



CHAPTER 2

The Story of RCEP: History, Negotiations, Structure, and Future Directions

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This chapter is about the story of the Regional Comprehensive Economic Partnership (RCEP), including the history, dynamics of negotiations, and structure of this multilateral framework. Issues related to ASEAN centrality, sensitivities of negotiations, and other challenges are also highlighted and analysed. Nearly a decade in the making, RCEP represents a significant achievement for the region. As an ASEAN-led process, RCEP supports not only the region's market integration but as well as ASEAN's economic relations with the rest of the world, particularly with the 5 RCEP FTA Partners. Beyond the impact of RCEP in supporting the multilateral trading system, it is also intended to address the current challenges in the region, including the COVID-19 pandemic crisis. Thus, the narrative of RCEP provides a comprehensive overview of, and considers the potential implications for, trade in the region; for economic integration, and for the future of trade policy.

Introduction

When the Regional Comprehensive Economic Partnership (RCEP) was signed on 15 November 2020, a new era of Association of Southeast Asian Nations (ASEAN)-centred economic integration dawned in the region. It also ushered in the potential role of ASEAN to create a unified trading region by bringing together the diverging interests of both developed and developing countries, with strong implications for multilateral cooperation (Park, Petri, and Plummer, 2021). Nearly a decade in the making, RCEP represents a significant achievement for the region. As an ASEAN-led process, RCEP not only supports the region's market integration efforts but also ASEAN's economic relations with the rest of the world, particularly with the five RCEP free trade agreement (FTA) partners (namely, Australia, China, Japan, the Republic of Korea (henceforth, Korea), and New Zealand). As the RCEP leaders recognised during the signing of RCEP, beyond the impact of RCEP in supporting the multilateral trading system is a trade pact that has the potential to address the many challenges facing the region, including the health and economic crisis caused by the coronavirus disease (COVID-19) pandemic.

This chapter is about the story of RCEP. It begins with a brief historical overview of RCEP's evolution from the embryonic idea of building regional resilience in East Asia through greater trade and investment in the region after the Asian financial crisis up to the actual realisation of that idea with the launch of RCEP negotiations in 2012. Then, it explores the dynamics of the actual negotiations that lasted for 8 years: the key bottleneck issues encountered by the negotiators and how were they resolved, and any lessons and best practices learned to guide negotiations for a similar mega FTA in the future. Finally, the chapter asks the hard questions of where RCEP is headed after its historic signing, how is it going to be implemented, and whether it can deliver on its promise to build a robust regional trade architecture for the region, for economic integration and for the future of trade policy.

What signifies RCEP? Triggers, beginnings, and the role of ASEAN centrality

In developing the story of RCEP, there are three important questions that need to be asked and unravelled.

First is the question of what signifies RCEP. Looking at RCEP, the first thing that stands out is its economic significance, particularly its sheer size, hugely diverse set of members, and its potential to create a much more unified trading region. But underlying that achievement is the fact that RCEP did not exist in a vacuum. In fact, its creation was not only the result of various proposals by Japan and China to create a region-wide FTA, but one also had to understand the various forces within the global economy and wider East Asia since 1991 to appreciate the nuances of why ASEAN had to engage in deeper integration and the critical role of its partners within the region, like ASEAN+3 (i.e. ASEAN plus China, Japan, and Korea), and the role that ASEAN+3 had played in facilitating and widening ASEAN's goal to expand intra-regional economic cooperation.

Initial triggers and turning points

Even before the ASEAN Leaders first presented the 'ASEAN Framework for Regional Comprehensive Partnership (RCEP)' at the 11th ASEAN Summit in November 2011, there were turning points and events in earlier years that influenced ASEAN to seriously consider deeper integration with partners as a key development strategy. The first turning point was the Asian financial crisis in 1997. The crisis weakened the ability of ASEAN to attract foreign investment and capital and expand its export markets, which made it inevitable for ASEAN to deepen its integration with the rest of the world through a wider framework for East Asian cooperation. In fact, East Asian economic cooperation was borne out of the Asian financial crisis. At the same time, there were threats in the region and the world that seemed to undermine ASEAN's economic strength. These included the dominant and rising influence of China, the failure of trade liberalisation at the World Trade Organization (WTO), which compelled economies to pursue plurilateral, regional, and/or bilateral free trade arrangements (FTAs), and the more entrenched economic interdependence in East Asia. These structural changes brought by the crisis 'required a deepening of intra-ASEAN economic cooperation for ASEAN' (Shimizu, 2021) and compelled economies to pursue plurilateral, regional, and/or bilateral FTAs.

ASEAN's desire to deepen integration, as evident in its multi-layered involvement in East Asia, with initiatives under ASEAN+1, ASEAN+3, and ASEAN+6, made ASEAN a potential key ally in advancing the integration agenda in East Asia. From as early as 2001, East

Asia had been thinking of establishing a region-wide FTA. In October 2001, the East Asia Vision Group recommended establishing the East Asia Free Trade Area (EAFTA) in a report to the ASEAN+3 Leaders, and this proposal was further backed by the East Asia Study Group in November 2002. To further explore the proposal, the ASEAN+3 Economic Ministers in their meeting in August 2004 set up the Joint Expert Group, which later submitted a Phase 1 Report and recommended to the ministers in 2006 that an EAFTA be launched in 2007. Meanwhile, the Joint Expert Group also proposed to the 10th ASEAN+3 Summit in January 2007 a Phase 2 Study involving more in-depth sectoral analysis. In June 2009, the Phase 2 Report was submitted with proposals for achieving an EAFTA, which was considered by the ASEAN+3 Economic Ministers in August 2009. Whilst this was all taking place, ASEAN was already engaging in bilateral FTA negotiations with its key trading partners, namely: China, Japan, Korea, India, Australia, and New Zealand.

Meanwhile, a parallel process (Track 2) for investigating the establishment of a Comprehensive Economic Partnership in East Asia (CEPEA) encompassing ASEAN+3, Australia, India, and New Zealand, as proposed by Japan in August 2006, was launched at the 2nd East Asia Summit in January 2007. Similar to the EAFTA proposal, the Track 2 Study Group submitted a Phase 1 Report in June 2008 setting out a roadmap for achieving CEPEA. In August 2008, the ASEAN+6 Economic Ministers agreed to further conduct a Phase 2 Track 2 Study on CEPEA, detailing the pillars of economic cooperation, trade facilitation, liberalisation, and institutional development. The Phase 2 Report of CEPEA was finally submitted in July 2009, a month after the Phase 2 Report of EAFTA was submitted.

At the same time all these discussions were taking place, a second turning point that would change the initial debates between the EAFTA and CEPEA proposals was also happening. The global financial crisis in 2008 suddenly saw the East Asian region in jeopardy again, given the dependence of the region's export and financial markets on the United States (US) and Europe, which were deeply affected by the crisis. Fortunately, unlike other regions in the world, ASEAN and East Asia, underpinned by the region's burgeoning internal markets and strong economic fundamentals, recovered fastest and became the main production line and main market for intermediate and final goods in the world (Shimizu, 2021). Suddenly, both external and internal markets became attractive options for ASEAN and East Asia.

Meanwhile, the decision by the US to join the Trans-Pacific Partnership (TPP) in 2009 to expand its markets in Asia and the Pacific, including East Asia, as a strategy to build both internal and external markets following the global financial crisis, added another wrinkle to deepening integration in East Asia. With the US at the driver seat of the TPP, and as negotiations began with eight more countries joining, the TTP became very significant

in the world economy. Recognising the enormous impact that the TPP could have on the realisation of East Asian integration, the East Asia Summit (EAS) economic ministers in August 2011 welcomed a Chinese and Japanese joint 'Initiative on Speeding up the Establishment of EAFTA and CEPEA'.¹ This led the way for the ASEAN Leaders to endorse the 'Framework for Regional Comprehensive Economic Partnership' in November 2011, replacing references to CEPEA and EAFTA with references to ASEAN FTA Partners (AFPs) and finally ending the internal debates of what an East Asia FTA would look like. In November 2012, the RCEP negotiations were officially launched by ASEAN and FTA Partner Leaders at the 21st ASEAN Summit in Phnom Penh.

ASEAN centrality: Driving the essence of RCEP

The launch of RCEP negotiations also marked ASEAN's initial success in leading the process of building an East Asian FTA right from the start, underpinning the crucial role of ASEAN centrality.² If ASEAN centrality is understood to be the role and capability to be in the driver seat, then one must recognise and appreciate the role played by ASEAN in the RCEP process in the context of ASEAN centrality. From start to finish, RCEP was driven by ASEAN. It can be recalled that back in 2009, there was a discussion on a concentric circle where ASEAN, at the hub of the ASEAN+1 FTAs, could be at the centre of the emerging regional economic architecture by first consolidating its FTAs with China, Japan, and Korea to establish the EAFTA (ASEAN+3) then, subsequently, with the conclusion of FTA negotiations with India and Australia and New Zealand, and the expansion of ASEAN+3 to ASEAN+ 6 to form the CEPEA. To get out of the EAFTA vs CEPEA debate, ASEAN worked on a set of guidelines for consolidating its FTAs that eventually led to the launch of RCEP negotiations in 2012 with Indonesia at the helm. So, in fact, without ASEAN and the platform it provides for its dialogue and trading partners to engage, it would be difficult to imagine bringing together six non-ASEAN countries with varying geopolitical dynamics amongst them to sit down and chart the economic partnership that is RCEP.

As pointed out by Fukunaga (2014), ASEAN centrality, in the context of RCEP, should be best understood as the role of ASEAN as a 'process facilitator' (i.e., facilitating formal meetings or a platform for discussions), or 'initiator of substance' (i.e., setting

¹ Even before this decision by EAS+6 economic ministers in August 2011 to agree on the joint initiative, a strong political directive was already given by both ASEAN and EAS Leaders. For example, in October 2009, EAS Leaders tasked officials with considering the recommendations of both EAFTA and CEPEA studies. They also recognised the need to redouble efforts on regional integration through the ASEAN+1 FTAs and wider regional economic integration efforts, including CEPEA and EAFTA. They also tasked the various ASEAN Plus Working Groups to report on specific targets and timelines. Meanwhile, at the 6th EAS Summit in May 2011, ASEAN Leaders discussed CEPEA and the five priority areas and instructed the working groups to accelerate their work in consolidating ASEAN+1 FTAs.

² While there's no official definition of the term, 'ASEAN centrality' is referred to as one of the ASEAN principles in the ASEAN Charter, with respect to the 'centrality of ASEAN in external political, economic, social, and cultural relations while remaining actively engaged, outward-looking, inclusive, and non-discriminatory' [ASEAN Charter, Article]. The term was first used at the 38th AEM in August 2006 when the ministers recognised the 'centrality of ASEAN in external economic relations'. Since, the term has been referenced in various ASEAN official documents, including in political and social community pillars that look at centrality as the ability of ASEAN to lead and initiate a process.

directions and providing leadership). Both roles seem to stand ground. Even before pre-RCEP discussions, ASEAN has been hosting high-level meetings, such as the ASEAN+1 Summit, ASEAN+3 Summit, and East Asia Summit, where ASEAN Leaders have had the opportunity to advance a number of strategic policy issues. Even negotiations for the ASEAN+1 FTAs and the various discussions for CEPEA and EAFTA, were all facilitated by ASEAN through the ASEAN Economic Ministers (AEM)-related meetings. Interestingly, all key RCEP milestones prior to the launch of negotiations (for example, when RCEP was first proposed at the Bali Summit in 2011 or when the 'Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership' were agreed at the 40th AEM in 2012) signified the ability of ASEAN to promote centrality by pulling different partners together and reaching decisions amongst them. Had ASEAN not carried out its facilitating role properly, those substantive outcomes that led to the launch of RCEP negotiations would not have been possible.

In fact, ASEAN centrality as an initiator of ideas and engineer of compromises was evident all the time during the evolution of RCEP. As mentioned, the 'Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership',³ proposed by the ASEAN economic ministers in 2011 and developed by ASEAN together with its six FTA partners in 2012, were used as the basis to launch RCEP negotiations in 2012. Interestingly, one of the principles is the recognition of ASEAN centrality in RCEP, whilst the other principles are common elements in existing ASEAN+1 FTAs as well as new proposals by ASEAN that all FTA partners accept. This shows that ASEAN has been quite successful in setting the direction of RCEP and in influencing the substantive discussions from the beginning. When the actual RCEP negotiations started in 2013, the ASEAN Member States, led by Indonesia, took the pivotal role of chairing RCEP Trade Negotiating Committee (TNC), seven working groups, and four sub-working groups. All these were acceptable to the FTA partners.

As pointed out by various scholars (Petri and Plummer, 2020; 2014; Fukunaga, 2014; Das, 2012), ASEAN's desire to promote centrality is one of the main motivations for proposing RCEP. In a way, such centrality also propelled RCEP to fruition. ASEAN capability and centrality facilitated the entire process of negotiations for 8 years, by bringing together 16 economies with different levels of development and domestic constraints to agree on various commitments. Without doubt, ASEAN centrality was the most important force that drove the initial success of RCEP.

³ These RCEP Guiding Principles include: (a) recognition of ASEAN centrality; (b) broader and deeper engagement with significant improvements over the existing ASEAN+1 FTAs; (c) open accession clause; (d) emphasis of economic and technical cooperation; (e) importance of trade and investment facilitation (in addition to liberalisation), and (f) special and differential treatment for ASEAN especially the CLMV. As pointed by Fukunaga (2021), principles (f) are from existing ASEAN+1 FTAs while principles (d) and (e) were referenced from the official studies of CEPEA and EAFTA.

Recognising RCEP for what it is and what it is not: Structure and challenges of negotiations

The second question to ask to better understand RCEP is to recognise RCEP for what it is and what it is not, is 'Is RCEP a rule-taker or a rule-maker?'

For example, although RCEP does not provide pioneering breakthroughs in trade governance in the sense that most of its commitments have been streamlined from current bilateral trading arrangements, RCEP was able to change the character of FTAs in ASEAN. Beyond the initial objective of consolidating the ASEAN+1 FTAs, RCEP elevated the quality of the agreement by introducing new disciplines, such as competition, intellectual property rights, electronic commerce, and government procurement. Although the chapters are pretty modest, they are good for now for addressing these important issues. The RCEP agreement, anyway, has provisions for review that could ensure that it remains relevant and abreast with the evolving regional and global developments.

RCEP should be appreciated for its potential to write a new set of rules that will establish a more unified trading system in the world's most dynamic region. For example, RCEP should be recognised for its ability to create the largest trading bloc in the world comprising of diverse nations with vastly different stages of economic development and political systems. Viewed from that perspective, RCEP is no easy feat.

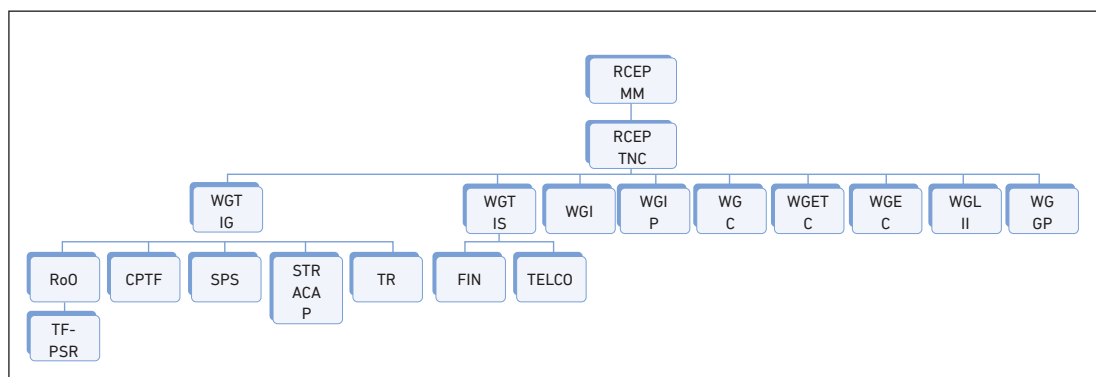
Understanding the structure of RCEP

Even before the ASEAN Leaders first presented the 'ASEAN Framework for Regional Comprehensive Partnership

When the first round of negotiations (the Brunei Round) was launched in Brunei Darussalam in May 2013, the first task of the TNC was to establish the working groups on trade in goods (WG-TIG), trade in services (WG-TIS), and investment (WGI) and, immediately, the working groups, together with a sub-working group on rules of origin (RoO) as well as customs procedures and trade facilitation (CPTF) under the WG-TIG, were tasked to commence their work on the core negotiating areas consistent with the Guiding Principles. In Brunei, recognition of transforming the RCEP negotiations to achieve a higher level of ambition was very evident amongst negotiators, and perhaps aided by that ambition, interest by other RCEP participating countries (RPCs) to take up other issues stipulated in the Guiding Principles, such as economic and technical cooperation and dispute settlement, were immediately surfaced at the first round.

By the second round (the Brisbane Round) in September 2013, discussions on the need to have a holistic approach in addressing cross-cutting issues (such as small and medium-sized enterprises (SMEs) and electronic commerce) and other new issues (such as competition, intellectual property rights, and government procurement) were initiated by some AFPs, arguing that these should be equally treated in the TNC agenda to achieve a comprehensive, balanced, and commercially meaningful outcome from the RCEP negotiations. These discussions led to the establishment of more working groups and sub-working groups to address the concerns in the core negotiating areas, as well as in the new areas proposed. By the end of the ninth round (the Nay Pyi Taw Round) in 2015, the RCEP negotiating structure had expanded to 15 bodies⁴ involving working groups, sub-working groups, task forces, and expert groups, adding more complexity to the negotiation process (see Figure 2.1). Similar to the TNC, the TNC subsidiary bodies are led and chaired by an ASEAN Member State and facilitated – on the basis of rotation – by an AFP. For instance, the core working groups on TIG, TIS, and investment have been chaired by Singapore, Malaysia, and Viet Nam, respectively. Thailand and the Philippines correspondingly have chaired the sub-working groups on RoO and CPTF.

Figure 2.1 Structure of the RCEP FTA Negotiations



Source: ASEAN Secretariat.

⁴ As per the RCEP negotiating structure, there are nine working groups and five sub-working groups. The first sub-working groups to be established were the sub-working groups on RoO (SWG-RoO) and customs procedures and trade facilitation (SWG-CPTF) (Brisbane Round, 2013). The Working Group on Government Procurement (WGGP) was the last to be established at the 19th Round (Hyderabad Round) – following a decision made at the 3rd Inter-Sessional RCEP Ministerial Meeting to include a modest chapter on government procurement – along with the Sub-Working Group on Trade Remedies (SWG-TR).

By the end of the ninth round (the Kyoto Round) in June 2015, it was clear that substantial negotiations were being dragged by the need to finalise the modalities and address the initial issues on trade in goods (e.g. the tabling of initial offers and engaging business and stakeholders on non-tariff barriers); services (e.g. different approaches to scheduling commitments); and investment (e.g. methodology and scheduling, the relationship between the investment and services chapters, and inclusion of an Investor-State Dispute Settlement (ISDS) mechanism). The issues became more challenging in the succeeding rounds as RCEP Participating Countries (RPCs) were embroiled in discussions on complex issues, such as 'common concessions' for market access on trade in goods, how to achieve commercially meaningful outcomes for trade in services and investment, and whether or not to go beyond the commitments and obligations made under the WTO for certain chapters (e.g. technical barriers to trade and sanitary and phytosanitary measures), amongst other issues. One key problem is that whilst negotiations had been sustained, progress has been uneven (on both text and market access across all negotiating areas until the 16th Round (Tangerang Round) in 2017, reflecting the nature of challenges facing all RPCs. RPCs required additional time to settle key challenging issues in recognition of their individual and diverse circumstances, whilst subscribing to the vision of achieving a modern, comprehensive, high quality and mutually beneficial economic partnership. Recognising all these problems, and by the conclusion of the Third RCEP Ministerial Meeting in Kuala Lumpur in July 2015, the die was already cast: RCEP could not be completed by end of 2015 as mandated by the RCEP Leaders in 2012.⁵

Challenges and dynamics of negotiations: The long 8 years

The RCEP negotiations came at a critical juncture by the end of the 20th round (the Seoul Round) when, despite re-doubling efforts to address the outstanding issues across all negotiation areas, several key challenges hampered progress, demonstrating the complexity of negotiations.

One key challenge was the lack of readiness of RPCs to exercise flexibility. Many, if not all RPCs, took hard-line positions, making it difficult to reach consensus despite prolonged discussions at the WG/SWG, TNC, and ministerial levels. The reiteration of positions at different levels of discussions did not facilitate the resolution of the issues. Whilst the agreed *RCEP Key Elements for Significant Outcomes by End of 2017*⁶ provided new

⁵ As acknowledged by the TNC Chair Report to the 3rd RCEP Ministerial Meeting in July 2015. The TNC Chair also 'recommended to the ministers to extend the RCEP negotiations beyond 2015, while instructing the TNC to further accelerate the negotiations as much as possible in 2015.'

⁶ The Key Elements paper was agreed by the TNC at the 19th Round (Hyderabad, 2017) and welcomed by the ministers at the 5th RCEP Ministerial Meeting in September 2017. 'It was understood that the paper is not meant to define the overall architecture or scope of the RCEP Agreement, but, rather, to guide all RPCs to prioritise work to achieve significant outcomes by end 2017. Likewise, it was understood that the Key Elements paper would not prevent progress beyond the identified elements by December 2017, as maybe achievable.' [TNC Chair Report to 5th RCEP Ministerial Meeting]

impetus to reach settlements on most of the key outstanding issues, it was not sufficient to compel RPCs to recalibrate their positions and ambitions, seek broader mandates where necessary, exercise utmost flexibility, or positively give due consideration to other RPCs' interests and sensitivities.

Second was the need for comprehensive and balanced outcomes, which unfortunately became even more elusive to achieve as negotiations dragged. This was made more difficult by the fact that RPCs, owing to their diverse levels of development, had different areas of interest and sensitivities. There was also a tendency for some RPCs to unduly link issues and not engage in negotiations on each issue based on its own merit.

Finally, the introduction of new elements by some RPCs became a tricky issue that somehow distracted the direction of negotiations. This was evident in the continued tendency of RPCs to introduce new elements or issues, especially towards the latter stage of negotiations. This not only hampered progress in negotiations but also dampened good momentum in the negotiations.

Whilst there were clear setbacks, such as the failure to meet the 2015 deadline for the successful completion of negotiations, and even having it 'substantially' concluded in 2017,⁷ the political will amongst RPCs to intensify efforts, find landing zones, and realise the leaders' mandate only became strong as adverse global developments started to weigh down on the region. One of these events was the global trade war between the US and China that started in 2018, of which the ramifications for East Asian trade and investment links were perceived to threaten East Asia's regional trade architecture given ASEAN and East Asia's dependence on global supply chains. The threat of a global slowdown, associated with the worsening global trade conditions, also meant that East Asia's integration would be at risk again. The risks were further amplified when the COVID-19 pandemic crisis started to emerge in early 2020.

Ironically, this turn of events only propelled RCEP to new heights and resolve to accelerate the negotiations.⁸ It seems that RCEP, with all the global uncertainties around, is an important source of light for the region to shine anew, with its promise of becoming the biggest trade bloc in the world and using RCEP as a shield for regional resilience.

⁷ Reference to RCEP being 'substantially concluded' was first suggested by the TNC Chair to the 2nd Intersessional RCEP Ministers Meeting in May 2017, where the ministers exchanged views on what should be the RCEP deliverables by the ASEAN Summit in November 2017, i.e. (i) substantial conclusion of negotiations, or (ii) significant progress towards a swift conclusion of the negotiation.

⁸ To better track and achieve a substantial conclusion of the RCEP negotiations, the RCEP ministers at the 5th RCEP Intersessional Meeting in July 2018, tasked the negotiators to identify a package of deliverables. The proposed package outlined in broad terms what should be achieved by the 33rd ASEAN Summit and Related Summits held in the week of 12 November 2018 in Singapore. To further intensify negotiations and move towards a substantial conclusion, the ministers at the 6th RCEP Ministerial Meeting in August 2018, reaffirmed the following principles and disciplines for all negotiators to follow. These include: (i) positive and constructive responses to requests made by other RPCs whilst respecting the justified sensitivities a respondent may have; (ii) no reopening of agreed texts; (iii) no introduction of new issues; no moving of the 'goal posts'; (iv) while the overall negotiation is pursued on the principle of 'single undertaking', each issue should be considered on its own merit; no undue linking of issues; (v) shifting the gear to 'solution mood', no reiteration of positions; and (vi) negotiators should have secured the necessary mandate and be well-prepared when coming to meetings.

This was evident in a huge change in negotiation momentum. Between 2017 and 2020, negotiations amongst TNC and working group officials were intensified, with more than 16 rounds held, half of which were held in the last 4 years (2017–2020). The RCEP ministers were also heavily involved all throughout both the regular and inter-sessional meetings, ensuring that the outstanding text negotiations were resolved, and all chapters were fully delivered⁹ until the final conclusion of the agreement and its signing.

It is rather difficult to specifically mention an RPC that 'took the initiative in the market access negotiations', primarily because market access was negotiated bilaterally based on a request-offer approach, and whilst the target outcome was 'common concession', this was deterred by: i) skewed trading patterns, particularly for those RPCs with no bilateral FTAs; and ii) consolidating tariff commitments made in the ASEAN+1 FTAs and still achieving a very high level of market access commitments in RCEP. All throughout the negotiations, however, some RPCs strongly pushed for certain elements to be included in the agreement. For example, market access in the Chapter on Government Procurement, and state-owned enterprises in the Competition Chapter. These two examples are not in any of ASEAN's FTAs, not even in the AEC Blueprint, which explains ASEAN's sensitivity in these two areas.

Conclusion of the RCEP negotiations would not have been possible if not for the genuine desire of all RPCs to conclude the negotiations, notwithstanding the challenges posed by the COVID-19 global pandemic, which made the bilateral market access negotiations and legal scrubbing of the RCEP Agreement that encompasses 20 chapters, 17 annexes, and 54 market access schedules in a document of more than 14,000 pages very challenging. In the end, it took a lot of determination, creative thinking for landing zones, and readiness and willingness to exercise flexibility and compromise to make the conclusion of the negotiations and signing of the agreement possible.

At the same time, one should not forget the crucial roles that the ASEAN Secretariat (ASEC) and the Chair of the Trade Negotiating Committee, Mr. Iman Pambagyo from Indonesia, played in the entire process of negotiations. Mr. Pambagyo patiently guided the negotiations and provided strong leadership for the region for 8 years by ensuring that key decisions were made, and bottlenecks were resolved, particularly in the late rounds when issues became trickier and political decisions more compelling. Without the staunch determination from Indonesia, as the originator of RCEP and as chair of negotiations, RCEP would not have happened.

⁹ The first two chapters to be concluded were the ECOTECH (15th TNC Tianjin October 2016) and MSME chapters (16th TNC Tangerang December 2016); the last two were the Chapters on Rules of Origin and Electronic Commerce (7th Intersessional TNC, Bangkok, October 2019). The conclusion of the text-based negotiations, which was announced in November 2019, did not really mean that negotiations had indeed been concluded, as negotiators still grappled with several issues that arose when the RCEP agreement was being legally scrubbed.

On the other hand, ASEC had been a strong pillar all throughout the RCEP process. From the drafting of the Guiding Principles that led to the launch of RCEP negotiations, and even prior to that, up to the last round in July 2020 (31st Round, by video conference), and to the signing of the agreement in November 2020, ASEC was there supporting the TNC Chair and the various working groups driving the negotiations. Aside from facilitating meetings amongst RPCs, ASEC was also engaged in substantive aspects of negotiations by preparing the discussion and position papers used in negotiations, coming up with an ASEAN position – brokering, in some instances – and subsequently reconciling this ASEAN position with that of the six non-ASEAN RPCs. Towards the later stage of the negotiations, ASEC was often relied upon to come up with 'way forward' papers, find landing zones, and, in a particular instance, even facilitate discussion amongst experts on the issue of tariff differentials. Under the leadership of ASEAN Secretary-General Dato' Lim Jock Hoi, who guided and even led the ASEC RCEP team, especially during the last crucial 3 years of negotiations, ASEC's role in ensuring that ASEAN centrality in making RCEP a reality shone at its brightest.

How were the negotiations won? Between building trust and managing technical issues

Whilst critics argue against RCEP's long completion, one has to properly understand the context of the challenging 8 years, given the parties involved in the negotiations and the complex issues discussed. For one, ASEAN, a very diverse group of countries by themselves, had to try to reconcile their positions with the six AFPs, whose economies were more advanced than ASEAN's. It was nearly impossible to achieve comprehensive and balanced outcomes when the 16 countries participating in the negotiations had significant development gaps and divergent national interests and expectations. Yet, beyond those realities that RCEP had to contend with in the first place, were internal dynamics that affected significantly the course of negotiations, particularly the process of building trust in an engagement whilst navigating through the many complex details of a mega trade agreement.

Managing trust deficit

Although the Guiding Principles were intended to help negotiators navigate the negotiations and address issues, negotiators also used them, to a certain extent, in advancing their positions on issues as they saw fit. Varying interpretations ('cherry picking') of the Guiding Principles by the negotiators contributed to delays in resolving issues. The Guiding Principles also underscored that during the negotiations, new issues covered by FTAs amongst RPCs may be included, as well as those new emerging issues

relevant to businesses, provided that RPCs agreed to their inclusion. All this suggests that as negotiators started to engage with each other, how relationships had been built in the past would obviously impact the outcome of the discussions. Unfortunately, the trust element seemed to be not as strong in some RPCs when RCEP negotiations began, due to a number of reasons.

Absence of bilateral FTAs amongst some RPCs

Prior to RCEP, ASEAN Member States were implementing five ASEAN+1 FTAs, or bilateral FTAs with China, Japan, Korea, India, and Australia and New Zealand, and the primary objective was to consolidate these FTAs to address the perceived 'noodle bowl' effect of simultaneously implementing several overlapping FTAs. This was aside from the enabling agreements to realise the ASEAN Free Trade Area (which subsequently established the AEC). Although ASEAN had FTAs with these AFPs, some of them did not have bilateral FTAs with each other. This lack of bilateral FTAs between some of them (e.g. China-Japan, Japan-Korea, China-India, Australia-India, and New-Zealand-India) made it difficult to discuss and advance bilateral market access negotiations for trade in goods, trade in services, and investment.

Level of ambition

During the first 3 years of the negotiations (2013–2015), RPCs were embroiled in discussions on complex issues, mostly hovering around the level of ambition of specific commitments that needed to be made and the rules and disciplines that would bring about the 'modern, comprehensive, high-quality and mutually beneficial economic partnership agreement' that the Guiding Principles envisaged – for instance, the modality for tariff liberalisation and the application of the principle of common concessions for trade in goods; the approach for scheduling commitments (i.e. whether they would be in the negative or positive lists) and value-added obligations, such as a ratchet, MFN treatment, or a transparency list for trade in services; and the approach to the scheduling of investment commitments, the application of the ISDS, and ratchet and MFN treatment as well as the prohibition of performance requirements (PPR) for investment.

For new areas or emerging issues, the area of contention was whether to include new issues such as labour and environment and government procurement, which are not covered by any WTO agreement, and, if ever, most of the RPCs are not signatories to these plurilateral agreements. Moreover, in the case of other topics or chapters, the contention was whether or not to go beyond the WTO obligations of the RPCs ('WTO Plus'), such as on technical barriers to trade (TBT) and, sanitary and phytosanitary (SPS) measures.

Building an ASEAN consensus

ASEAN operates on consensus. Generally, in ASEAN agreements, including free trade agreements such as the ASEAN Trade in Goods Agreement (ATIGA), decisions especially for coming up with new rules and agreements are based on consensus. Although there may be cases for an exception to this long-held principle of consensus, such as an ASEAN 'minus X' decisions for other agreements, the practice has always been consensus, especially in ASEAN's engagement in the ASEAN+1 FTAs, and RCEP is no different. In RCEP, before an ASEAN proposal could be tabled for discussion with AFPs, it has to undergo a tedious and rigorous process of securing consensus. ASEAN caucuses were held, which could be at the level of the TNC, working groups, sub-working groups, or in some cases at the ASEAN Ministers level.

This situation or predicament for securing consensus prior to any solid ASEAN position on various issues contributed to delays in resolving issues during the RCEP negotiations. This was manifested in the discussions on the modality for trade in goods, negotiations on the product-specific rules (PSRs) for the RoO, tariff differentials, issues on services and investment, and new emerging issues, amongst others. The difficulty experienced by ASEAN in reaching a consensus could be attributed to pressure from ASEAN Member States' domestic stakeholders, positions taken by some AMS in their involvement in other trade arrangements, a lack of understanding of some technical issues being discussed, and their divergent levels of development that prevented them from joining a consensus immediately.

RCEP versus CPTPP – ('CP-TPPnising' RCEP)

In view of the existing FTAs, either bilateral, plurilateral, or even the ASEAN+1 FTAs, RPCs are compelled to ensure that they would be able to sell RCEP to their domestic stakeholders through significant value-added and commercially meaningful outcomes that they would get out of the negotiations. This is particularly true for those RPCs that are also signatories to the Comprehensive and Progressive Transpacific Partnership (CPTPP). This is how the term 'CP-TPPnising' was coined. Whilst some RPCs are ready to engage in discussions on some of the new elements or concepts being tabled, e.g. MFN treatment and the ratchet mechanism for both trade in services and investment, some elements, such as labour and environment, market access for government procurement, and the treatment of state-owned enterprises, are "non-negotiable", particularly for some of the ASEAN Member States, and even for those that are also in the CP-TPP.

Managing technical issues

Aside from the delicate task of building trust amongst RPCs with differing economic engagement in the past, which is crucial to being able to agree on landing zones and common decisions, RCEP also needed to deal with a lot of technical issues. The sheer volume of the RCEP Agreement is not fully and truly representative of the hard work of those involved in the negotiations, from the country lead negotiators and their sectoral experts but perhaps more importantly the chair of the RCEP TNC who, with the support of the ASEAN Secretariat, had to single-handedly manage the technical difficulties arising from negotiating the mega-trade deal with the burden of bringing it to a conclusion within the targets set by the RCEP Leaders on his shoulders.¹⁰ Because of the nature of the text, this made the negotiations and conclusion of the RCEP Agreement more challenging. Amongst the most contentious issues that significantly dragged negotiations and delayed decisions are as follows.

Tariff liberalisation

As in any FTA negotiation, trade in goods is normally the most challenging. Trade in goods is often regarded as the 'heart' of any FTA not only because it is the most quantifiable in terms of dollars and cents, e.g. revenue loss, production costs that affect prices, value and volume of trade, amongst others. Tariff liberalisation commitments are almost immediately felt by manufacturers, traders, and eventually by consumers. The quality and level of ambition of any FTA are often measured vis-à-vis the depth of tariff liberalisation and the transition period the signatories commit to in the FTA. It is worth mentioning that six of the 20 chapters in the RCEP Agreement relate to trade in goods.

The Guiding Principles specifically mention that RCEP negotiations should aim *'to achieve the high level of tariff liberalisation, through building upon the existing liberalisation levels between RPCs and through tariff elimination on a high percentage of both tariff lines and trade value'*. In the case of AMS, for the tariff commitments made in the ASEAN+1 FTAs, with the exception perhaps of the ASEAN-India FTA, the tariff elimination levels go as high as 90% of all tariff lines. Consolidating such tariff commitments and abiding by the common concession principle has not been very easy, especially when tariff requests and offers are bilaterally negotiated, the outcome of which should be applied to all countries participating in the negotiations. Tabling offers on the basis of 'working assumptions' because RPCs could not arrive at a consensus on

¹⁰ Although negotiations took place at the level of the sectoral experts at the Working/Sub-Working Group levels, issues that could not be resolved were often elevated to the TNC, where some of the TNC sessions to deliberate on the matter were done either at joint sessions with the Working/Sub-Working Group or 'TNC Leads Only' sessions. Whilst on the whole the issues were manageable, there were some areas where the sticky issues could be highly technical, and while these issues were mostly in the core areas of trade in goods and services, and investment, there were instances when these were technical details in new areas, such as electronic commerce and intellectual property.

a modality for tariff liberalisation is made even more difficult by the lack of a bilateral FTA between two RPCs, skewed trading patterns, or even bilateral issues such as trade deficits and non-tariff barriers.

For RPCs to reach their final destination, which is the finalisation of tariff commitments to be made under the RCEP Agreement, they have to go through several phases for tabling offers. For instance, the Basic Concept for Initial Offers (BCIO), which covers the thresholds, categories, and parameters for tabling initial offers, was initiated by ASEAN to kickstart discussions on the modality for tariff liberalisation. But since the BCIO entailed three tiers of tariff commitments, efforts were then directed towards the tabling of offers that were more or less aligned with the common concession principle, essentially offering the same tariff line with the same tariff rate and phase-out period to all RPCs.

The difficulty of agreeing on a single modality lasted for several more rounds, which prompted the TNC Chair to table a 'working assumptions' paper that detailed specific thresholds for certain milestone years (e.g. tariff elimination on 65% of all tariff lines upon entry into force of the RCEP Agreement) and the categories under which goods could be classified again subject to certain thresholds (e.g. the sensitive/highly sensitive track) to facilitate a second round for tabling offers that could then be subject to bilateral negotiations. Consistent with the Guiding Principles, the least-developed ASEAN Member States were given not only special and differential treatment but also additional flexibility, such as a lower threshold for tariff elimination at entry into force (EIF) and a longer transition period to phase out tariffs.

Rules of Origin (RoO)

In any FTA negotiation, RoO is typically the most contentious issue because it is the main determinant of a good's originating status and, therefore, its eligible for preferential tariff treatment under the FTA. As they can become highly technical in nature, RoO negotiations are also very challenging as there is a tendency to use RoO to restrict trade in protected industries. In fact, there are instances where a country would agree to liberalising tariffs for a certain good but would take a hard-line position for a more restrictive RoO for the same good or vice versa.

Prior to RCEP, ASEAN had been implementing seven sets of RoO: ATIGA and the six ASEAN+1 FTAs (including that of the ASEAN-Hong Kong, China FTA) and it is for this reason that the 'noodle bowl' effect is often mentioned when ASEAN's FTAs are being discussed. Consolidating and streamlining these RoO into a single set of rules would not only augurs well for supply chains in the region but also encourage greater integration and intra-regional trade. Post-RCEP negotiations, we often hear of streamlined RoO as

major value-added for the RCEP Agreement. The road to this streamlined RoO, however, was rough, especially for the Sub-working Group on Rules of Origin (SWGRoO), which had to spend long hours and additional (inter-sessional) meetings to accomplish its task.

The definition of 'RCEP country of origin'; the application of 'full cumulation' and the acceptance of 'declarations of origin by exporters or producers' (which the CP-TPP has); what constitutes 'minimal operations and processes'; and 'produced entirely' versus 'produced exclusively' in the context of goods that are not wholly produced or obtained are amongst the issues that were hotly debated at the level of the SWGRoO as well as the TNC.

Negotiating the product-specific rules' (PSRs) was another area in the RoO negotiations that had been particularly difficult to conclude, mainly due to the perceived different approaches taken by negotiators on the rules for agriculture products vis-à-vis industrial goods and how to operationalise the principle that PSRs should be 'technically feasible, trade facilitating, and business friendly'. In addition, whilst there was a general agreement that RCEP rules should be more liberal than the ASEAN+1 FTA rules, some negotiators missed the context or the nuance of the term 'more liberal', e.g. a certain rule proposed for RCEP may on the surface be more restrictive than that of the ASEAN+1 FTA, but given that there are more participants or countries to source inputs from compared to a bilateral FTA, then that proposed rule may not be restrictive after all. To accelerate negotiations of PSRs for 5,205 tariff lines (at the HS 6-digit level), a PSR Task Force (TF-PSR) that would negotiate PSRs in parallel with the SWGRoO had to be created. This TF-PSR was amongst the last few sectoral bodies under the TNC to complete its task.

Tariff differentials

As a general rule, parties should adhere to the principle of common concession, whereby a party should accord the same tariff treatment to the same originating good from any other party. Recognising, however, the dynamics and the circumstances by which tariff commitments have been bilaterally negotiated, RPCs agreed to allow limited deviation from the principle of common concession that gave rise to what is now Article 2.6 (Tariff Differentials) in the RCEP Agreement.

The concept of a 'tariff differential' was first mooted by India as a means to address its concern on circumvention that could possibly arise as a result of differentiated tariff commitments made by some RPCs. The proposal was to allow RPCs to impose an additional requirement, e.g. a certain percentage of 'domestic value content', on all tariff lines subject to tariff differentials before those goods can enjoy preferential

tariff treatment. Because of the large number of tariff lines subject to limited deviation, mainly brought about by the lack of bilateral FTAs for a number of RPCs, the proposal was not able to get enough support. As some other RPCs recognised that there might be a need for such a provision, a compromise was reached, whereby such a provision would be applied to a limited number of tariff lines, e.g. 100 tariff lines, and would be subject to a common requirement, i.e. domestic value content of 20%. Notwithstanding, this particular provision has a review clause, of which the objective is to reduce or eliminate not only the requirements specified for determining the country of origin in order to avail of the appropriate preferential tariff treatment but also the number of tariff lines and conditions provided in the party's appendix to its Schedule of Tariff Commitments.

Positive vs negative list approach to scheduling commitments in the Trade in Services Chapter

The schedules of specific commitments in all of the ASEAN+1 FTAs, even under the ASEAN Framework Agreement on Services (AFAS), follow the positive list approach to scheduling specific commitments consistent with the General Agreement on Trade in Services (GATS). The introduction, therefore, of the negative approach, which was used in the CP-TPP, faced quite a resistance for several reasons, amongst others, the perception that it is a more liberal approach and the lack of confidence and capacity to be able to draw up or employ such an approach. To complicate the matter, some developed RPCs tabled MFN treatment, the ratchet mechanism, which was deemed to be part and parcel of a negative list, and came up with a transparency list citing the importance of achieving commercially meaningful outcomes from the services negotiations. Failing to reach an agreement on what scheduling approach to adopt, each RPC was allowed to table its trade in services offer based on its preferred approach. It is interesting to note that whilst New Zealand and Viet Nam – two RPCs that are also in the CP-TPP – chose to use the positive list approach. On the other hand, Indonesia, and Korea, which are not in the CP-TPP, used a negative list approach with Korea having a single list to cover its commitments for both trade in services and investment.

MFN treatment, ratchet, and other investment-related issues

The Investment Chapter is another chapter where negotiations have been very challenging, not so much because it is highly technical but because of the following, amongst others: (i) there are currently no multilateral rules governing the protection of foreign direct investment; (ii) possible implications for national development policies and the need for certain countries to preserve that policy space; (iii) the linkage between commercial presence (Mode 3) in the Trade in Services Chapter; (iv) most of the elements that have been tabled for negotiations are not in any of the earlier

ASEAN+1 FTAs, e.g. MFN treatment, the ratchet mechanism, prohibition of performance requirements (PPR), and even the scheduling of non-conforming measures; and (v) ISDS. Investment negotiations have been so tough that almost always the issues arising from these challenges have to be elevated even up to the level of the ministers for policy intervention and decision.

Notwithstanding the tedious and arduous negotiations, the RCEP Chapter on Investment is one of the areas where RPCs got the most value-added compared to the ASEAN+1 FTAs or even ASEAN's own internal agreements, such as the ASEAN Comprehensive Investment Agreement (ACIA). For instance, the straightforward MFN treatment clause is a first for ASEAN outside of ACIA. The commitments made on PPR not only go beyond what has been committed to by the ASEAN Member States in the ACIA or even the ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP) but also beyond their multilateral obligations under the WTO Trade-Related Investment Measures (TRIMS). No ASEAN+1 FTA has a two-annex negative list for scheduling non-conforming measures and a ratchet mechanism that addresses liberalisation, which makes RCEP another first for ASEAN. This is not to say that all investment issues have been resolved. In fact, ISDS, as well as the application of the provisions on expropriation to taxation measures that constitute expropriation, were put in a work programme for discussion within an agreed period of time.

India's issues

India opted out from the RCEP Agreement in November 2019 after Prime Minister Narendra Modi expressed at the 3rd RCEP Summit that the country was not in a position to join RCEP because: 'The present form of the RCEP Agreement does not fully reflect the basic spirit and the agreed guiding principles of RCEP. It also does not address satisfactorily India's outstanding issues and concerns.'

All throughout the negotiations, India pushed for maintaining parallel progress in negotiating trade in goods and services, with India pressing for a conservative level of ambition for goods but a very high level of commitment on trade in services, particularly on the movement of natural persons (MNP) and the adoption of an RCEP Business Card. On the other hand, some AFPs, especially those that did not have bilateral FTAs with India, found it very challenging to secure commercially meaningful market access outcomes for the agricultural products of trading interest to them.

Failing to muster enough support for a stronger MNP chapter and its RCEP Business Card proposal, India focused on trade in goods, where most of its issues and concerns related to its trade deficit problem with most RPCs, particularly the ASEAN Member

States and China, as well as possible circumvention. These outstanding issues include India's proposal on a more stringent application of RoO for those goods subject to tariff differentials, an 'auto-trigger' (special safeguards) mechanism that would raise tariffs on goods when such imports reached a certain threshold to protect against import surges from RPCs, exemptions from MFN, and ratchet obligations and a few others.

India made some last-minute proposals at the stage when all the other RPCs were already ready to announce the conclusion of text-based negotiations. But whilst some of them were accommodated at a ministerial-level meeting in 2019, some were not, prompting Prime Minister Modi to eventually opt out. Despite India opting out of RCEP when the conclusion of text-based negotiations was announced at the November 2019 Summit, India is still recognised as an original RPC and a vital player in regional value chains, and as such the RCEP Agreement will be open to India anytime it decides to re-join.

Other issues

As mentioned earlier in this chapter, some elements in the CP-TPP were tabled by concerned AFPs as early as the first round of negotiations, i.e. labour and environment and government procurement. These are elements that are not in any of ASEAN's FTAs or even in the AEC Blueprint, which made it difficult for ASEAN to agree to have these included in the negotiations. Because of fact that the Guiding Principles make no reference to either labour and environment or government procurement, it became easier for most RPCs – ASEAN Member States and some AFPs – to say that they did not have the mandate to discuss these new elements. In the end, the AFP proponent had to swallow the bitter pill when, at the Fifth Round (Singapore Round, June 2014), it dropped labour and environment – suggesting that these would be pursued bilaterally provided there be an agreement for that approach – and kept government procurement on the negotiating table. A mandate to include a chapter on government procurement was subsequently secured, albeit with a focus only on transparency and technical cooperation and no market access.

The inclusion of competition as a chapter in the RCEP Agreement was never an issue, primarily because it was referred to in the Guiding Principles and the Competition Chapter in the Agreement Establishing the ASEAN-Australia-New Zealand FTA, which covered only economic cooperation, and was deemed to be sufficient to be a basis for commencing text-based negotiations. Some AFPs, however, pushed for non-discrimination, taken as the provisions on competition policy should also be applied to state-owned enterprises, to be included in the basic principles for a Competition Chapter. No ASEAN FTA, not even the AEC Blueprint, alludes to state-owned enterprises, and for some ASEAN Member

States and AFPs, state-owned enterprises are a sensitive matter. In the end, Chapter 13 (Competition) of the RCEP Agreement made no reference to state-owned enterprises; however, under Article 13 (Appropriate Measures against Anti-Competitive Activities),¹¹ RPCs committed to applying competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership, and any exclusion or exemption from this obligation 'shall be transparent and based on grounds of public policy or public interest.' So technically 'state-owned enterprises' is implied but not stated when negotiators agreed to use 'all entities engaged in commercial activities, regardless of their ownership.'

The future of RCEP – built-in agenda, deepening economic integration, and multilateralism

The last question of the RCEP story is to assess what's next for RCEP and its future. To become meaningful and relevant, the key priority is to ratify RCEP as soon as possible so that the various commitments under the agreement can be implemented. The critical next step for RCEP is to ensure its smooth implementation once it enters into force on 1 January 2022; and since the agreement is entering into force only for six ASEAN Member States and four non-ASEAN signatories, it would also be important for the remaining signatory states to accelerate their ratification process to have RCEP enter into force for all signatory states in 2022, which incidentally would mark 10 years from the launch of RCEP negotiations in 2012. But beyond the ratification process are a number of important issues that impact the implementation of RCEP and, thus, require further discussion.

Addressing RCEP's 'unfinished business': Transition period, built-in agenda, and review provision

Even Concluding negotiations for a mega-trade deal like RCEP, especially when they have already dragged on for a number of years, requires some creative thinking, especially on areas where convergence has been most difficult. This is where an agreement becomes a 'living document', which essentially means that further work needs to be undertaken on what could be considered as 'unfinished business'. Within RCEP, these are technical areas or elements where agreement has been difficult to reach because some countries participating in the negotiations required more time before they could make

¹¹ Article 13 includes a transition period for some ASEAN Member States.

any commitment in those areas. This 'unfinished business' is then incorporated in a work programme, which at some point in time in the future will be tackled as part of a 'built-in agenda', or being addressed as part of a transition period and review provision.

The so-called 'built-in agenda' would include commitments that signatories have already made but that would need to be reviewed within a specific timeframe with a view to enhancing or improving such commitments. Examples of this type of items in the 'built-in agenda' are related to trade in goods:

- (a) Schedules of tariff commitments that do not adhere to an earlier agreement that tariffs will be eliminated following a linear approach, e.g. no bunching (or tariffs are kept to a certain level over a certain number of years) or sudden death (tariffs are maintained for a longer period of time, then eliminated in the last few years of the transition period) will be reviewed to ensure compliance with what has been agreed upon.
- (b) Article 2.6 (Tariff Differentials) will be reviewed 2 years after entry into force and every 3 years to determine whether the number of tariff lines identified and the conditions set by the relevant signatories can be reduced or eliminated.
- (c) The Cumulation Article in the RoO Chapter will also be reviewed to consider the extension of the application of cumulation 'to all production undertaken and value added to a good within the Parties', which basically means inputs from any party, whether or not these are originating, could be cumulated.
- (d) The non-application of the Chapter on Dispute Settlement (DS) on the Chapters on Sanitary and Phytosanitary Measures (SPS) and Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP), which include provisions that go beyond the WTO SPS and TBT (Technical Barriers to Trade), will also have to be reviewed 2 years after entry into force to determine whether the DS Chapter could already be applied to these two chapters.

In terms of the transition period, there are instances when a signatory could actually agree to commit to something but not necessarily upon entry into force of the RCEP Agreement for them but rather several years after because either they need to put in place the necessary domestic regulations or build their capacity to implement such commitments. In the RCEP Agreement, transition periods were given to the least-developed ASEAN Member States, not only in recognition of their level of development but also as part of the special and differential treatment provided for in the Guiding Principles. For instance, Cambodia, the Lao PDR, and Myanmar were given 5 years to implement certain obligations under the CPTF Chapter. In these 5 years, technical assistance – as provided for in the RCEP Chapter on Economic and Technical Cooperation – will be given to these countries to build their capacity to implement commitments they have made in the fifth year.

Finally, just like ASEAN's existing Plus 1 FTAs, RCEP has review provisions that could be the basis for subsequent upgrades. In fact, most of ASEAN's FTAs, like the ACFTA and the AKFTA, are being reviewed with the view to being upgraded – not updated – to make them more modern and perhaps more comprehensive, especially with the RCEP already in place. With the global economic landscape constantly changing and more and more attention being given to elements that not only go beyond just keeping markets open but also those that have never been in any of ASEAN's earlier FTAs, it would be good to see the RCEP Agreement eventually upgraded to incorporate provisions on those elements.

RCEP and implications for the AEC and regional economic integration

The AEC and RCEP represent the two most important initiatives in ASEAN today: AEC, established in 2015, signifies ASEAN's commitment to creating an integrated market, whilst RCEP, signed last year, represents the goal of integrating ASEAN with the rest of the world. Thus, AEC and RCEP, given their end goals of strengthening economic linkages, both reinforce each other.

One area where RCEP complements the AEC, or vice versa, is in deepening regional economic integration. According to a study by Park, Petri, and Plummer (2021) which quantifies the impact of RCEP, by 2030, RCEP will increase members' income by 0.6%, adding \$245 billion annually to regional income and 2.8 million jobs to regional employment. Every RCEP member will gain, and the largest percentage increases will be realised by the region's most trade-oriented economies, such as Malaysia and Viet Nam. These benefits will be more than twice those projected for the CPTPP agreement and under the scenario of a US-China trade war.

As discussed in the previous section, the success of RCEP lies in ASEAN's capability and centrality to lead the entire process of negotiations by bringing together 15 economies with different levels of development and domestic constraints and agreeing on various commitments. The same ASEAN centrality has underpinned the success and evolution of ASEAN economic integration over the years, from AFTA in 1992 to the AEC in 2003. At the same time, the flexibility of the approach by which AEC initiatives have been implemented is akin to the way RCEP countries have committed to specific provisions of RCEP. Under RCEP, some countries, particularly the least-developed AMS, were able to negotiate different timelines for implementing certain commitments and obligations, which is consistent with the Guiding Principles, i.e. special and differential treatment, with additional flexibilities, especially for the LDCs.

The second area where RCEP and the AEC complement each other is in setting new trade rules to enhance the competitiveness of the region. In a way, RCEP serves as a rule-maker in making important rules that guide the region's integration with the rest of the world. For example, although RCEP does not provide pioneering breakthroughs in trade governance in the sense that most of its commitments have been streamlined from current bilateral trading arrangements, RCEP was able to change the character of FTAs in ASEAN.

Thus, one important implication of RCEP for the AEC is that RCEP contains broad provisions that can be further expanded in the future, and with significant impacts on regional economic integration. For example, RCEP has a built-in agenda that provides for amendments to be incorporated into the agreement, including, amongst others, the full cumulation of RoO, the inclusion of ISDS for investor protection, and a review of ratchet and MFN provisions for investment. The review provisions of RCEP also imply that RCEP continues to remain relevant to the changing global and regional economic landscape and emerging issues such as the deepening of AEC. At the same time, as RCEP continues to evolve, it is also possible that it will be forced to address some of the missing issues, such as those related to labour, environment, SOEs, and sustainability. These are equally relevant issues for ASEAN, especially in the post-2025 AEC agenda. Thus, depending on the extent to which RCEP incorporates these issues in the future, the more ASEAN will become receptive to considering the issues in the integration agenda. Without a doubt, RCEP will become an important trigger for AEC and regional economic cooperation in the future.¹²

RCEP and the future of multilateralism and the global trading system

If RCEP delivers on its promise, it will become a model for managing the diverging interests and sensitivities of developing and developed economies, with obvious implications for wider multilateral cooperation, including adherence to the multilateral trading system (Park, Petri, and Plummer, 2021). For ASEAN, reliance on a rules-based global trading system has benefited the region as well and underpinned the evolution of the region's economic integration over the years – from the ASEAN Free Trade Area (AFTA) in 1993 to the AEC in 2015. In fact, the success of various initiatives under the AEC – whether in trade, services, investment, finance, or connectivity – has been due to the ability of ASEAN to make the region the most dynamic hub of regionalism where intensive multilateral efforts have also continued to be pushed forward not only in normal trading conditions but even during times of crisis.

¹² Similarly, for AEC to be a credible driver for RCEP, ASEAN has to continuously pursue deepening and broadening the AEC, including giving priority attention on putting in place a credible mechanism to address non-tariff barriers, digitalisation, going green, and expanding the AEC by incorporating those areas that are in RCEP but not in the AEC (e.g. government procurement, intellectual property, competition, and deeper commitments in electronic commerce).

Although RCEP is generally less comprehensive than other multilateral agreements, including the CPTPP, it represents a major resurgence in economic multilateralism. This is evident in the potential of RCEP to improve the global economic governance system and restructure global trade patterns and supply chains through lower trade costs and streamlined rules. It also has the capability to stimulate practical cooperation amongst countries and to create win-win interactions between developed and developing economies, thus expanding the space for mutually beneficial multilateral cooperation. But beyond its strong support for an open global trading system, RCEP can serve as a powerful platform to address the global challenges affecting the region, including key vulnerabilities exposed by the COVID-19 pandemic crisis. RCEP's streamlined rules and trade facilitation can help restructure global supply chains that are crucial to restoring global demand by allowing goods, services, and investment to move again and support global production and trade. For example, by forming win-win cooperation between the developed and developing members of RCEP, RCEP can help reduce trade barriers on essential inputs needed for vaccine production and ensure the adequate supply of critical goods for medical interventions. At the same time, RCEP's strong emphasis on digitalisation also implies the ability of RCEP to leverage powerful technologies to facilitate structural transformation in a post-pandemic world.

Strengthening domestic capacity and institutional support to implement RCEP

Even Like other international trade agreements, RCEP is not self-executing. Whether the RCEP Agreement can help deliver its promise to strengthen the region's trade architecture and deepen economic integration depends on how the agreement is being implemented, particularly in navigating the various complexities that come with the implementation as well as in identifying and managing the trade-offs. One crucial element for successful RCEP implementation is institutional development. At the country level, successful implementation of RCEP would require RPCs to implement policies and reforms that can maximise the agreement's potential gains whilst minimising risks. For example, it is vital that RPCs anticipate how RCEP will impact their economies and put in place the necessary mechanisms to mitigate losses from economic restructuring. It is also important that trade and macroeconomic policies are well-coordinated and remain relevant in their roles beyond trade and economic integration, including governance, social cohesion, and other issues.

Beyond strengthening the domestic capacity to implement policies, institutional support at the regional level remains crucial as well, particularly on how RCEP can be fully leveraged to intensify economic cooperation. Economic cooperation, whilst provided for in the various framework agreements that became the basis for negotiating the ASEAN Plus 1 FTAs, gained more prominence in the AANZFTA – ASEAN's first comprehensive

single undertaking – where it has a dedicated chapter that later had a life of its own through the AANZFTA Economic Support Programme. Economic cooperation provides the development dimension of ASEAN's FTAs, especially in the FTAs with the more developed economies, as they aim for high-quality FTAs, and some ASEAN Member States, particularly the least developed ones, may have difficulty in meeting the higher levels of commitments due to their lack of capacity and capability to implement them. RCEP is no different as its economic and technical cooperation (ECOTECH) component serves as a vehicle not only to help least developed RPCs to implement the agreement but also to advance the work programme/built-in agenda. In RCEP, ECOTECH presents an opportunity to provide various technical and capacity-building activities, particularly on trade-related issues as well as on areas that are relatively new in ASEAN's FTAs, e.g. electronic commerce, competition, and government procurement.

Given the difficult and complex process of creating a single, continent-wide market for goods, services, and investment, it is only logical that regional institutions be developed over time to enforce rules and monitor the progress of implementation. One critical institutional support is the establishment of the RCEP Secretariat, which is currently being considered by the RCEP Joint Committee (RJC).¹³ Issues relating to the functions of the RCEP Secretariat (especially in relation to the RJC), funding, location, etc. are the subject of deliberations.

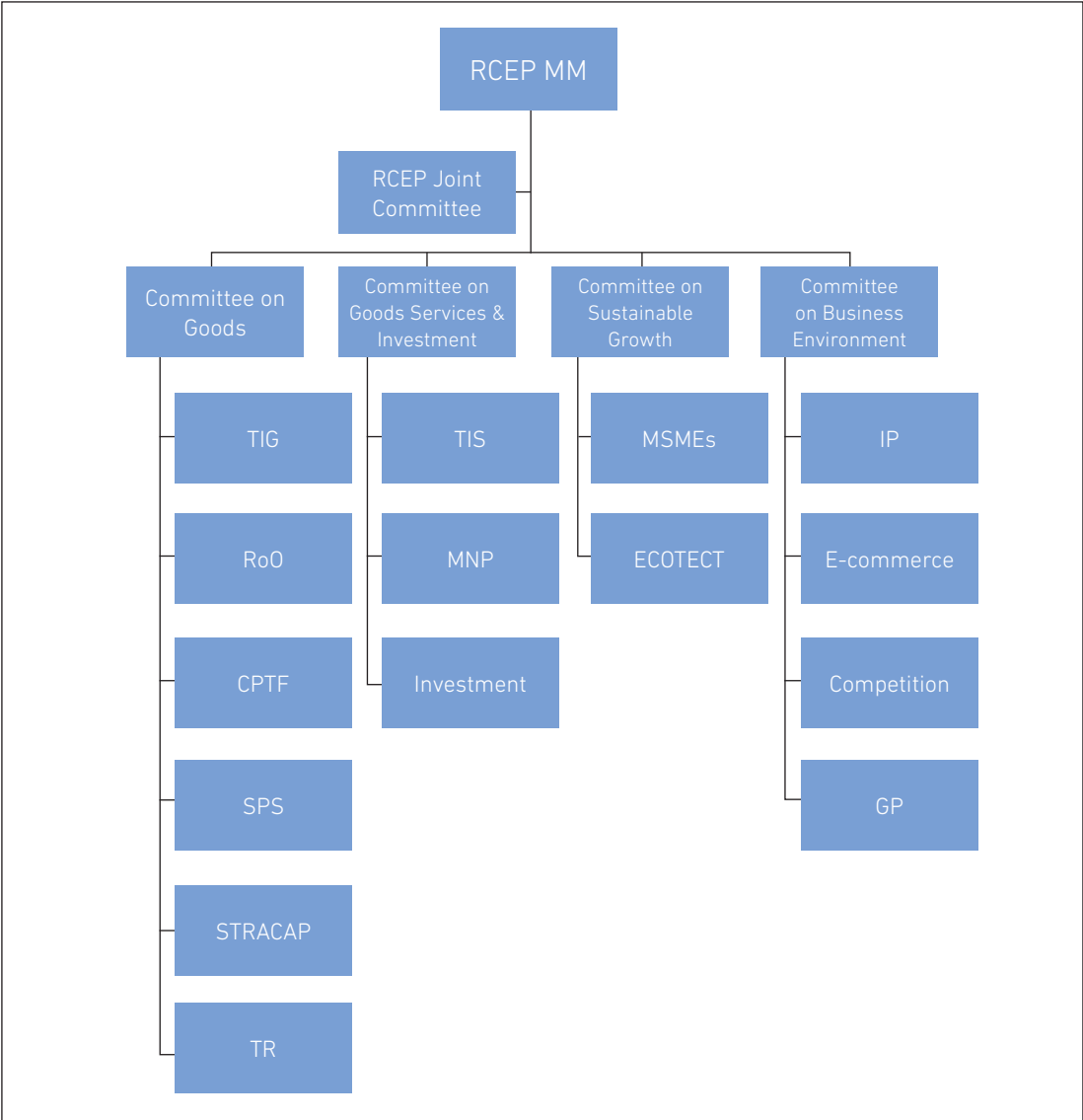
Managing the RCEP Agreement is basically the function of the RJC. But with RCEP being a mega-trade deal, with housekeeping matters and transition arrangements to monitor, built-in agenda to manage, and economic cooperation projects and activities to implement, an RCEP Secretariat would play an important and critical role in ensuring the unhampered and smooth implementation of the RCEP Agreement (Figure 2.2). In addition, the establishment of the RCEP Secretariat, complemented by the agreement's general review provision, validates that the RCEP Agreement is indeed a 'living document' that, with the support of a strong institutional structure, will ensure that the RCEP Agreement remains a 'modern, comprehensive, high-quality and mutually beneficial' free trade agreement notwithstanding the challenges it may be confronted with in the future.

Meanwhile, the ASEAN Secretariat will continue to remain an important institution in the East Asian trade landscape. Whilst ASEC played a key role in supporting the ASEAN Member States during the negotiations and was pivotal in coordinating their negotiations, existing ASEAN instruments and mechanisms (for example, regional initiatives on trade

¹³ The RJC is to establish the RCEP Secretariat to provide the secretariat and technical support to the RJC and its subsidiary bodies. RCEP's institutional structure is provided for in Chapter 18 (Institutional Provisions) in the RCEP Agreement. No other ASEAN Plus One FTA provides for the establishment of a secretariat, although some AFPs, e.g. the AANZFTA and AHKFTA, established facilities at the ASEAN Secretariat to augment human resources not only in implementing economic cooperation projects but also supporting the Joint Committees in overseeing the implementation of their FTAs with ASEAN. Even the CP-TPP has not provided for the establishment of a secretariat. Like the other ASEAN Plus One FTAs, the RJC, supported by its subsidiary bodies, is the main body to oversee the overall implementation of the RCEP Agreement.

liberalisation like ATIGA, as well as regional policy reviews on services and investment under ATISA and ACIA, respectively) can help in the implementation of RCEP. Thus, it is expected that whilst RCEP provides the overarching framework for trade amongst RPCs, institutions like ASEC will remain relevant in its role in deepening economic integration, which will also benefit RCEP implementation. ASEC can support some important measures to enforce RCEP rules, since some of the initiatives under ASEAN co-exist with RCEP’s own rules, such as those related to RoO, customs administration, and efficient customs clearance procedures at borders.

Figure 2.2 The RCEP Secretariat



Source: Authors’ formulation.

Conclusion

Despite its economic significance, the reality is that there are limits to what RCEP can do. It lacks rules to protect the environment and workers, and the tariff reductions it demands are not as large as those required by the other big Asia-Pacific trade agreements, such as the CPTPP. RCEP also needs to deal with more difficult issues, such as digital trade, trade-opening regulatory reform, and the professional movement of persons that are at the forefront of a modern trade agenda. Most of these issues cannot be resolved without the renegotiation of many of the current WTO rules. Unfortunately, rule-making negotiations are currently stalled and may take years to return on track. Nonetheless, whilst RCEP is not expected to solve all the problems confronting the multilateral trading system, it is vital in defending the global trading order.

Given that international trade and its modalities are fast evolving, and against the changing realities in the global economy today, it is important for all RPCs, particularly for ASEAN and East Asia, to continue to actively participate in global and regional discussions on important areas within the global trading system where active policy interventions are most needed. These include issues where existing multilateral trade rules are still constrained by a lack of market competition, such as the high trade barriers in the agriculture sector and the preferential treatment still given to SOEs in some countries. In addition, ASEAN and East Asia should remain proactive in discussing issues where multilateral rules are not keeping pace with changes in the global economy, such as the updated rules for services trade as well as next-generation trade issues, including trade-related aspects of the digital economy and the relationship between commercial policies and climate change.

In a highly globalised world, revitalising the multilateral trading system does not only require major changes in the rules of the game. What is needed is the willingness for RPCs to engage in candid, substantive deliberation on prevailing working practices and discussions on the perceived problems and possible solutions.

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