

Analysing Impacts of Preferential Trade Agreements toward International Rule-Based Trading System

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Abstract

International economic law was born in line with the development of international economic relations. International economic law can continue to exist because it is needed by every country in participating in the international arena to expand its market share. The change in the international trade system towards liberalization, such as ASEAN becoming the ASEAN Economic Community at the end of 2015, creates many opportunities as well as challenges for Indonesia's balance of payments condition. The opportunity in question is that Indonesia can expand its market reach to other ASEAN countries. Another positive impact of the existence of the AEC is that Indonesian investors can expand their investment reach abroad, and vice versa, Indonesia can also attract investors from other ASEAN countries to invest in Indonesia. Meanwhile, the challenge is, with the level of trade competition getting tighter, the greater the trade balance deficit between Indonesia and other ASEAN countries, and how Indonesia can increase its investment attractiveness. This study was conducted to determine the impact of the ASEAN Economic Community (AEC) on Indonesia's Balance of Payments in 2017. From the results of data analysis, in 2016, there was a decrease in the number of exports of goods from USD 148,365 million in 2015, to USD 144,441 million in 2016. The services trade balance deficit in 2016 decreased to USD6.5 billion from USD8.7 billion in 2016.

Keywords

international law, international rules, opportunity



I. Introduction

International trading system has arguably transformed from a power-driven into a rules-based trading system throughout modern history. In the early centuries of its inception, international trade was marked by trading companies whose operations were actively supported by states and its military forces, making state power was the cornerstone of international trading system (O'Rourke, 2005; Irwin & O'Rourke, 2014). In nineteenth century, rules started to play a role in shaping trade relations as European countries signed bilateral trade agreements with each other to reduce trade barriers, but European powers continued to use forces in trading with non-European countries, many of which desired protective policies (Irwin & O'Rourke, 2014). It was only after the world wars, moved by widespread unilateral restrictions on trade during wars, that multilateral rules-based trading system emerged – initially in a form of the 1947 General Agreement on Tariffs and Trade (GATT) and, after several negotiation rounds, transformed into World Trade Organization (Zeiler, 2012; Preeg, 2012). This is not to say that power is completely irrelevant in trade relations today, but merely to underline that trade flows – once were entirely driven by state power – have largely governed by agreed multilateral principles and rules since the end of the second world war.

Economic relations with foreign countries are one part of international relations broadly, which includes political, military, educational, and cultural relations. International economic relations involve transactions of goods and services, capital, monetary, means of payment and all of which affect the domestic economy. The influence of international economic relations on the domestic economic conditions of a country will be reflected through the country's Balance of Payments. Then from this Balance of Payments, matters relating to trade in goods (exports-imports), service transactions, exchange rates, debt values and repayment obligations, current account deficits, foreign exchange reserves, and international trade ratios can be analyzed. Every country's economy faces increasingly fierce competition. This was then marked by the implementation of free trade areas and investment agreements as well as advances in information technology, which resulted in the erosion of trade barriers, freer international financial traffic, and the entry and exit of capital and investment flows. in each country. The impact of the passing of this globalization era will lead to intense competition among countries so that only countries that can compete will be able to survive. Economic integration of countries within one region (regional) or regionalism, whether in the form of free trade agreements, customs unions, or higher levels of integration, seems to have become the way that each country or group of countries currently takes as an effort to face globalization. and liberalization of the world economy. According to Pomfret (2006:63-64), there have been at least three waves of regional integration since the General Agreement on Tariffs and Trade (GATT) was agreed in 1947. The first wave was European regional integration in the 1970s which put Europe as a major actor in global trade. The second wave was triggered by American dissatisfaction with the principle of non-discrimination in the GATT which led to the formation of the North American Free Trade Agreement (NAFTA) in the early 1990s. The third wave was initiated by Asian countries by introducing tariff preferences such as the Economic Cooperation Organization (ECO), South Asian Association for Regional Cooperation (SAARC), and Association of South-East Asian Nation (ASEAN) (www.cemented.go.id).

The main benefit of economic integration that encourages regional integration to develop globally in Europe, America, and Asia is the economy. Economic integration will drive the economy through two channels: the measure of economic integration and the reallocation of economic resources (Bretschger and Steger, 2004:7-8). Furthermore, Meir (1995: 507) states that economic integration in a region will produce several benefits for the integrating country, such as (1) encouraging the development of the local industry; (2) increasing trade benefits through improving terms of trade; and (3) promote economic efficiency in an economic zone. Based on this thinking, the role of society to be more involved in economic development is very important (Setyaningrum, 2020). While indirect factors such as economic factors, culture, education and work, health service facilities (Lubis, 2021). According to Suarez (2000:1), the establishment of economic integration in a region is aimed at a more efficient allocation of resources, encouraging competition, and increasing economies of scale in production and distribution among member countries. The measure of economic integration is related to the number of resources each country has. The greater the resources owned by a country will encourage the economy to produce more certain products, and the accumulation of these products will encourage more productive use of resources (www.cemented.go.id) Indonesia is a country that adheres to an open economic system. Conditions and developments in foreign trade and the international balance of payments cannot be separated from the current and future events in the global economic arena. The general situation and trend of the world economy will certainly affect the Indonesian economy.

However, in the past three decades, bilateral and regional trade agreements have begun to flourish. According to recent data, there are more than 290 agreements currently in force and all members of the World Trade Organization (WTO) have been a party to at least one these agreements (World Trade Organization, 2019). While the details of each agreement vary greatly, one thing in common is that signatories of these agreements offer better market access conditions to other signatories than to non-signatories (Johns & Peritz, 2015). Therefore, these agreements can be perceived to have breached one of the main principles of the rules-based trading system – the most favoured nation (MFN) principle that requires all members of the WTO to treat the products and services from or to any members similarly to the like products and services from or to all other members (Hoekman & Kostecki, 2009). Some scholars, however, have argued otherwise, raising a question whether preferential trade agreements (PTA) strengthen or undermine the multilateral rules-based trading system (Baldwin, 2012).

This paper aims to answer this question, arguing that preferential trade agreements have not undermined the rules-based trading system. This answer is supported by three arguments. First, the rules of the multilateral trading system itself allow, under specific conditions, for countries to have PTAs. Second, legal PTAs are designed to further achieve the objectives of the multilateral trading system. Third, WTO has measures to deal with PTAs that are inconsistent with the rules.

As such, the paper will be divided into four sections. The first, second and the third section will elaborate each of the above-mentioned arguments. The paper then will provide conclusion from its analysis.

II. Review of Literature

2.1 ASEAN Economic Community (AEC)

The ASEAN Economic Community (AEC) or often called the ASEAN Economic Community (AEC) is a form of regional economic integration that is planned to be achieved in 2015. The main goal of the AEC is to make ASEAN a single market and production base, in which flows of free goods, services, investment, and skilled labor and a freer flow of capital. Talks about the AEC have been started since 1997. ASEAN leaders at the ASEAN Summit in Kuala Lumpur in December 1997 decided to transform ASEAN into a stable, prosperous, and empowered region. Furthermore, the ASEAN Heads of State at the 9th ASEAN Summit in Bali, Indonesia in 2003, agreed to establish an ASEAN Community (ASEAN Community) in the field of Political Security (ASEAN Political-Security Community), Economics (ASEAN Economic Community), and Socio-Culture (ASEAN Socio-Culture Community), which later became known as Bali Concord II.

Along with its development, at the 39th ASEAN Economic Ministers (AEM) meeting in 2007, it was agreed on the ASEAN Economic Community (AEC) Blueprint and its Strategic Schedule, which includes new initiatives and a clear roadmap to achieve the establishment of the 2015 ASEAN Economic Community. The Economic Community (AEC) Blueprint was later ratified at the 13th ASEAN Summit Series (Ministry of Foreign Affairs, 2009). Subsequently, the heads of ASEAN member states issued a Declaration ratifying a blueprint for realizing the ASEAN economic community (Declaration on the ASEAN Economic Community Blueprint) in month November 2007. For the establishment of the ASEAN Economic Community in 2015, ASEAN has agreed that it will be directed to regional economic integration whose implementation refers to the AEC blueprint. This AEC Blueprint contains four main pillars, namely:

- (1) ASEAN as a single market and production base supported by elements of a free flow of goods, services, investment, an educated workforce and a freer flow of capital (a single market and production base);
- (2) ASEAN as a region with high economic competitiveness, with elements of competition regulations, consumer protection, intellectual property rights, infrastructure development, taxation, and e-commerce (a highly competitive economic region);
- (3) ASEAN as a region with equitable economic development with elements of small and medium business development, and ASEAN integration initiatives for CMLV countries (Cambodia, Myanmar, Laos, and Vietnam) (a region of equitable economic development); and
- (4) ASEAN as a region fully integrated into the global economy with elements of a coherent approach in economic relations outside the region, and increasing participation in global production networks (a region fully integrated into the global economy). (ASEAN, 2007a and ASEAN, 2013). The blueprint also stipulates that there are 12 priority sectors to be integrated. Seven of them are the goods sector, namely the agro-industry, fisheries, rubber-based industry, textile industry and textile products, wood and wood product industry, electronic equipment, and automotive. While the rest are five sectors Based on the ASEAN Economic Community Blueprint (ASEAN Economic Community Blueprint) published by the Ministry of Trade, ASEAN as a single market and production base has five main elements.

2.2. Free Flow of Goods

The free flow of goods is one of the main means of realizing a single market and production base. A single market for goods (and services) will also facilitate the development of production networks in the region and increase ASEAN's capacity as a global production center or as part of a global supply chain. Through the ASEAN Free Trade Area (AFTA), ASEAN has made significant progress in eliminating tariffs.

However, the free flow of goods requires not only the abolition of tariffs but also the elimination of non-tariffs. In addition, the other most important components needed to facilitate the free flow of goods are trade facilitation measures, such as the unification of the Common Effective Preferential Tariff (CEPT) procedures on an ongoing basis, the enforcement of provisions on the origin of goods, including operational certification procedures and alignment of standardization and conformity procedures. The Common Effective Preferential Tariff Agreement for ASEAN Free Trade Area (CEPT-AFTA) will be reviewed and upgraded to become a comprehensive agreement and realize the free flow of goods and can be implemented as needed by ASEAN to accelerate the process of economic integration towards 2015.

III. Discussion

3.1 GATT and GATS allow Preferential Trade Agreements

Among others, WTO was established to facilitate the implementation of three multilateral trade agreements – the GATT, General Agreement on Trade in Services (GATS) and Trade-Related Aspects of Intellectual Property Rights (Wilkinson, 2005). These agreements not only consisted of basic principles and rules of the trading system, but also consisted of ‘exception clauses’, detailing conditions under which parties to the agreements may withdraw from their obligations (Lanoszka, 2009). Two of these agreements – the GATT and GATS – have a special clause to allow WTO members, under specific conditions, to have PTAs (Bossche & Zdouc, 2017).

Under Article XXIV of the GATT, it is stated that the provisions of GATT shall not prevent the formation of a customs union or of a free-trade area between members so long as the duties and other regulations of commerce imposed by such union or applied by each of the constituent territories of such free-trade area, in respect of trade with Members not parties to such union or free-trade area, are not higher or more restrictive than the duties and other regulations of commerce existing in the constituent territories prior to the formation of the union or the free-trade area.

In a similar fashion, Article V of the GATS states that GATS shall not prevent any of WTO members from entering into an agreement liberalizing trade in services so long as such agreement is designed to facilitate trade between the parties to the agreement and shall not, in respect of any WTO members outside the agreement, raise the overall level of barriers to trade in services within the respective sectors compared to the level applicable prior to such an agreement.

In other words, both GATT and GATS allow a subset of WTO members to create a customs union or a free-trade area if it does not raise the level of barriers to trade for countries who are not parties to such union or such area. WTO jurisprudence, particularly the Turkey – Textile (1999), shows that for assessing whether a specific customs union or free-trade area meets the stated requirements, it will apply an economic test to measure the effect of establishing the customs union or the free-trade area on trade restrictions (Howse, Trebilcock, & Eliason, 2013).

Thus, the first argument of this essay is straightforward: as long as the preferential trade agreements in question are consistent with these rules, the agreements do not contradict with the trading system that is grounded on those rules. It is, therefore, clearly invalid to argue that preferential trade agreements have undermined a rules-based trading system.

3.2. Legal PTAs Contribute to WTO Objectives

The second argument of this paper is that legal preferential trade agreements, those who meet the requirement as stated above, strengthen the rules-based system because it contributes to achieve WTO stated objectives, such as substantial reduction of tariffs and other barriers to trade. This can be clearly seen by examining why countries sign PTAs – despite significant barrier reductions have been achieved under GATT/WTO and while the rules require PTAs to not move in protectionist (i.e., raising trade barriers) directions.

First, countries join PTAs to liberalize in areas not covered by WTO multilateral agreements or that have been stalled in WTO negotiation forums (Kim, 2015). One prominent example is the investment chapter of North-America Free Trade Agreement (NAFTA), banning various kinds of domestic requirements (e.g., minimum local content and maximum foreign ownership requirements) that previously was applied (Manger, 2012). Such regulation is not covered under the WTO's Agreement on Trade-Related Investment Measures (TRIMs).

Second, many PTAs are North-South agreements and developing countries' motivations to engage with larger and more developed partners are to overcome domestic resistance to liberalization and lock in liberal policies so that succeeding governments cannot overturn it (Hoekman & Kostecki, 2009; Manger, 2012). In a multilateral setting, the strong and specific 'external pressure' is absent, making governments of developing countries do not have any leverage and excuse to pursue significant market-opening policies (Manger, 2012). Moreover, the commitment made in the negotiations of PTAs would be incorporated into an international agreement which would be monitored and, if necessary, enforced by the bigger partner, assuring that the liberal economic policies are going to stay (Hoekman & Kostecki, 2009). One prime example of this was President Salinas of Mexico's decision to

propose a free trade agreement with the US as he wanted to further liberalize Mexican economy but was blocked by domestic interest-groups (Cameron & Tomlin, 2000).

Building on these two main reasons why countries sign PTAs, we may argue that legal PTAs contribute in strengthening the rules-based trading system. It helps WTO to achieve its objectives as countries further reduce trade barriers in areas that have already reduced by WTO negotiations, while also reduce trade barriers in ‘new’ areas that are not covered by WTO multilateral agreements. This liberalization trend is also expected to continue as new PTAs usually widen the scopes and deepen the commitments covered by previous existing PTAs (Woolcock, 2012).

To end this section, it is also important to note that ‘new barriers’ that are reduced by PTAs mostly concern about domestic regulatory regimes (World Trade Organization, 2011). Due to the nature of domestic regulations apply for all, most PTAs do not have discriminatory implications to WTO third parties (Krishna, Mansfield, & Mathis, 2012). In other words, PTAs contribute to more trade reductions, many of which apply to all goods and services regardless of their origin – in line with the MFN principle.

3.3 Measures Deal with Illegal PTAs

After arguing that the rules of the system allow PTAs as long as it does not increase trade barriers, as well as these liberal PTAs are beneficial to achieve WTO objectives, one may question what if there are ‘illegal’ PTAs, ones that move towards protectionist direction. The third argument of this paper, therefore, is that the WTO is well-equipped with measures to deal with illegal PTAs.

First, the WTO has rules to ensure transparency of any PTAs and to determine their consistency with GATT and GATS. Both Article XXIV of the GATT and Article V of GATS require WTO members deciding to enter PTAs to promptly notify all other WTO members. Under the Understanding on the Interpretation GATT Article XXIV, customs unions and constituents of free-trade areas shall also report any changes to the PTAs and report periodically on its operations. Notification and reporting are further regulated by the 2006 Transparency Mechanism for Regional Trade Agreements and is closely managed by the Committee on Regional Trade Agreements (World Trade Organization, 2006).

Second, PTAs are justiciable as members of the WTO may file a lawsuit against alleged inconsistent PTAs. While scholars initially assumed that WTO dispute settlement mechanism does not have jurisdiction to decide on the GATT/GATS-consistency of PTAs, Turkey – Textiles (1999) provides a jurisprudence that this is not the case (Bossche & Zdouc, 2017).

Empirical evidences demonstrate that WTO rules are effective to deter illegal PTAs. Manger (2012), for example, found that there is significant similarity of fundamental principles in GATT and GATS with PTAs. He argued this is because most active proponents of PTAs are also WTO members, who are required to comply with WTO principles and obligations. Otherwise, measures created through PTAs would be challenged through and annulled by the WTO dispute settlement body.

IV. Conclusion

In the 20th century, the nature of the international trading system has gradually transformed from a power-driven into a rules-based system. However, since the 1990s, bilateral and regional trade agreements have emerged, being a significant feature of the world’s trading system. Some scholars argue that these agreements undermine the rules-based trading system because it violates the Most-Favored-Nation principle as parties to such agreement offers better market access condition to other parties than to non-parties. This paper, however, argues otherwise for three related reasons. First, rules of the trading system

allow countries to sign PTAs so long as it does not raise trade barriers. It is problematic to argue that PTAs undermine the rules-based system as the rules themselves allow PTAs. Second, due to the rules, PTAs are designed to further liberalize trade, strengthening the system as it helps achieve the system's objectives. Third, evidence shows that PTAs are empirically in line with the rules as the system has effective measures in place to deter the development of protectionist-oriented PTAs.

From the data described above, the following conclusions can be drawn:

1. In 2016, there was a decrease in the number of exports of goods from USD 148,365 million in 2015, to USD 144,441 million in 2016. The decline in the number of exports was not solely This was due to the enactment of the MEA in December 2015 but was more a result of the weakening global economic conditions which only grew by 3.1%.
2. The services trade balance deficit in 2016 fell to USD6.5 billion from USD8.7 billion in 2016. This was mainly contributed by a decrease in payments for freight services, in line with a decrease in imports of goods. In addition, the improvement in the service balance was also supported by an increase in revenue from travel services in line with the increase in the number of foreign tourists visiting Indonesia from 9.79 million in 2015 to 10.93 million in 2016.
3. The direct investment surplus increased from USD3.0 billion in the second quarter of 2016. to USD5.2 billion in the third quarter of 2016 supported by positive sentiment towards the domestic economic outlook.
4. The development of liability side portfolio investment in the third quarter of 2016 was influenced by an increase in foreign investors' net purchases of rupiah-denominated securities, especially government securities and stocks. The Tax Amnesty Law, although on the other hand, increased sentiment regarding the timing of the increase in the Fed Funds Rate (FFR) had triggered an outflow of foreign funds from stocks in September 2016. SD2.3 billion, lower than the previous period which recorded a deficit of USD3.7 billion, but in contrast to the surplus in the third quarter of 2015 of USD0.4 billion. The decline in the deficit in the quarter under review was mainly driven by the net withdrawal of government foreign loans and the net withdrawal of resident deposits abroad. Indonesian payments. The fluctuations in the number of exports, imports, and investments in 2016 were mainly due to the turbulent world economic conditions. Further analysis in the long term is needed on how the implementation of the ASEAN Economic Community will impact Indonesia's Balance of Payments.

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