

INDONESIA'S INTEREST IN THE HARMONIZATION OF THE PRINCIPLES OF
THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) AND ASEAN FREE
TRADE AREA (AFTA) REVIEW BASED ON THE PERSPECTIVE OF THE ASSOCIATION
OF SOUTH-EAST ASIAN NATIONS (ASEAN)

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ABSTRACT

The ASEAN Economy Community (AEC) is one of the three community pillars strived by the Association of South-East Asian Nations (ASEAN). The AEC aims to achieve a well-integrated and connected economy through the ASEAN Free Trade Area (AFTA). Meanwhile, the members of the ASEAN, including Indonesia, are also members of the World Trade Organization (WTO). In contrast with the AFTA, General Agreement on Tariffs and Trade (GATT) and other international provisions under WTO aim to ensure that trade flows as smoothly, predictably, and freely as possible. Furthermore, the circumstances of the member states are also different. The ASEAN consists of developing and underdeveloped countries as the members, while the WTO consists not only of developing and underdeveloped countries but also of developed countries. These circumstances create different purposes, principles, and policies for those organizations and caused overlapping conditions for the members. Aside from the differences, the WTO and the ASEAN policies are binding for the members and are prominent for world economic development. Therefore, the ASEAN and the WTO must harmonize their perspectives to create cooperation regarding the application of the policies of the two organizations by member countries.

Keywords: policy, principle, WTO, ASEAN, GATT, AFTA.

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INTRODUCTION

International economics is the driving force of the nations' repercussion that affects the states' national economic provisions and situations. According to Jeffrey Sachs, international economics is concerned with the trade and financial relations of the national economy; and the effects of international trade and finance on the distribution of production, income, and wealth around the world and within nations.¹ As international economics begin to rapidly increase and affects many aspects between nations, international community creates organizations and agreements to provide and accommodate countries all around the world who now have the same marketplace.

The international organizations and agreements created by the international community link countries all around the world and create no-barriers relationships. The establishment of international organizations is not only based on purposes, but also based on regions, visions, systems, and many considerable aspects. One of the well-known international organizations that embody the economic field in its organization pillars is the Association of South-East Asian Nations (ASEAN). ASEAN strives for three community pillars including The ASEAN Economy Community (AEC).

The AEC aims to achieve a well-integrated and connected economy through the ASEAN Free Trade Area (AFTA). The AFTA has intensified intra-regional trade in the South-East Asian region since 1993. This agreement provided for the elimination of tariffs and non-tariff barriers within the 15 years from January 1994 with the completion date set at 2008. Until then, tariffs will be reduced to less than 5%.² Through the decades, AFTA has become a large-scale program that not only has an economic impact on the member states but also the international community. AFTA as a whole has become increasingly interdependent in trade with outside trading partners. On one hand, the United States as a key in NAFTA, EU, and Japan has been AFTA's largest export market. On the other, Japan, followed by the U.S and EU, has been the largest source of AFTA

¹ Sachs, J. (1998). International Economics: Unlocking the Mysteries of Globalization. *Foreign Policy*, 110, 97–111. <https://doi.org/10.2307/1149279>

² https://www.researchgate.net/profile/Kien-Nguyen-67/publication/5206750_ECONOMIC_ANALYSIS_OF_ASEAN_FREE_TRADE_AREA_BY_A_COUNTRY_PANEL_DATA/links/53ec17220cf24f241f155d13/ECONOMIC-ANALYSIS-OF-ASEAN-FREE-TRADE-AREA-BY-A-COUNTRY-PANEL-DATA.pdf

imports.³ However, ASEAN is not the only international organization that regulates international economics. Other international organizations also focus on the field of economics, one of them being the World Trade Organization (WTO). The member states of ASEAN, including Indonesia, are also subject to the WTO and are obliged to the provisions of the General Agreement on Tariffs and Trade (GATT) and other international provisions under WTO that aim to ensure that trade flows as smoothly, predictably, and freely as possible.

Aside from being prominent organizations for world economic development, ASEAN and WTO have different situations and purposes due to the different circumstances of the state members. The ASEAN consists of developing and underdeveloped countries as members, while the WTO consists not only of developing and underdeveloped countries but also of developed countries. These circumstances create different purposes, principles, and policies for those organizations and caused overlapping conditions for the members. For an instance, The ASEAN member countries preserve their value and norms highly even in the condition of integrated ASEAN, particularly in state sovereignty, resulting “ASEAN Way” of integration that is different from what the theory of economic integration suggests.⁴ ASEAN firmly holds the principle of non-intervention and through AFTA, ASEAN proposes the main instrument that applied for the member states, namely Common Effective Preferential Tariff (CEPT), a tariffs reduction scheme covering manufactured goods, agricultural products as well as services. Meanwhile, GATT under the WTO adheres to the principle of the most favored nation. This principle states that a trade policy must be implemented on a nondiscriminatory basis. According to this principle, all member countries are bound to give other countries the same treatment in implementing export and import policies as well as other costs.

Both ASEAN and WTO are international organizations that have binding international provisions for the member states and have a great impact on the domestic law and politics of the members. The question is: will the overlapping provisions of both organizations infringe domestic authorities of the member states? Therefore, this article considers the effects of overlapping policies and

³ https://www.researchgate.net/profile/Kien-Nguyen-67/publication/5206750_ECONOMIC_ANALYSIS_OF_ASEAN_FREE_TRADE_AREA_BY_A_COUNTRY_PANEL_DATA/links/53ec17220cf24f241f155d13/ECONOMIC-ANALYSIS-OF-ASEAN-FREE-TRADE-AREA-BY-A-COUNTRY-PANEL-DATA.pdf

⁴ https://mpra.ub.uni-muenchen.de/80880/1/MPRA_paper_80880.pdf

provisions of both organizations and emphasizes that the solution lies in the harmonization of both organizations' perspectives to create cooperation regarding the application of the policies of the two organizations by member countries.

This paper uses the statute approach to imply the difference embodied in GATT as the instrument of WTO and AFTA as the instrument of ASEAN. There will be a framework to impose a particular circumstance such as political, economic, and other related field practices of both provisions and how these differences impacted the member states. The paper will proceed as follows: Section II presents the differences between both provisions. There will also include an exploration of the purposes of both GATT and AFTA. Section III will turn to the challenge of both provisions including the consent of the member states, the implementation of the provisions, and state sovereignty. In this section, the basic framework is limited to Indonesia's perspective only as a member of both GATT and AFTA. It will then extend into the harmonization between both provisions which will be discussed in Section IV. While section V will be the conclusion of this paper.

II

GATT AND AFTA

World economy has been through many changes and transitions through the decades. It is by no doubt the heart of civilized history. Some famous world economic transitions happened during the agricultural revolution and the industrial revolution. One of the other dramatic events in the half-century of rapid worldwide transition was the introduction of nuclear armaments and other weapons of mass destruction.⁵ Sign of these nuclear armaments and weapons of mass destruction is the world war itself. Through the world war period, the world economy suffered enormously and the monetary crisis was inevitable. Therefore, the International community cooperated to manage the problems related to the international economic crisis caused by the world war aftermath by designing postwar international trading to parallel the monetary system.⁶

⁵https://books.google.co.id/books?hl=en&lr=&id=MI2yDwAAQBAJ&oi=fnd&pg=PP1&dq=world+economic&ots=Y96JszpOvG&sig=wy5GYPjaolg2mrl-FoQXhMnzAQY&redir_esc=y#v=onepage&q=world%20economic&f=false

⁶ file:///C:/Users/Erwin%20Jap/Downloads/4qeppart4-pdf.pdf

In the inter-war years, international attention turned increasingly to threats of what was loosely called ‘dumping,’ partly because the expected post-war increase in industrial output raised fears of market flooding. The government practice of bounty exports was known in this period as ‘bounty dumping’⁷ Dumping itself is described by the WTO as “a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country.”⁸ During that period, countries concerned by this situation created an anti-dumping national act to safeguard their domestic production. The United States even went further by creating a distinction between ‘injury to competition’ and ‘injury to competitors’.

Thus, it proves how concerning the international economic situation was during that period and how the countries maximize their effort to undertake the problems. Not stopping there, the transition created by the international community evolved and turn into circumstances where there is recognition of mutual self-interest. The mutual interest between parties supported legal and economic consideration, and countries around the world created and maintained an open-market trade agreement. The Second World War offered the Allied Powers an opportunity to remake the world, and the post-war system of international organizations that they devised resembles the structure of national governments, the International Trade Organization (ITO) that supposedly performs the function of a global trade ministry.⁹ However, significant attachment towards countries' sovereignty and tension between countries after the world war had to make things worse and cannot satisfy sovereign states' needs and answer their critics. This postwar political and economic situation then led to the collapse of the ITO when the United States Congress refused the approval of the Havana Charter. Then, countries turn back into the temporary GATT, one of the chapters concerning trade policy that is planned to be a part of the Havana Charter regarding the formation of ITO.

As a temporary solution, rather than recognize as an international organization, GATT is a contractual agreement that has no definitive basis and only consists of the parties' commitments. Therefore, in concert with the circumstances that GATT is not an international organization that

⁷ <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1299&context=facpub>

⁸ https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

⁹ https://www.wto.org/english/res_e/booksp_e/historywto_01_e.pdf

can accommodate trade relations between countries, the international community proposed new changes in the legal basis of the regime. This proposal went through four years of negotiations between countries and the result of the negotiations is the World Trade Organization (WTO), an international organization governing trade relations between countries that enforced laws and have dispute settlement mechanisms. The emergence of the WTO in 1994 brought big changes in international trade relations. GATT itself is not terminated but becomes a provision under the WTO. other international provisions were also established by a member of the WTO, such as the General Agreement on Trade in Services (GATS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

GATT has a long history of being the center provision that governs trading relations between nations, it is an international provider that is recognized by most of the countries in the world and has already had many member countries signing it. GATT aims to ensure that trade flows as smoothly, predictably, and freely as possible, and to make it happen, GATT set forth some principle that has to be applied by the member countries as follows:

1. Most Favoured Nation Principle

One of the principles that are regulated in the Article 1 General Agreement on Tariffs and Trade that is well-known is the most favored nation principle. According to Article 1 of the GATT, member countries are obliged to treat other countries non-discriminatory, including the same treatment in the field of export, import, and other provisions regarding tariffs and trade. member countries should treat every country with the same respect without any special treatment and all countries should be benefited from the provisions. the principle of the most favored nation also regulates that this provision should be done immediately and unconditionally towards any kind of product that is proposed to all of the member countries of GATT.

2. National Treatment Principle

has been regulated in Article 3 General Agreement on Tariffs and Trade. Along with the most-favored-nation principle, the national treatment principle is also one of the pillars of the founding principle of the multilateral trading system. This principle regulates that an

imported product should receive the same treatment as a local product. GATT implies that the treatment of those products also includes all kinds of taxes policies.

3. Quantitative Restriction Principle

as stated in article XI of the GATT, all kinds of export, import, license of export or import, even the supervision of the export and import payments are restricted and prohibited under this provision. however, this provision is hard to be applied by the member of the WTO because of the condition where this restriction will hinder the normal practical way of trading.

4. Binding on Tariffs Principle

all of the member states of the WTO are obliged to apply all of the agreements regarding tariffs. the protection under this provision showed that there are possibilities for healthy competition between countries. however, all kinds of tariff agreements must be the subject of GATT'S provisions. by the time products are agreed upon with their tariffs, they should be registered by the countries to the National Tariff Schedule under the WTO.

5. Reciprocity Principle

Reciprocity principle is the fundamental principle in GATT, it is widely known as a pillar of multilateral negotiations, particularly for trade merchandise, this principle is regulated in the preamble of the GATT and applied to the member states' negotiation regarding tariffs and the interest within the member countries.

Other than WTO as a big organization concerning international economic flows, ASEAN, as a regional international organization also concerns about the economic flow of its region. Looking back at its history, ASEAN was established on August 8th, 1967 in Bangkok by its five original member countries, namely, Indonesia, Malaysia, Singapore, Philippines, and Thailand.¹⁰ the establishment of ASEAN aims to accelerate economic growth, social progress, and cultural development in the region and also to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among member countries. However, the economic trade flows between members after ASEAN was established were insignificant.

Thus, to support economic flow between member countries and enhance the trade flows between countries, ASEAN created ASEAN Economic Community. under the ASEAN Economic

¹⁰ Expansions on the membership were Brunei in 1984, Vietnam in 1995, Myanmar and Laos in 1997 and Cambodia in 1999.

Community. the goal of this pillar is to support economic cooperation between member countries without overstepping the sovereignty of other countries. In moving towards the ASEAN Economic Community, ASEAN has agreed on the following:

- institute new mechanisms and measures to strengthen the implementation of its existing economic initiatives including the ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS) and ASEAN Investment Area (AIA);
- accelerate regional integration in the following priority sectors by 2010: air travel, agro-based products, automotive, e-commerce, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products.
- facilitate movement of business persons, skilled labor, and talents; and
- strengthen the institutional mechanisms of ASEAN, including the improvement of the existing ASEAN Dispute Settlement Mechanism to ensure expeditious and legally-binding resolution of any economic disputes. ¹¹

Member states In July 1991, Prime Minister Anand and Singapore Prime Minister Goh Chok Tong in a meeting came up with the idea of AFTA. At that time, ASEAN was in the process of liberalizing trade by using the concept of the Common Effective Preferential Tariff (CEPT) and avoiding the use of the words ‘free trade.’¹²

The creation of AFTA is symbolized by the member states' agreement and willingness to sign the Framework Agreement on Enhancing ASEAN Economic Cooperation and the Agreement On The Common Effective Preferential tariff Scheme For The ASEAN Free Trade Area. However, AFTA is particularly regulated in the Agreement On The Common Effective Preferential Tariff Scheme For The ASEAN Free Trade Area. this agreement specifically mentions the creation of AFTA while other agreements regulated the implementation of the agreements regarding AFTA. There are several basic provisions regarding the implementation of the AFTA, such as the Common Effective Preferential Tariff (CEPT).

CEPT is applied to all products from ASEAN member countries defined as those that had at least 40% ASEAN content. More than 99 percent of the products in the CEPT Inclusion List (IL) of

¹¹ https://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/04_asean-generalin/04_asean-generalinfo.pdf

¹² <https://www.eria.org/asean50-vol.1-26.narongchai-akrasanee.pdf>

ASEAN-6, comprising Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand, have now been brought down to the 0-5 percent tariff range. ASEAN new members including Cambodia, Lao PDR, Myanmar, and Vietnam have also implemented their commitment to the CEPT scheme with 80 percent of their products having been moved into their CEPT Inclusion List.¹³ CEPT mechanism aims to decrease the tariff hindrance in the ASEAN. member countries are obliged to the CEPT mechanism under the AFTA regulations. all kinds of goods prices regulated and listed under CEPT should be decreased without exclusion and according to the CEPT tariffs scheme.

III

GATT AND AFTA'S DIFFERENCES

GATT has come so far by creating a trade market for the international community and already has a big amount of accomplishment. However, the provisions regulated in GATT remain controversial as some of the countries find it difficult to apply GATT to their national systems. One of the challenges faced by the implementation of GATT is the application of article XI GATT. This article regulates the objective element of the prohibition of quantitative restrictions. however, there is no clear scope or limit regarding this regulation which means there is no limitation for the interpretation of the restriction on the importance of products conducted by the WTO. The difficulty in ascertaining the precise scope of application of Article XI stems initially from an apparent contrast between its heading 'General Elimination of Quantitative Restrictions' and the actual wording of its basic obligation in paragraph 1 prohibiting, more broadly, import restrictions made effective through quotas, import or export licenses or other measures. Secondly, the existence of Article III GATT 1994 dealing with internal regulation raises the issue of the dividing line between the far-sweeping per se prohibition of Article XI and the potentially more lenient non-discrimination principle of Article III.¹⁴

GATT problems are not limited to the regulation of the products, but also tariffs regulation. Full implementation of the Uruguay Round resulted in the bound simple average tariff of 7% across all

¹³ <https://www.unescap.org/sites/default/files/AWP%20No.%2021.pdf>

¹⁴ [file:///C:/Users/HP/Downloads/SSRN-id1462341%20\(1\).pdf](file:///C:/Users/HP/Downloads/SSRN-id1462341%20(1).pdf)

merchandise trade and all WTO members. However, the picture is more complex as there are differences in the current level of customs duties between products such as manufactured (industrial and textiles) and agricultural products, between developed and developing countries, as well as between different developed countries and between different developing countries.¹⁵

Back then, the United States support free trade for contracting parties, but suggest trade exceptions for the benefit of the developed countries, These exceptions included the right to implement export subsidies for agricultural commodities and the right to use quantitative restrictions on agricultural imports. During the first decade of GATT, special provisions were not included to address the peculiar needs of developing countries. This forced developing countries to request waivers from the GATT rules., Developing countries were often required to use formal GATT procedures at times when formalities were not required of the developed nations.¹⁶

Furthermore, GATT faced some challenges regarding the public's perspective of its enforcement. Public commentary and perception of GATT and WTO remain negative and the public debated that the WTO means loss of sovereignty. the source of this controversy is often that a dispute settlement finding has found a piece of trade "defense" legislation to be contrary to the WTO obligations and, therefore, in need of elimination amendment.¹⁷ the public perceives that WTO has caused a loss of freedom to decide and regulates one export standard applications and causing countries, especially developing countries to be dependable and cannot decide for themselves thus it is perceived that the WTO has crossed the members' sovereignty. however, the concept and the meaning of sovereignty liberalization have different meanings. for an instance, the willingness of a country to be involved in trade systems under the WTO trade regulations is a way to express their sovereignty and freedom to have international relations. ThereforhasTO, GATT, and its relations to sovereignty remain debatable through the years.

On the other hand, AFTA has different background and purpose use than WTO. AFTA was created by the members of the ASEAN because of the political economy integration between its members, however, looking back to ASEAN's fundamental principle which is the party-intervention

¹⁵ file:///C:/Users/HP/Downloads/SSRN-id1462341%20(1).pdf

¹⁶ <https://core.ac.uk/download/pdf/56359302.pdf>

¹⁷ https://www.wto.org/english/thewto_e/10anniv_e/future_wto_chap3_e.pdf

principle, has created AFTA as an instrument that preserves ASEAN member countries' values and norms, especially its sovereignty. Therefore, ASEAN's economic integration is different from the theory of economic integration and results in the "ASEAN way" which has its provisions and regulations for the member countries. Over the years, AFTA has accelerated its goal which proves ASEAN regional economic integration is successfully integrated. CEPT, the provision under AFTA also improves by including all of the products that were not regulated in the scheme, it is undoubtedly widened and expanded over the border barriers.

Meanwhile, AFTA through its process has encountered many different challenges, AFTA's member countries also experience challenges because of the different economic and political backgrounds of its members, for example, Singapore as a trading country and Brunei as a non-producing country (except for petroleum). Another challenge that AFTA encounters is that when AFTA was created, many member countries were not ready for this scheme and were afraid that AFTA might cause distress to their local products. Undoubtedly, the member countries at first didn't think much about the collaboration scheme under AFTA and went separate ways to benefit each of their countries. The intense competition ASEAN now faces from countries like China and India to attract foreign investment also adds to the pressures for reform. The very existence of regional agreements like AFTA and multilateral trade agreements like the GATT (WTO) and their importance to the ASEAN states both place pressure on countries to undertake trade liberalization and give governments excuses they otherwise would not have to dismantle structures that protect powerful vested business interests or effect workers and other social groups.¹⁸

Indonesia, as a member of both AFTA and GATT, has encountered great challenges to compete in the trading field and implement both provisions. In 1994, Indonesia has ratified the result of the Uruguay Round into its national law. Indonesia's step to ratify these provisions comes with the consequence that Indonesia is obliged and bound to the WTO regulations. Furthermore, Indonesia, as a founding party of the ASEAN also became a member of the AFTA by signing the "Framework Agreement on Enhancing ASEAN Economic Cooperation" in 1992 as the first step of Indonesia's will to join the trade agreement and international economic integration. However, both provisions are binding for Indonesia and must be implemented while there are regulations from AFTA and

¹⁸ <https://www.tandfonline.com/doi/pdf/10.1080/10349952.1996.11876641>

GATT that is contrary. for an instance, GATT's fundamental principle is the Most Favoured Nation Principle which regulates that member countries are obliged to treat other countries non-discriminatory, including the same treatment in the field of export, import, and other provisions regarding tariffs and trade. Meanwhile, AFTA regulations regulate the " special" treatments and preferences for the member countries regarding export, import, and other provisions regarding tariffs and trade.

During its process, Indonesia encounters problems and was considered to have violated the basic principles of GATT. Japan, the European Union, and the United States as the complainants, all claimed that the domestic content requirements of the February and June 1996 National Car programs violated GATT Article I, GATT Article III, paragraphs 2 and 4, and Article 2 of the TRIMs agreement. The EU and the United States also claimed that the National Car Program caused serious prejudice within the meaning of Article 5(c) of the SCM Agreement.¹⁹ Japan, the European Union, and the United States claimed that the domestic regulation to give special rights to the National Car Company is against the international economic principle, especially the non-discrimination principle and the National Treatment Principle and this violation will cause loss for other parties such as the automotive producer from other countries and will create unhealthy competition climate.

Meanwhile, as the prominent founding member of ASEAN, Indonesia is also hesitant to fully implement its provision. The "Framework Agreement on Enhancing ASEAN Economic Cooperation" was signed in 1992, but Indonesia postpone its implementation until fifteen years before the last commitment of the AFTA on January 2002. Indonesia's consent to implement the AFTA regulations has come with effects where it becomes politically difficult to pursue further regional FTAs when Indonesia is rapidly losing competitiveness in labor-intensive manufacturing exports mainly to its ASEAN partners, contributing to rising unemployment and poverty.²⁰ Furthermore, Indonesia, as one of the developing member country in the ASEAN have tended to rely on ASEAN for concluding FTAs with the region's larger economies. It reflects Indonesia's weak capacity and resource production. and limited leverage to undertake FTA negotiations in poorer economies. As a solution and to reduce Indonesia's dependency, Indonesia created and gave

¹⁹ file:///C:/Users/HP/Downloads/308-1-894-1-10-20180628.pdf

²⁰ <https://faculty.washington.edu/karyiu/confer/busan07/papers/chowdhury.pdf>

special rights and special subsidies to PT. Timor Putra National in the National Car Program. Indonesia's purpose is to strengthen the foundation of Indonesia's car industry and also prepare the upcoming trading scheme in AFTA and APEC.

As a member of both organizations, Indonesia is obliged to apply the provisions regulated in the GATT and AFTA, entering the international economic integration means exposing one's country to a bigger competitive trade market. Indonesia on the other hand has to consider its national capability to compete in the international market trade while dealing with both provisions. Therefore, to implement both provisions successfully and prevent both provisions from colliding with each other, AFTA and GATT need to harmonize the implementation to achieve international economic integration without causing further challenges for its member.

IV

HARMONIZATION

GATT and AFTA, as international provisions are created and legitimated by the countries. without countries' and international community's consent and approval, a provision could not have any legitimacy or enter into force. On the other hand, when a country expresses its consent to a provision and decided to be a part of it by signing and becoming its member, a country is performing its sovereignty to express its free will to join and implement a provision.

From the perspective of state sovereignty, state consent to the WTO is the starting point for any assessment of the WTO's legitimacy²¹ same goes for the AFTA. international provisions and state sovereignty is integrated and related to each other. therefore an international provision, including GATT and AFTA, was created in the member's best interests. However, it is undoubtedly that both provisions regulate the same thing regarding tariffs and trade and overlap with each other. what makes GATT and AFTA different is the area of their force. where GATT under the WTO governs almost all of the countries in the world, while the AFTA governs only the countries in the scope of ASEAN. the question arises is when a country is a member of both organizations, which one should be applied and be preceded?

²¹ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1221&context=jil>

The provision on General Exceptions in the CEPT Agreement is consistent with Article X of the General Agreement on Tariffs and Trade (GATT). Undoubtedly, multilateralism through the WTO framework and its predecessor, the General Agreement on Trade and Tariffs (GATT), and open regionalism—supported by unilateral liberalization—centered on Asia–Pacific Economic Cooperation (APEC), underpinned Asia’s approach to international trade policy for several decades.²² However, the different circumstances experienced by the member countries are different from the GATT expectation where some countries' best interests can not be fulfilled, such as developing countries.

Therefore, the neighboring countries decided to create a regional free trade area, one of them is AFTA which consists of the developing countries in the region of South-East Asia. As a result, there is a sub-optimal level of liberalization in agricultural products and even conflict with the spirit of GATT article XXIV, which provides an exemption to the WTO's most favored nation clause, or nondiscriminatory treatment.²³ Under the article XXIV GATT, the creation of AFTA is permitted under the GATT scheme because it will encourage GATT’S purpose to have a liberalization of trading. FTAs are permitted by GATT as long as their purpose is to increase the trade flow without having to increase import taxes and non-tariff barriers for the non-member’s products and perform their duties to implement the fundamental principles of GATT.

As mentioned, there are some tariffs and trade regulation differences between GATT and AFTA that distress Indonesia on its application. The solution to this problem and to narrow its burden is the harmonization of both provisions. One of them is the National Treatment Principle of GATT which is particularly contrary to the ASEAN regulations for member states, however, the GATT provides for certain exceptions as follows:

1. Government Procurement GATT Article III: 8

- (a) permits governments to purchase domestic products preferentially, making government procurement one of the exceptions to the national treatment rule.

²² <https://www.adb.org/sites/default/files/publication/155999/adbi-wp144.pdf>

²³ <https://www.adb.org/sites/default/files/publication/155999/adbi-wp144.pdf>

2. Domestic Subsidies GATT Article III:8

(b) allows for the payment of subsidies exclusively to domestic producers as an exception to the national treatment rule, under the condition that it is not in violation of other provisions in Article III and the Agreement on Subsidies and Countervailing Measures.

3. GATT Article XXIV:

Members of the WTO are allowed to establish regional, bilateral, and customs union trade agreements, but the commitments of each WTO member incorporated in such trade cooperation could not be changed.

4. GATT Article XVIII:

Members in the early stages of development can raise their standard of living by promoting the establishment of infant industries, but this may require government support and the goal may not be realistically attainable with measures that conform to the GATT.

5. GATT Article XIX

GATT Article XIX and the article regarding Safeguards allowed a state to use quotas on an imported product which has a substantial increase and is harmful to the domestic industry.

6. Exceptions to Economic Development

The purpose of this exception is to assist developing countries. Almost all agreements in the WTO regulate it specifically in Special and Differential Treatment for developing country members to facilitate their entry into the world trade system and to encourage their economic development.

7. Other Exceptions to National Treatment

General Exceptions would also apply on the principle of national treatment. The provisions of GATT Article XX on general exceptions, Article XXI on security exceptions and GATT Article IX on waivers also apply to the national treatment rule.²⁴

However, these exceptions towards FTAs were considered concerning for the other members of GATT, therefore, these compromise was monitored by the Committee on Regional Trade Agreement (CRTA) that was created in 1996 by the WTO's General Council. CRTA was created to examine the compliance of AFTA to the GATT. Its job to create a report whether AFTA's rules are in sync with GATT and compared AFTA's provisions to GATT's to hinder any form of disputes between both provisions. Even though AFTA's establishment are permitted by the GATT, to maintain the harmonization between AFTA and GATT still have to be maintained with some rules regarding the international trade integration. for an instance, Article XXIV paragraph 5(b) regulates about the members duties, including all of the FTAs scheme, to maintain the tariffs and commerce regulations so it will not injure the third parties and corresponding with the GATT.

when the GATT and AFTA was formed, the international community have considered all of the circumstances and possible changes. nonetheless, both provisions were formed to create a better economic integration and reach the best interest of the countries all around the world. despite the hardship of implementing both provisions at the same time, GATT and AFTA already make its exception and regulations that comply with each provisions. Therefore, Indonesia, as a country that express its consent by becoming a member of both provisions, obliged to perform its duties to comply of the GATT and AFTA regulations to maintain the tariffs and trade scheme, also the relations between the member countries.

V

CONCLUSION

As international economics begin to rapidly increase and affects many aspects between nations, international community creates organizations and agreements to provide and accommodate countries all around the world. GATT and AFTA, both as international provision regulating trade

²⁴ file:///C:/Users/HP/Downloads/308-1-894-1-10-20180628.pdf

and tariffs have its own purpose and regulations. GATT's purpose is to create a trade liberalization, while AFTA's to increase the economic, social, and culture development of the South-East Asia region. different purpose of both provisions was caused by the different circumstances during its formation and created different regulations for the trade and tariffs systems.

as a member of both organizations, Indonesia encountered some problems regarding the implementation of AFTA and GATT because there are different principles and regulations regarding tariffs and trade. however, in the GATT, some regulations permitted exclusions for the Free Trade Areas, including AFTA, to create its scheme and regulations. the permission GATT gave to the FTAs is also accompanied by some restrictions where the regulations of the FTAs must not harm the tariffs and trade systems for the third parties and should comply with the regulations of the GATT.

therefore, as a member of both organizations, Indonesia is bound and must oblige both provisions considering Indonesia has expressed its consent to both AFTA and GATT by becoming its member, which means by the time Indonesia became a member of the GATT and AFTA, Indonesia has fully understand the regulations and the consequences of the implementation of the provisions. therefore, harmonization can only be maintained if all the member countries perform their rights and duties in the field of trading as regulated in the provision.