

Import Tax Disputes: Identification of Causes and Problem-Solving Strategies

Nita Palupiningrum, Arifin Rosid

Master of Accounting, Faculty of Economics and Business, University of Indonesia,
Jl. Salemba Raya No. 4 Jakarta 10430, Indonesia

ABSTRACT

According to Indonesian Taxation Law, the Directorate General of Customs and Excise (DGCE) holds the authority to collect import taxes. When there is a deficiency in the amount of taxes paid, DGCE issues a Notice of Underpayment. However, from 2016 to 2022, there have always been disputes that resulted in appeals regarding these notices. This study aims to analyze the different types of dispute materials, causes, and recommendations to minimize future occurrences. This research uses a case study approach and qualitative methods with the Root Cause Analysis framework as a basis for cause analysis and research recommendations. Content analysis was used to classify opinions from parties involved in Tax Court Rulings. Interviews were conducted to confirm the literature review and content analysis conducted beforehand. The results show that there are 5 (five) categories that cause import tax disputes namely substances, procedures, authorities, examiners, and importers. This study recommends several points to minimize the occurrence of disputes in the future and eventually help the domestic industry to grow further, including changes in import tax regulations, solidification of customs regulations, standardization of examination procedures, more firm authority in import tax examination and determination, continuous education and training for examiners, and counseling to increase importers' understanding of import taxes.

Keywords: disputes; fishbone diagram; import; Root Cause Analysis; taxes.

INTRODUCTION

Imports play a pivotal role in bolstering the Indonesian economy, fulfilling domestic demand, and reducing the cost of goods and service provision, as elucidated by Hodijah and Angelina (2021). They further augment a country's access to foreign-produced goods and technologies, subsequently facilitating economic advancement (Aigheyisi, 2021). However, the year 2022 witnessed a 3.1% decrease in imports from G20 member nations, a manifestation of global demand lethargy, according to the OECD (2023). In contrast, data from the World Bank (2023) indicate a surge in Indonesia's import value in comparison to the preceding year, with raw and auxiliary materials experiencing the most significant uptick at US\$33.95 billion, and capital goods imports rising by US\$7.72 billion (Central Statistics Agency, 2023). These trends are indicative of heightened domestic industrial activity, a viewpoint corroborated by a Fiscal Policy Agency (2022). Supporting this, Davis (2021) posited a direct correlation between the influx of raw materials and an increase in domestic industrial productivity.

The importation process in Indonesia is regulated through levies encompassing import duties and various import taxes, as stipulated by the Customs Law and Taxation Law (Government of the Republic of Indonesia, 2023). The Directorate General of Customs and Excise (DGCE) plays a critical role in industrial assistance by implementing tax collection strategies to bolster the competitiveness of domestic industries against the influx of finished imported goods (Anjarwi, 2021). To uphold regulatory

compliance in import tax collection, the DGCE rigorously supervises goods importation and ensures the proper execution of the self-assessment system provided to importers (Government of the Republic of Indonesia, 2006). Discrepancies in import duty or tax notifications trigger the issuance of a Notice of Import Duty Underpayment (NIDU) or a Notice of Additional Import Duty Underpayment (NAIDU) by the DGCE (Government of the Republic of Indonesia, 2008). Importers, in turn, reserve the right to lodge objections and appeals against such notices, a practice prevalent from 2016 to 2022. Graph 1 shows the number of appeals submitted by importers between 2016 and 2022.

Tax disputes bring uncertainty to both governments and companies (Mann, 2022). Therefore, the number of tax disputes must be minimized to avoid large tax collection delays and high litigation costs (Mayanja, 2020). Based on DGCE appeals, the main types of disputes submitted by importers include classification rates, customs value, ease of import for export purposes, export duty, free trade agreement rates, tax rates for imports, audit number, audits, import duty rates, and tariffs. This study focuses on import tax disputes. This is interesting because according to the Indonesian Taxation Law, DGCE holds the authority to collect import taxes, but there is no mention of DGCE's authority to determine import tax underpayments. A significant increase in the number of import tax disputes has occurred since the enactment of PMK-267/PMK.010/2015, which regulates the criteria and details of livestock and feed ingredients for making animal feed and fish feed, which are exempt from the imposition of value-added tax.

The ratio fluctuates between 2016 and 2022. The highest ratio occurred in 2019 and the lowest ratio occurred in 2016. In 2016, only two import tax dispute rulings were made. However, there has been an increase in appeals since 2017, reaching a peak in 2019 with 221 rulings. The large number of rulings on appeals against import taxes shows that the intensity of appeals from importers is high. Based on the DGCE Appeal Recapitulation data, it is also known that the import tax dispute value in the 2016 to 2022 period was IDR 427.4 billion. The large number of rulings on appeal and the large value of these disputes demonstrate the importance of discussing import tax disputes (Yunindar, 2023).

There is limited research on import tax disputes. However, much research has been conducted on the state revenue disputes. Rasfina (2012) researched import duty-tariff disputes. The research concluded that there are still weaknesses that need to be addressed in the tax court regarding the performance and legal knowledge of judges. Harsono (2018) researched the disputes over taxable goods. The research concluded that disputes related to determining whether coal is taxable are unlikely to become jurisprudent. Bangun (2018) studies customs value disputes. The research concluded that the Tax Court institution did not play the role it should play. Yulianto (2022) researched the promotional cost disputes. They concluded that promotional cost disputes were caused by differences in interpretation and evidentiary problems. Novita (2022) researched tax refund disputes. Research shows that disputes between Taxpayers and Tax Auditors cause tax disputes. Syafiqoh (2022) researched the value-added tax disputes. The research concludes that the cause of tax disputes is due to different interpretations of Directorate General of Taxes (DGT) and Perusahaan Gas Negara (PGN). The analysis of Import Tax Disputes was conducted in this study to fill the research gap in previous research. This study differs from previous studies because the dispute object is import taxes. In addition, this study used a fishbone diagram to obtain a more comprehensive picture of the causes of disputes. This study will analyze different types of dispute materials, causes, and recommendations to minimize future occurrences. Based on the previous research above, it can be concluded that the causes of tax disputes include differences in orientation, demands for "justice" and "dignity," failure of communication, statutory regulations, application of statutory regulations, differences in interpretation, problems of proof and lack of examiner's skills and expertise.

Root Cause Analysis

Root Cause Analysis is a structured analysis that aims to identify the root of the problem and the actions needed to solve it (Andersen et al., 2006). In root cause analysis, there are 6 (six) stages: understanding problems, brainstorming problems, problem cause data collection, problem cause data analysis, problem cause identification, problem cause elimination, and solution implementation (Andersen and Fagerhaug 2006). Root cause analysis was used as a framework for thinking in this study because it is in accordance with the research objectives. To find the root of the problem, researchers have used fishbone diagrams. Fishbone diagrams are also called cause and effect diagrams because their function is as an analytical tool for observing the effects and causes of these effects (Gheorghe ILIE, 2010). One of the categories that can be used in a fishbone diagram is 4 M, namely, material, methods, man, and machine. Several studies that use fishbone diagrams include Yuliyono, Baehaki, Luqman, Utama, and Wibowo (2022), who examine improving the tax refund process at the DGT and Syahroni, Supriadi, and Supriadi (2019), who examine the effectiveness of local tax collection.

Import and Import Taxes

The definition of imports based on Customs Law is the activity of bringing goods into customs territory. The customs territory covers the territory of the Republic of Indonesia, including land, water, and air space above it, as well as certain places in the Exclusive Economic Zone and continental shelf to which Customs Law applies. Customs are defined as everything related to the supervision of the traffic of goods entering or leaving the customs territory as well as the collection of import and export duties. This supervision is carried out by the Directorate General of Customs and Excise to ensure that importers fulfill their customs duties. Import Taxes include value-added tax, luxury goods sales tax, and/or Income Tax Article 22 (Government of the Republic of Indonesia, 2023). Imposing import levies aims to protect domestic industry from the entry of imported goods from abroad. The barrier tariff is the percentage determined by the country to be collected by the DGCE in relation to imported goods (Semedi, 2011).

Customs Control and Assessment

Customs control is carried out through two mechanisms: clearance and post-clearance. Clearance control is carried out through physical and document inspections at the Office of Customs Services. Physical examination was performed by the Physical Examiner Officer, and document examination was performed by the Functional Document Examiner Officer. Post-clearance control was conducted through re-examination and customs audits. Re-examination is an examination of customs declarations in the context of re-determination by the Government of the Republic of Indonesia (DGCE, 2023). Meanwhile, Customs Audit is defined as the activity of examining financial reports, books, records, and documents, which are basic evidence of bookkeeping and letters relating to business activities, including electronic data, as well as letters relating to activities in the customs sector and/or the supply of goods, in the context of implementing statutory provisions in the field of customs (Government of the Republic of Indonesia, 2016). Further, based on Customs Law, two types of determination can be made. According to Article 16, customs tariffs and values are determined by customs and exercise officials using an Notice of Import Duty Underpayment (NIDU). Meanwhile, Article 17 is determined by the Director General of Customs and Excise using Notice of Additional Import Duty Underpayment (NAIDU).

Objections and Appeals

According to Article 93 of the Customs Law, importers who do not agree with the official's assessment can submit a written objection to the DGCE within 60 days of the date of determination. Article 95 of the Customs Law states that importers who object to the NIDU and the Decision of the Director General of Customs and Excise can submit an appeal to the Tax Court within 60 days from the date of determination or decision date. An appeal is a legal remedy that can be taken by a taxpayer or taxbearer against a decision that can be appealed based on applicable tax laws and regulations (Government of the Republic of Indonesia, 2002).

Cause of Dispute

Tax disputes in Indonesia manifest as intricate phenomena that stem from a multitude of factors. The genesis of such disputes often lies in the orientation discrepancy between the DGCE, tasked with collecting state revenue, and importers, who aim to fulfill their tax obligations while ensuring business sustainability. Rasfina (2012) elucidates how this disparity creates fertile ground for conflicts between the two entities.

The pursuit of "fairness" and "dignity" also plays a pivotal role, often prolonging the duration of tax disputes occasionally for decades. Novita, Rahim, and Adrianto (2022) discovered that taxpayers' focus transcends the quantum of corrections made by tax inspectors, extending to seeking justice and the restoration of dignity. Rasfina (2012) further underlined the frequent disillusionment of justice seekers in tax courts. Wahyudi, Ludigdo, and Djamhuri (2017) interpreted tax disputes as protracted negotiations, with tax auditors navigating various negotiating strategies, balancing the pros and cons, and contending for the principles of justice.

Ineffective communication between taxpayers and tax-auditors is another contributing factor. Novita, Rahim, and Adrianto (2022) identify communication breakdowns as frequent conflict catalysts, indicating a malfunction in the crucial communication channel between the two "poles." Harsono (2018) complements this perspective, pointing out that unclear regulations and their inconsistent application often pose significant challenges, corroborated by Sebele-Mpofu, Mashiri, Korera (2021) and Yunindar, Nuryanah (2023). Additionally, various interpretations of tax regulations have been identified as sources of disputes. Kusuma, Setiawan, and Sugiharto (2019) observed that material findings often stem from these interpretational disparities, leaving taxpayers feeling aggrieved. Ispriyarso (2019) emphasizes the importance of the legal protection of taxpayers to mitigate these issues.

The challenge of providing adequate proof is a prominent aspect of tax dispute. Sebele-Mpofu, Mashiri, and Korera (2021) noted the complications arising from data scarcity and information asymmetry in auditing. Concurrently, Kusuma, Setiawan, and Sugiharto (2019) highlighted the difficulty for taxpayers in substantiating audit results due to limited data availability. Yulianto (2022) corroborates these findings by identifying evidentiary challenges as the principal causes of tax disputes. Moreover, the deficit in skills and expertise among tax inspectors, particularly in developing nations, adds complexity. Sebele-Mpofu, Mashiri, and Korera (2021) stressed the necessity of apt skills, expertise, and knowledge for proficient tax administration, emphasizing their role in audits and dispute resolution, areas where developing countries often fall short.

Information asymmetry and lack of cooperation from companies exacerbate tax disputes. Sebele-Mpofu, Mashiri, and Korera (2021) point out that information imbalances and taxpayer resistance complicate the auditor's data access, thereby muddling the audit process and obscuring results.

METHOD, DATA, AND ANALYSIS

This study used a qualitative approach. Creswell (2008) states that qualitative methods are a way to study and understand central phenomena. Raco (2010) stated that the advantage of using qualitative methods is that they allow researchers to study facts, realities, problems, symptoms, and events thoroughly and are not limited to basic understanding. This study also used a case study approach. Raco (2010) defined case studies as qualitative methods that involve collecting various sources of information to study a particular case in more depth. According to Yin (2018), a case study is an appropriate research strategy for answering “how” or “why” research questions, where the focus of the research is on contemporary (present) phenomena and the researcher has little or no control over the events to be studied. This study included one type of problem diagnosis. The purpose of problem diagnosis is to determine why a problem occurs (Ellet, 2018).

Two types of data were used in this study. Secondary data collection was carried out on 129 (one hundred and twenty nine) appeal rulings documents from 2016 to 2022. Content analysis was performed by grouping information obtained from the collected appeal rulings. The primary data collection was conducted through interviews. The author conducted semi-structured interviews with participants to confirm the results of the content analysis. Interviews were recorded using electronic media and transcribed. The results of the transcripts will be subjected to thematic analysis to obtain themes that are in accordance with the research questions.

Table 1. List of Participants

Code.	Party	Position	Number	Justification
KBP	Appeal Management	Section Chief Supervisor	2 interviewees	The respondents hold the responsibility of overseeing and facilitating the appeal process directed towards the tax court.
PBC	Customs Examiner	Associate Supervisor Functional	3 interviewees	The respondents are the party responsible for inspecting documents, overseeing imports, and issuing letters of determination.
PJ	Importers	Manager	4 interviewees	The respondents are divisions within a company that has filed an appeal against the decision on import taxes
PP	Tax Regulations	Supervisor Functional Analyst	6 interviewees	The participant is responsible for developing policies and establishing technical standards in the field of taxation

Source: processed by the Author (2023)

Qualitative methods were carried out to explore and understand why DGCE’s import tax determination was appealed by importers and what recommendations the relevant parties could make to minimize the occurrence of import tax disputes. In the next stage, the author triangulates the results of the literature review, content analysis, thematic analysis, and previous research.

RESULTS AND DISCUSSION

Based on the results of the content and thematic analyses, we found that there were several types of disputed materials related to import taxes, causes of import tax disputes, and recommendations for minimizing the occurrence of import tax disputes in the future.

Type of disputed material

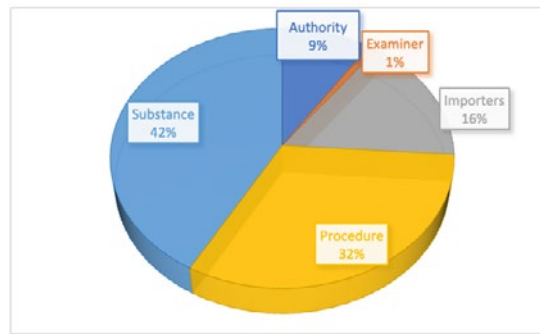
Based on the results of the analysis, there are five categories of import tax dispute material. This category includes feed ingredients, mining goods, notice of tax exemptions, fruits and reimports of strategic goods. Feed ingredients were the dominant material in tax disputes on imports, accounting for 92.65% of all import tax disputes. This material relates to the issuance of Government Regulation Number 81 in 2015, which regulates the determination of strategic taxable goods. The derivative regulations relating to feed ingredients are regulated by Ministry of Finance Regulation No. 267 of 2015, which was last amended by Ministry of Finance Regulation Number 142 of 2017. The Ministry of Finance regulates the criteria and details of feed ingredients exempt from VAT. The dispute is related to whether the feed ingredients imported by importers receive a VAT exemption.

Disputes related to mining goods occur in connection with fulfilling the definition of mining goods that are not subjected to VAT. The type of mining goods for which a tax dispute is submitted for import is Chrysotile Asbestos. Law No. 42 of 2009 states that asbestos is a good not subject to VAT. Asbestos that are not subject to VAT must meet the requirement that it be taken directly from the source. This dispute is related to whether the Chrysotile Asbestos was taken directly from the source or has undergone further processing. The third category is the notice of tax exemption. Based on PMK-115/PMK.03/2021, a notice of tax exemption is a certificate indicating that the importer is entitled to tax facilities. The dispute is related to whether the quantity, type, value, and tariff of imported goods correspond to what is stated in the certificate.

The fourth category of dispute materials is fruit. Law No. 42 of 2009 states that a fruit is a type of good that is not subject to value-added tax. Based on Ministry of Finance Regulation Number 99 of 2020, fruits that are not subject to VAT must meet the following criteria: freshly picked fruit, whether it has been washed, sorted, peeled, cut, sliced, graded, and not dried. The fruit importation appeal was related to the import of dates. Dates have unique characteristics because there are obstacles in distinguishing whether imported dates are naturally dried or dried by further processing. The final material is the import of strategic goods. According to Ministry of Finance Regulation Number 175 of 2021, reimports are the re-entry of goods exported into the customs territory. Reasons why goods are reimported include goods that are not sold, do not fulfill the purchase contract, do not meet quality standards, or do not meet import regulations in the export-destination country. The reimported goods were tuna and shrimp. Disputes are related to goods that are reimported and the notice of import duty underpayment by the DGCE.

Causes of Import Tax Disputes

Causal analysis was carried out by comparing DGCE's arguments with those of the importer. The results of this research are in accordance with previous research. Import tax dispute is caused by problems with the evidence, application of statutory regulations, differences in interpretation, lack of expertise of examiners, failure of communication, and differences in orientation. Based on the results of the content analysis and thematic analysis of interviews, the causes of import tax disputes are grouped according to the 4M categories in the fishbone diagram, namely substance (material), procedures (methods), authority (machine), examiner (man), and importer (man). Graph 1 shows that substance and procedure category are most frequently questioned.



Graph 1. The Category of Import Tax Disputes
Source: processed by the Author (2023)

Substance

Law Number 30 of 2014 defines a substantive error as an error in the event that the desired material does not match the formulation in the decision. This dispute is related to differences in opinion between DGCE and importers regarding the fulfilment of the definition of goods to determine whether the goods are entitled to tax facilities. In relation to this group of substances, four causes were found: imported goods are strategic goods; imported goods are basic necessities; imported goods are mining goods taken directly from the source; and imported goods already have a Notice of Tax Exemption.

The first cause of the substance dispute was imported goods, including strategic ones. The argument used by the appellant was that the goods they imported met the definition of strategic goods according to Law Number 42 of 2009, and the imported goods were actually used as raw materials for making feed. In fact, the Ministry of Finance Regulation stipulates that if imported goods do not include an attachment, the appellant can still obtain VAT exemption as long as they meet certain criteria. However, to date, there are no procedures for implementing this Article. This is in accordance with what was conveyed by sources from importers who stated that:

“It’s clear what is meant by raw materials in the Animal Husbandry Law is all materials used to produce animal feed... If it is not on the attachment list, VAT can still be exempted, as long as it meets the requirements stated in Article 4. However, the company must ask for recommendations from the Ministry of Agriculture. To date, there have been no procedures regarding requests for VAT exemption recommendations...How is it possible that every time we import, the minister’s regulations come out? This process is absolutely impossible.”

On the other hand, the DGCE said that auditors carried out their duties in accordance with the applicable regulations. To determine whether imported goods are strategic goods that are exempt from the imposition of VAT, the inspector followed the procedures and used basic rules that are in accordance with the objectives of the inspection. This is in accordance with the results of interviews conducted by customs examiners, which stated that “Audits compare criteria with facts. The criteria are the rules. If you look at animal feed whether it’s in the Ministry of Finance Regulation attachment or not. If it’s not in the attachment it means it’s affected.” This dispute occurred because of problems with the evidence and the application of statutory regulations.

The second cause of substance disputes is that imported goods are basic necessities. The types of imported goods in the dispute were dates. The argument put forward by the appellant was that the dates they imported were fresh fruits and, therefore, entitled to VAT exemption. On the other hand, DGCE stated that the inspection results showed that the imported dates were dates that had undergone a drying

process. This dispute occurred because of evidentiary problems. DGCE does not have strong evidence to support the conclusion of the examination results that dates are not fresh fruits. This is in accordance with the results of interviews with DGCE examiners, who stated that: *"Dates are indeed a unique commodity. This is because the criterion for exemption is fresh fruits. Meanwhile, dates are usually produced dried or processed."*

The results of the interviews with those who drafted the regulations also stated the following:

"The definition of fresh and non-fresh dates can be found in the letter from the Head of the Agricultural Research and Development Agency, Ministry of Agriculture number 425/LB.240/I/5/2011, dated June 1, 2011. Fresh dates were harvested at the optimal maturity level, depending on the variety, without any treatment. In general, to maintain freshness, it is stored in a low-temperature container according to its adaptability or freezing."

The third cause of substance disputes is that imported goods are mining goods that are taken directly from the source. The argument put forward by the appellant was that the mining goods they imported did not undergo further processing and, therefore, were entitled not to be subject to VAT. The Appellant imports raw material products in the form of asbestos fibers for the production of building materials. This asbestos fiber is a natural product mined from nature. The examiner argued that there was a separation process between asbestos rock and asbestos fiber. The asbestos fiber content can be sorted from ordinary to the best quality. This dispute occurred because of evidentiary problems. This was confirmed by the results of an interview with the DGCE appeal-management party as follows:

"I am actually sure that asbestos must go through further processing before being imported. We have also had discussions with the DGT regarding asbestos and the result was a letter from the DGT stating that imports of asbestos should indeed be billed by import tax."

Meanwhile, the regulatory party conveyed the following:

"Mining goods taken directly from the source are exempt from the imposition of VAT, asbestos is in number 4. The definition of processing and refining is explained in the Minerba Law, namely Law Number 3 of 2020."

The appellant can provide facts that imported goods meet the definition of mining goods obtained directly from the source. The mention of "asbestos" in the explanation of article 4A paragraph (2) letter a of the VAT Law and not "asbestos rock" shows that what is intended to obtain VAT exemption is not merely asbestos in the form of rock.

The fourth cause of substance disputes is that imported goods already have notice of tax exemptions. The argument put forward by the appellant was that the realization of the quantity and type of imported goods was in accordance with the notice of exemptions. Other attributes in the Notice of Exemption, such as invoice number, value of goods, and amount of tax exempted, became immaterial. In contrast, the DGCE examiner checks all the attributes listed in the Notice of Exemption. The discrepancy in these attributes makes the Notice of Exemption held by the appellant inappropriate. This dispute arose because of the application of statutory regulations. This is, as stated by the DGCE appeal management party.

"Sometimes they feel that the Notice of Exemption is a free card. When they have Notice of Exemption, they think DGCE cannot make corrections related to import taxes. Because customs officials are not tax authorities."

The following are the results of interviews with regulators: *"The main thing in the Notice of Exemption is the object. As long as the object meets the criteria of Government Regulation Number 49 of 2022, it can receive exemption. What is binding is the quantity and type of goods, not their value."* It can be concluded that the

essence of the Notice of Exemption was the type and quantity of the goods imported. If imported goods comply with the Notice of Exemption, the company is entitled to tax facilities.

Procedure

Law Number 30 of 2014 defines procedural error as an error in the event that the procedures for making a decision are not in accordance with the requirements and procedures stipulated in the provisions of statutory regulations and/or standard operating procedures. This dispute relates to the appellant's argument that DGCE did not carry out the procedures for issuing import tax determination letters correctly. Three causes were identified in relation to the procedural category. They are wrong objects of determination; the issuance of NAIDU is not in accordance with Article 17 of the Customs Law, and DGCE's decision is not to comply with Article 55 paragraph (1) of the Government Administration Law.

The first cause of procedural disputes is incorrect object of determination. The argument put forward by the appellant is that NIDU or NAIDU should not be used to determine import taxes. This is in accordance with the importer's statement in the interview as follows: *"If you look at the title alone, Notice of Import Duties Underpayment or Notice of Additional Import Duties Underpayment. There are no words VAT or income tax."*

Meanwhile, DGCE argues that, according to the explanation of Article 6 of the Customs Law, everything related to the settlement of import obligations must be based on the provisions of this law. This is confirmed by the DGCE examiner's opinion as follows:

"Associated with import tax, is what we determine in relation to imports. Because of its connection to imports, it is indirectly related to import tax. If there is a shortage of levies on imports, we will determine it, either through NIDU or NAIDU."

This dispute occurred because of differences in interpretation between the DGCE and the appellant. DGCE interprets that all settlements of import obligations are carried out by them. Meanwhile, the Appellant interpreted that the DGCE only determined discrepancies in tariffs and/or customs values.

The second cause of procedural disputes is that the issuance of NAIDU does not comply with Article 17 of the Customs Law. The argument put forward by the appellant is that Article 17 of the Customs Law has no clause that will be further regulated by the regulations below. This is in line with the results of interviews with importers, who said the following:

"In article 17 it is stated that the Director General can re-determine. However, the form of redetermination has not been stated. There is no further regulation regarding the form of redetermination referred to in Article 17."

The DGCE argued that they had issued the NAIDU according to the applicable procedures. This is in accordance with the results of interviews with examiners, as follows:

"The determination in Article 16 is not identical to the NIDU. These norms do not state that the determination is the NIDU. There is a time limit of 30 days when there is a determination and NIDU is used. NIDU, and 30 days were determined... There are still norms even though they are not mentioned in Article 17. Even though there is no delegation in the law, it is regulated in Ministry of Finance Number 51 of 2008."

This dispute occurred because of differences in interpretation between the DGCE and the appellant. DGCE interprets NAIDU as a product of determination in accordance with Article 17 of the Customs Law. Meanwhile, the Appellant interpreted that NAIDU was not in accordance with Article 17 of the Customs Law.

The third cause of procedural disputes is that the DGCE's decision does not comply with Article 55, paragraph (1) of the Government Administration Law. It is regulated that every decision must be given reasons for juridical, sociological, and philosophical considerations that form the basis of the decision. There are differences in interpretation between DGCE and the appellant regarding this matter. The appellant stated that the DGCE decision did not comply with Article 55, Paragraph (1) of the Government Administration Law. The format of the letter of determination and decision issued by the DGCE does not convey juridical, sociological, and philosophical considerations, so the procedure is flawed. The following are the results of the interviews with importers: *"We only found new regulations when we received the determination. We must find out why this was determined."* On the other hand, the DGCE stated that they had fulfilled the juridical, sociological, and philosophical considerations in the determination letter and decision issued. The DGCE examiner said, *"Regarding policy, regulations can be conveyed at the beginning or while implementation is underway. If they do not understand them, we give them the rules. If they make a mistake, we tell them that the regulations are like this, and they must follow them."*

Authority

Law Number 30 of 2014 defines authority as the power of Government Agencies, officials, or other state administrators to act in the realm of public law. This dispute relates to the appellant's argument that DGCE does not have the authority to make determinations on import tax. Regarding the category of authority, there are four causes: DGCE can determine import tax only at the time of import; there is no error in tariffs and/or customs values; DGCE has no authority to collect import VAT through NAIDU; and the authority to examine import tax is DGT.

The first cause of authority disputes is that the authority to determine the import tax is only at the time of import. Elucidation of Article 2, paragraph (1) of the Customs Law states that imported goods are due when they enter the customs territory and during the period of time regulated by law for the Appellee to supervise imported goods even if the goods have left the customs area. This is in accordance with the results of the interviews with the DGCE appeal management party:

"The import tax is owed at the time of import. Meanwhile, when determined by DGCE, it had already passed the import time. DGCE's authority was limited to phrases at the time of imports. The time of import is from the time the goods import notification is submitted to the time it is determined by the NAIDU."

This dispute occurred because of differences in interpretation between the DGCE and the appellant regarding the phrase at the time of the import. DGCE believes that they have the authority to determine the time of import for up to 2 (two) years, as stipulated in Article 17 of the Customs Law. However, the appellant argued that the DGCE only had the authority to make determinations at the time of import.

The second cause of authority disputes is that there are no errors in the tariffs or customs values. The appellant argued that there was no error in the tariff and/or customs value reported in the goods import notification. DGCE examiner determines the import tax rates rather than the customs tax rates. This is reinforced by the following statement from the importers: *"Before there was NAIDU, it used to be called Notification Letter for Shortage of Payment of Import Duty, for those lacking import tax it would be forwarded to DGT."*

This dispute occurred because of differences in the interpretation of Customs Law. According to the appeal management party, the determination made by the DGCE is not limited to corrections to tariffs and customs values. The following are the results of an interview with DGCE: *"DGCE determines taxes within the framework of withholding tax. The results of the collection will later become a tax credit (input VAT or PPh Article 22) and become a deduction at the end of the tax period."*

The third cause of the authority dispute is that, according to the Appellant, DGCE has no authority to collect Import VAT through NAIDU. This dispute occurred because of differences in the interpretation of phrase collection in the Taxation Law. According to the DGCE, the determination is an effort to collect taxes for imports. On this matter, there are interview results that do not agree with DGCE:

“It is clear in the Taxation General Provisions Law that the authority to make the determination is the DGT. Determination is the process of calculating and determining the tax due to DGT. Because taxes follow a self-assessment system, they are audited by the DGT, calculated officially.” The appellant believes that the DGT has the right to determine the import taxes. The following are the results of interviews with the importer: *“DGCE is given the authority to collect and not determine the import tax. There is no regulation stating that DGCE has the right to determine the VAT. Article 16 only mentions import duties, not VAT.”*

The fourth cause of authority disputes is that the import tax assessment authority is carried out by the DGT and not the DGCE. Importers report import taxes through self-assessment. The consequence of this system is that government institutions have authority to test compliance with tax obligations. The following are the results of interviews with importers:

“The DGT can issue Notice of Tax Underpayment Assessment. However, thus far, there has been no DGT determination of the import tax. This is what I think is unusual. Although clear, DGCE can provide recommendations for the DGT. Every year, we also conduct tax audits. As soon as a taxpayer is checked, the DGCE information should be collected, totaled, then a Notice of Tax Underpayment Assessment will be issued if there is a payment shortfall.”

This dispute occurred because of differences in interpretation between the DGCE and the appellant regarding who had authority to conduct checks on the suitability of import tax reporting. DGCE believes that they have the authority to determine for the time of import up to 2 (two) years, as stipulated in Article 17 of the Customs Law. The following is an opinion from the DGCE Appeal Management Party:

“DGCE has the right in the context of collecting (withholding tax). The VAT Law states that the DGCE has authority to collect (withholding taxes). Later, the DGT will conduct an examination of annual tax returns to determine final tax decisions.”

Examiner

Based on the Minister of Finance Regulation Number PMK-184/PMK.04/2014, Customs and Excise Inspectors are Civil Servants who are functionally given full duties, responsibilities, authority, and rights by authorized officials to carry out customs and excise inspections, prevent violations of laws and regulations, and investigate criminal acts in the field of customs and excise. The main point of this dispute is related to the results of the analysis, which concluded that DGCE examiners lacked competence, communication, and evidence collection.

The first relates to the competency of DGCE examiners in carrying out import tax inspections. Competency includes the skills and knowledge of the examiners. The appellant stated that the examination was not in accordance with their competencies. This is because customs examiners are only considered to have competence related to customs and excise matters. The audit was related to tax matters. On the other hand, DGCE in an interview conducted said that: *“Competencies that must be possessed by functional officer have been regulated in ministerial regulations including managerial competence, technical competence and social and cultural competence and of course every functional officer must take special education and assessment.”*

The examiner also said that audits always base their findings on latest regulations. If there are differences in opinion between examiners and importers, discussions can be held with the Technical

Directorate regarding this matter. Furthermore, before the final Audit Report is decided, the Customs and Excise Audit Directorate always performs Quality Assurance.

The second reason is related to communication. Communication is an important skill for examiners. The following are the results of interviews with importers: *"There is insufficient communication with Customs and Excise. We can simply hang around them. NAIDU cannot be rejected. So the only way to voice the company's opinion is to file an appeal."* This dispute occurred because of a communication failure between the DGCE and the appellant. When conducting re-examinations and audits, examiners are given the authority to request document data and confirm them with importers. Importers also have the right to provide clarification, supported by relevant evidence and documents. However, this process is not effective. This is, as stated by the DGCE examiner:

"Communication, both to the team and to the auditee, must be good. For example, if audited, the company should not feel oppressed. Communication must be good so that the data runs smoothly. For example, if there is a problem, I try to pinch it, but it does not hurt. Audits disturb the company's time, money and energy."

The third reason is related to the collection of evidence. The appellant's arguments can refute the evidence presented by the DGCE. The evidence submitted regarding the composition of goods uses the laboratory results. In relation to imported goods, laboratory testing is conducted by the Customs and Excise Laboratory Center (CELC). The use of the CELC gives rise to disputes according to the results of the following interview:

"If you use the CELC, there is an assumption that there is a tendency for the lab results to benefit from DGCE. We do not know the competency of the examiners at the CELC. How independency is CELC when it is on the DGCE's side. The method of testing is only common, it doesn't go deep."

However, the DGCE examiner said:

"We ask the competent party related to chemical goods, namely CELC, to carry out tests and take samples. We believe that they are independent, because they have a code of ethics. These were functional lab examiners. They were professional and competent in carrying out this test. There are also regulations that require that when it comes to imported goods, CELC must conduct laboratory tests."

Importers

The importer is a party that submits an appeal regarding import taxes. The main dispute relates to the results of the thematic analysis of the interviews with importers. There are 5 (five) causes from the importer's perspective: the purpose of the facility, inequality in the application of tax facilities, lack of legal certainty, goods have left the factory at the time of determination, and input VAT cannot be credited. The first is related to the purpose of the tax facilities provided by the government. The aim of the import tax exemption for animal feed based on Government Regulation Number 81 of 2015 is to encourage national development, so that several types of goods are exempt from VAT. However, this provision is subject to restrictions regarding the types of goods that can be applied for exemption, namely, PMK-267/PMK.010/2015 and PMK-142/PMK.010/2017. These restrictions include the types of goods that can be exempted and the HS codes of goods. According to this appellant, this violates the aim of providing tax facilities. This is in accordance with the results of interviews with importers: *"The purpose is that VAT exemption for animal feed does not burden consumers. In fact, the raw materials do not get exemption but the animal feed cannot be credited because it is a strategic item."* This dispute occurred because of

the differences in orientation. The government sees the purpose of this acquittal within a broader scope than the appellant. This was conveyed in an interview with the regulator as follows:

“The purpose of this VAT exemption for animal feed is to support Ministry of Agriculture and the Ministry of Maritime Affairs and Fisheries in providing meat in Indonesia. The Ministry of Finance provides facilities related to VAT charges. In general, this goal is achieved. Cheaper animal feed has been achieved.”

The second cause is related to the unequal application of tax facilities. The appellant believes that there are more detailed regulations in PMK-267/PMK.010/2015 and PMK-142/PMK.010/2017 that trigger inequality in the application of tax facilities. This is because, for companies operating in the same industry, some receive tax facilities, and some do not get tax facilities. The following excerpt is from an interview with the importer: *“Attachment is also compartmentalized. Separation of animal feed and fish feed. The government is half-hearted in providing this policy.”* This dispute occurred because of differences in orientation between the DGCE and the appellant. The appellant is oriented towards his need to obtain tax facilities, so that product selling prices become cheaper. Fiskal Policy Agency (FPA) and DGT in drafting regulations have considered various factors, and the details of goods that receive exemptions are suggested by the Technical Ministry. The following is an excerpt from an interview with the regulator:

“We do not discriminate in providing this facility. If the company meets the details and criteria, it is entitled to receive facilities. Fish feed and animal feed are separated into different attachments because we get recommendations from 2 Ministries, namely the Ministry of Agriculture and the Ministry of Maritime Affairs and Fisheries.”

The third reason is appellants' lack of legal certainty. Changes in import tax regulations and different results of appeal disputes with the same material give rise to legal uncertainty. Certainty is needed because, within that time period, the appellant must still carry out his business activities. The following are the results of interviews with importers: *“Sometimes we don't get legal certainty because the same case can have different decisions. There are different panels and decisions for the same cases. And the reasons for making decisions also vary.”* This dispute occurred because of differences in orientation. The appellant, who was oriented towards business continuity, did not accept this decision and filed an appeal. The following are the results of interviews with DGCE examiners: *“They feel that if the regulations change, there will be legal uncertainty for them to do business. For example, income tax rates may change. Whether they will be aware of that also has to be considered, they have no certainty about going concern in the future.”*

Fourth, the goods have already left the factory at the time of determination. Post-clearance examination has a determination period of up to 2 (two) years from the time of import. Within that period, imported goods often left the appellant's warehouse. This dispute occurred because of differences in orientation. The appellants did not agree with this because they thought that each item had its own characteristics. In connection with this, in interviews conducted by DGCE examiners, they stated the following.

“Let's just be professional, if the supplier is the same, the name of the goods is the same, then the goods should be the same. The goods they imported from two years ago to the goods we carried out were the same lab tests. Unless they say the item is different they have to provide us with proof.”

The examiner said that they not only relied on laboratory results but also checked import supporting documents, such as the Certificate of Analysis (COA) and Material Safety Data Sheet (MSDS). Regarding the laboratory results, importers no longer have evidence because the goods are no longer in the warehouse. The following is an excerpt from an interview conducted with importers: *“The goods for the past two years were taken as samples from imported goods. Our raw materials cannot be stored for long because they have a shelf life.”*

The fifth reason is that the input VAT cannot be credited. In this case, the appellant cannot credit the input VAT because the goods produced are strategic goods that are exempt from VAT. The results of the interviews with the importer are as follows:

“We cannot credit VAT on raw materials because our products are strategic goods in the law. This means that VAT is added to production costs and passed on to consumers. If there is a import tax bill, we have to deal with it first and it disrupts the company’s cash flow.”

This dispute occurred because of differences in orientation. DGCE determines the import tax in relation to its duties to check the suitability of import notifications for goods reported by importers. The following are the results of the interviews with the DGCE appeal management party:

“ This is not a problem for the company as long as it can be credited. Animal feeds is a strategic item; therefore, it cannot be credited. Actually, it’s also a pity for importers if they pay VAT up front but it can’t be credited.”

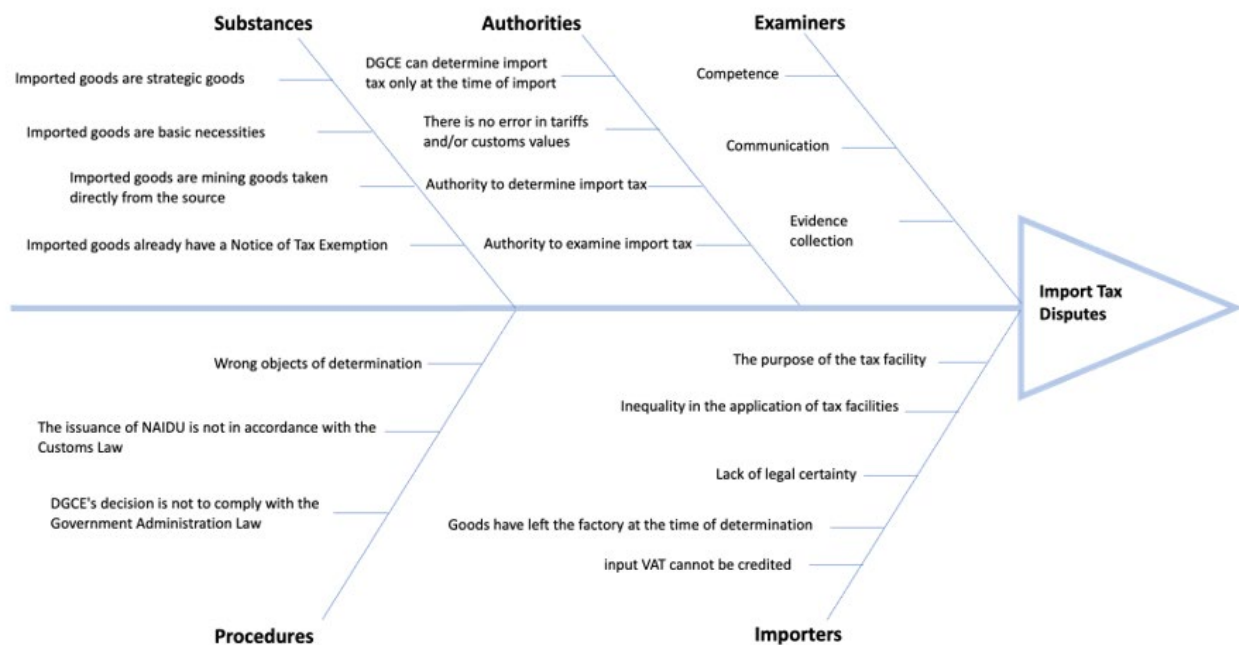


Figure 1. Fishbone Diagram of The Categories of Import Tax Disputes Causes
Source: Processing by the Author (2023)

There are 5 (five) causes classifications of import tax disputes namely substances, procedures, authorities, examiners, and importers. This is caused by problems with the evidence, application of statutory regulations, differences in interpretation, lack of expertise of examiners, failure of communication, and differences in orientation. The results of this research are in accordance with previous research conducted by Rasfina (2012), Harsono (2018), Sugiharto (2019), Budi (2019), Kusuma, Setiawan, Sugiharto (2019), Novita, Rahim, Mpofu (2021) and Adrianto (2021), Yulianto (2022), Yunindar, Nuryanah (2023).

Recommendations for Minimizing Import Tax Disputes

To minimize import tax disputes, various efforts are needed by all parties involved in the import tax determination process. The analysis results show several dominant themes for minimizing import tax disputes in the future. These recommendations are listed in Table 1.

Table 1. Recommendations for minimizing import tax disputes

Category	Recommendation
Substance	Changes in import taxes regulations
Procedure	Solidification of customs regulations and standardization of examination procedures
Authority	More firm authority in import taxes examination and determination
Examiner	Continuous education and training for examiners
Importers	Counseling to increase importers understanding in import taxes

Changes in Import Taxes Regulations

The Regulatory changes are required to reduce import tax disputes. This is because some regulations give rise to differences in interpretations. Regarding feed ingredients, changes to PMK-142/PMK.010/2017 should be made because there are several aspects that need to be corrected regarding the attachments. To date, mining goods so far it is still based on Government Regulations. Ministry of Finance Regulations can be prepared based on the delegation of Government Regulations. The regulations relating to the Notice of Tax Exemption are clear enough that no changes to the regulations are required. For disputed material relating to dates, a more in-depth analysis is required regarding the phrase “other than dried ones.”

The process of formulating regulations must be carried out with meaningful participation. As stated in Law Number 13 of 2022, this means that the community or public participates in every stage of the formation of statutory regulations. Participation can be performed offline or online. People who participate in meaningful activities are those who are affected or have an interest.

Solidification of Customs Regulations and Standardization of Examination Procedures

This aims to reduce disputes that question NAIDU without a prior NIDU. Articles 16 and 17 of the Customs Law are the basis for the DGCE to make a determination so that the object of the determination, the subject of the determination, the period of the determination, and the delegation of further regulations to lower regulations must be clearly stated.

Standardization of examination procedures must be carried out by examiners at both clearance and post-clearance stages. This needs to be done to ensure that the process carried out by the examiner is the same between one examiner and another. It is also important to improve the quality of the examination.

More Firm Authority in Import Taxes Examination and Determination

To reduce the occurrence of import disputes, it is necessary to affirm the authority over import tax examinations. As stated in the Tax Law, DGCE only has the authority to collect import taxes at the time of import. In Customs Law, there is also no authority for the DGCE to carry out import tax inspections. Therefore, it is clear that the import tax examination authority lies with DGT.

So far, DGCE has used NIDU and NAIDU to determine import tax. This is not in accordance with Customs Law because NIDU and NAIDU are used if there is an error in the import duty rate and/or customs value. The authority to determine taxes rests with the DGT, based on Article 13 of the Taxation General Provisions Law. Therefore, the authority to determine import tax is more appropriate if import tax determination is carried out by the DGT using a Notice of Tax Assessment.

Continuous Education and Training For Examiners

The competence and communication of DGCE examiners can be increased through integrated and sustainable education and training programmes. Education and training programmes should focus on technical knowledge, evidence collection techniques, and communication skills. In addition, assignments must be evenly distributed so that all examiners have adequate experience and competence.

Counselling to Increase Importers Understanding in Import Taxes

Importers can do several things to better understand the regulations related to import taxes. These include asking Bravo Customs, Client Coordinator, accessing the website <https://peraturan.beacukai.go.id/> or the Documentation and Legal Information Network available in each Ministry. Furthermore, importers must actively participate in socialization activities carried out by DGCE and DGT.

CONCLUSIONS AND SUGGESTIONS

This study found that there are five categories of import tax dispute material namely feed ingredients, mining goods, notice of tax exemptions, fruits and reimports of strategic goods. This study also found that several factors cause import tax disputes and strategies to minimize them in the future. Based on the results of the content and thematic analyses, it can be concluded that there are 5 (five) categories that cause import tax disputes. The five main causes are substance, procedures, authority, examiners, and importers. To minimize the occurrence of import tax disputes, it is necessary to change import tax regulations, solidification of customs regulations, standardization of examination procedures, more firm authority in import tax examination and determination, continuous education and training for examiners, and counseling to increase importers' understanding of import taxes.

This study endeavors to bridge the prevailing gap in academic research by conducting a thorough analysis of the factors leading to import tax disputes, thus enriching the theoretical understanding of this domain. In terms of practical implications, this study extends a series of recommendations aimed at various stakeholders in the import taxation spectrum. First, it proposes that the Directorate General of Taxes (DGT) and Finance and Planning Agency (FPA) undertake a comprehensive review and enhancement of existing regulations related to import taxes. Concurrently, it advocates the fortification of customs regulations by the Directorate General of Customs and Excise (DGCE). Specifically, for DGCE examiners, the study underscores the need for refinement in the procedures of import tax examinations. Furthermore, the study emphasizes the importance of importers to bolster their understanding of the existing import tax regulations, ensuring seamless compliance. While this study provides invaluable insights, it is not without its limitations, and it is from these limitations that avenues for future research are identified. This study is confined to the perspectives of post-clearance examiners, which include re-examinations and customs audits. An expansion of future research endeavors to include on-clearance examiners as participants could yield a more holistic view of this subject matter. The research methodology incorporates the participation of four distinct parties: examiners, appeal-management entities, tax regulators, and importers. However, the interviews were conducted on an individual basis. Future studies might consider the utilization of Forum Group Discussions (FGD) to construct fishbone diagrams, fostering a more comprehensive and contextually relevant understanding. This study focused predominantly on identifying the causes of import tax disputes. There is an opportunity for subsequent research to explore the efficacy of resolution mechanisms in place for such disputes. Finally, while this study concentrated on appeal decisions rendered at the tax court level, an exploration of judicial review

decisions at the Supreme Court level stands as a viable and potentially fruitful avenue for future research, promising to contribute further to the academic discourse surrounding import tax disputes.

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