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Rationale Behind the Indonesia-EFTA Regional Trade Agreement under Article XXIV GATT 1994 on "Substantially All Trade"

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ABSTRACT

The increasing number of Regional Trade Agreements (RTAs) worldwide reflects the shift from multilateral to regional trade liberalization, posing challenges to the World Trade Organization (WTO) framework under Article XXIV of GATT 1994. Indonesia's participation in the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) raises the question of whether the agreement satisfies the "substantially all trade" requirement and whether it is driven by economic or political rationale. This paper hypothesizes that Indonesia's formation of the IE-CEPA was predominantly political rather than economic, aiming to strengthen diplomatic relations and strategic positioning in Europe rather than to expand market access. Using a normative legal method supported by trade data analysis. The findings reveal that while Indonesia and EFTA have formally satisfied the legal test of "substantially all trade," the underlying rationale for Indonesia's participation is predominantly political rather than economic. The agreement reflects Indonesia's diplomatic ambition to strengthen its strategic relations with Europe, indicating that compliance with the "substantially all trade" clause serves more as a legal formality than an instrument of genuine trade liberalization.

Keywords: Article 24 GATT; Indonesia-EFTA; Rationale; RTA; Substantially All Trade.

I. INTRODUCTION

The World Trade Organization (WTO) is a trade organization that comprehensively regulates almost all significant aspects of multilateral international trade. However, many of these crucial aspects are more significantly regulated or integrated by WTO member countries through bilateral agreements or Regional Trade Agreements (RTAs). These directly set aside the fundamental WTO principle of Most-Favoured-Nation (MFN).[1]

Today, nearly all WTO member countries are involved in RTAs at various levels and regions. As of October 22, 2024, only six (6) WTO member countries are not involved in any RTA. The trend of forming RTAs has been unstoppable since the early 1990s, with 373 RTAs recorded in the WTO database as of 2024.[2] The formation of RTAs is not solely based on economic factors but also involves political perspectives, explaining why many WTO member countries participate in RTA formation.[3]

Generally, establishing RTAs, whether in the form of Free Trade Agreements (FTAs) or Customs Unions (CUs), would violate the MFN principle, one of the critical principles of the WTO. However, Article XXIV of the GATT allows RTAs to be a notable exception, provided specific criteria are met.[4] Furthermore, RTAs must promote freer trade among the participating countries without creating obstacles to trade outside the RTA. In other words, RTAs should support the WTO framework without posing any threats or barriers.[5]

The RTA regime has also extended its influence on Indonesia's trade policies. Indonesia participates in numerous RTAs, particularly in the form of FTAs. According to the WTO database, Indonesia has at least sixteen (16) RTAs recorded or in force, not including those in the signing or negotiation stages yet to be entered into the WTO

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[1] Mossner, Louise Eva, "The WTO And Regional Tade: A Family Business? The WTO Compatibility of Regional Trade Agreements with Non-WTO-Members", *World Trade Review,* Vol. 13, Issue. 4, 23 May 2014, p. 634. https://doi.org/10.1017/S1474745613000347
[2] WTO, "Regional Trade Agreement Database", https://www.wto.org/, 22 Oktober 2024 https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.
[3] World Trade Organization, "Understanding WTO, World Trade Organization Information and External Relations Division", Fifth Edition, Geneva, 2015, p. 8. https://www.wto.org/English/Thewto_E/whatis_e/tif_e/understanding_e.pdf
[4] World Trade Organization, "The WTO and Preferential Trade Agreements: From Co-Existence to Coherence", *World Trade Report*, 2018, p. 42. https://doi.org/10.30875/b51b2f2c-en
[5] *Ibid*,.

database. One of the recently enforced RTAs is the Indonesia-European Free Trade Association Comprehensive Economic Partnership Agreement (IE-CEPA).[6]

Accordingly, this paper seeks to answer the following research question: **Does the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) satisfy the legal requirement of Article XXIV GATT 1994 on "substantially all trade," and to what extent does political rationale influence its formation?** The research employs a normative legal method complemented by empirical trade data to provide contextual interpretation of Indonesia's obligations under international trade law. This approach is justified on the basis that legal compliance in trade agreements cannot be separated from their underlying political-economic realities.

This academic journal will be divided into five main sections: (1) the scope of RTAs within the WTO framework; (2) the rationale behind WTO member countries forming RTAs; (3) the legal requirements for RTA formation under Article XXIV of the GATT 1994; (4) an in-depth explanation of 'substantially all trade' as outlined in Article XXIV of the GATT 1994; and (5) an analysis of the extent to which the 'substantially all trade' criterion is met in the formation of the Indonesia-EFTA RTA, aiming to determine whether the rationale behind the agreement is political or economic.

This paper employs a normative legal research methodology, which does not merely rely on secondary data but systematically interprets and analyses legal norms governing regional trade agreements. The research adopts a doctrinal approach, focusing on textual and systematic interpretation of Article XXIV of the GATT 1994 and related WTO instruments to examine the legal meaning of "substantially all trade." Doctrinal interpretation is complemented by analytical conceptualization to assess how WTO jurisprudence and scholarly debates construct the legal standards for regional trade agreements. In addition, the study incorporates quantitative and qualitative trade data from the Central Statistics Agency (*Badan Pusat Statistik*)[7] to support normative analysis

[6] WTO, "Regional Trade Agreement Database", https://www.wto.org/, 22 Oktober 2024 https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.
[7] BPS is a Non-Ministerial Government Institution accountable directly to the President. BPS organizes basic statistics, facilitates sectoral and special statistics, and publishes its outputs through the Official Statistical News (BRS). It plays a role in developing the National Statistical System, providing data for the government and the public, assisting other institutions in statistical activities, developing statistical methodologies and training, and fostering international cooperation in the field of statistics. BPS, "Profil BPS", https://ppid.bps.go.id/app/konten/0000/Profil-BPS.html?_gl=1*1ltpdm2*_ga*NjcyNTMyMjQwLjE3NDgyMjc0NDg.*_ga_XXTTVXWHDB*czE3Nj

with empirical indicators, allowing the research to evaluate not only the formal compliance of the IE-CEPA with WTO law but also its substantive implications for Indonesia's trade outcomes.

II. DISCUSSION

2.1. The Scope of RTAs within the WTO Framework

Before delving deeper into this journal's discussion, it is essential first to understand what a Regional Trade Agreement (RTA) is. Prior to the emergence of the term RTA during the multilateral trading system era under the World Trade Organization (WTO), various terminologies were used to describe agreements that offered preferential or better treatment than others before the WTO's establishment. The most commonly used terms included Preferential Trade Agreements (PTAs) and Free Trade Agreements (FTAs), while some countries preferred the terms "closer economic partnerships" or "closer economic cooperation".[8] In GATT 1994, the WTO initially used the term "Territorial Application – Frontier Traffic – Customs Unions and Free Trade Areas" in Article XXIV as the legal basis for establishing Customs Unions (CUs) or Free Trade Areas (FTAs), which also recognized interim agreements as steps toward forming CUs or FTAs.

Given the growing complexity and variety of agreements under Article XXIV, the WTO introduced a new term encompassing all preferential agreements among its members: Regional Trade Agreements (RTAs). This term is used in the WTO framework and GATT 1994 to cover all preferential agreements. Consequently, in 1996, the WTO established a special committee, the Committee on Regional Trade Agreements (CRTA), to review each RTA formed by member countries and assess the systemic impact of these agreements on the multilateral trading system.[9] The WTO provides various legal frameworks for RTAs, including Article XXIV of GATT 1994, Article V of the General Agreement on Trade in Services (GATS), Paragraph 2(c) of the Enabling Clause, and the

MwMjAxNTMkbzIkZzEkdDE3NjMwMjAzODYkajQ2JGwwJGgw, accessed on November 12, 2025, at 13:50.

[8] Acharya, Rohini, "Intoduction Regional Trade Agreements: Recent Developments", dalam *Regional Trade Agreements and the Multilateral Trading System*, *ed*. Rohini Acharya, Cambridge University Press, Cambridge, United Kingdom, 2016, p. 16. https://doi.org/10.1017/CBO9781316676493.003

[9] *Ibid*,.

most recent addition, the Transparency Mechanism for Regional Trade Agreements, which laid the foundation for the CRTA's formation.[10]

The current development of RTAs as a form of regional liberalization runs parallel to multilateral trade under the WTO. Since the early 1990s, the number of RTAs has significantly increased, even before the WTO was established with GATT 1994 as its primary legal foundation. During the GATT 1994 era, only about three RTAs were registered annually. In contrast, following the WTO's establishment in 1995, the number of RTA notifications rose significantly to an average of 25 per year. As of October 22, 2024, there are 373 RTAs registered with the WTO, covering trade liberalization in goods and services.[11]

2.2. Rationale Behind WTO Member Countries Forming RTAs

After discussing the development of definitions and terminology related to Regional Trade Agreements (RTAs), it is interesting to explore why WTO member countries have increasingly engaged in RTAs with one another. The influence of trade liberalization can be traced back to a historical perspective. Trade restrictions during the 1930s and World War II significantly harmed the global economy, particularly in Europe. As a response, the General Agreement on Tariffs and Trade (GATT) was established in 1947 to promote multilateral trade liberalization and help rebuild economies devastated by the war.

Over time, however, the focus of economic integration and liberalization among GATT contracting parties shifted from a purely multilateral approach to a more regional one. This shift was driven by the perception that economic integration and liberalization could be achieved more effectively through regional agreements, where countries granted preferential treatment to their trade partners by lowering tariffs more than for other GATT members. Such arrangements were permitted under GATT 1947, as the overarching goal was to facilitate liberalization and economic recovery. In the modern era of multilateral trade governed by the WTO, the rationale behind forming RTAs has expanded. While economic integration and regional liberalization remain central, political considerations have become increasingly significant. RTAs now reflect a combination of economic and political rationales. Countries pursue these agreements to enhance trade and economic

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[10] *Ibid*, p. 4-5.
[11] *Ibid*.

cooperation, strengthen political alliances, exert regional influence, and address broader strategic objectives. This evolution underscores how RTAs have transitioned from purely economic tools under GATT to instruments that serve multifaceted economic and political purposes within the WTO framework.

2.2.1. Economic Rationales

The development of Regional Trade Agreements (RTAs) today presents intriguing and challenging aspects for economists. The most common questions surrounding RTAs are: **"Is it beneficial?"** and **"Why is it happening?"** Comprehensive investigations by economists reveal the following key insights about the RTA phenomenon:[12]

1. Rapid Growth

   According to the Committee on Regional Trade Agreements (CRTA), by 2005, at least 334 RTAs were registered with the WTO. Since the WTO's establishment in 1995, the average number of RTA notifications has been around 11 yearly. This rapid increase highlights the growing importance of RTAs in the global trade landscape.

2. Periodic Terminations

   RTAs are not always permanent. For example, the CRTA reported in 2004 that at least 65 RTAs had been terminated, often due to members joining larger Customs Unions (CUs) such as the European Union (EU). This demonstrates the dynamic and evolving nature of trade agreements.

3. Predominance of Free Trade Areas (FTAs)

   Most RTAs are structured as FTAs rather than Customs Unions or other types of trade agreements. FTAs are easier to negotiate because they do not require a standard external tariff, unlike Customs Unions, which necessitate uniform tariffs for external countries.

4. Mostly Bilateral Agreements

   More than 75% of all RTAs notified to the WTO by 2005 were bilateral. These agreements can involve various configurations, such as country-to-country,

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[12] D, Viet D. dan William Watson, "Economic Analysis of Regional Trade Agreements", dalam *Regional Trade Agreements and the WTO Legal System*, *ed*. Lorand Bartels & Federico Ortino, Oxford University Press, New York, 2006, p. 18. https://doi.org/10.1093/acprof:oso/9780199206995.003.0002

country-to-FTA, or country-to-CU arrangements. Bilateral agreements are often more manageable and flexible than multilateral negotiations.

5. Complexity within the WTO Framework
   The rise in RTAs since the early 1990s correlates with the complexities of the WTO system: *first*, **Tariff Reductions.** The Uruguay Round of trade negotiations resulted in tariff reductions, which were not deemed sufficient to liberalize global trade fully. This shortfall encouraged countries to pursue RTAs, and *second*, **Slow Multilateral Progress.** The slow pace of multilateral negotiations led countries to seek alternative means of trade liberalization through RTAs, which can be negotiated more quickly and tailored to specific needs.
6. Implementation Challenges
   Not all RTAs are effectively implemented. Many agreements remain on paper without delivering tangible trade benefits. Excessive regional liberalization can sometimes undermine its effectiveness, prompting countries to return to multilateral approaches, especially when RTAs fail to achieve their intended outcomes.
7. Uneven Geographical Distribution
   RTAs are not evenly distributed globally. For example, the EU has numerous bilateral RTAs comparable to those established by the United States. There is also significant RTA activity in Southeast Asia and Africa, but some regions are more engaged than others, reflecting varying levels of regional integration and economic priorities.

These insights underscore the complexities and varied impacts of RTAs, highlighting their potential benefits and challenges within the broader multilateral trading system.

Generally, more liberalized but not fully open trade does not necessarily result in economic prosperity. From an economic perspective, a vital issue concerning the proliferation of Regional Trade Agreements (RTAs) is whether they generate new markets ("**trade creation**") or merely redirect existing markets ("**trade diversion**"). These concepts were first introduced by Jacob Viner in 1950.[13]

[13] Vebiyanto, Sony and Hastarini Dwi Atmanti, “Impact of ASEAN Plus Five Free Trade Area: Trade Creation and Trade Diversion”, *Jurnal Ekonomi Pembangunan*, Vol. 20, No. 2, 2022, p.148. https://doi.org/10.29259/jep.v20i2.18718

To illustrate these concepts, consider the following example. Until the 1980s, Canada had a wine industry concentrated in the Niagara Peninsula near the U.S. border. The wine produced was relatively expensive and of low quality, limiting its competitiveness to the domestic Canadian market due to tariff and non-tariff barriers imposed by the United States. Following the establishment of the Canada-U.S. Free Trade Agreement (FTA), which liberalized wine trade between the two countries, Canadian wineries lost market share as they could not compete with higher-quality, lower-priced wines from California. As a result, Canadian consumers benefited from more affordable wine. While the Canadian wine industry experienced losses, consumers enjoyed increased access to better products, and Canadian businesses were able to invest in the United States due to reduced costs. This scenario exemplifies **trade creation**.[14]

Conversely, the Canada-U.S. FTA also led to **trade diversion** in the wine sector between Canada and France. Before the agreement, U.S. and French wines faced import tariffs in Canada. After the FTA took effect, U.S. wines could enter Canada tariff-free, while French wines remained subject to tariffs. This created a competitive disadvantage for French wines, even though they may have been cheaper and of higher quality than those produced domestically in Canada or imported from the United States. Consequently, the agreement diverted trade from a potentially more efficient global supplier (France) to a regional partner (the United States), reducing overall economic welfare.[15]

2.2.2. Political Rationales

The spread of Regional Trade Agreements (RTAs), initially dominated by the economic rationality of countries before and after the WTO era, now reflects a variety of rationales. The most dominant rationale in RTA negotiations is political. This has attracted the attention of political researchers investigating it within the International Political Economy (IPE) framework. IPE scholars explore both the political and economic causes, or a combination of both, behind countries' decisions to engage in RTA negotiations. They have identified at least seven political rationales motivating countries to pursue RTAs:

1. **Regionalism and the marginalization syndrome**

[14] *Ibid*,.
[15] *Ibid*,.

The primary reason is that countries tend to engage in RTA negotiations to avoid being left behind or marginalized in the global economic and political landscape. Typically, this applies to smaller, poorer, isolated countries or those heavily dependent on other nations.

2. **Security via economic means**
   IPE researchers say countries enter RTA negotiations primarily to enhance their economies. Simultaneously, they use these agreements to assert their national security and presence. For instance, European countries formed the European Coal and Steel Community to prevent future German aggression. Similarly, ASEAN was initially established for economic and cultural cooperation but also served as a defence mechanism against the Cold War influences of the United States and the Soviet Union.
3. **Regionalism and 'new security' needs**
   This rationale extends beyond traditional military threats to include non-military concerns such as environmental degradation, illegal immigration, and organized crime (e.g., drug trafficking and terrorism). An example is the Southern African Development Community (SADC), which aims to facilitate the transportation of goods in Africa while addressing environmental preservation.
4. **Regionalism to increase negotiating leverage**
   Countries may also be motivated to engage in RTA negotiations to enhance their bargaining power on the international stage. This is common among developing countries, which use RTAs as a stepping stone to engage in broader negotiations with developed nations.
5. **Regionalism to lock in domestic reforms**
   Countries might enter RTA negotiations to accelerate domestic trade reforms. By committing to the agreed terms, domestic industries and markets are pressured to comply, thereby speeding up liberalization processes.
6. **Regionalism to accommodate domestic constituents**
   This is arguably the most politically pragmatic rationale. Regional liberalization is often pursued to meet the needs of domestic populations, mainly when governments cannot fully satisfy those needs or when doing so domestically would be prohibitively expensive.

7. **Practical ease of regionalism vs. multilateralism**

   This final rationale underscores the practical advantages of RTAs over multilateral liberalization through the WTO. RTAs are generally easier to negotiate than multilateral agreements, which require consensus among all WTO members, each with different levels of economic development and national interests. This political rationale highlights the slower, more complex nature of multilateral liberalization.

2.3. The Legal Test of "Substantially All Trade" under Article XXIV GATT 1994

Regardless of the economic or political rationality behind each RTA negotiation conducted by individual countries, every WTO member can negotiate RTAs with any country. However, each state must comply with several WTO provisions, considering that the legal basis or standing of RTAs has been established and serves as the foundation for negotiations before and after the WTO's establishment.

Since this journal focuses on trade in goods, it is worth delving further into Article XXIV of the GATT 1994 as the legal standing for trade in goods. Article XXIV:5 of the GATT 1994 provides an exception to WTO members' commitments, allowing the formation of RTAs. This is explained in Article XXIV:5's opening statement: "*Accordingly, the provisions of this Agreement shall not prevent, as between the territories of Members, the formation of a custom union or of a free-trade area*".[16]

Regarding the exception referred to in **Article XXIV:5**, countries intending to form an RTA must first understand the meaning of the exception contained in **Article XXIV:4**, which states:

> "*the Members recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a custom union or of a free-trade area should be to 'facilitate trade between the constituent territories and not to raise barriers to the trade of the other Members with such territories*."

[16] Mitchell, Andrew D. and Nicolas J.S. Lockhart, "Legal Requirement for PTAs Under the WTO", dalam Simon Lester,*ed, al, Bilateral and Regional Trade Agreements : Commentary and Analysis*, Cambridge University Press, Cambridge, United Kingdom, 2015, p. 81. https://ssrn.com/abstract=2664939

The elaboration of this Article is further explained in the **Understanding on the Interpretation of Article XXIV of the GATT 1994** (RTA Understanding). According to the RTA Understanding, each WTO member is required to:[17]

- Recognize the contribution to the expansion of world trade that may be achieved through the formation of RTA;
- Acknowledge that trade expansion is enhanced when internal trade barriers among RTA members are eliminated for all trade and diminished if specific sectors are excluded; and
- Continuously review and negotiate RTAs with other countries to avoid adverse effects on nations outside the RTA.

As explained in the previous Introduction, the scope of **GATT 1994** only covers **Free Trade Areas (FTAs)** and **Customs Unions (CUs)** under **Article XXIV:5**. However, to benefit from FTAs or CUs, a specific objective must be achieved, known as the **elimination of internal trade restrictions**.[18] For **Customs Unions (CUs)**, this is regulated under **Article XXIV:8(a)(1)**, which states: *"duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XIV, XV, and XX) are eliminated concerning substantially all trade between the constituent territories of the union or at least concerning substantially all the trade in products originating in such territories ..."*

Meanwhile, for **Free Trade Areas (FTAs)**, the same conditions and rules are regulated under **Article XXIV:8(b)**, which states: *"duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XIV, XV, and XX) are eliminated with respect to substantially all trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories ..."*

From these two provisions, it can be concluded that both **FTAs** and **CUs** must: (a) Fulfil the elimination of all trade restrictions within the scope of **"substantially all trade"** among RTA members; (b) Ensure that the elimination of trade restrictions includes **tariffs** and other restrictive regulations of commerce (**ORRCs**); and (c)

[17] *Ibid*, p. 83-84.
[18] *Ibid*, p. 92.

Explicitly allow the continuation of certain necessary restrictions under **Articles XI, XII, XIII, XIV, XV, and XX**.[19]

In the case of **Customs Unions (CUs)**, internal barriers must be eliminated both for **"substantially all trade"** among members and for **"substantially all trade"** for products originating from third-party countries. The provisions of CUs are considered more liberal because they include provisions that eliminate trade barriers for goods regardless of where they were produced. [20]

Under Article XXIV:8(a) of GATT 1994, a Customs Union (CU) requires not only the elimination of internal barriers on "substantially all the trade" among members, but also the adoption of a common external trade policy vis-à-vis third countries. This differs from Free Trade Areas (FTAs), which are only required to remove internal barriers while maintaining independent external tariffs. Therefore, the “substantially all trade” requirement in CUs applies specifically to internal trade among members, whereas the obligation toward third-country products is framed as maintaining “substantially the same duties and other regulations of commerce” among CU members. The broader institutional commitment explains why CUs are often viewed as more trade-integrative than FTAs. [21]

A more in-depth understanding of this distinction is illustrated in the WTO Appellate Body Report *Turkey – Textiles* (1999), where the panel emphasized that the formation of a CU must not lead to the creation of new barriers to trade with non-members. The case clarifies that CU members may impose common external restrictions only when such restrictions are necessary to the functioning of the CU and consistent with Article XXIV. This jurisprudence shows that while CUs may adopt a unified external trade policy, they must still demonstrate that these measures neither violate general GATT obligations nor restrict the competitive conditions for third-party exporters. Thus, the legal framework for CUs is not merely more “liberal,” but also more stringent in requiring justification for external measures.[22]

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[19] *Ibid*, p. 93.
[20] Kim, J. B. and L. Yoo, “Tariff Flexibility Amid Formation of Preferential Trade Agreements: WTO Law vs. PTA Law,” *World Trade Review*, Vol. 22, No. 5 (2023), p. 682. https://doi.org/10.1017/S1474745623000277
[21] Robert Howse and Joanne Langille, “Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future,” *American Journal of International Law*, Vol. 117, No. 1 (2023), p. 32. https://doi.org/10.1017/ajil.2022.82
[22] Dadush, Uri and Elena Dominguez Prost, “Preferential Trade Agreements, Geopolitics, and the Fragmentation of World Trade,” *World Trade Review*, Vol. 22, No. 2 (2023), p. 283. https://doi.org/10.1017/S1474745623000022

From a policy perspective, the deeper integration achieved through CUs indicates a higher degree of political commitment among members, as the harmonization of external tariffs limits national discretion in trade policy. This illustrates why many developing countries, including Indonesia, tend to prefer FTAs over CUs: the political and economic costs of aligning external tariffs are significantly higher. The distinction also helps contextualize Indonesia's engagement with EFTA, confirming that IE-CEPA—being an FTA—was designed primarily to achieve formal compliance with Article XXIV rather than deeper economic integration. This supports the article's finding that Indonesia's rationale was predominantly political rather than driven by substantial economic incentives.[23] In contrast, **Free Trade Areas (FTAs)** follow a provision where eliminating internal barriers to meet the **"substantially all trade"** requirement applies only if the goods originate from RTA member countries.[24]

2.3.1. Divergent Interpretations of "Substantially All Trade" Among WTO Members

The meaning of **"substantially all trade"** in **Article XXIV:8** has been discussed among WTO members for many years. To date, WTO members have disagreed on how **"substantially all trade"** or **"all the trade"** in an RTA must be applied.[25] However, there are two overlapping approaches. The first is the **qualitative approach**, which requires removing barriers to cover **each country's primary sector** within the RTA. The second is the **quantitative approach**, which relies on **statistical thresholds**. An example of this is the fulfilment of the removal of barriers to maintain a **percentage of trade** conducted and agreed upon by both countries before establishing the RTA.[26]

The **qualitative approach** is designed to prevent the parties in the RTA from maintaining barriers in specific sectors that are considered important to protect markets and avoid competition within the domestic economy. This approach is also supported by the rationale for fulfilling the provisions regarding exceptions as previously outlined and determined by the WTO. Furthermore, it represents the commitment of WTO members

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[23] Giorgio Sacerdoti and Luca Borlini, "Systemic Changes in the Politicization of International Trade Relations and the Decline of the Multilateral Trading System," *German Law Journal*, Vol. 24, No. 1 (2023), p. 33. https://doi.org/10.1017/glj.2023

[24] *Ibid*,.

[25] *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Coverage, Liberalization Process and Transitional Provisions in Regional Trade Agreements: Background Survey by the Secretariat,* WT/REG/W/46 (5 April 2002).

[26] *Ibid*,.

to engage in more liberal economic integration as their justification for entering into RTA negotiations. If one party excludes a **primary sector** from liberalization, the RTA will be considered not to meet the **"substantially all trade"** requirement. If this approach is used to satisfy the **"substantially all trade"** criterion, the parties to the RTA must also simultaneously negotiate which sectors are considered major or significant for each party.[27]

According to the **quantitative approach**, to meet the requirement of **"substantially all trade"**, it is recommended that the parties eliminate trade barriers for at least **95 percent** of all tariff concessions made under their commitments to the WTO based on the **Harmonised Commodity Description and Coding System (HS Code)** at the six-digit level. The **HS Code** can be used as a reference for the parties to liberalize the sectors and commodities they wish, but with a tariff reduction scheme based on the average of the sectors and commodities that have been liberalized.[28] However, tariffs based on the HS Code may need clarification because commodities have been liberalized. For instance, if trade between the RTA parties is concentrated on a small number of tariffs, and barriers to those sectors are maintained, then most trade activities may fulfil the intention of trade liberalization within the RTA.[29] On the other hand, a significant portion of the tariffs might be dedicated to trade in small quantities. For example, nearly one-quarter of the HS Codes for all agricultural products might result in trade liberalization in only a tiny portion of the sector.[30]

Trade Trade flows are often used as an alternative criterion to tariffs in determining which internal trade barriers should be eliminated within an RTA. The logic is that the removal of internal barriers should correspond to the liberalization of a substantial proportion of actual trade between the parties—typically measured at around 95 percent of total trade in goods. However, relying on trade flows as the basis for liberalization presents several methodological challenges. Actual trade flows may already be distorted

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[27] *Ibid*, p. 94.
[28] *Ibid*,.
[29] *Ibid*,. "*for instance, the EC has pointed out that in agreements involving the Faroe Island, 'well under tariff lines accounted for about 80 per cent of the trade'. Norway, likewise, has observed that in a Faroe Island – Norway Free Trade Agreement, all of the trade between the two parties was conducted under just ten tariff lines".* WTO Committee on Regional Trade Agreements, *Note on the Meetings of 16 – 18 and 20 February 1998,* WT/REG/M/16 (18 March 1998), para. 118 dan 125.
[30] *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Note on the meetings of 23 – 24 September 1998,* WT/REG/19 (16 October 1998), para. 18.

by existing tariffs and non-tariff barriers, meaning they do not necessarily reflect the true volume of trade that would occur under freer conditions. As a result, trade-flow-based calculations risk over- or under-estimating the level of trade that should be covered under the "substantially all trade" requirement.[31]

Further difficulties arise in determining how the 95 percent threshold should be measured, particularly whether it should be calculated on a **summation basis** (combined bilateral flows) or on an **individual basis** (each country's imports from the other). To illustrate, suppose Country A exports USD 95 billion of goods to Country B, while Country B exports USD 5 billion to Country A. Under a summation approach, both countries would be required to liberalize 95 percent of the combined bilateral trade value of USD 100 billion, although the parties may differ on whether B must fully liberalize imports from A. In contrast, using the individual approach, each country liberalizes 95 percent of its own imports from the other, resulting in markedly different liberalization obligations. This divergence demonstrates how the choice of method significantly influences the extent of required barrier removal and highlights why trade-flow criteria often create practical and legal ambiguity in RTA negotiations.[32]

2.3.2. Dispute Settlement Body Clarification of "Substantially All Trade": A Flexible, Case-by-Case

Although WTO members have not fully agreed on the definition of "substantially all trade," panels or the Appellate Body (AB) may be required to interpret this terminology in dispute settlement within the WTO. To date, neither the AB nor the panels have formulated a detailed definition of "substantially all trade." In the Turkey – Textiles case, the AB noted that "substantially all trade" is not the same as "all trade," but rather it is a concept that is broadly understood as "more than merely some of the trade."[33]

In another case, to test whether the North American Free Trade Agreement (NAFTA) was consistent with Article XXIV:8(b) in the US – Line Pipe Safeguards case,

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32 *Ibid*,. *See also* WTO Committee on Regional Trade Agreements, *Communication from Australia*, WT/REG/W/22 (30 January 1998), dan *See also* WTO Committee on Regional Trade Agreements, *Note on the Meeting of 16 – 18 and 20 February 1998*, WT/REG/M/16 (18 March 1998), para. 112.

33 *Ibid*, p. 96. *See also* Appellate Body Report, *Turkey – Textiles,* para. 48.

the United States provided evidence that NAFTA eliminated 97 percent of tariffs among the parties, representing nearly 99 percent of the total trade between them in terms of the volume of goods.[34] After reviewing this evidence, without reinterpreting "substantially all trade," the panel considered that the United States had established a prima facie case that NAFTA met the definition of "substantially all trade" under the FTA provisions of Article XXIV:8(b).[35] Subsequently, the AB reviewed the panel's ruling and concluded that the evidence of "substantially all trade" accepted by the panel had no legal effect on the true meaning of "substantially all trade."[36]

2.4. Political Rationale as the Dominant Driver of IE-CEPA

Based on the discussion regarding the rationality and "substantially all trade" concept, the author attempts to illustrate and examine the relationship between these topics in the context of the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE CEPA) negotiations. Given that the IE CEPA was only signed on December 16, 2018,[37] it is interesting to discuss, even though the agreement has not yet entered into force.

Before the IE CEPA was formed and agreed upon, EFTA itself was a separate RTA that had existed since 1960, consisting of Iceland, Liechtenstein, Norway, and Switzerland.[38] EFTA, as an independent RTA, is an intriguing agreement when examined based on its rationality before analyzing its relationship with Indonesia. EFTA is an example of an RTA with stronger political rationality than economic rationality. The

[34] *Ibid*,. *See also* Panel Report, *US – Line Pipe Safeguads*, para. 7.142.
[35] *See* Panel Report, *US – Line Pipe Safeguads*, para. 7.144.
[36] *Ibid*,. *See also* Appellate Body Report, *US – Line Pipe Safeguards*, para. 198-199.
[37] Indonesia and the member countries of the European Free Trade Association (EFTA) officially signed the Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) on Sunday (December 16) in Jakarta. The signing of the Agreement was carried out by the Minister of Trade of the Republic of Indonesia, Enggartiasto Lukita, together with the Federal Councillor, Head of the Federal Department of Economic Affairs, Education and Research of Switzerland, Johann N. Schneider-Ammann; the Minister for Foreign Affairs and External Trade of Iceland, Guðlaugur Þór Þórðarson; the Minister of Foreign Affairs, Justice, and Culture of Liechtenstein, Aurelia Frick; and the Minister of Trade and Industry of Norway, Torbjørn Røe Isaksen. Quoted from "Indonesia – EFTA Officially Signed the Comprehensive Agreement IE–CEPA," as published on www.kemlu.go.id, accessed on March 23, 2025, at 13:02.
[38] The European Free Trade Association (EFTA) is an intergovernmental organization comprising Iceland, Liechtenstein, Norway, and Switzerland. It was established in 1960 by its then seven member states to promote free trade and economic integration among its members. The four EFTA states are open and developed economies, with trade figures significantly higher than might be expected from a total population of less than 14 million people. EFTA is the ninth largest trader in the world in merchandise trade and the fifth largest in trade in services. EFTA is the third most important trading partner in goods for the European Union and the second most important in services. Quoted from "About EFTA," as published on www.efta.int, accessed on March 23, 2019, at 14:16.

primary purpose of EFTA's formation was to enhance the bargaining power and relations of the EFTA countries with the European Economic Community (EEC) at that time, and it successfully led to the bilateral relationship within the EFTA-EC Free Trade Agreement in 1972.[39]

Interestingly, despite EFTA being an FTA, the four EFTA countries always negotiate RTAs collectively, even though they could negotiate individually since EFTA does not have a standard external tariff agreement, allowing them to manage their tariffs independently, unlike a CU. EFTA has established 29 RTAs with 40 countries[40], currently making EFTA the party with the most RTAs.

As for Indonesia, RTA is considered a long-standing phenomenon since, before the establishment of the WTO, Indonesia had already joined an RTA, namely the ASEAN Free Trade Area (AFTA) in 1992. By 2000, AFTA had successfully increased trade intensity within the ASEAN region by 30-45 percent. In contrast, trade with countries outside the ASEAN region increased by only 7-14 percent annually relative to the regional GDP of ASEAN countries. [41] Thus, the formation of AFTA was strongly driven by economic rationality, which is considered successful.

Although AFTA is strong in its economic rationality, it is interesting to examine its historical perspective. AFTA is an RTA consisting of ASEAN countries, and ASEAN is a regional agreement established in Southeast Asia. The formation of ASEAN is considered to be driven by the concept of **'Security via Economic Means.'** The founding ASEAN delegates sought to build a regional identity to avoid conflict and foster regional security cooperation. ASEAN was established in **1967** with elements of economic cooperation and the development of a regional identity to prevent conflicts among ASEAN countries, especially during the Cold War period.[42] Over time, ASEAN's

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[39] Cottier, Thomas and Marina Foltea, "Constitutional Function of the WTO and RTAs", dalam *Regional Trade Agreements and the WTO Legal System*, *ed*. Lorand Bartels & Federico Ortino, Oxford University Press, New York, 2006, p. 44.
[40] The following are the RTA partner countries with EFTA: **Status (in force)** – Iceland, Albania, Bosnia & Herzegovina, Canada, Costa Rica & Panama, Chile, Colombia, Egypt, Georgia, Hong Kong (China), Israel, Jordan, South Korea, Lebanon, Mexico, Montenegro, Morocco, North Macedonia, the Palestinian Authority, Peru, the Philippines, SACU (South African Customs Union), Serbia, Singapore, Tunisia, Turkey, Ukraine, the European Union, the Faroe Islands, Japan; **(early announced)** – Guatemala, Ecuador, GCC (Gulf Cooperation Council), Indonesia, India, Mercosur (Southern Common Market), Russia, Belarus, Kazakhstan, Vietnam. Source: http://rtais.wto.org, see also "EFTA's Free Trade Agreements Monitor," as published on www.efta.int, accessed on March 23, 2025, at 14:18.
[41] Lorand Bartels and Federico Ortino, *Regional Trade Agreement*, p. 13.
[42] *Ibid*, p. 31.

objectives have shifted, particularly since the establishment of the WTO, by negotiating RTAs with other countries, known as **ASEAN + 1**.[43]

Of all the RTAs Indonesia participates in, as recorded in the WTO database, most are RTAs where Indonesia is not negotiating independently but as part of ASEAN, with trade partners from countries classified as developed or with a higher economic level than ASEAN nations. Therefore, these RTAs have strong rationality, as most ASEAN countries are classified as developing countries.

However, Indonesia has begun negotiating RTAs independently, starting with Japan, which was signed in **2007** and will remain in effect until **2023**. In contrast, ASEAN only concluded an RTA with Japan in **2008**, known as the **Indonesia–Japan Comprehensive Economic Partnership Agreement (IJEPA)**. IJEPA marks an initial milestone for Indonesia in increasing its **leverage** in international relations, particularly in the Asia-Pacific region.

Lastly, Indonesia signed the **IE CEPA**. This RTA is likely driven more by political rationality than economic rationality. As outlined in Article XXIV, the **'substantially all trade'** requirement can be examined and assessed to test this assumption.

The quantitative and qualitative approaches are general approaches for a country to meet the **'substantially all trade'** requirement. However, for Indonesia, a new and updated approach is needed as a test for the formation of the **IE CEPA**. This approach involves assessing Indonesia's trade capacity in exports and imports, so long before Indonesia initiates RTA negotiations, it evaluates whether the potential trade partner can accommodate all of Indonesia's commodity exports. This approach can be referred to as the **"comparative approach."**

[43] RTA partner countries with ASEAN, of which Indonesia is a member: ASEAN–Australia–New Zealand, ASEAN–China, ASEAN–India, ASEAN–Japan, ASEAN–South Korea. Source: http://rtais.wto.org.

Agricultural Products		
Export	***Value (Million USD)***	***% of all exports (±)***
HS1511 *Palm oil and its fractions*	18.513	50
HS1513 *Coconut (copra), or palm kernel oil*	3.028	10
HS3823 *Industrial monocarboxylic acids*	2.991	10
HS0901 *Coffee*	1.187	5
HS1517 *Margarine; edible mixtures oil*	909	5
Import	***Value (Million USD)***	***% of all imports (±)***
HS1001 *Wheat and meslin*	3.628	17
HS1701 *Cane or beet sugar*	2.349	12
HS2304 *Solid residues from soya-bean oil*	1.841	8
HS1201 *Soya beans, whether or not broken*	1.285	6
HS5201 *Cotton, not carded or combed*	1.268	6
Non-Agricultural Products		
Export	***Value (Million USD)***	***% of all exports (±)***
HS2701 *Coal; briquettes, ovoids*	17.868	13
HS2711 *Petroleum gases*	8.861	7
HS2709 *Petroleum oils, crude*	5.238	5
HS4001 *Natural rubber, balata*	5.105	5

HS2603 *Copper ores and concentrates*	3.440	3
Import	***Value (Million USD)***	***% of all imports(±)***
HS2710 *Petroleum oils, oher than crude*	14.980	11
HS2709 *Petroleum oils, crude*	8.232	6
HS8517 *Line telephony electrical apparatus*	3.313	3
HS2711 *Petroleum gases*	2.897	3
HS8708 *Parts for motor vehicles 8701-8075*	2.892	3

Table. 1. Indonesia's Trade Balance Based on WTO Statistics, 2019.
Source: World Trade Organization, WTO Statistics Database (accessed March 28, 2024).

Referring to the table above, Indonesia should negotiate RTAs with countries that can accommodate Indonesia's export commodities, either by maintaining existing markets with new policies (zero tariffs or the removal of non-tariff barriers) or by opening new markets (trade creation) for countries that have not yet absorbed Indonesia's export products, in line with economic rationality. Indonesia must also consider the export commodities of potential RTA partner governments. The potential partner should be an exporter of commodities that Indonesia imports. In this way, Indonesia can apply zero tariffs or impose minimal trade barriers on them.

HSCODE	**Value ($)/ Weight (Kg)**	**EFTA Country**			
		Iceland	**Norway**	**Liechtenstein**	**Switzerland**
0901	$	0	934.352	0	207.604
	Kg	0	195.200	0	41.202
2709	$	0	0		28.442.699

	Kg	0	0	0	122.575
Note	The data for HS codes 1511, 1513, 1517, 2603, 2701, 2711, 3823, and 4001 could not be found through the Statistical Service System (Silastik) of BPS.				

Table 2. Indonesia's Top Five Agricultural and Non-Agricultural Export Sectors to EFTA, 2019.
Source: Processed from BPS Database, *Silastik* (accessed June 20, 2019).

Based on Indonesia's top five export sectors in agriculture and non-agriculture, Indonesia only has two trade records in the coffee sector, valued at USD 934,352 for Norway and USD 207,604 for Switzerland. In the crude oil sector, Indonesia only has a transaction record with Switzerland amounting to USD 28,442,699. Other HS Code trade records were not found. When linked to economic rationality, particularly trade creation, Indonesia is likely targeting the markets of Iceland and Liechtenstein, which have not yet been formed. Therefore, Indonesia's economic approach to the IE CEPA is to open up a broader market. This can be demonstrated by the tariff commitments of the four EFTA countries for Indonesian coffee and crude oil commodities.

HS Code	**Tariff Commitment**			
	Islandia	**Norwegia**	**Liechtenstein**	**Switzerland**
901	Chapter 9: (Ad Valorem= 0%) and (Icelandic Currency/ Kg= 0%)	0901 1100 - 0901 9000: (Ad Valorem=0%) and (Norwegian Currency/Kg=0%)	0901 1100 - 0901 9900: (preferential trade=0% dan MFN Applied Minus=0%) per kg	0901 1100 - 0901 9900: (preferential trade=0% dan MFN Applied Minus=0%) per kg
2709	Chapter 27: (Ad Valorem= 0%) and (Icelandic	Chapter 27: (Ad Valorem=0%) and (Norwegian Currency/Kg=0%)	Chapter 27 = (preferential trade=0% dan MFN Applied	Chapter 27 = (preferential trade=0%

	Currency/ Kg= 0%)		Minus=0%) per kg	dan MFN Applied Minus=0%) per kg
Note	The HS Code used is 2012. The tariffs for Liechtenstein and Switzerland are the same because the Customs Union agreement binds both countries.			

Table 3. EFTA Commitments on Indonesian Exports under IE-CEPA, 2019.

Source: Processed from IE-CEPA Agreement, Annex III (Iceland), Annex IV (Norway), and Annex V (Switzerland)

The table above shows that the tariffs imposed by the four EFTA countries on Indonesian export commodities are an average of zero tariffs. Thus, Indonesia can continue trading with Norway and Switzerland more massively, hoping that Iceland and Liechtenstein will start considering conducting trade transactions with Indonesia on Indonesian export commodities.

Meanwhile, Indonesia's import commodity balance from EFTA countries includes:

HSCODE	**Value ($)/ Weight (Kg)**	**EFTA Country**			
		Iceland	**Norway**	**Liechtenstein**	**Switzerland**
2709	$	0	41455911	0	0
	Kg	0	88611001	0	0
2710	$	0	0	0	606
	Kg	0	0	0	19
1001	$	0	0	0	7.741.616
	Kg	0	0	0	34.684.600
5201	$	0	0	0	2.352.022
	Kg	0	0	0	269.846
8517	$	0	538	0	10.678
	Kg	0	2	0	54
8708	$	0	0	0	1.389
	Kg	0	0	0	26
Note	HS Code 1704, 2304, 1201, 2711 could not be found through the Statistical Service System (Silastik) of BPS.				

Table 4. EFTA Commitments on Indonesian Export Products, 2019.
Source: Processed from BPS Database, *Silastik* (accessed June 15, 2019)

From the table above, Iceland and Liechtenstein do not contribute to Indonesia's import of commodities. It can be concluded that only Norway and Switzerland actively contribute to Indonesia's trade balance and domestic needs for several HS Codes. So only Norway and Switzerland can enjoy preferential tariffs through the IE CEPA, which Indonesia follows in the following table:

HS CODE 2012	*Base Rate*	*Category*	Years of Entry				
			1	2	3	4	5
2709	0%	NT0	0%	0%	0%	0%	0%
2710	0%	NT0	0%	0%	0%	0%	0%
1001	0%	NT0	0%	0%	0%	0%	0%
5201	0%	NT0	0%	0%	0%	0%	0%
8517	0%	NT0	0%	0%	0%	0%	0%
8708	10%	NT2	8%	8%	6%	6%	4%
Note:	The year of entry is only used for the first 5 years compared to the 14 years included in the agreement. NT0 means the elimination of tariffs since the first year of entry into the agreement. At the same time, NT2 means that tariffs must be eliminated periodically, at 0% in the 10th year.						

Table 5. Indonesia's Import Commitments to EFTA under IE-CEPA, 2019.

Source: Processed from IE-CEPA Agreement, Annex II (Indonesia's Commitments).

Referring to both the qualitative and quantitative approaches, the data indicates that Indonesia and EFTA formally meet the requirements of the "substantially all trade" clause under Article XXIV of GATT 1994. However, the fulfilment of this legal threshold does not necessarily translate into economic gains for Indonesia. The IE-CEPA offers limited opportunities for significant export expansion because Indonesia's historical trade flows with several EFTA members particularly Liechtenstein and Iceland are extremely low, with some sectors recording zero transactions. This highlights that compliance with "substantially all trade" remains primarily a *formal* requirement, while its substantive economic impact is minimal.

A comparative analysis further shows that Indonesia's export performance to EFTA markets has historically been weak, and the opening of comprehensive commitments under IE-CEPA does not guarantee trade creation. Even with tariff elimination and market access improvements, EFTA consumers may continue to prefer cheaper and higher-quality imports from other suppliers, thereby limiting Indonesia's ability to benefit from the agreement. As a result, the findings affirm that despite fulfilling the "substantially all trade" requirement, the agreement does not provide Indonesia with meaningful economic advantages reinforcing the conclusion that IE-CEPA's underlying rationale is predominantly political rather than economic.

Moreover, the limited economic impact of IE-CEPA also highlights a broader interpretive issue embedded within the "substantially all trade" clause itself. WTO jurisprudence and scholarly commentary consistently emphasize that SAT is a *coverage obligation*, not a guarantee of economic outcomes. In this sense, compliance is assessed by examining whether tariff lines and trade regulations have been legally liberalized not whether trade volumes actually increase after the agreement enters into force. This distinction is crucial for the IE-CEPA context, where Indonesia may have formally liberalized a sufficient percentage of tariff lines to satisfy SAT, yet the underlying trade structure remains too shallow to generate meaningful export growth. As a result, the gap between *legal coverage* and *economic substance* becomes evident, reinforcing the finding that SAT compliance alone does not correct structural weaknesses in Indonesia's trade performance with EFTA countries.

III. CONCLUSION

The Indonesia–EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) was established under Article XXIV GATT 1994, requiring the elimination of barriers to "substantially all trade." Indonesia and EFTA have fulfilled this formal requirement through comprehensive tariff reductions. However, key empirical indicators—including persistent trade balance deficits, high export concentration in only a few commodity groups, and low tariff-utilization rates for Indonesian exporters—demonstrate that Indonesia's economic gains remain limited, with minimal evidence of trade creation. These observations support the finding that IE-CEPA operates more as a political instrument to strengthen Indonesia's diplomatic positioning in Europe than as a mutually beneficial or efficiency-driven economic pact. Therefore, the agreement reflects a predominance of political rationality over economic efficiency.

A more constructive direction for future negotiations would be for Indonesia to strengthen export complementarity with EFTA members by identifying niche sectors where Indonesian products can realistically penetrate high-standard European markets. Indonesia could also advocate for more substantive RTA evaluation metrics—beyond the formal fulfilment of the "substantially all trade" requirement—such as indicators of supply-chain integration potential, market absorption capacity, domestic value-added resilience, and sector-specific trade elasticity. Incorporating these indicators would ensure that future agreements are assessed not merely through legal coverage, but through their ability to generate measurable economic benefits.

Lastly, Indonesia should reconsider the alignment between its RTA objectives and domestic industrial capabilities, improve monitoring of tariff-utilization and non-tariff barriers, and further investigate structural constraints that limit export competitiveness. Incorporating these improvements would elevate future trade agreements from mere diplomatic tools into instruments capable of delivering substantive economic outcomes.

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