indonesia cause deforestation and forest fires.<sup>1</sup> This change in the European Union's attitude regarding palm oil has had a major impact on palm oil exporting countries such as Indonesia. On the one hand, the European Union is trying to maintain environmental sustainability and reduce global emissions. However, on the other hand, this is considered a new form of obstacle created by the European Union to protect vegetable oil from other countries, because so far the European Union also produces vegetable oil within its region.<sup>2</sup>

Based on data taken from 2008-2015, shows that expansion in areas producing sunflower, sugar beet, and rapeseed occurred slowly on land with high carbon stocks, but on the other hand, oil palm plantations had a high expansion on forest land of 70%. It was also found that oil palm showed a large expansion into peatlands (18%), in contrast to other fuel

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<sup>1</sup> Windratmo Suwanto, "Kebijakan Sawit Uni Eropa Dan Tantangan Bagi Diplomasi Ekonomi Indonesia," *Hubungan Internasional* 8, no. 1 (2019): 23–34, <https://doi.org/https://doi.org/10.18196/hi.81150>.

<sup>2</sup> The Committee on Development. 2017, "REPORT On Palm Oil And Deforestation Of Rainforests", diakses melalui [https://www.europarl.europa.eu/doceo/document/A-8-2017-0066\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2017-0066_EN.html), pada 1 Mei 2024, pukul 20.40 WIB.

and feed crops. So this positions oil palm plants as the only plants that have a wide expansion scale on peatlands.<sup>3</sup>

On 9 December 2019, Indonesia requested consultations with the European Union regarding certain measures imposed by the European Union and its member countries regarding palm oil and palm oil-based biofuels from Indonesia. Indonesia claims that the measures imposed by the European Union appear to be inconsistent and violate several articles contained in Subsidies and Countervailing Measures (SCM), Technical Barriers to Trade Agreement (TBT), and GATT 1994. At its meeting on July 29, 2020, Dispute Settlement The Body (DSB) formed a panel to which Argentina, Brazil, Canada, China, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, India, Japan, Korea, Malaysia, Norway, Russia, Singapore, Thailand, Turkey and the United States had the rights as a third party in dispute resolution at the WTO with case number DS593: "European Union-Certain measures concerning palm oil and oil crop-based biofuels".<sup>4</sup>

Some of the GATT provisions that cover the TBT issue are articles I and III, article IX, article X, article XI, and article XX. Articles I and III imply in general that a specification that is solely used to protect domestic industry is prohibited. Article XI implicitly concerns the requirements for a brand, while Article X concerns the publication of administrative

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<sup>3</sup> "Report From The Commission To The European Parliament, The Council, The European Economic And Social Committee and The Committee of The Regions on The Status of Production Expansion of Relevant Food And Feed Crops Worldwide" diakses melalui <https://ec.europa.eu/energy/sites/ener/files/documents/report.pdf>, pada 1 Mei 2024, pukul 22.00 wib.

<sup>4</sup> WTO, DS593: "*European Union-Certain measures concerning palm oil and oil crop-based biofuels*", diakses melalui [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm), pada 1 Mei 2024, pukul 23.00 wib.

regulations which also include product standards. While articles XI and XX imply general references to standards and other related regulations.

The GATT provisions mentioned above are inadequate in dealing with various problems that occur in practice in the field. Due to the lack of clarity in GATT provisions, various technical regulations used by many countries often become trade barriers.<sup>5</sup> For this purpose, through the Tokyo Round of negotiations, an agreement has been made that regulates the use of technical regulations in trade as well as determining the conditions that must be met and the procedures that must be followed to be able to implement these. The agreement is the Technical Barrier to Trade (1979) known as the standards code.

National standards issued by authorized bodies from one country to another are very different. This is because the demand for standards and the ability to implement standards is determined by various factors. The factor that influences standards is the level of development of a country.<sup>6</sup> The use of standards increases existing knowledge, technical and business capabilities, the level of industrialization, the level of the economy, the interest in exports, and the interests of consumers. Standards vary widely between countries, causing difficulties for exporters. These exporters must adjust their production facilities to comply with all existing technical regulations in each country where the exporter wants to sell their goods. This will result in production costs increasing than they should be. This increase in production costs is due to translating technical regulations

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<sup>5</sup> H. S. Kartadjoemena, *GATT WTO Dan Hasil Uruguay Round*, Jakarta: UI-Press, 2007, hlm.14.

<sup>6</sup> Bruno Miranda Henrique, Vinicius Amorim Sobreiro, Herbert Kimura, "Stock Price Prediction Using Support Vector Regression on Daily and up to the Minute Prices", *The Journal of Finance and Data Science*, Vol. 4, No. 3 (2018), hlm. 191.

issued by other countries, employing technical experts to explain these regulations, and adjusting production facilities to meet requirements.

The TBT Agreement regulates in such a way that regulations, standards, testing techniques, and certification procedures at the domestic level do not become obstacles to international trade. This agreement respects the rights of members to use certain standards of appropriateness to protect humans, animals, plants, health, the environment, and consumer interests. The TBT Agreement also does not prohibit member countries from creating policies to meet their standards. As a result of being allowed each country to create its standard policies, this results in many standards that must be followed by exporters and importers to carry out trade. This is of course very difficult. Therefore, to reduce the number of differences in policies implemented, this agreement recommends member countries to refer to international standards in formulating their national policies, without reducing the level of protection provided. The TBT Agreement regulates practices that central governments can undertake to prepare, ratify, and implement various standardization regulations. The TBT agreement also regulates fair and equal procedures to determine whether a product meets existing national standards.<sup>7</sup> On this basis, how can the guidelines for policies that the Indonesian government implement after the implementation of the Fit For 55 Policy, Emission Trading Systems, and Fuel Quality Directive be categorized as technical barriers to trade based on the TBT Agreement.

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<sup>7</sup> WTO, DS593: “*European Union-Certain measures concerning palm oil and oil crop-based biofuels*”, diakses melalui [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm), pada 2 Mei, pukul 19.30 wib.

## **METHOD**

This research is qualitative research with an empirical approach. The primary data source for this research is based on literature searches.

## **RESULT AND DISCUSSION**

### **The Implementation of the Fit For 55 Policy, Emission Trading Systems, and Fuel Quality Directive Can Be Categorized as Technical Barriers To Trade Based on the TBT Agreement**

The European Green Deal is a strategic initiative from the European Union that aims to make the European Union carbon neutral by 2050. One of its main commitments is to reduce greenhouse gas emissions by 50 to 55 percent by 2030, compared to 1990. To achieve this goal, the Union Europe plans to invest trillions of Euros in infrastructure and green technology in the next decade. This includes measures such as increasing energy efficiency, developing renewable energy, supporting sustainable transport, and promoting sustainable agriculture. In addition, the European Green Deal also involves the development of stricter regulations and standards to ensure industry compliance with sustainability principles. So that technical regulations do not become obstacles to trade, the TBT agreement encourages WTO member countries to mutually accept each country's technical regulations. This is based on the TBT agreement article 2.7 which states that:

*“Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their regulations.”<sup>8</sup>*

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<sup>8</sup> Ping Jiang and others, “Effects of Microplastics (MPs) and Tributyltin (TBT) Alone and in Combination on Bile Acids and Gut Microbiota Crosstalk in Mice”, *Ecotoxicology and Environmental Safety*, 220, 112345, (2021).

Member states should give positive consideration to accepting other member states' technical regulations as equivalent, even if these regulations differ from their own, by definition, they are satisfied that these regulations adequately meet the objectives of their regulations. One of the obligations of WTO member countries regulated in the TBT Agreement is the obligation to notify standards, conformity assessment procedures, and technical regulations that will be implemented.

Conformity assessment procedures not only include testing and certification but also include inspection, registration, laboratory accreditation, and quality system registration. Conformity assessment procedures can be provided by central government bodies, local government bodies, or non-government bodies. This is regulated in the TBT Agreement articles 5, 7, and 8. Meanwhile, recognition of conformity assessment may only be given by central government bodies. Article 6 of the TBT Agreement states that the results of conformity assessment procedures from other members are accepted, even if the procedures are different from their own.

Regarding conformity assessment procedures, Article 6.1 of the TBT agreement requires member states to accept the results of other member states' procedures, even if these conformity assessment procedures differ, as long as they are satisfied that such procedures provide a guarantee of conformity with their equivalent applied technical regulations and standards. This can be done after there is a Mutual Recognition Agreement (MRA) between these countries. MRA is a bilateral agreement that states that the parties (Countries) in the agreement mutually recognize the authorized conformity assessment body in each country. MRA covers the acceptance of different assessments (regulations and standards), and testing procedures carried out in each country that are different but have

the same objectives. If the MRA does not exist, then exporters face quite large costs associated with repeated testing and conformity assessments. Based on (OECD 1997) estimates differences in technical regulations and standards in various markets, and the need for testing and certification procedures result in an increase in production costs of 2% to 10%. Exporters can be required to apply standards that apply in the importing country, use harmonized standards used in their country, the importing country, or in several other importing countries, or make a product that complies with the requirements in their country which are considered to be the same as those of the importing country.<sup>9</sup>

One of the main focuses of the Fit for 55 policy is efforts to reduce greenhouse gas emissions from the building and transportation sectors. In the building sector, the European Union plans to improve the energy efficiency of buildings through various measures, including building renovations to improve thermal insulation and the use of energy-saving technologies. In addition, the use of clean and renewable energy sources in buildings will also be encouraged as part of efforts to reduce dependence on fossil energy. In the transportation sector, policies will focus on promoting sustainable transportation, such as the use of electric vehicles, public transportation, bicycles, and environmentally friendly roads. Investment in more efficient and sustainable transport infrastructure is also a priority, with improved rail networks and greener mass transport.

The European Union Emissions Trading System (EU ETS) is the world's largest emissions trading scheme introduced in 2005. It regulates

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<sup>9</sup> Daniel F Gros, Derek D Szafranski, Sarah D Shead, "A Real World Dissemination and Implementation of Transdiagnostic Behavior Therapy (TBT) for Veterans with Affective Disorders", *Journal of Anxiety Disorders*, 46 (2017), hlm. 74.



the amount of greenhouse gas emissions permitted by a particular industry and allows trading of emissions permits between companies. In Fit for 55, one of the proposals is to expand the scope of the EU ETS to additional sectors such as the aviation sector. The aim is for this scheme to reduce emissions in sectors that are significant but previously not covered. In addition, Fit for 55 also proposes new limits for emissions allocation in the EU ETS. This means companies will be given lower emissions allocations, encouraging them to reduce emissions further.

The ETS provides economic incentives for innovation in clean energy production, including the development of new generations of biofuels that are more efficient and have a lower carbon footprint. In the long term, ETS can accelerate the energy industry's transition from fossil fuels and emissions-intensive sources to cleaner alternatives, including biofuels from more sustainable sources. The impact of the ETS varies across regions, depending on the stringency of regulations and market mechanisms in place. In the European Union, for example, the ETS is already quite developed and has a significant impact on industrial decisions. In other regions, the application and influence of ETS may still be developing. Palm oil and biofuel producers in countries such as Indonesia and Malaysia may need to adapt their strategies not only to comply with local regulations but also to maintain access to international markets regulated by the ETS scheme.

Standards in the biofuel trade have an important role in the manufacturing industry, apart from that they greatly influence the sales of a product in national and international markets. Currently, the manufacturing industry no longer produces all the components needed to make a product, but instead purchases them from supporting industries. The standards given to these components enable entrepreneurs to choose

component suppliers who sell at cheaper prices, besides that entrepreneurs can also look for substitute goods for these components. In this case, standards can reduce production costs and the production process is efficient.

National standards issued by authorized bodies from one country to another are very different. This is because the demand for standards and the ability to implement standards is determined by various factors. The factor that influences standards is the level of development of a country. The use of standards increases existing knowledge, technical and business capabilities, the level of industrialization, the level of the economy, the interest in exports, and the interests of consumers.<sup>10</sup> Standards vary widely between countries, causing difficulties for exporters. These exporters must adjust their production facilities to comply with all existing technical regulations in each country where the exporter wants to sell their goods. This will result in production costs increasing than they should be. This increase in production costs is due to translating technical regulations issued by other countries, employing technical experts to explain these regulations, and adjusting production facilities to meet requirements.

Although standards are a facility that can facilitate international trade so that buyers can know the specifications and quality of the products being sold, they can also become an obstacle if the standards between one country and another country differ from each other. Usually, buyers reject products that do not meet the standards in their country or use standards that are different from their country. With the increasing

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<sup>10</sup> Bruno Miranda Henrique, Vinicius Amorim Sobreiro, Herbert Kimura, "Stock Price Prediction Using Support Vector Regression on Daily and up to the Minute Prices", *The Journal of Finance and Data Science*, Vol. 4, No. 3 (2018), hlm. 191.

growth of trade in each country, the development of standards is also getting bigger. These standards are created by national, regional, and international standards bodies. In this case, standards created by international standards bodies are easier to follow, while national and regional standards are more difficult. This is due to the lack of publication of the standard settings that have been issued by these standards bodies. The purpose of establishing the TBT Agreement is to ensure that technical regulations and standards, including packaging, marking, and labeling requirements as well as conformity assessment procedures with technical regulations and standards do not create unnecessary obstacles in international trade.

### **Indonesian Government Policy Guidelines Post Implementation of Fit For 55 Policy, Emission Trading Systems, and Fuel Quality Directive Can Be Categorized as Technical Barriers To Trade Based on the TBT Agreement**

Fit for 55 is an integral part of the European Green Deal, designed to accelerate the European Union's efforts to reduce greenhouse gas emissions and achieve its ambitious target of climate neutrality by 2050. By endorsing the goal of reducing GHG emissions by 55% by 2030 compared to 1990 levels, Fit for 55 includes a broad set of legislative proposals, embracing almost all sectors of the economy. This policy not only aims to reduce emissions but also to increase the use of renewable energy, improve energy efficiency, and ensure a just and inclusive energy transition for all EU citizens. At the heart of Fit for 55 is a significant revision of the EU Emission Trading System (ETS), which is the backbone of the European Union's emissions reduction efforts.

The Fit for 55 policy also brings significant challenges, both from an implementation perspective and its socio-economic impact. Ambitious

emissions reductions require major investments in clean technology and renewable energy infrastructure, as well as a transition of jobs away from sectors based on fossil fuels. There are concerns about the impact of this policy on energy prices and availability, especially for vulnerable groups. It is therefore important for the European Union to ensure that this clean energy transition is inclusive and fair, by providing sufficient support for those affected by these economic changes. Through Fit for 55, the European Union seeks to position itself as a global leader in climate action and the clean energy transition. While the challenges are not trivial, this initiative offers a holistic framework for reducing emissions, increasing sustainability, and ensuring a greener future for future generations.

The Indonesian government has filed a lawsuit with the WTO against the European Union's policy, claiming that RED II and the Delegated Regulation discriminate against palm oil products and hurt exports of Indonesian palm oil products to the European Union. This lawsuit marks Indonesia's seriousness in fighting what it perceives as discrimination against its palm oil products.<sup>11</sup> On June 14, 2022, the European Commission also ratified the Implementing Regulation which is a complementary policy to RED II and DR, which theoretically allows biofuels made from palm oil to obtain low ILUC-risk certification so that they can enter the European Union market. However, the established criteria are still considered difficult for Indonesian palm oil farmers to

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<sup>11</sup> Annisa Margit, "Indonesia Resmi Gugat Kebijakann Sawit Uni Eropa ke WTP" diakses melalui <https://ekonomi.bisnis.com/read/20191215/12/1181524/indonesia-resmi-gugat-kebijakan-sawit-uni-eropa-ke-wto>, pada 3 Mei 2024, pukul 19.50 wib.

fulfill, which raises concerns that this policy is designed to complicate market access for palm oil-based biofuels.<sup>12</sup>

The Fit for 55 policy targets a 55% reduction in GHG emissions by 2030 compared to 1990 levels. This policy includes various initiatives, including the revision of the ETS and the promotion of the use of renewable energy. By setting ambitious emissions standards, Fit for 55 indirectly requires products and technologies imported into the European Union to meet strict environmental criteria. This could limit market access for products from countries that have not adopted similar standards or do not have the infrastructure to meet such requirements.

International manufacturers, especially from developing countries, must adapt their production practices and increase transparency to meet European Union standards. This could require significant investment in new technology, certification, and supply chain verification. Dialogue between the European Union and partner countries could help overcome potential trade barriers posed by these policies. Through negotiations, it may be possible to reach agreements on mutual recognition of standards or the development of mechanisms that facilitate easier trade in sustainable products. The EU's ambitious environmental and climate policies, while important for achieving GHG emissions reduction and clean energy transition goals, can serve as technical barriers to international trade. However, through adaptation, dialogue, and international cooperation, there is an opportunity to overcome these challenges, promote global sustainability, and ensure that international trade

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<sup>12</sup> Redaksi Sawit Indonesia, "Memperjuangkan Sawit Dapatkan Perlakuan Adil di Eropa", diakses melalui <https://sawitindonesia.com/memperjuangkan-sawit-dapatkan-perlakuan-adil-di-eropa/>, pada 3 Mei 2024, pukul 22.00 wib.

remains fluid in the face of increasingly stringent environmental regulations.

The Indonesian government has taken steps to address these environmental concerns through the development and strengthening of Indonesian Sustainable Palm Oil (ISPO) certification. This certification aims to increase sustainability in the palm oil industry by implementing standards that ensure palm oil production is carried out in a way that minimizes environmental impacts, protects peatlands, reduces greenhouse gas emissions, and improves the social conditions of workers and local communities. Despite efforts to improve sustainability, challenges remain, including the need to; (1) Strengthening the Implementation and Supervision of Standards; (2) Increasing transparency, namely developing a better tracking and verification system to ensure that palm oil produced and exported meets sustainability criteria; and (3) Balancing Economic Growth with Environmental Protection.

Identify ways to support the livelihoods of millions of people who depend on the palm oil industry while protecting the environment and reducing greenhouse gas emissions. Implementation of this policy also includes the implementation of additional regulations, such as the Implementing Regulation related to sustainability criteria and greenhouse gas emission savings for biofuels. This regulation sets out the standards that must be met to obtain certification allowing access to the European Union market. However, these criteria are considered difficult for Indonesian palm oil producers to meet, posing additional challenges for exports to the European Union. The European Union's policy on palm-based biofuels is part of a broader effort to tackle climate change and support the transition to renewable energy. The European Union has

developed a series of regulations designed to promote the production and consumption of biofuels.

Apart from that, the steps taken by the Indonesian government are to utilize international forums such as the WTO, ASEAN, or G20 to voice Indonesia's position and seek international support for a fair and non-discriminatory approach to sustainability. In negotiations with the European Union or international institutions, the following strategies can be used targeting the establishment of a common understanding on sustainability definitions, criteria and verification methods acceptable to both parties. By emphasizing the importance of considering the socio-economic impact of sustainability policies on small farmers and local communities in Indonesia, finding common ground between Indonesian sustainability standards (ISPO) and European Union requirements can be challenging, given the differences in criteria and priorities. By balancing Indonesia's economic interests, especially in supporting small farmers and the palm oil industry, with environmental sustainability demands from the European Union, we can overcome negative perceptions and improve the image of palm oil as a sustainable product through public diplomacy and effective communication. Through effective international diplomacy and negotiations, Indonesia can strive to ensure that palm oil and biofuel trade can take place in accordance with European Union policies without harming national interests. This approach requires a commitment to transparency, open dialogue, and cross-sector collaboration to achieve sustainable and mutually beneficial solutions.

By conducting dialogue with the European Union and other international organizations to ensure that Indonesia's national regulations and standards are in line with the expectations and needs of the international market, and do not create unnecessary trade barriers, it

is hoped that the policies or legal steps that the Indonesian government can take to ensure oil trade can be adjusted. Palm oil can be applied in accordance with European Union policy. With the steps above, effective coordination between government agencies involved in the regulation and supervision of the palm oil industry is a step to strengthen national laws and regulations in Indonesia's efforts to ensure the sustainability of the palm oil industry and fulfill European Union policies without harming national interests.

## **CONCLUSION**

The European Green Deal is a strategic initiative from the European Union which aims to make the European Union carbon neutral by 2050. One of its main commitments is to reduce greenhouse gas emissions by 50 to 55 percent by 2030, compared to 1990. The TBT Agreement regulates such that regulations, standards, testing techniques and certification procedures at the domestic level do not constitute obstacles to international trade. Conformity assessment procedures not only include testing and certification, but also include inspection, registration, laboratory accreditation and quality system registration. Conformity assessment procedures can be provided by central government bodies, local government bodies or non-government bodies. Standards in the biofuel trade have an important role in the manufacturing industry, apart from that they greatly influence the sales of a product in national and international markets. The Indonesian government has filed a lawsuit with the WTO against the European Union's policy, claiming that RED II and the Delegated Regulation discriminate against palm oil products and have a negative impact on exports of Indonesian palm oil products to the



European Union. This lawsuit marks Indonesia's seriousness in fighting what it perceives as discrimination against its palm oil products.

The Indonesian government has taken steps to address these environmental concerns through the development and strengthening of Indonesian Sustainable Palm Oil (ISPO) certification. This certification aims to increase sustainability in the palm oil industry by implementing standards that ensure palm oil production is carried out in a way that minimizes environmental impacts, protects peatlands, reduces greenhouse gas emissions, and improves the social conditions of workers and local communities. Apart from that, the steps taken by the Indonesian government are to utilize international forums such as the WTO, ASEAN, or G20 to voice Indonesia's position and seek international support for a fair and non-discriminatory approach to sustainability. By emphasizing the importance of considering the socio-economic impact of sustainability policies on small farmers and local communities in Indonesia, finding common ground between Indonesia's sustainability standards (ISPO) and European Union requirements can be challenging, given the differences in criteria and priorities.

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