# **Dynamism of East Asia and RCEP:**

The Framework for Regional Integration

#### Edited by

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#### Dynamism of East Asia and RCEP: The Framework for Regional Integration

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# Preface

The Regional Comprehensive Economic Partnership (RCEP) is the world's largest regional trading bloc, consisting of 30% of the world's population, 30% of global gross domestic product (GDP) in 2019, and nearly 28% of global trade. This regional multilateral free trade agreement (FTA) sets an important agenda for trade and regional integration and the creation of dynamic regional and global production value chains. Open regionalism and global trade in terms of a rules-based trading framework will be enhanced by RCEP. RCEP is key to the next stage of growth for the Association of Southeast Asian Nations (ASEAN) and East Asia to create more inclusive and sustainable development in regionalism and integration of value chain activities.

RCEP is a 'living' agreement, which allows it to address current and contemporary issues that affect regional integration. It could drive deeper trade and investment reforms, implementing new technologies and managing structural transformation, addressing environmental and climate change issues, and creating more sustainable and inclusive growth in East Asia and ASEAN.

In this second book, *The Dynamism of East Asia and Regional Comprehensive Economic Partnership (RCEP): The Framework for Regional Integration*, technical issues related to trade in goods, trade in services, investment, and economic cooperation are examined. A multilateral FTA like RCEP is expected to positively impact domestic economies through the integration of key domestic sources such as the private sector and human capital, as well as trade and investment facilitation.

This book further outlines a trade and regional integration framework to help create more sustainable and inclusive growth in the region. Indeed, a rules-based trade and regional integration framework must be established to manage global uncertainties from the Russia–Ukraine war, COVID-19 pandemic, and global production value chain resilience.

**Pan Sorasak** Chair of ASEAN Economic Ministers Minister of Commerce Kingdom of Cambodia

# Preface

The Regional Comprehensive Economic Partnership (RCEP) became the largest free trade agreement in the world when it was signed in 2020. It comprises the 10 Member States of the Association of Southeast Asian Nations (ASEAN) (Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam) and five other countries in the region (Australia, China, Japan, the Republic of Korea, and New Zealand). It encompasses a combined population of 2.2 billion people (30% of the world population), a total regional gross domestic product (GDP) of around \$38,813 billion (30% of global GDP in 2019), and nearly 28% of global trade. RCEP sets an important agenda by releasing huge resources for trade and investment, and creating dynamic regional and global value chain activities.

RCEP provides an important framework for global trade and regionalism, especially given the current context of uncertainty and inward-looking policies due to the coronavirus disease (COVID-19) pandemic. Moreover, RCEP will enhance digital connectivity as presented in ERIA's study, *The Comprehensive Asia Development Plan 3.0 (CADP 3.0)*, published this year, and accelerate the move towards a digital economy and society in the region. It provides an impetus for global trade and investment and supports open regionalism.

However, RCEP is not yet fully understood by many in terms of its features, commitments, likely impact, and how it differs from the other trade agreements. Moreover, RCEP introduced several new features not previously seen in other agreements, such as 'differential tariff concessions', co-sharing, single rules of origin, and a transition from positive to negative lists in services liberalisation. All these features are likely to create new dynamics in the implementation of the agreement and potentially create different impacts from those of previous agreements.

The Economic Research Institute for ASEAN and East Asia (ERIA) initiated a research project on RCEP in 2021, strongly motivated by the desire to raise the awareness of stakeholders of the potential value added and the complexity of some of the modalities used in the agreement. Our research reflects ERIA's strong commitment to supporting deeper ASEAN and East Asia regional integration. In fact, ERIA recommended the conclusion of the RCEP negotiations in the Mid-Term Review of the ASEAN Economic Community Blueprint 2015, which was submitted to the ASEAN Economic Ministers during Cambodia's ASEAN chairmanship in 2012. The Mid-Term Review found that stronger links with other East Asian economies are critical for robust economic growth in ASEAN, supporting the idea of RCEP.



ERIA'S RCEP research project assesses various elements of the agreement and potential implications for economic integration in the region. It highlights the key features of the agreement and sets out to demonstrate how these could strengthen regional integration. The impact on businesses and behind-the-border issues, as well as the lack of domestic capacity of some RCEP member states, are also assessed. Adding another dimension is a discussion of how implementation of the agreement is entangled with the COVID-19 pandemic recovery.

This volume is the second of three books ERIA intends to publish. It sheds light on basic regional trade facts and the potential benefits arising from the member states' commitments to trade in goods, services, and investment, as well as cooperation between the member states on topics related to trade and sustainable growth. This book also compares the RCEP commitments with those of other major trade agreements being implemented by the RCEP member states.

ERIA is privileged to be part of this second-track process, as there is an urgent need on the part of stakeholders – including governments, but especially businesses and consumers – for guidance on how they can adjust or maximise the welfare impact arising from the implementation of the agreement. Most of the authors of this volume, in addition to our in-house economists, are experienced researchers and have been frequent participants in projects organised by ERIA. This book also serves as an important reference for researchers and students of international trade and related subjects.

Richimuja

**Professor Hidetoshi Nishimura** President, Economic Research Institute for ASEAN and East Asia



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# CHAPTER 1

# The Regional Comprehensive Economic Partnership: Challenges and Opportunities for ASEAN and East Asia

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**Dionisius Narjoko** ERIA The chapter provides an overview of the challenges and opportunities of the Regional Comprehensive Economic Partnership (RCEP), the largest global regional trading bloc, which came into force in January 2022. It highlights the importance of RCEP for pandemic and post-pandemic recovery of East Asia. It also summarises the chapters of the book, The Dynamism of East Asia and Regional Comprehensive Economic Partnership (RCEP): The Framework for Regional Integration.

### Introduction

The Regional Comprehensive Economic Partnership (RCEP) is the world's largest regional trading bloc, consisting of a combined population of 2.2 billion people (30% of the world), total regional gross domestic product (GDP) of around \$38,813 billion (30% of global GDP in 2019), and nearly 28% of global trade. This regional multilateral free trade agreement (FTA) sets an important agenda for trade and regional integration and the creation of dynamic regional and global production value chains (GVCs). It mobilises and releases huge resources for trade and investment in global trade in terms of opening the large domestic markets (i.e., demand) of East Asia. RCEP is expected to benefit not only East Asia but will also have a global impact, as indicated by recent studies (Park, 2022; Itakura, 2022; Petri and Plummer, 2020). Open regionalism and global trade in terms of a rules-based trading framework will be enhanced by RCEP, which is expected to have a significant impact on the post-pandemic recovery of the region as well.

The RCEP, signed on 15 November 2020, is the largest FTA in the world. It comprises the 10 Association of Southeast Asian Nations (ASEAN) Member States (i.e. Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic [Lao PDR], Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam) and 5 countries in the region with which ASEAN has FTAs – Australia, China, Japan, the Republic of Korea, and New Zealand.<sup>1</sup> The RCEP came into effect on 1 January 2022 through the ratification of six ASEAN Member States (i.e. Brunei Darussalam, Cambodia, Lao PDR, Thailand, Singapore, and Viet Nam) and Australia, China, Japan, and New Zealand.

The RCEP is critical for the post-pandemic recovery of ASEAN and East Asia and to manage the global uncertainty from the Russia–Ukraine war. It has elements crucial for regional transformation, such as (i) the first free trade area of China–Japan–Korea; (ii) a single rules-of-origin (RoO) framework for the 15 member countries, which may have

<sup>&</sup>lt;sup>1</sup> ASEAN leaders adopted the ASEAN Framework for RCEP during the 19th ASEAN Summit in November 2011 in Bali, Indonesia. The Joint Declaration of Ministers on the Launch of Negotiations for the Regional Comprehensive Economic Partnership was made on 20 November 2012 during the 21st ASEAN Summit in Phnom Penh, Cambodia (ASEAN, 2012).

an accelerating and enhancing impact on GVCs in the region; (iii) elements for digital transformation and services liberalisation in e-commerce, financial, professional, and telecommunications services; and (iv) the notion of ASEAN centrality, which is critical for sustainable and inclusive growth.

The RCEP is a 'living' agreement that allows member countries to address current and contemporary issues with regard to regional integration and sustainable growth. Technical cooperation and capacity building elements allow least-developed countries in ASEAN to implement key reforms and liberalisation policies to induce structural transformation in their respective economies to fully benefit from regional FTAs. Their 'special and differential treatment' in RCEP allows flexibility to undertake necessary reform policies to fulfil FTA commitments (ADB, 2020; Fatmawati, 2020).

This chapter provides an overview of the challenges and opportunities posed by RCEP and summarises the chapters of the book, The Dynamism of East Asia and Regional Comprehensive Economic Partnership (RCEP): The Framework for Regional Integration.

# Challenges and Opportunities of Regionalism and the Importance of RCEP

Regional and global integration have recently been affected due to rising protectionism and anti-globalisation in regional and global trade, which will have a significant impact on growth and development in the region (Rodrik, 2021). For example, United States (US)– China trade war tensions will impact regional trade and investment in terms of inwardlooking policies and the decoupling effects of GVCs to more developed countries away from China and East Asia (Bown and Irwin, 2019; Evenett and Fritz, 2019).

Globalisation and trade had an uneven impact in the pre-COVID-19 period. First, the gains from trade were unequally distributed and biased against the unskilled (Thangavelu, et al., 2022; UNCTAD, 2013). UNCTAD (2013) showed that although trade increased the wages of unskilled workers, 70% of the income generated from trade went to the top two income groups. Firms encompassed less skilled and more labour-intensive jobs, such as those in the garment and textiles and agricultural sectors, tended to experience fewer gains from trade in terms of wage increases for the unskilled and less educated (UNCTAD, 2013).

Second, a wage gap between skilled and unskilled workers during that period is observed, and the polarisation of semi-skilled jobs increased with trade and globalisation. ASEAN Member States have experienced a large decline in the share of semi-skilled jobs – mostly white-collar jobs – compared to unskilled and skilled jobs (Thangavelu and Wang,

2021). Third, over the past 2 decades, East Asia has also been experiencing the rise of protectionist policies from increasing anti-globalisation trends in regional and global trade (Thangavelu, 2021). This rise is reflected in the increasing trends of country-level new trade interventions since 2009 (Thangavelu, 2021). Harmful interventions accounted for nearly 72% of total state-level interventions from 2009 to 2021.<sup>2</sup>

Fourth, the COVID-19 pandemic shock also increased and intensified the vulnerability of openness and induced more inward-looking policies. The uneven impact of the shock on unskilled workers and increasing digitalisation of the economy widened the welfare gap between the skilled and unskilled (World Bank, 2021). The imbalanced impact of COVID-19 is also apparent within and between countries; negative impacts were more severe in developing and least-developed countries that do not have sufficient fiscal resources to cushion the economy and populations from shocks. The key dimension of the COVID-19 pandemic shock, however, is the diversion from open economic policies to those more inward-looking (Kimura et al., 2020).

It is expected that the pandemic shock will have long-term impacts on regional growth, as greater persistence of the shock is observed. Long-term impacts should induce structural transformation in the region by (i) adopting more digital technology; (ii) intensifying technology adoption and streamlining the supply process in GVCs, making them more resilient to economic shocks; (iii) transforming human capital and skills via restructuring to more technology-intensive and skills-based GVCs; (iv) increasing the fragmentation of the production process across countries participating in a GVC; (v) adopting and investing in communications technology to increase the agglomeration of manufacturing and services activities in the region; and (vi) increasing investment in digital and communication infrastructure in the region. These structural transformations will impact GVCs in the region and production structures of ASEAN and its least-developed Member States.

Further, the pandemic shock has increased the cost of trade at borders and intensified behind-the-border issues in the ASEAN region and East Asia. Rising trade costs at borders and behind-the-border issues directly affect trade in goods and services in East Asia and GVC activities (Baldwin and Evenett, 2020; World Bank, 2022). Recent studies by UNCTAD (2021a, 2021b) highlighted the rise in border and behind-the-border issues, such as increasing logistics and maritime freight costs due to bottlenecks in logistics supply chains, which directly affect goods and services trade in GVC production activities. UNCTAD (2021a) emphasised that the impact of rising border and behind-the-border

<sup>&</sup>lt;sup>2</sup> Global Trade Alert defines harmful measures (in terms of colour codes) as follows: (i) red; the intervention almost certainly discriminates against foreign commercial interests; (ii) amber; the intervention likely involves discrimination against foreign commercial interests; and (c) green; the intervention liberalises on a non-discriminatory (i.e. most favoured nation) basis or improves the transparency of a relevant policy. Global Trade Alert. Independent Monitoring of Policies That Affect World Commerce, https://www.globaltradealert.org (accessed 15 July 2021).



costs are significant in East Asia. The 9.9% increase in the intra-regional contract freight costs for Asia reflects these issues, which will impact the region's trade and economic recovery. Rising logistics and transport costs from freight charges will also effect the prices of imported goods and intermediate goods, which are expected to impact GVC activities in the region (UNCTAD, 2021a, 2021b).

UNCTAD (2021a) also showed that the increased cost of intermediate goods are centred in computer, electronics, and optical products (11.4%); furniture and other manufacturing (10.2%); textiles, apparel, and leather products (10.2%); rubber and plastics (9.4%); pharmaceutical products (7.5%); electrical equipment (7.5%); other transport equipment (7.2%); motor vehicles, trailers, and semi-trailers (6.9%); and machinery and equipment (6.4%). Simulated results of rising freight costs show that production costs will increase by 1.4%, intermediate goods by 3.1%, and imports by 11.9%. The rising costs of production and imports of intermediate inputs will affect the supply-side activities of GVCs in the region.

# Importance of RCEP for Managing Regional Integration

RCEP is critical for global trade and regionalism, given the current context of global uncertainty from the Russia–Ukraine war, inward-looking policies induced by the COVID-19 pandemic, and the US–China trade war. It provides the key impetus for global trade and investment and shifts domestic and regional activities in East Asia to open regionalism and global trade and investment. RCEP is also important for East Asia and ASEAN regional recovery in the post-pandemic era and to move the region to the next stage of inclusive and sustainable growth in regionalism and regional and global production value chain activities.

The impact will be significant for ASEAN and its least-developed Member States as indicated by various recent studies (Itakura, 2022; Park, Petri, and Plummer, 2021; Park, 2022). A dynamic computable general equilibrium (CGE) analysis by Itakura (2022) highlighted RCEP's positive impact on GDP for all members throughout the 2030s, particularly for the scenario with deeper trade and investment facilitation in which behind-the-border issues are addressed. Cambodia, the Lao PDR, Myanmar, and Viet Nam are particularly likely to have significant positive gains, given their young populations and GVC effects from China–Japan–Korea effects. Park (2022) posited that RCEP will generate more significant gains than the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) for members.

The economic impact of RCEP as a regional trading bloc will contribute significantly to East Asia mitigating the negative effects of the US–China trade war and COVID-19 pandemic shock (Plummer and Petri, 2020; Park, Petri, and Plummer, 2021). The trade agreement under RCEP creates a positive impact on output in the region through market access, greater flexibility in GVCs, and better technology adoption in the region.

#### **Structure of the Book**

Recent research conducted by the Economic Research Institute for ASEAN and East Asia (ERIA) on RCEP examines its commitments, modalities, and mechanisms. It discusses potential implications of the integration process in the region and compares RCEP commitments to those of other agreements, including the CPTPP. It analyses how key features of RCEP can strengthen domestic and regional integration. The impact of businesses, behind-the-border issues, and domestic capacities of RCEP members are also discussed, in addition to potential benefits of RCEP. Finally, it addresses emerging issues, especially with respect to the COVID-19 pandemic recovery.

The first book, *The Regional Comprehensive Economic Partnership (RCEP): Implications, Challenges, and Future Growth of ASEAN and East Asia,* focusses on the key social, economic, and political dimensions of RCEP from the initial conceptualisation of the ASEAN Plus Six framework to detailed trade negotiations. It also undertakes recursive CGE analysis to identify the impact of RCEP, reviews services commitments, conducts a comparative analysis of RCEP with the ASEAN Plus One framework and CPTPP, examines the emergence of regional architecture from RCEP, outlines the role of RCEP in international production networks and China–Japan–Korea effects,<sup>3</sup> and looks at the role of RCEP in pandemic and post-pandemic recovery.

This second book, *The Dynamism of East Asia and Regional Comprehensive Economic Partnership (RCEP): The Framework for Regional Integration*, addresses selected questions regarding trade in goods, trade in services, investment, and economic cooperation. These are more technical in nature, but it is important for the private and public sectors to understand how the agreement is positioned vis-à-vis other agreements, including the CPTPP. Each chapter highlights key policy issues to increase the impact of a regional FTA – such as RCEP – on domestic and regional integration.

<sup>&</sup>lt;sup>3</sup> The RCEP provides the first free trade and investment arrangement for China, Japan, and Korea, which is expected to have significant impact on the regional and global production value chain activities in the region.

A study on the preferential nature of RCEP's tariff liberalisation commitment is presented in Chapter 2, '**How Preferential are RCEP Tariffs?**', by Kazunobu Hayakawa. RCEP does not necessarily adopt a common concession rule in tariffs, and the speed and depth of tariff reduction/elimination also differ by country. The chapter shows that RCEP tariffs are the best choice in trading some products with some countries in some years. Furthermore, there are some cases in which the use of RCEP tariffs becomes beneficial even if RCEP tariffs are not lower. The chapter demonstrates that RCEP tariffs are beneficial in specific types of GVCs.

The analysis of the restrictiveness of RoO in RCEP and other multilateral FTAs in East Asia with a view to facilitate GVCs is undertaken by Archanun Kohpaibon and Juthathip Jongwanich in Chapter 3, '**Restrictiveness of RCEP Rules of Origin: Implications for Global Value Chains in East Asia**'. The analysis begins by dissecting product-specific rules in these FTAs and quantifying them. Product-specific rules in RCEP are the most flexible compared to those in other multilateral FTAs – and more facilitative to GVC operations. This is driven by RCEP-specific features, such as high intra-member trade and member coverage. The main policy inference is that a full cumulation clause is needed in RCEP to allow a regional value content alternative to be in full effect. Meanwhile, harmonisation in RoO provision across these multilateral FTAs remains a challenge for ongoing negotiations.

Trade facilitation under RCEP is discussed by Wenxiao Wang and Shandre Thangavelu in Chapter 4, '**Trade Facilitation in RCEP Countries**'. Using available data sets on the trade facilitation index, the chapter compares current trends in trade facilitation across RCEP countries in four dimensions: the World Trade Organization's Trade Facilitation Agreement, digital trade streamlining, ease of doing business, and trade logistics performance. It finds that RCEP countries have improved significantly in trade facilitation measures, but these vary across countries. For example, China should further enhance its performance in cross-border paperless trade, whilst ASEAN Member States should improve documentary their compliance of trade, infrastructure of trade, and trade logistics performance.

Chapter 5, '**RCEP and Modern Services**', presents the first of three chapters on services commitments in RCEP, by Christopher Findlay, Xianjia Ye, and Hein Roelfsema. This chapter provides an overview of trade flows in modern services within RCEP and identifies the main challenges for policymaking that have emerged in negotiations. Providing a quantitative basis for the analysis, the chapter presents a general equilibrium Poisson pseudo-maximum likelihood analysis of the gravity model to cover several scenarios including structural adjustments that can guide future cooperation in liberalisation and development of modern services. The analysis then demonstrates opportunities for further liberalisation within the framework of RCEP.



A discussion of the RCEP commitment to liberalise e-commerce is presented in Chapter 6 by Jane Kelsey, 'Opportunities and Challenges for ASEAN and East Asia from the Regional Comprehensive Economic Partnership on E-Commerce'. RCEP is a microcosm of the current tensions in negotiations on digital trade involving parties that have divergent positions on the digital economy, data, and regulations – including within ASEAN itself. The chapter adopts a prudent approach that recognises that the state parties need flexibility and policy space at the national and regional levels to develop policy and regulations in the rapidly changing digital ecosystem and to advance their collective interests through dialogue and cooperation. This chapter contrasts that approach with the disciplinary nature of binding legal obligations that are enforceable by other states and their investors, as in the CPTPP and other recent treaties. An analysis of key differences focusses on matters of particular importance to ASEAN, such as local content and government procurement, data rules and flexibility, financial data, source codes, and transparency. RCEP's cautious approach enables ASEAN Member States to deepen their national and regional understanding of the opportunities and challenges that these agreements present whilst developing and implementing their own digital development strategies.

Commitments for traditional services sectors in RCEP are analysed in Chapter 7 by Zhang Yan and Shandre Thangavelu, '**Traditional Services Trade in the Regional Comprehensive Economic Partnership**'. Traditional services trade, including tourism and transport services, is the basic component of the services trade in RCEP. RCEP implementation will provide a platform for further liberalisation in this sector and thus promote the growth of the whole services trade and development of the travel and transport industry. The chapter outlines the trade pattern of traditional services amongst RCEP member countries to consider the extent of trade of the services. It then analyses the commitments on these services for each member country. On this, a Hoekman index is constructed to measure the liberalisation levels for each.

Investment liberalisation in RCEP is considered in Chapters 8 and 9. Chapter 8, '**The Investment Chapter in the Regional Comprehensive Economic Partnership: Enhanced Rules without Enforcement Mechanism**', by Henry Gao examines the legal rules in the investment chapter of RCEP. It begins with an overview of the main provisions in the chapter, followed by an assessment of the rules by comparing established FTAs, especially the CPTPP. The discussion notes that in the RCEP investment chapter – whilst largely following established approaches to investment – also has important twists in the common rules to favour the host country. This chapter also discusses the conspicuous absence of an investor–state dispute settlement mechanism, its pros and cons, and wider implications on regional integration, and then concludes with some thoughts on future developments. Chapter 9, '**Investment Liberalisation in East and Southeast Asia**', by Toshiyuki Matsuura examines investment liberalisation in South-East and East Asia in an effort to analyse the potential benefits from implementing the investment liberalisation commitment of RCEP. It presents the trends and patterns of the inflows and outflows of foreign direct investment (FDI) and reviews FDI liberalisation in South-East and East Asia. The analysis shows that inward FDI has been significantly increasing in Singapore as well as in Cambodia, the Lao PDR, Myanmar, and Viet Nam. Outward FDI has also been increasing in China and major ASEAN Member States. Moreover, intra-regional FDI is growing in South-East and East Asia. Although there has been significant liberalisation of FDI in the region, restrictions remain – especially in the primary and tertiary sectors. Nevertheless, the quantitative analysis indicates that there is room for increasing FDI by means of investment liberalisation in non-manufacturing in ASEAN Member States.

Joseph Wira Koesnaidi and Yu Yessi Lesmana analyse trade remedies in RCEP in Chapter 10, '**Trade Remedies**'. Based on the comprehensive analysis method, the chapter explains each trade remedy instrument and compares it to the World Trade Organization Agreement and other relevant regional trade agreements to review any distinct features in the RCEP trade remedies chapter. These features are important to assess, together with this chapter's consistency with the World Trade Organization Agreement, to avoid the abuse of trade remedy instruments and to provide more legal certainty.

Chapter 11, 'Economic and Technical Cooperation in the Regional Comprehensive Economic Partnership: Focus Areas and Support for Small and Medium-Sized Enterprises', by Cassey Lee discusses the RCEP chapter on economic technical cooperation. To ensure that the benefits of RCEP are distributed equitably, economic and technical cooperation are needed between developing members and more developed members. This chapter identifies areas of economic and technical assistance needed by developing RCEP members as well as economic and technical assistance that can be implemented under RCEP to support the growth and development of small and mediumsized enterprises in the region. A comparison between the CPTPP and RCEP regarding small and medium-sized enterprises provides some ideas on how economic and technical cooperation can evolve and support further growth of such enterprises in the region.

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# How Preferential are RCEP Tariffs?

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This study discusses the extent to which the tariffs provided in the Regional Comprehensive Economic Partnership (RCEP) are preferential. RCEP does not necessarily adopt a common concession rule in tariffs, and the speed and depth of tariff reduction/elimination also differ by country. We show that RCEP tariffs become the best choice in trading some specific products with some specific countries in some specific years. Furthermore, there are some specific cases where the use of RCEP tariffs becomes beneficial even if RCEP tariffs are not lower. Therefore, we demonstrate that RCEP tariffs are beneficial in specific types of supply chains. In short, this study aims to enhance our comprehensive understanding of how preferential RCEP tariffs are compared with other types of available tariffs.

### Introduction

The Regional Comprehensive Economic Partnership (RCEP) entered into force on 1 January 2022. It was signed amongst 15 countries on 15 November 2020, including the Association of Southeast Asian Nations (ASEAN) and the five ASEAN free trade agreement partners (Australia, China, Japan, New Zealand, and the Republic of Korea (hereafter, Korea)). The RCEP agreement eliminates or reduces tariff rates amongst the member countries and is, therefore, expected to boost intra-regional trade. In particular, RCEP is the first regional trade agreement (RTA) between China and Japan and between Japan and Korea. Although India is unfortunately not included in the agreement, several RTA networks in Asia have finally been integrated into one RTA.

In this study, we discuss the extent to which the tariffs provided in RCEP are preferential. RCEP does not necessarily adopt a common concession rule in tariffs. Some countries set different preferential tariffs against member countries. The speed and depth of tariff reduction/elimination also differ by country. For example, the length ranges from 20 to 36 years. We investigate under what situations (in terms of products, country pairs, and years) the utilisation of RCEP tariffs becomes the best choice amongst all available tariff regimes. To do that, we first compare the RCEP tariffs with the lowest available tariffs in each year. The latter tariffs include not only the most favoured nation (MFN) rates but also other existing RTA tariff rates. Namely, we examine whether RCEP tariffs are lower than any other kinds of tariffs.

Furthermore, there are some specific cases where the use of RCEP tariffs becomes beneficial even if RCEP tariffs are not lower. Such cases arise especially when we consider trade amongst more than two member countries. Thus, we also discuss under what situations the use of RCEP tariffs could become the best choice even when they are not lower than the other kinds of tariffs. Here, which member countries are involved in supply chains plays a key role. In sum, this study aims to enhance our comprehensive understanding of how preferential RCEP tariffs are compared with other types of available tariffs.

# The Bilateral Trade Case

In this section, we show how preferential RCEP tariffs are in bilateral trade. Namely, we investigate whether RCEP tariffs are lower than any other kinds of tariffs when exporting to a member country. After explaining our methodology in this comparison, we present various figures and tables showing the performance of RCEP tariffs. Last, we also point out some issues relating to rules of origin (RoO).

#### Methodology

We compare RCEP tariffs with the lowest available tariffs. However, there are some challenging issues in this comparison. In order to explain those issues, it is helpful to introduce our data on tariffs. We obtain the RCEP tariffs from the RCEP legal text. We assume that RCEP will enter into force amongst all member countries in 2022. Thus, the first year in the legal text indicates 2022.<sup>1</sup> The data sources for the other kinds of tariffs (e.g. MFN tariffs) are the World Integrated Trade Solution (WITS) and the Tariff Analysis Online (TAO), both of which are managed by the World Trade Organization. These data sources provide tariff rates at a tariff-line level (e.g. the harmonised system (HS) eight-, nine-, or ten-digit level) in each country. Due to the fact that MFN tariffs are zero for most products in Brunei Darussalam and Singapore, we do not study these two countries.

When comparing tariffs across years, we need to be careful of consistency in the HS version, which is revised every five years. The recent versions include those set in 2012 and 2017. The HS codes are not convertible at the tariff-line level across HS versions. By using the converter table provided by the United Nations,<sup>2</sup> they can be converted at the HS six-digit level. The aim of this section is to compare the RCEP tariffs with the lowest available tariffs in each year. The legal text of RCEP presents the RCEP tariffs in the HS 2012 version. On the other hand, as the HS 2017 version has been used since 2017, the tariff-line level HS codes are not convertible between the versions in the RCEP legal text and the recent tariff tables.

One easy solution is to compare the RCEP tariffs with the lowest available tariffs in 2016. Since the latter tariffs are also reported in the HS 2012 version, we can compare these two kinds of tariffs at the tariff-line level, i.e. without taking any aggregation. However, the comparison with tariffs in 2016 results in overestimating the magnitude of the RCEP

<sup>&</sup>lt;sup>1</sup> Note that RCEP tariffs are reduced on 1 April in Japan, Indonesia, and the Philippines. Thus, for these countries, the second year of RCEP starts from 1 April 2022. However, we follow the calendar year for simplicity, so that the second year is assumed to start in all member countries from 1 January 2023.

<sup>&</sup>lt;sup>2</sup> https://unstats.un.org/unsd/trade/classifications/correspondence-tables.asp

preference margin. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force in December 2018. The CPTPP is a 'deep' RTA and eliminates tariffs for almost all products amongst member countries. It includes six RCEP countries, i.e. Australia, Brunei, Japan, Malaysia, New Zealand, and Viet Nam. Thus, the use of tariff rates in 2016 means that we do not take CPTPP tariffs into account. Similarly, at the end of 2015, RTAs entered into force amongst some RCEP members (i.e. the China–Korea RTA, Korea–New Zealand RTA, Korea–Viet Nam RTA, and Australia–China RTA). Tariff rates in 2016 reflect the tariff reduction based on these RTAs only in the early phase. In short, the use of tariffs in 2016 overestimates the magnitude of the RCEP preference.

Based on the above concerns, we take the following approach in our comparison. The RCEP tariffs are determined by comparing RCEP tariffs in each year  $(t_{year}^{RCEP})$  with the lowest available rate in 2016  $(t_{2016}^{Lowest})$  at the tariff-line level. The former rate changes over time based on the schedule set in the legal text. We use the lower tariffs between these two kinds of tariffs as the RCEP tariffs. Then, we take a simple average of the tariff-line level RCEP tariffs at the six-digit level. As a result, we have RCEP tariffs at an HS six-digit level in the HS 2012 version. The reason for comparing with the tariffs in 2016 is that RCEP tariffs may not be available depending on the product and year. If we take a simple average only amongst tariff-line codes where RCEP tariffs are available, the average rate will be underestimated. To avoid this bias, we take into account the lowest available rate in 2016 for the codes where RCEP tariffs are not available.

(%)
Industry
þ
2019
in
<b>Tariffs</b>
MFN -
Average
5.1
Table 1

Region	AUS	BRN	CHN	NQI	NAL	КНМ	KOR	LAO	MMR	MYS	NZL	PHL	тна	MNV
Live Animals	0.0	0.0	9.3	5.3	8.4	12.5	20.0	10.1	7.8	2.1	0.7	10.4	15.4	12.6
Vegetable products	0.7	0.0	13.4	5.3	6.1	8.4	95.8	12.8	8.7	2.2	1.0	9.9	19.7	14.9
Animal/vegetable fast and oils	1.8	0.0	13.6	4.3	3.5	7.0	7.7	10.0	3.8	2.7	1.1	8.7	24.4	16.5
Food products	2.6	0.0	10.1	23.6	14.8	21.8	28.2	12.2	15.1	4.1	2.6	11.4	23.3	30.3
Mineral products	0.4	0.0	3.6	3.2	0.7	8.0	3.8	5.2	2.9	1.5	0.4	1.8	1.8	6.9
Chemical products	1.4	0.1	5.6	5.0	1.8	7.5	7.4	6.8	3.7	2.0	0.7	3.2	2.8	3.0
Plastics and rubber	4.4	0.0	9.0	9.3	2.1	8.9	6.6	9.2	3.5	13.1	3.1	7.9	7.0	9.0
Leather products	3.4	0.0	9.7	8.6	10.9	12.8	7.7	16.4	7.7	0.3	2.5	7.4	10.6	12.8
Wood products	3.3	3.4	2.9	5.1	3.2	11.8	6.0	23.1	11.4	5.4	2.3	6.9	6.2	7.4
Paper products	3.7	0.0	4.2	4.5	0.0	6.7	0.0	6.0	2.8	10.5	0.0	5.5	3.5	12.5
Textiles	4.1	0.4	7.0	15.3	6.5	8.3	9.6	9.3	11.5	6.2	4.2	10.9	12.3	12.6
Footwear	2.5	2.8	8.2	16.4	14.6	14.8	10.1	11.9	6.7	5.1	5.7	9.7	21.1	22.3
Plastic or glass products	3.4	0.0	10.5	9.2	1.2	10.9	7.8	5.9	4.1	17.8	2.5	7.2	10.1	20.2
Precision metals	1.1	0.0	6.4	7.3	1.5	2.6	5.4	5.0	11.8	0.5	1.2	5.2	4.0	11.8
Base Metal	3.5	0.0	5.8	9.4	0.8	8.2	4.2	6.3	4.1	9.0	2.6	5.5	6.1	8.0
Machinery	2.5	0.1	6.1	5.6	0.0	13.7	4.7	7.3	4.2	4.8	2.6	2.5	4.8	6.4
Transport equipment	3.6	0.0	11.4	26.3	0.1	19.9	5.9	7.6	13.1	21.5	3.9	20.1	49.2	33.8
Precision machinery	0.8	0.6	6.2	5.6	0.2	14.8	4.1	6.7	5.6	0.5	0.9	1.8	3.1	4.5
Miscellaneous	3.2	1.2	6.0	10.0	2.2	15.8	4.9	14.7	8.3	10.4	3.6	8.0	13.7	16.2

Source: Author's compilation using WITS and TAO.

We compute the lowest tariff rates in each year after RCEP enters into force as follows. First, we identify the lowest available tariff rates in 2019 at the tariff-line level, which are reported in the HS 2017 version. For reference, Table 2.1 reports the average MFN tariffs in 2019 by industry. We do not take into account a generalised scheme of preferences (GSP) here because GSP regimes are slightly different from RTA regimes (e.g. less restrictive RoO). Due to the data availability, we use the lowest tariff rates in 2018 for Korea and those in 2020 for Thailand. In addition, we use the tariff information in both 2019 and 2020 for Myanmar due to the incomplete coverage of the ASEAN Trade-in-Goods Agreement tariffs in the WITS data for 2019. Also, those in 2014 are used for Malaysia because 2014 is the latest year when RTA tariff rates are reported for Malaysia in our data sources. Nevertheless, since tariff rates in 2014 are a bit outdated, we also take into account the MFN tariffs in Malaysia in 2020. Namely, for Malaysia, we identify the lower tariff rates between the lowest available rate in 2014 and MFN rates in 2020.<sup>3</sup>

Furthermore, we take into account the future tariffs, i.e. tariffs scheduled in existing RTAs. Specifically, we include the China–Korea RTA tariff rates in China and Korea; tariff rates in all RTAs in Japan; CPTPP tariff rates in Australia, Malaysia, New Zealand, and Viet Nam; ASEAN–Australia–New Zealand RTA tariff rates in Indonesia, Cambodia, the Lao PDR, Myanmar, Thailand, and Viet Nam; and ASEAN–Japan RTA tariff rates in Cambodia, the Lao PDR, and Myanmar. We assume that the CPTPP will enter into force in Malaysia in 2022. We compare the lowest available rates in 2019 with the future RTA tariffs at the HS six-digit level, not the tariff-line level, because the scheduled tariffs in some RTAs are reported in the HS 2012 version or an older version. Finally, we have two kinds of tariffs (i.e. RCEP tariffs and the lowest tariffs amongst all tariff regimes excluding RCEP) at the HS six-digit level, which are compared below. If RCEP tariffs are higher than the lowest tariffs, we replace the RCEP tariffs with those lowest tariffs. Thus, no HS six-digit codes have RCEP tariffs higher than the lowest tariffs.

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<sup>&</sup>lt;sup>3</sup> This identification is conducted at the HS six-digit level.

#### Comparison



#### Figure 2.1(a) Average RCEP Margin in ASEAN Forerunners (%)

ASEAN = Association of Southeast Asian Nations, RCEP = Regional Comprehensive Economic Partnership.

Source: Author's compilation

We compare the RTA tariffs with the existing lowest tariffs. We begin with the comparison at the country-year level. To do this, we first take the difference between the two kinds of tariffs (i.e. the lowest tariffs minus the RCEP tariffs) at the HS six-digit level. As mentioned in the last part of the previous subsection, the RCEP tariffs cannot be higher than the lowest tariffs. Thus, by definition, this difference takes a non-negative value. We call this difference the 'RCEP margin'. Then, we take a simple average of this difference by country pairs and years. As mentioned before, we set 2022 as the first year of RCEP.

The time-series changes in the average RCEP margin are depicted in Figure 2.1. Figure 2.1(a) shows the results in the four ASEAN Member States (AMS) of Malaysia, Indonesia, Thailand, and the Philippines. Since each AMS applies the same tariff rate against all AMS, we do not differentiate AMS as exporters. The RCEP margin is almost zero amongst AMS because tariff elimination amongst AMS was already completed by 2018 under the ASEAN Trade in Goods Agreement (ATIGA). Against non-ASEAN countries, the margin rises over time. However, as indicated in the size of the vertical axis, the magnitude of the margin is trivial. At most, it is around 0.6%. The relatively large margin in the final year can be found when importing from China and Korea or when Indonesia imports from non-AMS.



#### Figure 2.1(b) Average RCEP Margin in CLMV Countries (%)

ASEAN = Association of Southeast Asian Nations, CLMV = Cambodia, Lao PDR, Myanmar, and Viet Nam, RCEP = Regional Comprehensive Economic Partnership.

Source: Author's compilation.

Figure 2.1(b) reports the results in the other four AMS, the so-called 'CLMV countries' (Viet Nam, Cambodia, Lao PDR, and Myanmar). There are two noteworthy points. First, compared with Figure 2.1(a), the magnitude of the margin becomes large, especially in Cambodia and the Lao PDR against Japan, with a margin of around 1%. This result is because the liberalisation level under the ASEAN–Japan RTA in these countries was low. Second, due to the tariff elimination/reduction in the final year of the ASEAN–Japan RTA, the RCEP margin decreases in the fifth year of RCEP in Cambodia, the Lao PDR, and Myanmar. The relatively large margin in Viet Nam for Korea is partly because we do not take into account the future tariffs set in the Korea–Viet Nam RTA. We only include Korea–Viet Nam RTA tariffs as of 2018/2019.

We next move to the results in 'plus-one' countries. Figure 2.1(c) shows those in Australia. An increasing magnitude can be found except for Japan, New Zealand, Singapore, Malaysia, and Viet Nam, which are CPTPP member countries. However, the magnitude of the margin is rather small. The results for China are depicted in Figure 2.1(d). Since RCEP is the first RTA between China and Japan, we can see the large and growing magnitude of the margin against Japan. In the final year, it reaches around 6%. The margins for the other countries are trivial. A similar trend can be found for Japan's tariffs against China, as shown in Figure 2.1(e). Since RCEP is the first RTA with Korea for Japan, the margin is also large and growing against Korea. In the final year, the margins against China and Korea become around 2%. Figure 2.1(f) reports the results in Korea. Again, the margin for Japan is large and growing up to around 6%. Another key finding in Korea is that the margins even for the other countries are large compared with those in the other plus-one countries, indicating that Korea reduces tariffs by RCEP beyond the levels set by existing RTAs. Last, the results in New Zealand are presented in Figure 2.1(g). Although some countries have a growing trend, the magnitude is trivial.<sup>4</sup> At most, it is around 0.2%.

<sup>&</sup>lt;sup>4</sup> The relatively large margin for Korea is partly because we do not take into account the future tariffs set in the Korea–New Zealand RTA. We only include Korea–New Zealand RTA tariffs as of 2018.



#### Figure 2.1(c) Average RCEP Margin in Australia (%)

RCEP = Regional Comprehensive Economic Partnership.

Source: Author's compilation.



#### Figure 2.1(d) Average RCEP Margin in China (%)

RCEP = Regional Comprehensive Economic Partnership.



#### Figure 2.1(e) Average RCEP Margin in Australia (%)

RCEP = Regional Comprehensive Economic Partnership.

Source: Author's compilation.



Figure 2.1(f) Average RCEP Margin in the Republic of Korea (%)

RCEP = Regional Comprehensive Economic Partnership. Source: Author's compilation.



#### Figure 2.1(g) Average RCEP Margin in New Zealand (%)

RCEP = Regional Comprehensive Economic Partnership. Source: Author's compilation.

Next, we examine the product-level margin of RCEP. The average margins presented in Figures 1(a)–(g) may mask the existence of some products with a large margin. In Table 2.2, we count the number of HS six-digit codes according to the magnitude of the RCEP margin in the final year of RCEP. Table 2.2(a) shows the results in plus-one countries. In Australia and New Zealand, no products have a margin greater than 10%. In these two countries, products with relatively large margins can be found against ASEAN countries with which they have neither bilateral RTAs nor the CPTPP (i.e. Indonesia, Cambodia, the Lao PDR, Myanmar, and the Philippines). Many products have large margins for Japan's imports from China and Korea, China's imports from Japan, and Korea's imports from Japan. In addition, the relatively large number of products have a margin greater than 10% for Korea's imports from other countries.


Table 2.2(b) reports the results in the four forerunner AMS, whilst Table 2.2(c) shows the results in the CLMV countries. Overall, there are few products with positive margins for the intra-ASEAN flow due to the existing RTAs. These figures for the intra-ASEAN flow play a good role in illustrating some shortcomings in our computation. For example, although Malaysia should not have any products with a positive RCEP margin against other AMS, the table indicates that one product has a positive margin against non-CPTPP AMS. This inconsistency is because of our treatment of non-ad valorem tariffs, which are replaced with missing values. Similarly, the Philippines does not present an additional tariff reduction against other AMS. The positive number in the table is because the number of tariff-line codes is different between HS 2012 and HS 2017.<sup>5</sup> This difference affects the magnitude of tariffs when we take a simple average at the HS six-digit level.<sup>6</sup> Another source is the rise in MFN tariffs in our dataset,<sup>7</sup> which results in a positive RCEP margin if the concerned product is excluded from tariff reduction in both ATIGA and RCEP. This case can be observed at least in Myanmar and Viet Nam. In short, the numbers presented in the tables are not necessarily 100% correct.

<sup>&</sup>lt;sup>5</sup> Remember that we input tariffs from around 2016 for products where RCEP tariffs are not available and that the base tariffs compared with the RCEP tariffs are those from around 2019.

<sup>&</sup>lt;sup>6</sup> For example, the simple average amongst 1%, 1%, and 4% is 2%, whilst that amongst 1% and 4% is 2.5%.

<sup>&</sup>lt;sup>7</sup> We are not sure how accurate the tariff information in our data (i.e. WITS or TAO) is.

THA VNM	0	0	18 18	20 20	0	1	0	0	55 61	77
SGP	0	0	18	20	0	-	0	0	55	7,1
PHL	36	127	18	20	0	14	9	З	117	10%
NZL	0	0	-	0	0	-	0	0	243	787
MYS	0	0	18	20	0	-	0	0	117	1 2 /
MMR	36	127	17	20	0	65	76	4	117	1 2 /
LAO	36	127	17	17	0	65	76	4	117	1 2 /
KOR	15	14	95	27	7	504	1408	92	0	C
КНМ	36	127	18	18	0	65	76	4	117	1 2 /
Ndſ	0	0	411	3341	449	0	0	0	382	7053
NDI	36	127	18	20	0	47	60	4	117	1 27.
CHN	0	0	0	0	0	512	1486	145	117	70
BRN	0	0	18	20	0	0	0	0	117	127
AUS	0	0	57	33	9	0	0	0	170	217
Range	0 <m≤3< th=""><th>3<m≤10< th=""><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<></th></m≤3<>	3 <m≤10< th=""><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<>	0 <m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<></th></m≤3<>	3 <m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<></th></m≤3<></th></m≤10<>	m>10	0 <m≤3< th=""><th>3<m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<></th></m≤3<>	3 <m≤10< th=""><th>m&gt;10</th><th>0<m≤3< th=""><th>3/m/10</th></m≤3<></th></m≤10<>	m>10	0 <m≤3< th=""><th>3/m/10</th></m≤3<>	3/m/10
Importer	AUS		CHN			NAL			KOR	

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3<m≤10 0<m≤3 m>10

Table 2.2(a) Number of Products by RCEP Margin in the Final Year: Plus-one Countries

Source: Author's compilation.

#### Dynamism of East Asia and RCEP: The Framework for Regional Integration

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Importer	Range	AUS	BRN	CHN	NDI	NAL	МНХ	KOR	LAO	MMR	МУS	NZL	PHL	SGP	ТНА	MNV
IDN	0 <m≤3< td=""><td>80</td><td>0</td><td>45</td><td>0</td><td>115</td><td>0</td><td>124</td><td>0</td><td>0</td><td>0</td><td>81</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤3<>	80	0	45	0	115	0	124	0	0	0	81	0	0	0	0
	3 <m≤10< td=""><td>134</td><td>0</td><td>338</td><td>0</td><td>123</td><td>0</td><td>498</td><td>0</td><td>0</td><td>0</td><td>138</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤10<>	134	0	338	0	123	0	498	0	0	0	138	0	0	0	0
	m>10	9	0	22	0	15	0	28	0	0	0	9	0	0	0	0
MYS	0 <m≤3< td=""><td>0</td><td>0</td><td>28</td><td>-</td><td>0</td><td>-</td><td>22</td><td>-</td><td>-</td><td>0</td><td>0</td><td>-</td><td>0</td><td>-</td><td>0</td></m≤3<>	0	0	28	-	0	-	22	-	-	0	0	-	0	-	0
	3 <m≤10< td=""><td>0</td><td>0</td><td>97</td><td>0</td><td>0</td><td>0</td><td>85</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤10<>	0	0	97	0	0	0	85	0	0	0	0	0	0	0	0
	m>10	0	0	32	0	0	0	84	0	0	0	0	0	0	0	0
PHL	0 <m≤3< td=""><td>25</td><td>-</td><td>48</td><td>-</td><td>24</td><td>-</td><td>60</td><td>-</td><td>-</td><td>-</td><td>25</td><td>0</td><td>-</td><td>-</td><td>-</td></m≤3<>	25	-	48	-	24	-	60	-	-	-	25	0	-	-	-
	3 <m≤10< td=""><td>68</td><td>0</td><td>144</td><td>0</td><td>16</td><td>0</td><td>132</td><td>0</td><td>0</td><td>0</td><td>68</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤10<>	68	0	144	0	16	0	132	0	0	0	68	0	0	0	0
	m>10	20	0	37	0	-	0	30	0	0	0	20	0	0	0	0
THA	0 <m≤3< td=""><td>0</td><td>0</td><td>37</td><td>0</td><td>Q</td><td>0</td><td>32</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤3<>	0	0	37	0	Q	0	32	0	0	0	0	0	0	0	0
	3 <m≤10< td=""><td>0</td><td>0</td><td>145</td><td>0</td><td>48</td><td>0</td><td>138</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td></m≤10<>	0	0	145	0	48	0	138	0	0	0	0	0	0	0	0
	m>10	0	0	11	0	9	0	7	0	0	0	0	0	0	0	0

Source: Author's compilation.

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Table 2.2(c) Number of Products by RCEP

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Importer	Range	AUS	BRN	CHN	N	Ndſ	КНМ	KOR	LAO	MMR	MYS	NZL	PHL	SGP	ТНА	MNV
КНМ	0 <m≤3< td=""><td>133</td><td>4</td><td>75</td><td>4</td><td>14</td><td>0</td><td>17</td><td>4</td><td>4</td><td>4</td><td>133</td><td>4</td><td>4</td><td>4</td><td>4</td></m≤3<>	133	4	75	4	14	0	17	4	4	4	133	4	4	4	4
	3 <m≤10< td=""><td>231</td><td>14</td><td>230</td><td>14</td><td>288</td><td>0</td><td>187</td><td>14</td><td>14</td><td>14</td><td>231</td><td>14</td><td>14</td><td>14</td><td>14</td></m≤10<>	231	14	230	14	288	0	187	14	14	14	231	14	14	14	14
	m>10	38	0	166	0	242	0	110	0	0	0	38	0	0	0	0
LAO	0 <m≤3< td=""><td>278</td><td>-</td><td>2</td><td>-</td><td>29</td><td>-</td><td>വ</td><td>0</td><td>-</td><td>-</td><td>278</td><td>-</td><td>-</td><td>-</td><td>-</td></m≤3<>	278	-	2	-	29	-	വ	0	-	-	278	-	-	-	-
	3 <m≤10< td=""><td>194</td><td>-</td><td>18</td><td>-</td><td>551</td><td>-</td><td>249</td><td>0</td><td>-</td><td>-</td><td>194</td><td>-</td><td>-</td><td>-</td><td>-</td></m≤10<>	194	-	18	-	551	-	249	0	-	-	194	-	-	-	-
	m>10	0	0	-	0	75	0	27	0	0	0	0	0	0	0	0
MMR	0 <m≤3< td=""><td>54</td><td>4</td><td>103</td><td>4</td><td>282</td><td>4</td><td>183</td><td>4</td><td>0</td><td>4</td><td>54</td><td>4</td><td>4</td><td>4</td><td>4</td></m≤3<>	54	4	103	4	282	4	183	4	0	4	54	4	4	4	4
	3 <m≤10< td=""><td>52</td><td>-</td><td>30</td><td>-</td><td>91</td><td>-</td><td>58</td><td>-</td><td>0</td><td>-</td><td>52</td><td>-</td><td>-</td><td>-</td><td>-</td></m≤10<>	52	-	30	-	91	-	58	-	0	-	52	-	-	-	-
	m>10	-	0	1	0	0	0	0	0	0	0	-	0	0	0	0
MNV	0 <m≤3< td=""><td>0</td><td>0</td><td>53</td><td>с</td><td>0</td><td>с</td><td>76</td><td>с</td><td>с</td><td>0</td><td>0</td><td>с</td><td>0</td><td>с</td><td>0</td></m≤3<>	0	0	53	с	0	с	76	с	с	0	0	с	0	с	0
	3 <m≤10< td=""><td>0</td><td>0</td><td>109</td><td>ω</td><td>0</td><td>8</td><td>113</td><td>8</td><td>8</td><td>0</td><td>0</td><td>8</td><td>0</td><td>œ</td><td>0</td></m≤10<>	0	0	109	ω	0	8	113	8	8	0	0	8	0	œ	0
	m>10	0	0	4	2	0	2	57	2	2	0	0	2	0	2	0

Source: Author's compilation.

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The findings for AMS' margins against plus-one countries are as follows. Amongst the four forerunner AMS, Indonesia shows a relatively large number of products with margins greater than 3%. In contrast, Malaysia shows few products with margins greater than 3%. Due to the existence of the Japan–Philippines RTA, the number of products with a positive RCEP margin is small for Philippine imports from Japan. Thailand presents no additional tariff reduction against Australia and New Zealand, both of which have bilateral and plurilateral RTAs with Thailand. Cambodia has large margins with plus-one countries for a relatively large number of products. A similar finding can be found in the Lao PDR's imports, except for those from China. In Myanmar's imports, Japan receives the largest number of products with a positive margin. Due to the existence of the CPTPP and ATIGA, Viet Nam does not present additional tariff reductions to many countries.

Last, we take an overview of the industry average of the RCEP margin in the final year. Table 2.3 reports only the cases with an average margin greater than 3%. Table 2.3(a) focuses on exports from Japan to China and Korea. When exporting to China, a relatively large margin can be found for live animals, vegetable products, leather products, and plastic or glass products. On the other hand, when exporting to Korea, vegetable products, textiles, the footwear industry, plastic or glass products, and the precision machinery industry indicate a relatively large margin. Other cases are shown in Table 2.3(b). For example, the average margin for transport equipment is 3% when exporting from China to Indonesia. Some industries appear for Japan's imports from China and Korea. Many countries enjoy a margin greater than 3% when exporting vegetable products to Korea.

	Impo	orter
	СНМ	KOR
Live animals	9	6
Vegetable products	10	7
Animal/vegetable fats and oils	7	4
Food products	6	6
Mineral products	3	
Chemical products	5	5
Plastics and rubber	8	6
Leather products	10	6
Wood products		5
Textiles	6	8
Footwear	6	10

Table 2.3(a) Average RCEP Margin by Section: Exporting from Japan (%)

	Impo	orter
	CHN	KOR
Plastic or glass products	9	7
Precision metals		4
Base Metal	5	4
Machinery	5	5
Transport equipment	4	3
Precision machinery	6	7
Miscellaneous	5	6

Note: We report only sections with a final-year RCEP margin greater than 3%.

Source: Author's compilation.

								Exporter						
Importer	Section	AUS	BRN	CHN	N	Ndſ	КНМ	KOR	LAO	MMR	МҮЅ	NZL	PHL	ТНА
NDI	Food products							с						
IDN	Paper products			З										
IDN	Transport equipment			с										
NAL	Food products			9				с						
NAL	Leather products			9										
NAL	Textiles			9				9						
KHM	Machinery					m								
KHM	Transport equipment					Ð		с						
КНМ	Miscellaneous			с										
KOR	Live animals											4		
KOR	Vegetable products	7	c		ю		c		S	с	S	8	с	с
KOR	Food products	4										9		
LAO	Live animals					വ								
LAO	Vegetable products					4								
LAO	Animal/vegetable fats/oils					7								
LAO	Food products					m								
LAO	Leather products							с						
MYS	Transport equipment							വ						

Table 2.3(b) Average RCEP Margin by Section: Other Pairs (%)

Note: We report only sections with a final-year RCEP margin greater than 3%.

Source: Author's compilation.

#### **Rules of origin**

Before closing this section, we point out another possible advantage of RCEP tariffs. In general, when firms use RTA tariffs in exporting, they need to comply with rules of origin (RoO) and obtain/issue certificates of origin. RoO are set at the HS six-digit level and differ by RTA. When two RTAs present the same level of preferential tariff (e.g. 0%), exporters may prefer using the RTA tariffs that require the compliance of less restrictive RoO. In other words, even when the RCEP margin is zero, firms may still have an incentive to use RCEP tariffs if the RCEP RoO are less restrictive.

Various rules exist in RoO: change in chapter (CC), change in heading (CH), change in subheading (CS), wholly obtained (WO), regional value content (VA), and specific process (SP). For example, CC requires exported products to have different two-digit HS codes from inputs imported from non-RTA member countries, whilst such a transformation is required at the six-digit level for CS. Thus, CC potentially requires exporters to drastically adjust their production and input sources compared with CS. Some RoO require compliance with multiple rules (indicated by '&') or one of those rules (indicated by '/'). Naturally, RoO with '&' are more restrictive than those adhering to one RoO type. RoO with '/' are as restrictive or less restrictive than adhering to a particular one amongst multiple types of RoO.

Table 2.4 reports the distribution of the RoO by RTAs at the HS six-digit level, indicating the various types and combinations. To decrease the number of RoO types, we slightly simplify the original rules. For RoO combined with SP, we ignore the SP component. For example, CC&SP and CC/SP are simplified to CC. We also ignore the minor requirement. 'VA' indicates the 40% rule of regional value content. 'VA-' and 'VA+' represent less than 40% and more than 40% of regional value content, respectively. In Table 2.4, we study RoO in ATIGA, the four ASEAN+1 RTAs, and RCEP. Like other RTAs except for the ASEAN–China RTA, in RCEP, the largest number of RoO can be found in CH/VA. Also, it shows a relatively large number of the less-restrictive type of RoO, CS/VA, compared with other RTAs, except for the ASEAN–Australia–New Zealand RTA. Overall, except for the frequency of CS/VA, the distribution of RoO in RCEP looks similar to that in the ASEAN–Japan RTA.

	ATIGA	AANZ	AC	AJ	AK	RCEP
СС		297	1	1,479	5	1,100
CC&VA					2	
CC/VA	511	841	8	122	524	288
СН		203		416	11	475
CH&VA					1	
CH&VA+					14	
CH/(CS&VA-)/VA		197				
CH/VA	4,559	2,18	113	2,921	3900	2,488
CH/VA+					1	
CS				7		16
CS&VA		3				
CS/VA	129	1,037		34	73	634
CS/VA+					1	
SP		70				
VA	1	68	5,074	222	26	39
VA+					46	
VA-					3	
WO	4	308	8	3	607	164

#### Table 2.4 Product-specific Rules of Origin

Source: Author's compilation using the legal texts of the RTAs.

Although we do not show the details, we can find a non-negligible number of products where the RoO in RCEP are less restrictive than those in other RTAs. For example, there exist many HS six-digit codes where RoO are CH/VA in ATIGA and CS/VA in RCEP, particularly in the chemical industry, the general and electric machinery industry, and the precision machinery industry. Compared with RoO in the ASEAN–Australia–New Zealand RTA, which are known to be less strict, we can find products where RCEP sets CS/VA, whilst the ASEAN–Australia–New Zealand RTA sets stricter rules. In sum, some products have less restrictive RoO in RCEP. When exporting such products, firms may choose to use RCEP tariffs even if the preference margin of RCEP is trivial.

Finally, we also mention the availability of self-certification, which allows firms to issue certificates of origin by themselves. Since firms do not need to apply to the relevant authorities, they can minimise the time to obtain the certificates of origin. Also, they do not need to incur charges for the issuance from the authorities. RCEP allows an approved exporter system (i.e. exporters approved by the authorities can self-certify) once it comes into force. Furthermore, in Japan, self-certification by importers becomes immediately available. Also, self-certification by exporters will be introduced within a specified period of time after the agreement is implemented. There are many country pairs in the RCEP region for which the existing RTAs do not allow self-certification. Thus, some firms, especially large-sized firms that can manage the compliance of RoO well, may prefer using RCEP tariff rates to enjoy self-certification rules.

### The Multilateral Trade Case

In the previous section, we discussed the extent to which RCEP tariffs become preferential when exporting to a member country. A key issue was whether RCEP tariffs are lower than the preferential tariffs in any existing RTA or not. This aspect has long been discussed and has been one of the criteria regarding the advantages of a new RTA. However, we should also shed light on the so-called cumulation provision in the case of RTAs covering more than two countries as members. As mentioned in Section 2.3, RTA tariffs can be applied when the exported products comply with the RoO. In other words, exported products must be produced using inputs or materials that originate from the exporting country. The cumulation provision allows the inputs produced in other member countries of the RTA to be regarded as those produced in the exporting country. Since RCEP covers a larger number of member countries than the ASEAN+1 RTAs, the cumulation provision in RCEP results in expanding the area of originating inputs. As a result, there are several cases where the use of RCEP tariffs becomes most beneficial when trade patterns involve at least three member countries.<sup>8</sup>

To demonstrate when the use of RCEP tariffs becomes beneficial, we conduct several case studies. To highlight the role of the cumulation provision, we assume that all RTAs present the same level of tariff rates and set the same product-specific RoO. It is also assumed that firms prefer existing RTAs to RCEP unless RCEP presents additional benefits because they are familiar with using the former. The first case is described as 'plus-one  $\rightarrow$  AMS 1  $\rightarrow$  AMS 2'. For example, China (Plus-one) exports inputs to Thailand (AMS 1), and

<sup>&</sup>lt;sup>8</sup> As mentioned in the introductory section, some countries do not adopt the common concession rule. These countries require some imported products to meet the 'tariff differentials' rule in addition to the RoO. For example, Japan specifies 100 products as those products and requires the exporting country to add at least 20% value-added. Although the number of such products is limited, this rule may become an additional cost to utilising RCEP tariffs.

Thailand produces goods using those inputs and then exports the goods to Malaysia (AMS 2). In this case, ASEAN–China RTA tariffs can be used in the two trade flows (i.e. exporting from China to Thailand and exporting from Thailand to Malaysia). Thus, RCEP tariffs will not be chosen in this type of trade flow. This case implies that the necessary condition of RCEP tariffs' superiority is to involve at least two plus-one countries in the supply chain.

Next, we consider three cases of horizontally-linked supply chains. Namely, a country producing final goods imports inputs from two countries. The second case is 'two plusones  $\rightarrow$  AMS'. For example, Thailand imports inputs from China and Japan and sells final goods in the Thai market. In this case, importers in Thailand will choose to use ASEAN–China RTA tariffs when importing from China and use ASEAN–Japan RTA tariffs or Japan–Thailand RTA tariffs when importing from Japan. This second case involves two plusone countries, unlike the first case. Nevertheless, RCEP tariffs do not become the best tariff regime. This case demonstrates that involving multiple plus-one countries is not a sufficient condition for RCEP to be the best regime.

The third case is 'two plus-ones  $\rightarrow$  AMS 1  $\rightarrow$  plus-one 3/AMS 2'. As in the second case, Thailand imports inputs from China and Japan. In the third case, however, Thailand exports final goods to another country, either a plus-one country or another AMS. In this case, the use of RCEP tariffs (in Thailand's imports and exports) becomes the best choice. The key reason behind this choice is that the inputs imported under an RTA regime cannot be regarded as originating inputs when exporting final goods under a different RTA regime. Namely, RTA regimes cannot be mixed in a supply chain to enjoy the use of RTA tariffs in the whole chain. For example, if Thailand uses ASEAN–China RTA tariffs when importing from China, the final goods cannot comply with the RoO in any RTA when exporting to another plus-one country.<sup>9</sup> Also, when exporting final goods to another AMS, those goods do not meet the RoO in the ASEAN–China RTA because the materials imported from Japan are not qualified as originating inputs in the ASEAN–China RTA. It is crucially important to cover the whole supply chain with a single RTA, which is RCEP in this case. This case demonstrates that RCEP becomes beneficial if supply chains involve four RCEP member countries including at least two plus-one countries.

The fourth case looks like the third case. The difference is that the final destination, an importing country of final goods, has rather low MFN tariff rates, such as 0%. A typical example is Singapore. In this case, RCEP tariffs may not be chosen. The producers in Thailand import materials from China and Japan by using the duty-drawback regime or free economic zone regimes and then export the final goods to Singapore by using the MFN regime. The former regimes allow duty-free imports of materials if they are used to produce exported goods. Also, these regimes do not require compliance with RoO. Thus,

 $<sup>^{\</sup>rm 9}\,$  More precisely, there might be the case where the final goods can comply with some specific

firms prefer using these regimes to RTA regimes. However, the inputs imported under these regimes cannot be regarded as originating inputs in any RTA when exporting. Thus, low MFN tariffs in the final destination play a crucial role in this case.

Next, we consider three cases of vertically-linked supply chains, which involve two plusone countries and one AMS. The middle country imports materials from one country and exports final goods to another country. The three cases are 'plus-one  $1 \rightarrow AMS \rightarrow plus$ one 2', 'plus-one  $1 \rightarrow plus-one 2 \rightarrow AMS'$ , and 'AMS  $\rightarrow plus-one 1 \rightarrow Plus-one 2'$ . Due to the vertical involvement of two plus-one countries, ASEAN+1 RTA tariffs cannot be used in the whole supply chain. RCEP becomes the best regime in these three cases. Although the third case above indicated the importance of involving four member countries, these three cases demonstrate the superiority of the RCEP regime even amongst three member countries if they are linked vertically.

Last, we consider a slightly different case, which is 'AMS two plus-ones'. In this case, one AMS (e.g. Thailand) produces final goods and exports them to two plus-one countries (e.g. China and Japan). The AMS may use only domestic inputs or the inputs imported from other AMS. It is possible to use the respective ASEAN+1 RTAs in exporting to the plus-one countries, especially when the RoO in those ASEAN+1 RTAs are the same. However, one cumbersome requirement is that the exporters of the final goods must import inputs from other AMS under the respective ASEAN+1 RTAs. For example, the inputs imported using the ASEAN–China RTA tariffs must be used to produce the final goods only for China. Those inputs cannot be taken as originating inputs in the RoO of the ASEAN–Japan RTA when exporting to Japan. If it is costly or cumbersome to import materials using multiple RTA regimes depending on the export destination, exporters of final goods may import them using the RCEP tariffs and then export to both plus-one countries using the RCEP tariffs.

We have discussed the types of supply chains where the use of RCEP tariffs becomes the best choice. One of them is the supply chain where four countries including at least two plus-one countries are involved. One example is where firms in Thailand import machinery parts from China and Japan, produce finished machinery products, and export them to other AMS. Another type is where two plus-one countries are vertically linked in supply chains. One example is that firms in Viet Nam import fabrics from China, produce apparel products, and export to Japan. In these types of supply chains, firms may make use of RCEP tariffs even if RCEP does not present lower tariff rates than other available RTAs.

RoO in other RTAs. Suppose the export of final goods to Korea. When the RoO for those goods in the ASEAN–Korea RTA is the change-in-tariff classification, exporting firms can comply with the RoO if the exported final goods are different from the inputs imported from China at the required tariff classification level. Similarly, if those inputs occupy a trivial share in the value-added in the final goods, exporting firms can comply with regional value content rules in exporting to Korea. Our discussion in this section rules out such special cases to shed light on the role of the cumulation provision.

# **Concluding Remarks**

In this study, we discussed the extent to which RCEP tariffs are preferential compared with other types of available tariffs. We showed that their use becomes the best choice for trading some specific products with some specific countries in some specific years. We also demonstrated that the use of RCEP tariffs is beneficial in specific types of supply chains. Although we assumed that RCEP tariffs will become available in all member countries from 2022, they have not been ratified in a few countries as of July 2021. Therefore, the cases where the use of RCEP tariffs is beneficial differ by year. This difference creates unnecessary complexity in the choice of the best tariff regime by firms. RCEP should also be ratified immediately in the rest of the member countries.

# CHAPTER 3

# Restrictiveness of RCEP Rules of Origin: Implications for Global Value Chains in East Asia

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This chapter aims to examine the restrictiveness of rules of origin (RoO) in the Regional Comprehensive Economic Partnership (RCEP) and other key multilateral free trade agreements (FTAs) in East Asia with a view to facilitating the operations of existing global value chains (GVCs). The analysis begins with dissecting PSRs in the RoO Chapter in these FTAs and quantifying them. The key finding is that product-specific rules in RCEP are the most flexible compared to the other multilateral FTAs and more facilitative to GVC operations. This is driven by RCEP-specific features, such as high intra-member trade and the member coverage. The main policy inference is that a full cumulation clause is needed in RCEP to allow a regional value content alternative to be in full effect. Harmonisation in RoO provision across these multilateral FTAs remains a challenge for ongoing negotiation. Monitoring the dynamics of RoO as well as the FTA utilisation is needed so that these multilateral FTAs could be a true stepping stone for trade liberalisation in the broader World Trade Organization multilateral trading system.

### Issues

Recently, a growing number of multilateral free trade agreements (FTAs) have been observed amid the proliferation of FTAs. These FTAs not only enlarge the market size of a trading bloc but the common rules and regulations in them also facilitate firms to efficiently formulate production networks within the trading bloc. The latter is often highlighted as the main advantage for countries to join mega FTAs like the Regional Comprehensive Economic Partnership (RCEP) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Whether the above benefit from the FTA is materialised depends on many features of the FTA, and the rules of origin (RoO) are amongst them. This is the focus of this chapter.

In principle, RoO establish the conditions that products must meet to be eligible for preferential market access. They are to prevent superficial assembly operations with little or no value added that would, *de facto*, extend the benefit of preferential access to non-eligible intermediate producers upstream of those assembly operations. If these constraints specified in the RoO are binding, firms must alter their production processes to meet them and obtain certificates of origin. This raises the production cost of the product to a certain extent. In addition, bureaucratic procedures to obtain certificates of origin could incur fixed compliance costs, entailing paperwork and bureaucratic hassle. Hence, RoO have the power to depress preference uptake.

Generally, there are two components in RoO: one is product-specific rules (PSRs) and the other is regime-wide rules. The former is directly related to products of interest. The rules can be either uniform across products or vary across products. The latter lays out rules applicable for all products, including a maximum percentage of non-originating materials to be used without affecting the origin (*de minimis*), how to treat transhipment, and the data requirements for obtaining certificates of origin. As seen below, convergence is often observed in the latter so our analysis is on the former.

In the RoO restrictiveness literature, the standard practice to assess how restrictive PSRs are is to assign numerical values to them to reflect their restrictiveness score (Estevadeordal, 2000; Gretton and Gali, 2005; Anson et al. 2005; Harris, 2007). In general, there are four forms of PSRs: (1) technical requirements (TR), (2) wholly obtained (WO), (3) regional value content (RVC), and (4) change in tariff classifications (CTCs), which requires changes in tariff chapter (CC), those in tariff heading (CH), or those in tariff subheading (CSH). TR and WO are often ranked as the most restrictive, followed by CC and RVC/CH respectively, whereas CSH is the least restrictive. In practice, these forms are used as either alternatives (RVC or CC) or in combination (RVC and CC).

The standard practice discussed above might be problematic in the context of global value chains (GVCs). GVC activities often involve cross-border trade in parts and components, which often takes place at the tariff subheading level of the 6-digit Harmonised System (HS) classification. In this regard, it is likely for a country to experience exports and imports of a given 6-digit HS item (i.e. intra-industry trade) simultaneously, so the CSH PSR, the least restrictive rule often claimed in the existing literature, could be counterproductive in GVC operation. This has been overlooked in the previous studies but is of immense policy relevance in multilateral FTAs like RCEP, where GVC activities take place intensively.

Against this backdrop, this chapter assesses the RoO restrictiveness of RCEP as opposed to other key multilateral FTAs in the region with a view to formulating prudential policy to facilitate GVC operation. The multilateral FTAs covered in this study include the CPTPP, Association of Southeast Asian Nations (ASEAN)–Australia–New Zealand FTA (AANZFTA), Japan–ASEAN Economic Partnership Agreement (JAEPA), ASEAN–Republic of Korea FTA (AKFTA), ASEAN–China FTA (ACFTA), and ASEAN–India FTA (AIFTA). Our chapter contributes to the existing literature in two ways. Firstly, to the best of our knowledge so far, this study is the first systematic analysis to assess the RoO restrictiveness of the key multilateral FTAs covering East Asian economies, including RCEP, the largest multilateral FTAs ever signed so far. Secondly, the restrictiveness assessment in this study incorporates the intra-industry trade feature of GVC operation. The higher the intra-industry trade index at the sub-heading HS, the more the restrictiveness of the CSH criterion, *ceteris paribus*. Overlooking such a feature might mislead the implications for GVC operation.

The chapter is organised as follows. It begins with the analytical framework illustrating the role of RoO in FTAs and how RoO restrictiveness has been assessed so far. The methodology used in this study is discussed in Section 3, followed by the analysis in Section 4. Section 5 presents the conclusion and policy inferences.

# **Analytical Framework**

The proliferation of FTAs observed in the past two decades has far-reaching implications not just for the multilateral trading system's philosophy but also for the day-to-day conduct of business. For good or bad, preferential trading rules are of increasing relevance to traders on the ground. Notwithstanding the debate about whether FTAs create a net welfare gain (i.e. trade diversion vs trade creation), how they are designed matters a lot in understanding how much market access they really confer. In this regard, RoO play a key role.

RoO establish the conditions that products must meet to be eligible for preferential market access. They are vital for a signed FTA to prevent 'trade deflection' in the absence of external-tariff harmonisation – imports entering a bloc through the lowest-tariff member and then moving tariff-free within the bloc. It is also to prevent superficial assembly operations with little or no value added that would, de facto, extend the benefit of preferential access to non-eligible intermediate producers upstream of those assembly operations.

Generally, there are two main components in the RoO chapter in each FTA; product-specific rules (PSRs) and regime-wide rules (RWRs).

#### **PSRs**

There are four standard criteria in PSRs, including regional value content (RVC), technical requirements (TR), products that must be made entirely within the parties to be deemed originating (often referred to as wholly obtained or WO), and changes in tariff classification (CTCs).

RVCs are set to ensure firms source their intermediates from other member countries substantially and exclude superficial assembly operations. A minimum share of value added created within a trade bloc is often set in the product's price. TR can take many forms, often requiring certain production processes to be undertaken within and/or by sourcing certain intermediates from the trade bloc's members. WO, requiring that products must be made entirely within the parties to be deemed originating, seems to be the most severe criterion to identify the origin of goods (Harris, 2007).

CTC means that the tariff classification of the final product is different from the tariff classification of all non-originating materials used. The minimum requirement of the change may take place at CC, CH, or CSH. The stringency of CTC depends on the tariff

classification changes required. A change at the chapter level is the most demanding, whilst a change at the sub-heading level is the least demanding; thus, the order of the rules in descending stringency is CC, CH, and CSH (WTO, 2018).

Pioneered by Estevadeordal (2000), a numerical value is arbitrarily assigned to RoO product-specific rules to reflect the RoO restrictiveness score. Generally, the number assigned to CTC is the lowest and that to WO is the highest to reflect their restrictiveness levels. The higher the number the more restrictive the rule. In addition, CSH is regarded as the least restrictive, whereas CC is the most restrictive. The CH restrictiveness level is in the middle. The RVC criterion is often treated as the same level of restrictiveness as CH. Overall, the assigned value will be in ascending order: CSH < CH/RVC < CC < TR/WO. Any additional requirements that may be attached to each individual rule would increase the PSR restrictiveness level.

Table 3.1 reveals the scores used in the previous studies. Whilst the numerical values assigned are different amongst the studies, their ranks are similar to a certain extent. For example, in Hayakawa (2014), 8 is the maximum value assigned to WO and CC & Tech, followed by 7 to CC. The lowest score of 1 is assigned for rules where CSH, RVC, or Tech are available as an alternative. In Estevadeoral and Suominen (2006), where WO is not included, 7 is the maximum value assigned to CC & Tech. The CSH criterion is the second-lowest, with a score of 2, but higher than CTC at 8–10 digits. Hence, direct value comparison of the other studies must be done with care. Instead, ranking matters.

Criteria	Estevadeoral and Suominen (2006)	Hayakawa (2014)	This Study
WO/TR		8 (highest)	7 (highest)*
CC/RVC		6	3
CSH/RVC		1	1
RVC		4	3
CH/RVC		3	3
CSH & Tech/RVC			2.25
CH/RVC/Tech		3	1.25
CC	6	7	5
CC & Tech	7 (highest)	8 (highest)	6.25
СН	4	4	3

#### Table 3.1 Numerical Values Assigned in Selected Studies

Criteria	Estevadeoral and Suominen (2006)	Hayakawa (2014)	This Study
CH &Tech		5	4.25
CH/Tech		3	3
CSH	2	2	1
CH & RVC	5	5	
CSH & RVC	3		2.25
CSH/RVC/Tech		1 (Lowest)	1 (Lowest)
CTC at 8–10 digits	1 (lowest)		

 $^{\ast}$  The numerical value assigned to WO applied to HS 01-24 is 1.

Source: Authors.

There are two remarks in this practice. Firstly, assigning a value to WO in reflecting its restrictiveness is uniform. In fact, WO might not be a binding constraint in agricultural products, for which the production process often takes place from the beginning to the end within a given territory. This is different from manufacturing products, whose production processes could be fragmented across borders. Therefore, it would be more appropriate to treat the WO criterion differently between agricultural and manufacturing products.

Secondly, the above practice has not yet incorporated one important feature in GVC trade. Basically, GVCs, the geographic separation of activities involved in producing a good or service across two or more countries, have substantially increased the interdependencies amongst economies around the globe, leading to fast-growing trade in parts and components.<sup>1</sup> GVCs are highly concentrated in East Asia. This is especially true when sourcing parts and components is concerned (Athukorala and Kohpaiboon, 2011; 2014). As seen below, cross-border trade occurs at the tariff subheading level (i.e. CSH). A clear example is printed circuit board (PCB), a crucial electronic part in many machinery and electrical products. By HS classification, blank PCBs and those assembled with electronics (e.g. integrated circuits and sensors are under HS 850440. It is very likely for a GVC-engaged country to export blank PCBs to another country for assembling electronics there. Such cross-border trade might not be able to meet the CSH criterion to obtain the certificate of origin, thereby depressing the preferential uptake. So far, this feature has been overlooked in measuring the RoO restrictiveness but is of immense policy relevance for multilateral FTAs to facilitate GVC participation.



<sup>&</sup>lt;sup>1</sup> There are a wide range of factors attributing to the GVC growing importance. They include the fall of tariff barriers, the drop in freight rates, the emergence of globally oriented logistics services, and digital technology advancement (internet, computing power) facilitating the rapid flow of information (Baldwin, 2016). Improvement in the protection of intellectual property rights, particularly the World Trade Organization (WTO) agreement on trade-related aspects of intellectual property rights (TRIPs) is also one of the contributing factors (Estevadeordal et al., 2013).

#### **RWRs**

RWRs lay down general rules applicable to all products. They include a maximum percentage of non-originating materials to be used without affecting the origin (*de minimis*), how to treat transhipment, and the data requirements for fulfilling certificates of origin. This matters much in an FTA involving more than two members like RCEP and other multilateral FTAs. Basically, all RoO apply bilateral cumulation where products from two trading members, not elsewhere in the trade bloc, are eligible to fulfil RoO. Interestingly, more liberal forms of RWRs are found in some FTAs. One is diagonal cumulation, where countries can use products that originate in any part of the similar RoO as originating products. The most flexible and least-restrictive cumulation rule is full cumulation, which allows firms to accumulate originating components in non-originating intermediates elsewhere in the trading bloc to identify the origin of final goods.

To meet with the PSRs and RWRs, firms must alter their production processes. This raises the production cost of the product to a certain extent. How restrictive they are is the key to understanding the potential gains expected from the signed FTA. Note that RoO are not always a binding constraint, so the scoring procedure indicates the *ex ante* restrictiveness of RoO.<sup>2</sup> In reality, RoO can also be designed and implemented to be a protectionist device (Cadot et al., 2006; Cadot and Ing, 2015; Jongwanich and Kohpaiboon, 2017; Cadestin et al., 2016). Hence, the score revealed by this method is not the *ex post* effect of their implementation.

# Methodology

To reflect RoO restrictiveness, both PSRs and RWRs are analysed in this study. The analysis begins with quantifying the restrictiveness of PSRs and then integrating the effect of RWRs on existing PSRs.

To quantify PSRs, this study uses the method adopted in the previous studies as a point of departure. It starts with setting up criteria to quantify PSRs to obtain numerical values to reflect the restrictiveness score. The criteria are presented in Table 3.1. The score initially ranges between 1 and 7. The lower the score the least restrictive the PSRs are. The CSH criterion score is equal to 1, the lowest score. CH and RVC 40% (in short RVC) share the same score of restrictiveness equal to 3. The scores associated with the CC and WO and TR criteria, respectively, are 5 and 7. Such a ranking is in line with the previous studies (Estevadeoral and Suominen, 2006; Hayakawa, 2014). Table 3.2 presents the annexes of the FTAs related to RoO provision to reflect their restrictiveness.

 $<sup>^{\</sup>scriptscriptstyle 2}\,$  See Kohpaiboon (2015) for the case of unbinding RoO in the Thai automotive industry.

FTAs	Annex
RCEP	Annex 3A Product-specific rules
СРТРР	Annex 3-D Product-specific rules of origin
AANZFTA	Appendix 4: Annex 2 (Product-specific rules)
JAEPA	Annex 2: Product-specific rules (2002)
AKFTA	Appendix 2: Product-specific rules
ACFTA	Attachment B (Product-specific rules) as amended by the Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China (ACFTA upgrading protocol)
AIFTA	Annex 2: Rules of origin for the ASEAN–India Free Trade Area (AIFTA)

#### Table 3.2 Annexes of the FTAs Used to Reflect RoO Restrictiveness

Source: Authors.

As mentioned earlier, WO applied to agricultural products (HS 01-24) is treated differently from other products. Agriculture products by nature are wholly obtained in a given territory so the WO criteria might not be a binding constraint. This is different from other products. To integrate this feature into the numerical value procedure, the WO criterion is treated as the least restrictive and its score is equal to 1. Otherwise, its value is 7.

As found in many FTAs, the PSRs of given products often either combine two or more criteria together, offering alternative criterion, or add some exceptions. When an additional requirement is introduced, this could make the existing criterion more restrictive.<sup>3</sup> In such a case, the following rule is applied: +0.5, +0.75, +1 are added to the existing form if the exception is for CSH, CH, or CC, respectively. In a few cases, a further requirement is added, thereby adding a +1.25 score.<sup>4</sup>

In contrast, some PSRs offer options for firms to choose from. All other things being constant, this will make the PSRs less restrictive. In this regard, firms would opt for the easier choice to minimise the burden so that the minimum score amongst the available options is chosen to reflect the restrictiveness of the PSRs. This seems to be different from the practice in Hayakawa (2014), where the existing score is reduced when an alternative is available. For example, the score of the CSH criterion equals 2, whereas the CSH/RVC criterion score decreases to 1.

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<sup>&</sup>lt;sup>3</sup> For example, HS110313 [Cereal groats, meal and pellets of maize (corn)] in RCEP is subject to CC except from Chapter 10 [Cereals].

<sup>&</sup>lt;sup>4</sup> For example, the PSRs of HS 210390 [Other Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard] in the AKFTA require Change to Subheading 2103.90 from any other Heading, provided that materials from Chapters 7 and 9 are Wholly-Obtained or Produced in the territory of any Party for 2103.90.1030; 2103.90.9030;2103.90.9090 and the others: Change to Subheading 2103.90 from any other Heading; or RVC (40) provided that materials from Chapters 7 and 9 are Wholly-Obtained or Produced in the territory of any Party.

Note that TR in this study refers to the case where there is a separate annex of PSRs for a product of interest. A clear example of TR is found in the case of vehicles (HS 8701–07) in the CPTPP where a specific annex (Annex 3-D for vehicles) provides full details of the RoO. It is a combination of RVCs, CTC, certain processes that must be undertaken within the member countries, and other constraints (see full discussion in Section 4). Such complicated RoO are classified as TR, and the assigned score is 7. Technical requirements are also imposed as an additional condition to the specific rule in other products. It is treated as the same as an additional condition to PSRs and 1.25 is added to the existing score. This is applicable for textiles, although there is a separate annex for textiles and apparel.

There are several cases where the percentage set in the RVC criterion is not 40%. The lower (higher) the percentage, the lower (higher) the RoO restrictiveness. A linear relationship between the RVC percentage and score is assumed. For example, if the RVC percentage increases to 45%, the score will drop to 3\*45/40 = 3.375.

### Analysis

#### **Overview of RCEP's RoO**

The RoO provision in RCEP is in Chapter 3 of the agreement. The main text in this chapter provides the basic information, including definitions (Article 3.1), cumulation (Article 3.4), calculation of the regional value content (Article 3.5), and certificates of origin (Article 3.17). The product-specific RoO are in Annex 3A, using the Harmonised System Nomenclature 2012 edition. In RCEP, there is no separate annex or appendix for any products (i.e. no use of TR criterion). The length of the text exceeds 300 pages.

Table 3.3 presents the distribution of the RoO forms used in the FTAs. All product-specific rules available can be grouped into four main categories. The first is the single form (SF) of RoO imposed. This is one of six standard rules, i.e. WO, TR, RVC, CC, CH and CSH. The second category is the alternative form (AF), a circumstance where there are more than one RoO rule for firms to choose from. The third category is the combination form (CF), where more than one form of RoO are imposed and to be satisfied simultaneously. The last group, the other form (OF), is for those that do not fit into the three groups above.



# Table 3.3 RoO Forms Imposed in Selected MultilateralFTAs (% of Total Product Lines)

RoO Forms	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
Single form (1.1+2.1+3.1+4.1+5.1+6)	33.5	98.9	15	22.2	14	73.4	0
Alternatives (2.2+3.2+4.2)	58.8	0.6	60.6	62.5	85.9	18.2	100
Combination (2.3+3.3+4.2.2+5.4.3)	2.4	0	1	12.5	0.1	2.9	0
Others	5.3	0.5	23.4	2.8	0	5.5	0
1.1 WO single	3.2	16	6.8	0.1	12.3	4.4	0
1.2 WO or	0	0.6	0	0	0.1	0	100
1.2.1 WO or RVC45	0	0.6	0	0	0.1	0	0
1.2.2 WO or RVC35/CSH	0	0	0	0	0	0	100
2.1 CC	20.5	18	4.9	15	0	6.6	0
2.2 CC or	5.2	0.5	11.9	2.6	0	4.1	0
2.2.1 CC/RVC40	5.2	0.5	11.6	2.6	0	4.1	0
2.2.2 CC/Tech	0	0	0.3	0	0	0	0
2.3 CC plus	1.6	0	0.8	12.4	0	0.5	0
2.3.1 CC plus exception at CC	1.5	0	0	2.7	0	0.5	0
2.3.2 CC plus exception at CH	0	0	0.1	1.7	0	0.1	0
2.3.3 CC plus exception a CSH	ot O	0	0	0.1	0	0	0
2.3.4 CC plus tech	0	0	0.7	8	0	0	0
2.4 Other CC (CC/RVC) plus tech	0	0	3.9	0	0	0	0
3.1 CH single	8.8	30.2	2.1	2.5	0.2	0.1	0
3.2 CH or	46.5	0	41.2	61.8	83.6	16.1	0
3.2.1 CH/RVC	46.5	0	39.1	61.8	83.6	11.1	0
3.2.2 CH/Tech	0	0	1.6	0	0	0	0
3.2.3 CH/RVC/Tech	0	0	0.4	0	0	5	0
3.3 CH plus	0.6	0	0.2	0.1	0	0	0
3.3.1 CH plus exception at CSH	0.6	0	0	0	0	0	0
3.3.2 CH plus tech	0	0	0.2	0.1	0	0	0
3.3.3 CH plus exception a CH and CSH	at O	0	0	0	0	0	0
3.4 Other CH	0	0	1.6	0.3	0	1.3	0

	RoO Forms	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
3.4.1	CH plus exception at CC or RVC40	0	0	1.4	0.3	0	1	0
3.4.2	CH plus exception at CH or RVC40	0	0	0	0	0	0	0
3.4.3	CH or RVC40 plus tech	0	0	0.1	0	0	0.3	0
4.1	CSH single	0.2	21.3	0	0.1	0.3	0	0
4.2	CSH or	12.3	0	19.5	0.7	2.2	2.1	0
4.2.1	CSH or RVC	12.3	0	19.5	0.7	2.2	2.1	0
4.3	CSH plus	0.3	0	0	0	0	0	0
4.3.1	CSH plus exception	0	0	0	0	0	0	0
4.3.2	CSH plus exception at CSH	0.3	0	0	0	0	0	0
4.3.3	CSH plus exception CH and CSH	0	0	0	0	0	0	0
4.4	Other CSH	0.1	0	4.6	0	0	0	0
4.4.1	CSH plus exception at CC or RVC	0.1	0	0	0	0	0	0
4.4.2	CSH plus exception at CSH or RVC	0	0	0.7	0	0	0	0
4.4.3	CSH or RVC plus tech	0	0	3.9	0	0	0	0
5	RVC	0.8	13.4	1.3	4.5	1.1	62.3	0
5.1	RVC40	0.8	13.4	1.3	4.5	1.1	62.3	0
5.2	RVC35	0	0	0	0	0	0	0
5.3	RVC greater than 40	0	0	0	0	0	0	0
5.3.1	RVC45	0	0	0	0	0	0	0
5.3.2	RVC60	0	0	0	0	0	0	0
5.3.3	RVC70	0	0	0	0	0	0	0
5.4	Other RVC	0	0	0	0	0.1	2.4	0
5.4.1	RVC or CH or CC plus exception at CC	0	0	0	0	0	0	0
5.4.2	RVC or CH or RVC35 plus CSH	0	0	0	0	0	0	0
5.4.3	RVC plus tech	0	0	0	0	0.1	2.4	0
6	Tech single	0	0	1.4	0	0	0.1	0
7	TR	0	0	0	0	0	0	0

Note: The total product lines of RCEP, CPTPP, AAANZFTA, JAEPA, AKFTA, and AIFTA are 5,066; 5,205; 5,182; 4,916; 5,052; 5,388; and 5,052 lines, respectively.

Source: Authors' compilation from official documents.

In RCEP, AF accounts for 58.8% of total product lines, followed by SF (33.5%). CF and OF account for 2.4% and 5.3%, respectively. AF is dominated by CH/RVC, accounting for 46.5% of total product lines (nearly 80% of all AF). The exception is machinery (HS 84) and electronics and electrical appliances (HS 85), the GVC-intensive duo cited in the literature where CSH instead of CH is employed as an alternative to RVC. The availability of such an alternative immensely matters when GVC operation takes place at the subheading (HS 6 digit) level of disaggregation within East Asia. See more discussion about this below.

SF, the second largest group, is in CC and CH, accounting for 20.5% and 8.8%, respectively. The CC criterion is often imposed on agricultural products (HS 01–24), whereas the CH criterion is used for mineral products (HS 25–27) as well as textiles and garments (HS 50–63). The imposition of the WO criterion is found for animals and animal products (HS 01–05) as well as vegetable products (HS06-15).

The PSRs in RCEP are quite similar to other ASEAN-plus FTAs with high-income countries (i.e. the AANZFTA, JAEPA, and AKFTA) where AF is the main criterion to identify the product origin. The share of AF in these ASEAN-plus FTAs ranges from 60.6% in the AANZFTA, 62.5% in the JAEPA and 85.9% in the AKFTA. AF is dominated by the CH/RVC criterion. This is especially true for the JAEPA and AKFTA. Even though the percentage of product lines subject to the CH/RVC criterion is more or less the same as those for the ASEAN-plus FTAs, the greater share of intra-member trade makes RCEP's criterion easier to comply with, all other things being equal.

The relative importance of SF in these ASEAN-plus FTAs is less than that in RCEP. Its share is 14%, 15%, and 22.2% of the total product lines in the AKFTA, AANZFTA, and JAEPA, respectively. Nonetheless, the imposed criteria differ across these FTAs. For example, in the AANZFTA, the WO, CC, CH, and RVC criteria are imposed, accounting for 6.8%, 4.9%, 2.1%, and 1.3%, respectively. In contrast, the CC criterion dominates in the JAEPA, whereas WO dominates in the AKFTA. For both the AANZFTA and AKFTA, WO is mainly imposed on agricultural products.

Different from the other ASEAN-plus FTAs, including RCEP, OF in AANZFTA is sizable, accounting for nearly 10% of product lines. The share of OF in the other FTAs is between 0.1%–2.8%. The difference is the result of adding extra clauses (e.g. exception, additional requirements) on the standard RoO form. For example, HS 220421 other wine (*grape must with fermentation prevented or arrested by the addition of alcohol: in containers holding 2 l or less*) is subject to RVC/CSH except for HS 220429. It is difficult to identify whether the exception is binding in reality, but it makes the rules more complex and likely to depress the use of FTA preferential schemes. Note that such clauses are rarely in RCEP's PSRs.

RCEP's PSRs are quite different from those of ACFTA and AIFTA, whose RoO are rather uniform. This is very clear in the AIFTA, where the WO/RVC35/CSH criterion is imposed on all products. In the ACFTA, SF accounts for 73.4%. It is dominated by RVC (62.3%), followed by CC (6.6%) and WO (4.4%). Note that the WO and CC criteria are mostly imposed on agricultural products, whereas the RVC criterion is often for manufacturing products. The imposition of AF in ACFTA is around 20% of product lines, which is much smaller than that found in RCEP and the other ASEAN-plus FTAs mentioned above. Particularly, the CC/RVC, CH/RVC, and CSH/RVC criteria account for 4.1%, 11.1%, and 2.1%, respectively. There is no clear pattern of which products are subject to which AF criterion.

In contrast, the PSRs in the CPTPP are often in SF, accounting for 78.2% of total product lines. CH, CSH, and CC account for 37.1%, 24.4%, and 20.4%, respectively. The WO criterion accounts for 0.9% of agricultural products. The RVC criterion accounts for 15.1% and is often imposed on machinery and electrical (HS 84–85), transportation (HS 86–89), and miscellaneous (HS 90–97).

One rather unique feature of the PSRs in the CPTPP is that there are two separate rules for textiles and apparel (HS 50–63) and automotive products (HS 8701–8707), i.e. Annex 4-A (textiles and apparel product-specific rules of origin) together with Appendix 1, *Short Supply List of Products*,<sup>5</sup> and Annex 3-D (Appendix 1: provisions related to the product-specific rules of origin for certain vehicles and parts of vehicles). In Annex 4-A (textiles and apparel), CF applies to textiles (HS 50-60), in which one of the standard RoO forms together with an extra clause. This is not much different from the rules imposed in other multilateral FTAs to a large extent, and therefore they are not treated as TR. In contrast, apparel (HS 61-62) is a combination of CC, exceptions of CC, and the yarn-forward clause. This is more restrictive compared to the other multilateral FTAs (e.g. RCEP is subject to the CC criterion, and the AANZFTA is subject to the RVC plus fabric forward), so TR is assigned to reflect the restrictiveness of the RoO.

Interestingly, Appendix 1 in Annex-D applying to vehicles and parts of vehicles is much more complex and arguably the most restrictive compared to the other FTAs. Whilst the RVC criterion is the core, additional requirements are introduced. For example, the production of the following parts must be undertaken on those materials in the territory of one or more of the parties and involves one or more of the operations listed in Table B (complex assembly, complex welding, die or other casting). The parts include toughened safety glass (HS 7007.11), laminated safety glass (HS 7007.21), bodies for the motor vehicles of heading 87.03 (HS8707.10), bodies (including cabs) for the motor vehicles

<sup>&</sup>lt;sup>3</sup> Lists of intermediates are temporarily unavailable in FTA members so they are allowed to be imported elsewhere temporarily without affecting product origin. In the CPTPP, the lists will be removed five years after the date of entry into force. Note that the years lists to be removed in the CPTPP are longer than those in the Trans-Pacific Partnership (TPP) (CPTPP+ US).

of heading 87.01, 87.02, 87.04, and 87.05 bumpers (HS ex 8708.10), body stamping (HS ex 8708.29), and drive- axles (HS ex 8708.50). In addition, the value of the materials that originate in the above production shall be counted as originating content as specified in the appendix's Table C.

Interestingly, when all the PSRs across these multilateral FTAs are combined, they are presented in 43 forms. This comes from 13 PSRs in RCEP, 11 PSRs in the CPTPP, 20 PSRs in the AANZFTA, 14 PSRs in the JAEPA, 9 PSRs in the AKFTA, and 15 PSRs in the ACFTA. This suggests that the PSRs across these FTAs are far from harmonised in which a single rule is applicable for a given product across FTAs.

Table 3.4 presents the RWRs in RCEP together with the other multilateral FTAs covered in this study. The RWRs in RCEP allow diagonal cumulation, private self-certification, 10% *de mininis*, minimum data requirement, direct consignment, and provision of back-to-back proofs of origin. They are in line with other multilateral FTAs in this study. The exception would be the CPTPP, where full cumulation is offered. Nonetheless, whilst full cumulation is the least restrictive form in principle, proving compliance with full-cumulation rules implies complete traceability of the production process and the sourcing of intermediates. This is a heavy burden for many companies both in terms of paperwork and, more importantly, in terms of the disclosure of sensitive price and supplier information. Such a burden can be eased if an effective private self-certification system is in place. It is absent in the CPTPP, where private self-certification is not available.

	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
Cumulation rule (diagonal vs full cumulation)	Diagonal	Full	Diagonal	Diagonal	Diagonal	No	Diagonal
Private self-certificate	Yes	No	No	Yes	No	No	No
De minimis (% of FOB value vs % of weight)	10%	10%	10%	10%	10%	No	
Minimum data requirement	Yes	Yes	Yes	No	No	No	
Direct consignment, i.e. transhipment	Yes	No	Yes	Yes	Yes	No	Yes
Provision of back-to- back proofs of origin	Yes	No	Yes	No	No	No	No

#### Table 3.4 Region-wide Components in RCEP and Other Multilateral FTAs

Source: Compiled by authors.

#### **RoO restrictiveness**

Table 3.5 presents the PSRs' restrictiveness scores. The qualification is done at the HS 6-digit level of disaggregation and then aggregated by the HS section. The shaded cells indicate the highest values across the FTAs at a given HS section.

As revealed in Table 3.5, RCEP's restrictiveness score equals 3.31. It is higher than the AIFTA (1), AANZFTA (2.74), AKFTA (2.90), and ACFTA (3.08) but lower than the CPTPP (3.37), and JAEPA (3.78). AIFTA's RoO restrictiveness score is the lowest due to the uniform criterion, WO/RVC35/CSH, applicable to all products. Such a uniform criterion was found in the traditional FTA before the presence of the North American Free Trade Agreement (NAFTA) (Garay and Cornejo, 2002, cited in Cadot et al. (2006)). Compared to the AANZFTA and AKFTA, the higher score in RCEP is due to the relatively larger share of the CC criterion. The ACFTA restrictiveness is lower than that of RCEP due to the higher share of the RVC criterion in the RoO. JAEPA's score is higher than that of RCEP because the former is often associated with technical requirements as an additional condition.

HS	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
01-05	Animal & Animal Products	4.62	4.10	2.24	5.23	1.29	3.62	1.00
06-15	Vegetable Products	3.96	4.71	2.76	4.88	1.30	3.18	1.00
16-24	Foodstuffs	4.50	4.39	4.11	4.99	2.17	3.88	1.00
25–27	Mineral Products	3.14	2.84	2.72	3.00	3.00	3.04	1.00
28–38	Chemicals & Allied Industries	2.76	1.54	1.40	3.02	2.98	3.03	1.00
39-40	Plastics/Rubbers	3.05	2.71	3.05	3.01	3.00	2.95	1.00
41-43	Raw Hides, Skins, Leather, & Furs	3.99	3.86	3.14	4.95	3.03	3.55	1.00
44-49	Wood & Wood Products	3.38	2.99	2.49	3.09	3.00	3.01	1.00
50-63	Textiles	4.32	5.70	3.86	5.20	4.19	3.31	1.00
64–67	Footwear/Headgear	3.13	4.11	3.34	4.11	3.00	3.04	1.00
68–71	Stone/Glass	3.17	3.44	2.89	3.20	2.88	2.99	1.00
72-83	Metals	3.17	3.16	3.69	3.43	2.99	3.05	1.00
84-85	Machinery/Electrical	2.04	2.31	2.11	3.01	2.92	2.53	1.00
86-89	Transportation	4.20	3.77	2.84	3.00	3.00	3.23	1.00
90-96	Miscellaneous	2.48	2.70	2.39	2.85	2.98	2.90	1.00
All		3.31	3.37	2.74	3.78	2.90	3.08	1.00
Agricult	ural products	4.33	4.41	2.88	5.04	1.50	3.51	1.00
Manufac	turing products	3.10	3.16	2.71	3.53	3.20	2.99	1.00

#### Table 3.5 RoO Restrictiveness Scores of Selected Multilateral FTAs

Source: Authors' calculations.

RCEP's score is slightly lower than that of the CPTPP simply because the PSRs in RCEP are more flexible. In the latter, the RVC criterion is often available. In contrast, there is no option available in the PSRs in the former. In particular, the CH and CSH criteria account for 30.7% and 21.3%, respectively. The share of the CSH criterion is larger in the CPTPP, so its score is more or less the same as that in RCEP. Nonetheless, as seen below, this might not be the case when products are often crossing borders at the HS 6-digit disaggregation.

Spearman's rank correlation of the restrictiveness scores for each product across the FTAs points to the high correlation between RCEP, the CPTPP, JAEPA, and AANZFTA (Table 3.6). That is, products subject to relatively restrictive RoO in one of these FTAs are likely to face relatively restrictive RoO in the others.

	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA
RCEP						
CPTPP	0.3051***	1				
AANZFTA	0.5706***	0.3159***	1			
JAEPA	0.5691***	0.2437***	0.4643***	1		
AKFTA	-0.249***	-0.0289**	0.0156	-0.3399***	1	
ACFTA	-0.1251***	-0.1072***	-0.0232*	-0.2829***	0.3404***	1

#### Table 3.6 Spearman's Rank Correlation of the PSR Scores of the Multilateral FTAs

Source: Authors' estimates.

There are several explanations for the high correlation. One would reflect the nature of the RoO negotiation texts, which require deep industry-specific knowledge. Hence, negotiating teams from developed country members are more advantageous in influencing the texts. It is even worse when the negotiation of RoO is shifted away from the uniform criterion. This points to capacity building for developing country members to equally participate in negotiations. Another explanation would reflect lobbying efforts by interest groups in using the PSRs as a protectionist device and depressing preferential uptake. It is far from the scope of the current study to pin down their relative importance, but both point to room for improvement in making FTAs a stepping stone for further liberalisation.

Generally, the restrictiveness score for agricultural products is higher than that for manufacturing products (Table 3.5). This is observed in all the FTAs covered in this study, but the score varies substantially across them. In FTAs involving developed country members (North–South FTAs), the score is higher than those amongst

developing countries. Interestingly, the RoO criterion on agricultural products is moving away from WO to CC and CC/RVC without a clear pattern across three HS sections (i.e. animal and animal products, vegetable products, and foodstuffs).

In contrast, the restrictiveness score of manufacturing products does not differ much across the FTAs. Three criteria, i.e. CC, CH, and CSH, are often imposed on manufacturing products. The score is within a narrow range from 2.7 to 3.5. One interesting observation is the restrictiveness score is higher in the FTAs involving manufacturing powerhouses like Japan, the Republic of Korea, and China, ceteris paribus.

The score of RoO restrictiveness for textiles and apparel (HS 50–63) is the highest amongst the manufacturing products. This is especially true for those involving developed countries. Both textiles and apparel have long been sensitive products for developed countries and were protected by a special arrangement known as the multifibre arrangement (MFA) (1974–1994) and its successor, the Agreement of Textiles and Clothing (ATC) (1995–2005). Protection remains in the form of a tariff, and liberalisation efforts carried out by FTAs have been undermined by more restrictive PSRs. The PSRs of textiles and apparel in RCEP are similar to those in the North–South multilateral FTAs The CC criterion set in RCEP is equivalent to fabric forward requirements. This is because yarns and fabrics are in HS 51-60. To make apparel eligible for the preferential scheme, its manufacturing process must start at least from fabrics. In the AANZFTA and CPTPP, fabric- and yarn-forward requirements are imposed in addition to RVC, respectively.

In the GVC-intensive duos, for the machinery and electrical section (HS 84 and 85), the restrictiveness score seems lower than other manufacturing products. This highlights the importance of GVCs and the associated benefits mutually shared amongst policymakers in the region (Table 3.5).

Table 3.7 presents the PSRs imposed on these duos. The PSRs in RCEP are the most facilitative to GVC operation as the CSH/RVC and CH/RVC criteria are often used in these products. CSH/RVC and CH/RVC account for 48.6% and 46.6% of the total product lines, respectively. To a large extent, the PSRs on these duos in the AANZFTA, JAEPA, and AKFTA are similar to RCEP. ACFTA'S PSR on these duos is, in contrast, the RVC criterion, accounting for nearly 60% of total product lines. Even though China is generally known as Asia's factory, sizable parts come from non-ACFTA members and make the RVC criterion restrictive to GVC operations. This seems to be very different compared to RCEP, where key players in GVCs, especially Northeast Asian economies, are included.

	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA
CH single	0	25.8	0	0	1.9	0
CH/RVC	46.6	0.1	45.7	98.4	97.4	28.6
CSH single	0	35	0	0	0	0
CSH or RVC	48.6	0	30.8	0	0.7	12.3
CSH or RVC plus tech	0	0	17.1	0	0	0
RVC40	0	38.8	2.1	0.9	0	57.9
Tech single	0	0	0.1	0	0	0
TR	0	0	0	0	0	0
Others	0.1	0	20.6	0.8	0	1.3

# Table 3.7 PSRs Used in Machinery, Electrics, and Electrical Appliances(HS 84 and HS85) (% of Total Product Lines)

Note: The AIFTA is excluded due to the uniform PSRs.

Source: Authors' compilation.

In contrast, the PSRs in the CPTPP on these GVC-intensive products are quite rigid. The PSR is either RVC, CSH or CH, accounting for 38.8%, 35% and 25.8% of the total product lines of the GVC-intensive duos, respectively. Given the specialisation within the GVC network that could take place at the sub-heading tariff lines, the lack of flexibility in the CPTPP's PSRs could run counterproductive to GVC operation.

When focusing on the parts and components used in GVCs, the PSRs in RCEP remain the most facilitative for GVC operation. Table 3.8 shows the PSRs imposed on 471 items classified as parts and components across HS 39, 40, 56, 62, 66, 67, 70, 73, 82, 85, 87, 88, 90, 91, 94, and 96. The PSRs in RCEP on parts and components are either CH or CSH, associated with RVC as an alternative to choose (Table 3.8). Flexible PSRs are also found in other ASEAN-plus FTAs like the AANZFTA, JAEPA, and AKFTA. In contrast, the RVC criterion is the criterion most often imposed on parts and components in the CPTPP. This could have a severe impact on GVC operation in East Asia due to the fact that only some East Asian members are currently CPTPP members.

	RCEP	CPTPP	AANZFTA	AJFTA	AKFTA	ACFTA
CSH/RVC	19.7	0	8.9	0.4	4.7	6.4
RVC	0.4	43.7	7.7	5.7	0.4	62.7
CH/RVC	66.9	0.2	59.8	87	90.2	27.1
СС	4.7	3.4	3	0.2	0	0
СН	0	28.9	0	0.4	0	0
CSH	0	18.7	0	0	0	0
Others	8.3	5.1	20.6	6.3	4.7	3.8

#### Table 3.8 PSRs Used in Parts and Components (% of Total Product Lines)

Note: The AIFTA is excluded due to the uniform PSRs.

Source: Authors' compilation.

To elaborate on the nature of international trade in GVCs, the intra-industry trade (IIT) index for each multilateral FTA in 2014–2015 and 2019–2020 is calculated at the 6-digit HS level.<sup>6</sup> Then, they are aggregated by HS section as presented in Table 3.9. In general, the IIT indices increased between these two periods without any noticeable change across HS section. Hence, the following discussion focuses on 2019–2020. Generally, the average IIT index of RCEP is the highest at 0.77. The IIT index does not change when only the current 15 RCEP members are included. RCEP is higher than other multilateral FTAs, and followed by the CPTPP (0.69), AANZFTA (0.71), AKFTA (0.71), JAEPA (0.71), ACFTA (0.69), and AIFTA (0.68).

#### Table 3.9 IIT Index of the Multilateral FTAs

HS	Description	RCEP	RCEP-15	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
01-05	Animal & Animal Products	0.60	0.60	0.58	0.54	0.48	0.50	0.45	0.45
06-15	Vegetable Products	0.70	0.70	0.67	0.64	0.59	0.58	0.60	0.55
16-24	Foodstuffs	0.76	0.75	0.74	0.71	0.66	0.65	0.65	0.63

#### 9.1: 2014-2015

<sup>6</sup> Grubel–Lloyd intra-industry trade index amongst FTA members is calculated as expressed in Equation 1 (henceforth referred to as the FTA\_GL index).

$$IIT_{ijt}^{FTA_{k}} = 1 - \frac{\left| x_{ijt}^{FTA_{k}} - M_{ijt}^{FTA_{k}} \right|}{x_{ijt}^{FTA_{k}} + M_{ijt}^{FTA_{k}}}$$

 $x_{iir}^{FTA_k}$  = Exports of Good i from Country j to FTAk members at time t

 $M_{ijt}^{FTA_k}$  = Imports of Good i from Country j to FTAk members at time t

FTAk = Free trade agreement k including RCEP, CPTPP, AANZFTA, JAEPA, AKFTA, ACFTA and AIFTA.

HS	Description	RCEP	RCEP-15	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
25–27	Mineral Products	0.63	0.63	0.53	0.57	0.59	0.58	0.56	0.55
28–38	Chemicals & Allied Industries	0.78	0.78	0.64	0.66	0.71	0.67	0.70	0.64
39-40	Plastics/Rubbers	0.85	0.85	0.78	0.79	0.81	0.79	0.77	0.78
41-43	Raw Hides, Skins, Leather, & Furs	0.65	0.65	0.61	0.56	0.57	0.55	0.51	0.50
44–49	Wood & Wood Products	0.73	0.73	0.70	0.67	0.66	0.69	0.66	0.67
50-63	Textiles	0.71	0.71	0.65	0.63	0.66	0.63	0.57	0.59
64–67	Footwear/ Headgear	0.72	0.73	0.75	0.77	0.70	0.77	0.62	0.72
68–71	Stone/Glass	0.73	0.72	0.64	0.70	0.71	0.70	0.62	0.66
72–83	Metals	0.78	0.77	0.74	0.72	0.75	0.74	0.68	0.69
84-85	Machinery/ Electrical	0.82	0.81	0.74	0.72	0.76	0.75	0.74	0.71
86–89	Transportation	0.73	0.72	0.65	0.66	0.63	0.61	0.61	0.60
90-96	Miscellaneous	0.75	0.75	0.74	0.68	0.73	0.69	0.64	0.64
All		0.60	0.60	0.58	0.54	0.48	0.50	0.45	0.45
Primary	products	0.67	0.67	0.64	0.61	0.57	0.57	0.56	0.54
Manufac	turing products	0.77	0.76	0.69	0.68	0.71	0.69	0.67	0.66

9.1:2019-2020

HS	Description	RCEP	RCEP-15	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
01-05	Animal & Animal Products	0.60	0.60	0.58	0.54	0.48	0.50	0.45	0.45
06–15	Vegetable Products	0.70	0.70	0.67	0.64	0.59	0.58	0.60	0.55
16-24	Foodstuffs	0.76	0.75	0.74	0.71	0.66	0.65	0.65	0.63
25-27	Mineral Products	0.63	0.63	0.53	0.57	0.59	0.58	0.56	0.55
28–38	Chemicals & Allied Industries	0.78	0.78	0.64	0.66	0.71	0.67	0.70	0.64
39-40	Plastics/Rubbers	0.85	0.85	0.78	0.79	0.81	0.79	0.77	0.78
41-43	Raw Hides, Skins, Leather, & Furs	0.65	0.65	0.61	0.56	0.57	0.55	0.51	0.50
44–49	Wood & Wood Products	0.73	0.73	0.70	0.67	0.66	0.69	0.66	0.67
50-63	Textiles	0.71	0.71	0.65	0.63	0.66	0.63	0.57	0.59
64–67	Footwear/ Headgear	0.72	0.73	0.75	0.77	0.70	0.77	0.62	0.72

HS	Description	RCEP	RCEP-15	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
68–71	Stone/Glass	0.73	0.72	0.64	0.70	0.71	0.70	0.62	0.66
72–83	Metals	0.78	0.77	0.74	0.72	0.75	0.74	0.68	0.69
84–85	Machinery/ Electrical	0.82	0.81	0.74	0.72	0.76	0.75	0.74	0.71
86-89	Transportation	0.73	0.72	0.65	0.66	0.63	0.61	0.61	0.60
90-96	Miscellaneous	0.75	0.75	0.74	0.68	0.73	0.69	0.64	0.64
All		0.60	0.60	0.58	0.54	0.48	0.50	0.45	0.45
Primary	products	0.67	0.67	0.64	0.61	0.57	0.57	0.56	0.54
Manufac	turing products	0.77	0.76	0.69	0.68	0.71	0.69	0.67	0.66

Source: Authors' calculations.

The IIT index for agricultural and mining products (HS 01–24 and 25–27) is lower than that for manufacturing products (HS 28–96). The plastics and rubbers section shows the highest IIT index score (0.88), followed by the machinery and electrical section (0.83). Arguably, their production process involves transforming raw materials into processed products, which are in different HS headings, so the high IIT index for the plastics and rubbers section would indicate trade between two specialised products in the same HS subheading item. For example, plastics in their primary form are in the range of HS 3901–3915, whereas processed products are in HS 3916–26. Similarly, rubbers in primary forms are in HS 4001–06, whereas their processed products are in HS 4007–4016. This is different from the high IIT index for GVC-intensive duos, whose international trade is largely driven by the cross-border trade of parts and components.

When the 2019–2020 trade value is used as the weight in averaging the IIT index across HS sections, the weighted average is higher than the unweighted ones (Table 3.10). Interestingly, the weighted average of the CPTPP, AANZFTA and AKFTA is more or less the same as that of RCEP. The JAEPA recorded the highest weighted average of the IIT index. Such changes suggest that products that are intensively traded within a trade bloc exhibit a high IIT index. It also implies that it is less likely for firms to comply with the CSH criterion, which is the least restrictive RoO criterion. The presumption that the CSH criterion is suitable for GVC operations overlooks the nature of GVCs that take place at the highly disaggregated level and gives misleading implications for GVC operations.

Offering RVC as an alternative seems to be a valuable option so that firms can choose one or the other whenever it fits their operations. Such flexibility is also found in the AANZFTA, JAEPA, and AKFTA, but the differences in intra-member trade make RCEP more attractive for GVC operations. This also points to the role of RCEP in contributing to the earlier signed multilateral FTAs to facilitate GVC operations.

#### Table 3.10 Trade-Weighted IIT Indices Averaged Between 2019 and 2020

HS	Description	RCEP	RCEP-15	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
01–05	Animal & Animal Products	0.90	0.91	0.92	0.86	0.81	0.81	0.81	0.78
06-15	Vegetable Products	0.87	0.85	0.85	0.85	0.86	0.85	0.81	0.84
16-24	Foodstuffs	0.87	0.86	0.85	0.86	0.83	0.84	0.81	0.82
25-27	Mineral Products	0.87	0.87	0.84	0.84	0.94	0.93	0.90	0.93
28–38	Chemicals & Allied Industries	0.89	0.89	0.78	0.87	0.87	0.86	0.87	0.87
39-40	Plastics/Rubbers	0.93	0.93	0.87	0.90	0.92	0.91	0.89	0.90
41-43	Raw Hides, Skins, Leather, & Furs	0.77	0.76	0.64	0.75	0.71	0.71	0.76	0.76
44-49	Wood & Wood Products	0.86	0.86	0.86	0.84	0.82	0.84	0.84	0.81
50-63	Textiles	0.82	0.81	0.86	0.78	0.81	0.80	0.66	0.75
64–67	Footwear/ Headgear	0.83	0.83	0.89	0.87	0.84	0.79	0.77	0.86
68–71	Stone/Glass	0.78	0.79	0.88	0.83	0.79	0.81	0.77	0.80
72–83	Metals	0.89	0.88	0.87	0.87	0.90	0.90	0.82	0.87
84-85	Machinery/ Electrical	0.83	0.83	0.85	0.86	0.88	0.83	0.75	0.86
86-89	Transportation	0.86	0.86	0.84	0.76	0.81	0.72	0.77	0.76
90-96	Miscellaneous	0.85	0.84	0.79	0.81	0.86	0.80	0.70	0.80
All		0.86	0.85	0.84	0.85	0.87	0.85	0.79	0.86
Primary	products	0.87	0.87	0.85	0.85	0.90	0.90	0.87	0.89
Manufac	turing products	0.85	0.85	0.84	0.85	0.87	0.84	0.77	0.84

Source: Authors' calculations.
## **Conclusion and Policy Inferences**

This chapter aims to quantify the *ex ante* restrictiveness of the RoO of RCEP compared to other multilateral FTAs with a view to facilitating the operation of existing GVCs. The other multilateral FTAs are the AANZFTA, JAEPA, AKFTA, ACFTA, AIFTA, and CPTPP.

The analysis begins with dissecting the PSRs in RoO Chapters of the FTAs so that any details (e.g. alternative rules, additional requirements, and/or exceptions) in the PSRs are not missed out. Whilst the criteria in assigning numerical values to each PSR are in line with the standard practices in the literature, such scores are analysed in depth together with the RWRs as well as the nature of international trade in GVCs. This is to ensure the scores reflect the actual impacts on GVC operations.

The key finding is that the PSRs in RCEP are the most flexible compared to the other multilateral FTAs covered in this study as RCEP offers more than one PSR for firms to choose from. The often-found alternative is RVC, so firms can choose to comply with either CTC or RVC. Whilst the flexible feature of the PSRs seems to be common amongst ASEAN-plus FTAs with high-income countries (i.e. AANZFTA, JAEPA, and AKFTA), the higher share of intra-member trade in RCEP makes the PSRs easier to comply with and facilitate GVC operations. The PSRs in RCEP are quite different from those in the ACFTA and AIFTA, which remain traditionally uniform in style. This is very clear in the case of the AIFTA, where the W0/RVC35/CSH criterion is imposed for all products. In the ACFTA, a single form accounts for 73.4% and is dominated by RVC (62.3%).

Compared with compatible-size mega FTAs like CPTPP, RCEP's PSRs are more facilitative to GVC operations. The PSRs in the CPTPP do not offer such flexibility and are dominated by the CTC criterion. In addition, there are two separate rules for textiles and apparel (HS 50–63) and automotive products (HS 8701–8707), which make these PSRs much more restrictive.

Comparing all of these FTAs suggests that their PSRs are far from harmonised, in which a single rule is applicable for a given product across FTAs. Hence, the risk of the 'spaghetti bowl' effect remains. In contrast, a convergence of the RWRs is found. Diagonal cumulation, private self-certification, 10% de mininis, minimum data requirement, direct consignment, and the provision of back-to-back proofs of origin are the common features offered in these FTAs. The exception would be the CPTPP, where full cumulation is offered but not associated with private self-certification. This makes the offered full cumulation look good only on paper.

The restrictiveness score of RCEP is in the middle amongst the multilateral FTAs covered in this study. When taking the FTA-specific features, such as high intra-member trade, and the member coverage, the PSRs in RCEP are the most facilitative to GVC operations. This points to the role of RCEP in contributing to the earlier signed multilateral FTAs to facilitate GVC operations.

Finally, our findig estimate of the Spearman's rank correlation amongst the PSR scores is found to be highly positive and statistically significant amongst RCEP, the CPTPP, JAEPA, and AANZFTA. Despite a few possible explanations (e.g. specific knowledge needed in the negotiations and protectionism), all point to room for improvement to make FTAs a stepping stone for further liberalisation.

Two policy inferences can be drawn from this study. Firstly, to allow RCEP's member countries to harness the preferential trade schemes, introducing a full cumulation clause would allow an RVC alternative often associated with the CTC criterion to be in full effect and further boost the use of RCEP.

Secondly, harmonisation of the RoO provisions across these multilateral FTAs has not been found. Together with the high rank correlation of the recent multilateral FTAs that is found, the lack of harmonisation suggests that further liberalisation of sensitive products remains a challenge to ongoing FTA negotiations. One way to achieve this is to set up monitoring of FTA utilisation and the problems that arise from complying with the RoO. This will allow RCEP to become a true stepping stone for trade liberalisation in the broader WTO multilateral trading system.

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#### Appendix RoO Scores of Selected Multilateral FTAs

HS2	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
1	Live Animals	1.0	1.0	1.0	5.0	1.0	1.0	1.0
2	Meat and Edible Meat Offal	6.0	5.0	5.0	6.0	1.0	1.0	1.0
3	Fish and Crustaceans, Molluscs and Other Aquatic Invertebrates	4.8	4.2	1.4	5.1	1.4	4.8	1.0
4	Dairy Produce; Bird Eggs; Natural Honey; Edible Products of Animal Origin, Not Elsewhere Specified or Included	4.4	4.9	2.7	5.0	1.6	4.1	1.0
5	Products of Animal Origin, Not Elsewhere Specified or Included	5.1	5.0	4.7	5.0	1.0	4.7	1.0
6	Live Trees and Other Plants; Bulbs, Roots and the Like; Cut Flowers and Ornamental Foliage	5.0	5.0	1.2	5.0	1.0	2.9	1.0
7	Edible Vegetables and Certain Roots and Tubers	3.2	5.0	1.7	5.0	1.0	2.8	1.0
8	Edible Fruit and Nuts; Peel of Citrus Fruit or Melons	5.0	4.9	2.5	5.0	1.0	4.7	1.0
9	Coffee, Tea, Mate and Spices	3.6	3.8	4.0	4.7	1.4	3.1	1.0
10	Cereals	1.0	5.0	1.0	5.0	1.0	1.2	1.0
11	Products of the Milling Industry; Malt; Starches; Inulin; Wheat Gluten	5.4	5.0	4.7	5.1	3.8	4.8	1.0
12	Oil Seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruit; Industrial or Medicinal Plants; Straw and Fodder		5.0	2.3	5.0	1.0	1.1	1.0
13	Lac; Gums, Resins and Other Vegetable Saps and Extracts	5.1	4.8	3.8	5.0	1.2	3.0	1.0
14	Vegetable Plaiting Materials; Vegetable Products Not Elsewhere Specified or Included	5.0	5.0	2.6	5.0	1.0	3.0	1.0
15	Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes	4.8	4.7	5.0	4.5	1.3	4.1	1.0
16	Preparations of Meat, of Fish or of Crustaceans, Molluscs or Other Aquatic Invertebrates	5.0	5.0	5.0	5.7	3.9	4.4	1.0
17	Sugars and Sugar Confectionery	4.3	4.8	3.6	5.6	1.0	2.6	1.0
18	Cocoa and Cocoa Preparations	3.4	4.1	3.3	4.8	1.0	2.9	1.0
19	Preparations of Cereals, Flour, Starch or Milk; Pastrycooks' Products	4.8	4.4	4.4	5.1	2.1	4.3	1.0
20	Preparations of Vegetables, Fruit, Nuts or Other Parts of Plants	5.0	4.8	4.7	5.6	1.9	4.8	1.0
21	Miscellaneous Edible Preparations	4.9	3.9	3.8	5.0	1.4	3.7	1.0
22	Beverages, Spirits and Vinegar	3.6	3.7	3.6	4.4	2.2	3.3	1.0
23	Residues and Waste from the Food Industries; Prepared Animal Fodder	4.0	4.1	3.4	3.1	1.6	3.3	1.0
24	Tobacco and Manufactured Tobacco Substitutes	3.6	4.2	3.6	3.4	2.4	3.0	1.0
25	Salt; Sulphur; Earths and Stone; Plastering Materials, Lime and Cement	3.2	3.0	2.7	3.0	3.0	3.0	2.0

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HS2	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
26	Ores, Slag and Ash	3.0	3.0	2.4	3.0	3.0	3.1	1.7
27	Mineral Fuels, Mineral Oils and Products of Their Distillation; Bituminous Substances; Mineral Waxes	3.2	2.8	2.9	3.0	3.0	3.1	2.1
28	Inorganic Chemicals; Organic or Inorganic Compounds of Precious Metals, of Rare-Earth Metals, of Radioactive Elements or of Isotopes	2.9	2.5	2.3	3.0	3.0	3.0	2.2
29	Organic Chemicals	3.0	2.3	2.3	3.0	3.0	3.0	2.1
30	Pharmaceutical Products	3.1	2.4	2.3	3.0	3.0	3.2	2.0
31	Fertilisers	3.3	2.2	2.2	3.0	3.0	3.0	2.0
32	Tanning or Dyeing Extracts; Tannins and Their Derivatives; Dyes, Pigments and Other Colouring Matter; Paints and Varnishes; Putty and Other Mastics; Inks	2.9	2.9	2.7	3.0	3.0	3.0	2.5
33	Essential Oils and Resinoids; Perfumery, Cosmetic or Toilet Preparations	3.0	2.8	2.8	3.0	2.9	3.0	2.3
34	4 Soap, Organic Surface-Active Agents, Washing Preparations, Lubricating Preparations, Artificial Waxes, Prepared Waxes, Polishing or Scouring Preparations, Candles and Similar Articles, Modelling Pastes, 'Dental Waxes' and Dental Preparations with a Basis of Plaster		2.8	2.8	3.0	3.0	3.0	2.5
35	Albuminoidal Substances; Modified Starches; Glues; Enzymes	2.7	2.5	2.6	3.4	3.0	3.1	2.2
36	Explosives; Pyrotechnic Products; Matches; Pyrophoric Alloys; Certain Combustible Preparations	3.0	3.0	3.0	3.0	3.0	3.3	1.8
37	Photographic or Cinematographic Goods	3.0	3.0	2.6	3.0	3.0	3.5	1.6
38	Miscellaneous Chemical Products	3.4	2.6	2.4	3.0	3.0	3.0	2.2
39	Plastics and Articles Thereof	3.0	2.9	2.9	3.0	3.0	3.0	2.4
40	Rubber and Articles Thereof	3.1	3.0	3.2	3.0	3.0	2.9	2.2
41	Raw Hides and Skins (Other Than Furskins) and Leather	3.5	3.3	2.7	5.0	3.0	4.0	1.8
42	Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silk-Worm Gut)	5.0	5.2	4.1	5.0	3.1	3.0	2.1
43	Furskins and Artificial Fur; Manufactures Thereof	3.8	3.8	3.0	4.7	3.0	3.0	1.6
44	Wood and Articles of Wood; Wood Charcoal	3.0	3.0	2.3	3.1	3.0	3.0	2.0
45	Cork and Articles of Cork	3.0	3.0	3.0	3.4	3.0	3.0	2.3
46	Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork	3.2	4.3	0.5	4.1	3.0	3.0	2.1

HS2	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
47	Pulp Of Wood Or Of Other Fibrous Cellulosic Material; Recovered (Waste And Scrap) Paper And Paperboard	3.8	3.0	2.8	3.0	3.0	3.0	1.8
48	Paper and Paperboard; Articles of Paper Pulp, of Paper or of Paperboard	3.7	3.0	2.7	3.0	3.0	3.0	2.3
49	Printed Books, Newspapers, Pictures and Other Products of the Printing Industry; Manuscripts, Typescripts and Plans	3.0	3.0	3.0	3.1	3.0	3.1	2.3
50	Silk	3.8	3.5	2.8	3.8	3.7	3.4	2.1
51	Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric	3.9	4.3	3.8	4.3	3.9	2.9	1.4
52	Cotton	3.1	4.3	2.6	3.8	3.1	6.8	2.0
53	Other Vegetable Textile Fibres; Paper Yarn and Woven Fabrics of Paper Yarn	3.8	3.7	2.8	4.2	3.8	3.0	1.9
54	Man-Made Filaments; Strip and the Like of Man-Made Textile Materials	4.0	5.3	2.7	4.4	4.0	3.4	2.2
55	Man-Made Staple Fibres	3.6	5.0	2.7	4.1	3.4	3.0	2.1
56	Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof	4.8	6.2	4.7	6.0	5.0	3.6	2.2
57	Carpets and Other Textile Floor Coverings	5.0	5.0	4.8	5.8	5.0	3.0	2.2
58	Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery	5.0	6.2	3.3	6.2	4.7	3.0	2.0
59	Impregnated, Coated, Covered or Laminated Textile Fabrics; Textile Articles of a Kind Suitable for Industrial Use	5.0	5.9	5.0	5.4	5.0	3.2	2.1
60	Knitted or Crocheted Fabrics	5.0	6.3	5.0	6.3	3.0	7.3	1.9
61	Articles of Apparel and Clothing Accessories, Knitted or Crocheted	5.0	7.0	4.6	6.3	5.0	1.3	2.2
62	Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted	5.0	7.0	5.0	6.3	5.0	1.3	2.1
63	Other Made Up Textile Articles; Sets; Worn Clothing and Worn Textile Articles; Rags	5.0	7.0	5.5	6.3	5.1	1.4	2.3
64	Footwear, Gaiters and the Like; Parts of Such Articles	3.2	4.8	3.0	5.0	3.0	3.0	2.3
65	Headgear and Parts Thereof	3.0	3.5	3.8	3.3	3.0	3.3	2.3
66	Umbrellas, Sun Umbrellas, Walking- Sticks, Seat-Sticks, Whips, Riding- Crops and Parts Thereof	3.0	3.7	3.7	3.0	3.0	3.0	2.2
67	Prepared Feathers and Down and Articles Made of Feathers or of Down; Artificial Flowers; Articles of Human Hair	3.0	3.0	3.8	3.0	3.0	3.0	1.9
68	Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials	3.0	2.9	2.3	3.0	3.1	3.0	2.2
69	Ceramic Products	3.0	5.0	3.1	3.0	3.0	3.0	2.2
70	Glass and Glassware	3.0	3.0	2.7	3.1	3.0	3.0	2.3

HS2	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
71	Natural or Cultured Pearls, Precious or Semi-Precious Stones, Precious Metals, Metals Clad with Precious Metal, and Articles Thereof; Imitation Jewellery; Coin	3.7	3.8	3.8	3.6	2.9	3.0	2.1
72	Iron and Steel	3.4	3.3	3.8	4.4	3.0	3.2	2.2
73	Articles of Iron or Steel	3.0	3.8	4.5	3.1	3.0	3.0	2.3
74	Copper and Articles Thereof	3.0	3.0	3.0	3.0	3.0	3.0	2.2
75	Nickel and Articles Thereof	3.0	2.7	2.9	3.0	3.0	3.0	2.0
76	Aluminium and Articles Thereof	3.1	3.0	3.3	3.0	3.0	3.0	2.4
78	Lead and Articles Thereof	3.0	3.0	3.5	3.0	3.0	3.0	2.1
79	Zinc and Articles Thereof	3.0	3.0	2.8	3.0	3.0	3.0	2.6
80	Tin and Articles Thereof	3.0	3.0	2.7	3.0	3.0	3.0	2.2
81	Other Base Metals; Cermets; Articles Thereof	2.5	2.1	2.4	3.0	3.0	3.0	1.7
82	Tools, Implements, Cutlery, Spoons and Forks, of Base Metal; Parts Thereof of Base Metal	5.0	4.4	5.0	3.0	3.0	3.0	2.2
83	Miscellaneous Articles of Base Metal	2.9	2.9	3.1	3.0	3.0	3.0	2.4
84	Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof	2.8	2.8	2.6	3.0	3.0	2.9	2.3
85	Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles	2.7	2.8	2.4	3.0	3.0	2.8	2.3
86	Railway or Tramway Locomotives, Rolling-Stock and Parts Thereof; Railway or Tramway Track Fixtures and Fittings and Parts Thereof; Mechanical (Including Electro- Mechanical) Traffic Signalling Equipment of All Kinds	3.0	3.0	3.0	3.0	3.0	3.0	1.7
87	Vehicles Other Than Railway or Tramway Rolling-Stock, and Parts and Accessories Thereof	5.1	4.6	2.9	3.0	3.0	3.1	2.2
88	Aircraft, Spacecraft, and Parts Thereof	3.0	3.0	2.8	3.0	3.0	3.1	1.9
89	Ships, Boats and Floating Structures	3.0	3.0	3.0	3.0	3.0	4.3	1.9
90	Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Parts and Accessories Thereof	2.7	2.8	2.4	3.0	3.0	3.0	2.2
91	Clocks and Watches and Parts Thereof	2.9	3.0	2.9	3.0	3.0	3.0	1.8
92	Musical Instruments; Parts and Accessories of Such Articles	3.0	2.9	3.0	3.0	3.0	3.0	2.0
93	Arms and Ammunition; Parts and Accessories Thereof	3.0	2.9	3.0	2.9	3.0	2.9	1.7

HS2	Description	RCEP	СРТРР	AANZFTA	JAEPA	AKFTA	ACFTA	AIFTA
94	Furniture; Bedding, Mattresses, Mattress Supports, Cushions and Similar Stuffed Furnishings; Lamps and Lighting Fittings, Not Elsewhere Specified or Included; Illuminated Signs, Illuminated Name-Plates and the Like; Prefabricated Buildings	3.0	3.1	2.5	3.0	3.0	3.0	2.4
95	Toys, Games and Sports Requisites; Parts and Accessories Thereof	3.0	3.0	2.9	3.0	3.0	3.0	2.0
96	Miscellaneous Manufactured Articles	3.0	3.0	2.8	2.9	3.0	3.0	2.2



# Trade Facilitation in RCEP Countries

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The trade facilitation under the Regional Comprehensive Economic Partnership (RCEP) is critical for regional trade and economic cooperation amongst the 15 member countries. This chapter examines the trade facilitation under RCEP using the available datasets on the trade facilitation index and compares the current trends in trade facilitation across RCEP countries in terms of four dimensions: the World Trade Organization's Trade Facilitation Agreement, digital trade streamlining, ease of doing business, and trade logistics performance. The study finds that RCEP countries have improved significantly in trade facilitation measures, but they vary across the countries. For example, China should further enhance its performance in cross-border paperless trade, whilst the Association of Southeast Asian Nations countries should improve their performance in the documentary compliance of trade, the infrastructure of trade, and trade logistics performance.

## Introduction

The Regional Comprehensive Economic Partnership (RCEP) is the largest global trading bloc, which entered into force on 1 January 2022. RCEP has a critical framework for trade and regional integration as it is seen as an engine of economic growth and trade for its members. The 15 RCEP economies comprise a combined population of 2.2 billion people (30% of the world's population) and are expected to create the next phase of economic dynamism in East Asia. After implementing RCEP, import tariffs on more than 90% of all the goods will be eliminated in 20 years, with the majority reduced to zero immediately or within the next 10 years. The improvement in trade liberalisation, foreign direct investment (FDI) liberalisation, and institutional cooperation is vital for RCEP to induce trade and investment growth in the region. In this respect, the improvement in trade facilitation is an essential component of regional integration driven by RCEP.

Trade facilitation refers to policies and measures to reduce trade costs by improving efficiency at each stage of the international trade chain (Moïsé et al., 2011). It refers to a set of measures that facilitate and simplify the technical and legal procedures of trade, including the facilitation of border procedures, digital management and communication, the harmonisation of trade documents, and the legal and administrative regulations on trade facilitation. Trade facilitation reduces overall trade costs and increases the total welfare of trade, in particular for developing countries (Dennis and Shepherd, 2011). As a result, trade facilitation under RCEP is vital for the growth of trade and investment in the region (Kimura, 2021).

This chapter aims to evaluate the trade facilitation of RCEP and examine the gaps in trade facilitation measures across the RCEP member countries. The chapter highlights several challenges in terms of the trade facilitation gaps across the countries. For example, customs and transit issues are essential for trade facilitation in some countries, whilst others emphasise transportation amenities, banking and insurance facilitation, business practices, or telecommunications. Moreover, for different types of trade facilitation, the various standards for different policies greatly depend on the domestic institutions, infrastructure, and legal environment. Second, different sources of data and measurement may lead to inconsistent results for trade facilitation (Sudjana, 2018). It is vital to find a consistent measurement of trade facilitation for RCEP countries, especially after considering the economic characteristics of RCEP countries.

This chapter will summarise the current status and trends of trade facilitation across the RCEP countries. We will compare the trade facilitation development of RCEP countries and examine their impacts on trade and welfare. We will also establish a consistent measurement of trade facilitation that comprises the main characteristics of RCEP countries and enables us to compare the index across countries and across time. This chapter will provide policy implications on how to target trade facilitation in implementing the RCEP agreement and evaluate its impact on RCEP trade and welfare in the next decade.

The chapter proceeds as follows. Section 2 provides some background information on RCEP economic growth, trade growth, and the role of trade facilitation in recent years. Section 3 describes the current datasets on trade facilitation and their measurement of the trade facilitation index. Section 4 reveals the current trends in trade facilitation for RCEP countries and examines their impacts on trade and welfare. Section 5 examines the policy implications and concludes.

## Background

Despite the improvements in trade facilitation after implementing the RCEP agreement, the 15 RCEP countries have been large trade countries for decades. As shown in Figure 4.1, the total export value of all the RCEP countries is US\$5,274 billion, whilst the total import value reaches US\$4,700 billion, accounting for over 70% of trade in Asia and the Pacific. Almost 36% of the goods exported from different RCEP members in 2021, amounting to US\$1,882 billion, were destined for the export markets of the members themselves, up from a level of 36.5% in 1996 (US\$310 billion). The regional trade within RCEP countries is expected to further increase with the implementation of RCEP agreements that significantly reduce trade costs and facilitate trade transactions.



#### Figure 4.1 Major Markets of RCEP Exports

Data source: UN Comtrade dataset.

Figure 4.2 shows the major markets for RCEP exports. We observe that the Association of Southeast Asian Nations (ASEAN) bloc and mainland China are the most important destinations for such intra-regional exports, absorbing 14.57% and 7.12% of RCEP's total exports, respectively, in 2021, up from 14.1% and 5.4% in 2001. This contrasts with Japan, whose share shrank from 9.7% to 4.4% in the same period. The Republic of Korea (hereafter, Korea) shows a slight rise in the intra-regional share of exports from 4.3% in 2001 to 4.6% in 2020. The United States (US) and the European Union (EU) are still the top two exporting destinations of RCEP countries, but with a declining share of exports to 16.05% and 15.31%, respectively, in 2020. As a result, we can observe that intra-RCEP trade is becoming more important in the export destinations of RCEP exports, highlighting the increasing importance of intra-regional trade within RCEP countries. Moreover, developing RCEP countries, such as ASEAN countries and China, have been the major export destinations, suggesting the dynamic transfer of Asian production and trade value chains to the developing countries.

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Figure 4.2 Export Destinations of RCEP Countries in 2001 and 2021

Data source: UN Comtrade dataset.

Figure 4.3 depicts the major markets of RCEP imports. Imports from RCEP countries increased from 1996 to 2021, reaching 51.2% in 2020. This suggests that over half of the imports of RCEP countries come from the intra-regional RCEP members, at about US\$2,584 billion in 2020 compared to US\$304 billion in 1996. Moreover, the figure indicates that most RCEP countries serve as the intermediate suppliers of other RCEP countries, revealing an interdependency of intra-regional production linkages within the RCEP countries.



#### Figure 4.3 Major Markets of RCEP Imports

Data source: UN Comtrade dataset.

Figure 4.4 shows the major import sources of RCEP countries. Similar to exports, the ASEAN bloc and mainland China are the major sources of intra-regional imports. ASEAN is the largest source of imports for RCEP members, despite a slight decline in its share from 15.22% to 15.21% in the period. Mainland China has become the second-largest source, and its share has increased markedly from 9% in 2001 to 12.72% in 2021. Japan's share shrank to 5.71% in 2021, whilst Korea's share edged up to 6.3%. Australia supplies more import intermediates for RCEP countries, with its share of RCEP imports in 2021 increasing to 5.2%. All these results suggest that RCEP countries have enhanced their intra-regional production network, with their members becoming more important suppliers of themselves. Moreover, the importance of non-members as import suppliers is declining. For example, the share of RCEP imports from the US has decreased from 14.83% in 2001 to 7.71% in 2021, whilst the share of RCEP imports from the EU declined to 12.03%. This indicates a production transfer from the US and EU to intra-regional RCEP countries.





Figure 4.4 Import Sources of RCEP Countries in 2001 and 2021

Data source: UN Comtrade dataset.

In summary, over the past 20 years, one of the most dramatic features of the RCEP countries has been the remarkable growth in intra-regional trade. This is not only because of the rapid development of export-oriented production but also as a result of the comparative advantage of Asian countries in labour costs, human capital development, and capital accumulation. Moreover, more and more RCEP enterprises are benefiting from FDI and investment facilitation measures, making them more likely to produce internationally, which significantly promotes the development of Asia–Pacific production networks. With the implementation of RCEP policies, we believe the production linkages will be further enhanced. Moreover, with the trade and investment facilitation measures, it is easier for firms to produce and manage outside their countries, with reduced trade costs, improved administrative efficiencies, and better access to regional materials and intermediates. The further implementation of RCEP policies will inevitably stimulate the vigorous development of trade amongst the RCEP members.



## **Data and Measurements**

Recent literature measures a trade facilitation index by estimating the costs of inefficiency in the various policy areas influencing the movement of goods (Moïsé and Sorescu, 2013; Hillberry and Zhang, 2017). However, there are no standardised RCEP trade facilitation index measures that consider RCEP countries' heterogeneity in terms of their mass intra-regional trade values, close production linkages, and various infrastructure and institutional environments. This section will introduce four types of indices from the current trade facilitation index. We will discuss their measurement and compare the trade facilitation index of RCEP countries across time and countries. In the next section, we will reveal the current trends in trade facilitation of RCEP countries and further tailor the trade facilitation index for RCEP members. Further analysis will reveal the linkages between trade facilitation and welfare in the RCEP countries.

The Organisation for Economic Co-operation and Development (OECD) trade facilitation indicators dataset (OECD TFI) provides 11 indicators that assess the trade facilitation of more than 160 economies across different income levels. Figure 4.6 indicates the 11 specific dimensions of trade facilitation variables related to the existing trade-related policies and regulations and their implementation in practice. The measurements are mainly based on the Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO), which considers more traditional trade facilitation measures, such as customs procedures, information availability, and ease of documentation. The different measures are standardised into scores ranging from 0 to 2, with higher scores indicating better performance in the specific trade facilitation dimension. This dataset was updated in 2019, containing two-year interval data from 2015 to 2019. The TFIs measure not only the actual extent to which countries have introduced and implemented trade facilitation measures in absolute terms but also their performance relative to others, using a series of quantitative measures on critical areas of the border.

Indicator	Description
Information availability	Enquiry points; publication of trade information, including on the Internet
Involvement of the trade community	Structures for consultations; established guidelines for consultations; publications of drafts; existence of notice and comment frameworks
Advance rulings	Prior statements by the administration to request traders concerning the classification, origin, valuation method, etc. applied to specific goods at the time of importation; rules and processes applied to such statements
Appeal procedures	The possibility and modalities to appeal administrative decisions by border agencies

#### Table 4.5 OECD Trade Facilitation Index Categories

Indicator	Description
Fees and charges	Disciplines on the charges imposed on imports and exports; disciplines on penalties
Formalities-documents	Acceptance of copies, simplification of trade documents; harmonisation in accordance with international standards
Formalities-automation	Electronic exchange of data; use of automated risk management; automated border procedures; electronic payments
Formalities-procedures	Streamlining of border controls; single submission points for all required documentation (single windows); post-clearance audits; authorised operators
Internal cooperation	Control delegation to customs authorities; cooperation between various border agencies of the country
External cooperation	Cooperation with neighbouring and third countries
Government and impartiality	Customs structures and functions; accountability; ethics policy

Source: OECD. Trade Facilitation (https://www.oecd.org/trade/topics/trade-facilitation/).

Another dataset of the trade facilitation index is the UN Trade Facilitation and Paperless Trade (UN TFPT) dataset. This dataset features the results of the United Nations Trade Facilitation and Paperless Trade Implementation Surveys, which reveal the digital and sustainable trade facilitation of 143 economies. This dataset provides 58 measures of the trade facilitation index in five dimensions related to the WTO's TFA. However, in contrast to the OECD TFIs, this dataset focuses on the emerging regional and global initiatives on paperless trade or e-trade, such as the recent Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific (CPTA). This survey was conducted in 2015, 2017, and 2019 by the United Nations Regional Commissions for Africa (ECA), Europe (ECE), Latin America and the Caribbean (ECLAC), Asia and the Pacific (ESCAP), and Western Asia (ESCWA). It is updated to 2021 to collect the latest data on trade facilitation for RCEP countries. The measure is standardised into five dimensions with percentages from 1% to 100%. The higher percentage of the index, the better performance the country has in the trade facilitation dimension. The five dimensions include transparency, formalities, institutional arrangement and cooperation, paperless trade, and cross-border paperless trade.

The third dataset of this paper is the WTO Doing Business dataset, which presents quantitative indicators on business regulations and the protection of property rights, several of which are closely related to trade facilitation. For example, it contains data on the time/cost/document numbers to import/export and the ease of doing business ranking. This dataset ranges from 2004 to 2020 with coverage of 190 economies, enabling us to compare the trade facilitation of border clearance across countries and time.

The last dataset is the WTO Trade Logistics Performance Index. This dataset measures the performance along the logistics supply chain within a country in the domestic and international markets. This dataset focuses on how the transportation infrastructure affects the trade facilitation of RCEP countries. This dataset contains 160 countries from 2007 to 2018 with 2-year intervals. The overall index is measured by six dimensions allowing international comparability, with scores ranging from 1 to 5. The higher the score is, the better the country performs in trade logistics in the specific dimensions. The six dimensions are infrastructure, international shipment, logistics quality and competence, tracking and tracing, and timeliness.

## **Current Trends in RCEP Trade Facilitation**

This section compares the trade facilitation of RCEP countries using the currently available datasets of the trade facilitation index. We aim to reveal the current trends in RCEP trade facilitation and the linkages with regional production and global value chain activities.



#### Figure 4.6 Evolution of China in the OECD Trade Facilitation Indicators

Source: OECD. Trade Facilitation (https://www.oecd.org/trade/topics/trade-facilitation/).



#### Figure 4.7 Evolution of China in the Facilitation and Paperless Trade Index



As China is the largest trade country amongst RCEP countries, Figures 4.6 and 4.7 reveal the trade facilitation changes in China using the OECD TFI index and UN TFPT index. In Figure 4.6, China matches or is closest to the best performance across the sample for the involvement of the trade community, advance rulings, appeal procedures, fees, automation of border processes, governance, and impartiality. China's performance improved between 2017 and 2019 in the areas of the trade community, advance rulings, appeal procedures, fees and charges, simplification and harmonisation of documents, automation of border processes, streamlining of procedures, governance, and impartiality. Performance in the other areas remains stable.



#### Figure 4.8 Evolution of ASEAN Countries in OECD Trade Facilitation Indicators

Source: OECD. Trade Facilitation (https://www.oecd.org/trade/topics/trade-facilitation/).

As digital trade plays an increasingly important role in trade, paperless trade facilitation is becoming more and more critical. Several studies have examined the measurement of digital trade facilitation (Atkinson, 2020; Duval et al., 2018; 2019). Figure 4.7 shows China's trade facilitation performance in digital trade. We find that China performs best in transparency, with an overall score of 100%. Performance has dramatically improved in terms of transparency, institutional arrangement and cooperation, formalities, and paperless trade in China since 2015. However, China still performs poorly in the dimension of cross-border paperless trade, with no improvement since 2017 at an average score of only 72.22%. The UN TFPT has emphasised the importance of digital trade and suggests that China still has a long way to go in paperless trade, especially cross-border paperless trade facilitation.



Figure 4.9 Evolution of China in the Facilitation and Paperless Trade Index

Data source: UN Trade Facilitation and Paperless Trade (UN TFPT) dataset.

Figures 4.8 and 4.9 compare the trade facilitation index using the OECD TFI and UN TFPT indexes. According to the OECD TFIs, ASEAN performs comparably to the larger Asia region in all trade facilitation areas except for the involvement of the trade community and external border agency cooperation. We observe that ASEAN's performance is below the average performance in Asia, and performance across all TFI areas remains below the worldwide best practices. As a result, according to the OECD TFIs, ASEAN should improve in all 11 dimensions to promote its trade facilitation, especially after implementing RCEP policies.

However, we find that implementing trade facilitation measures in RCEP is heterogeneous when using the UN TFPT dataset. Most ASEAN countries have implementation rates greater than 75%, much higher than the average implementation of Asian countries (around 50%). This high-level implementation might be explained by ASEAN's joint efforts on digital trade facilitation measures, particularly the implementation of the ASEAN Single Window to accelerate cross-border paperless trade within the region and with non-ASEAN trade partners. As a result, if we consider the dimension of digital trade, the trade facilitation performance of ASEAN is much better. This also strengthens our point that the overall trade facilitation index in various scopes may convey inconsistent results without considering the heterogeneity of countries' characteristics. However, compared to other RCEP countries, ASEAN still has a long way to go to improve its trade facilitation index, even in the UN TFPT dataset, with Australia, China, Japan, New Zealand, Singapore, Korea, and Singapore achieving implementation rates above 90%.

Tables 4.1 and 4.2 report the trade time for documentary compliance and the trade costs of border compliance for each RCEP member from 2016 to 2020, collected from the WTO Doing Business dataset. In Table 4.1, we find that Korea is the most efficient country in documentary compliance amongst the RCEP members, with both export and import documentary compliance only taking 1 hour. Singapore is the second most efficient in export documentary compliance with 2 hours, whilst Japan and New Zealand ranked third at around 3 hours. China has the largest improvement in export and import documentary compliance, with exporting time reducing from 14.1 hours to 7.5 hours and importing time decreasing from 54 hours to 11 hours. However, ASEAN countries perform differently in documentary compliance, whilst importing only takes 6.5 hours, close to the developed RCEP countries. However, exporting documentary compliance takes 155 hours in Brunei in 2020, despite its improvement from 168 hours in 2016, suggesting they still need to work more on facilitating the documentary compliance of trade in these countries.

	Time t	o export:	Documen (hours)	tary comp	oliance	Time to import: Documentary compliance (hours)				
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
AUS	7	7	7	7	7	4	4	4	4	4
JPN	3	3	3	3	3	3	3	3	3	3
KOR	1	1	1	1	1	1	1	1	1	1
NZL	3	3	3	3	3	1	1	1	1	1
BRN	168	163	155	155	155	144	140	132	132	132
CHN	14.1	14.1	14.1	7.5	7.5	54	54	54	24	11
IDN	72	60	60	60	60	144	132	106	106	106
KHM	132	132	132	132	132	132	132	132	132	132
LAO	60	60	60	60	60	60	60	60	60	60
MYS	10	10	10	10	10	10	10	10	6.5	6.5
PHL	36	36	36	36	36	96	96	96	96	96
SGP	2	2	2	2	2	3	3	3	3	3
THA	11.2	11.2	11.2	11.2	11.2	4	4	4	4	4
VNM	83.7	50	50	50	50	106	76	76	76	76

#### Table 4.1 Trade Time: Documentary Compliance

Data source: WTO Doing Business dataset.

Table 4.2 reports the trade costs of border compliance for RCEP countries from 2016 to 2020. Overall, the developed countries have higher trade costs for border compliance. Korea is still the most efficient country in border compliance in terms of trade costs amongst RCEP countries, with an average cost of US\$184.7 for exports. Imports in Japan cost the least amongst RCEP countries at US\$275. However, not every developed country has low trade costs. For example, it costs US\$766 for exports and US\$539 for imports for border compliance in Australia. China has made great progress in reducing the trade costs of border compliance. For example, the cost of export border compliance has reduced from US\$532.7 in 2016 to US\$305 in 2020, whilst the import cost of border compliance decreased from US\$790 in 2016 to US\$230 in 2020. A similar trade facilitation trend has been observed in some ASEAN countries, such as Malaysia and Viet Nam. However, for most ASEAN countries, the trade costs of border compliance have remained stable with no improvement in recent decades.

	C	Cost to ex	kport: Bo	order co	mplianc	e	Cost to import: Border compliance					
	2015	2016	2017	2018	2019	2020	2015	2016	2017	2018	2019	2020
AUS	749	749	749	749	766	766	525	525	525	525	539	539
JPN	241	241	241	241	241	241	275	275	275	275	275	275
KOR	184.7	184.7	184.7	184.7	184.7	184.7	314.6	314.6	314.6	314.6	314.6	314.6
NZL	337	337	337	337	337	337	366.5	366.5	366.5	366.5	366.5	366.5
BRN	340	340	340	340	340	340	395	395	395	395	395	395
CHN	532.7	532.7	532.7	532.7	305	249	790	790	790	790	335	230
IDN	250	250	250	250	250	207.1	384.4	384.4	384.4	384.4	384.4	384.4
KHM	375	375	375	375	375	375	240	240	240	240	240	240
LAO	140	140	140	140	140	140	223.5	223.5	223.5	223.5	223.5	223.5
MYS	274	274	274	274	212.5	212.5	274	274	274	274	212.5	212.5
PHL	456.0	456.0	456.0	456.0	456.0	456.0	689.5	689.5	689.5	689.5	689.5	689.5
SGP	335	335	335	335	335	335	220	220	220	220	220	220
THA	222.6	222.6	222.6	222.6	222.6	222.6	232.5	232.5	232.5	232.5	232.5	232.5
VNM	309.1	309.1	309.1	290	290	290	392.1	392.1	392.1	373	373	373

#### Table 4.1 Trade Time: Documentary Compliance

Data source: WTO Doing Business dataset.

Figure 4.10 compares the recent developments in trade facilitation for the RCEP countries in terms of the logistic performance index. We observe that ASEAN countries have a lower logistics performance index than the other five countries. Japan performs best in trade logistics, with a slight decline between 2007 and 2018. New Zealand tends to have better performance in trade logistics and exceeded Australia to become the second-best country in the LPI index of RCEP countries. China improved significantly in its logistic performance, which signifies better trade facilitation in logistics infrastructure and performance.





Source: WTO Logistic Performance Index dataset.

## Conclusion

RCEP is the largest free trade agreement and was completed on 15 November 2020 and formally implemented on 1 January 2022. Boosting RCEP trade facilitation policies is vital to facilitate further regional trade and economic cooperation amongst the 15 members. In order to improve the trade facilitation of RCEP countries, it is essential to understand the current trends in RCEP facilitation and set guantitative targets for trade facilitation in the process of RCEP's implementation policies. This paper summarises the currently available datasets of the trade facilitation index. It compares the current trends in trade facilitation across RCEP countries in terms of four dimensions: the WTO's Trade Facilitation Agreement, digital trade streamlining, ease of doing business, and trade logistics performance. We find that RCEP countries have improved significantly in trade facilitation measures, but different countries have different scopes for improvement. For example, China should further enhance its performance in cross-border paperless trade, whilst ASEAN countries should improve their performance in the documentary compliance of trade, the infrastructure of trade, and trade logistics performance. We also find that different databases have different approaches to scoring the trade facilitation index of RCEP countries, which sometimes leads to inconsistent results. Therefore, it is vital to tailor the trade facilitation index and find a consistent trade facilitation index for RCEP countries with more robust analyses.

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# **RCEP and Modern Services**

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In this chapter, we start with an overview of trade flows in modern services within the Regional Comprehensive Economic Partnership (RCEP) region and identify the main challenges for policymaking that have emerged in the negotiations. To give this analysis a quantitative foundation, we use a general equilibrium Poisson pseudo-maximum likelihood analysis of the gravity model to cover several scenarios, including structural adjustments that could guide future cooperation in liberalisation and the development of modern services. We then show where the opportunities for further liberalisation lie within the framework of RCEP.

## Introduction

The Regional Comprehensive Economic Partnership (RCEP) came into force in January 2022. With 15 members in East Asia, it consolidated an existing set of trade agreements between the Association of Southeast Asian Nations (ASEAN) and its '+1' partners. It became the world's largest trade agreement with respect to its coverage of trade and gross domestic product (GDP). Its benefits have been estimated to be twice those of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), with a relatively small trade diversion effect (Park, Petri, and Plummer, 2021). Generally, the modelling work finds a dominant role of manufactured goods in the benefits of the agreement. In this chapter, we explore further the treatment of services in the agreement, with a focus on modern services, and we discuss the ways in which the treatment of these services in RCEP might create even greater benefits. We also contribute to the assessments of the agreement by reporting results of modelling work that is specific to services. Undeniably, the share of services in the gross national product is increasing worldwide, although two phases can be distinguished in this respect (Findlay, 2017). The first phase is when traditional services increase following the growth of agricultural production, the extraction of natural resources, and industrial production. This is often the case when countries move from the low-income to middle-income level. A second phase is when modern services, such as financial services, information technology, and telecommunications, become increasingly important and middle-income countries start building up a domestic services industry. This is often the case when countries move from the lower-middle to upper-income category (Eichengreen and Gupta, 2013). Because these 'modern services' are internationally tradable, expanding market access for foreign firms into the domestic market becomes an important policy issue next to market access abroad for agriculture and manufactured goods.

The development of modern services is vital for success in emerging economies. The second phase just described is usually critical because future employment opportunities and income growth depend strongly on the success of the modern services sector. This occurs not least because access to such services by international efficient service providers is essential for the growth of productivity in a manufactured goods sector and, therefore, a foundation of further industrialisation to avoid the middle-income trap. Access to services also becomes

more important over time as servicification, the increased share of services embodied in manufactured goods, becomes a driving force behind innovation in the manufacturing goods sector. Therefore, participation in global value chains (GVCs), crucial for economic development, benefits from the entry of efficient foreign providers (Miroudot and Cadestin, 2017), but also the GVC structure creates opportunities for the growth of services exports of developed economies around particular value-adding activities. Emerging markets, especially those in East Asia, are therefore naturally appealing to foreign service providers not only in terms of final consumers but also as the location of service provision in GVCs for both goods and services. Finally, modern services, and especially the use of information technology in a digital world, are an important means to start new companies and to participate in global trade with these young and small companies, which can also become exporters. We argue here that participation in the RCEP negotiations makes a number of contributions in these respects.

In contrast to traditional trade negotiations in goods that revolve around the reduction of tariffs and quantitative restrictions, access to domestic markets for services often involves a number of complex elements. One involves changing domestic regulation in these sectors, especially when this regulation has a discriminatory nature against foreign services affiliates and thus breaks the national treatment provisions. Hence, market access guestions raise attention to more complicated and broader issues concerning services sector reform. Another, in the context of global and regional trade negotiations, is that the liberalisation of domestic services markets can be perceived as a bargaining chip to gain better access to agricultural products and industrial products and, thus, a stronger position in high-income markets. With respect to regional talks amongst emerging markets, opening to regional partners may involve an expectation that countries in the region that are more developed gain from such 'deep' agreements. Hence, also in regional trade agreements amongst emerging markets, access to services is seen as a bargaining chip from the perspective of countries that are relatively distant from productivity frontiers. Furthermore, there are deeper fears at the nexus of trade and technology that the liberalisation of services trade may have adverse economic consequences and is not able to be bargained away in trade negotiations. Perhaps the most important one from the view of the less developed economies is that the increased importance of services and the strong increase in productivity in global value chains will condemn them to premature industrialisation because the incorporation of professional services will come too late for them, and they will be limited to the first generation of traditional services that will bring little added value and, therefore, income (Rodrik 2016). On top of that comes the fear that in the modern platform economy, the revenue from modern services will accrue to a few large service providers, who generally come from developed countries. Lastly, there is the information technology revolution and the move towards robotics supported by artificial intelligence (AI) and blockchain services, which can erode the comparative advantage in labour-intensive production (Rodrik 2018). As noted above, however, potential exporters in these economies have an interest in facilitating their access to international markets.

The playing field for services trade liberalisation is thus complex. With little progress in multilateral trade negotiations, much of the action takes place through regional agreements. Recently, there has been significant traction on mega-agreements involving large countries. Although stalled because of recent trade wars between the United States and China, such deals may return soon. In Asia, deeper regional integration has been initiated by the CPTPP and recently with RCEP. Although in the region there are still challenges in industrial goods protection, its importance has declined over time when compared to services, and especially regarding the effects of the bundles of technology associated with the 'Industry 4.0' revolution. But services liberalisation is much more complex, involving the harmonisation of standards for their provision or establishment of equivalence of standards. These exercises are not quantitative but qualitative in nature and require a substantial degree of knowledge and judgment. Therefore, liberalisation of services trade also puts a much stronger demand on public sector capacity and capabilities, as well as negotiating skills. In addition, differences in national regulations are usually the biggest threat to free trade in services, but cooperation mechanisms between countries to align these regulations are still not well-developed. Hence, regional agreements often express an ambition to work together ('talks'), rather than making significant progress at the outset. Therefore, much of the success of regional agreements, including RCEP, will depend on the success of cooperation in overcoming barriers to the integration of services.

In this chapter, we discuss the current state of trade in modern services (financial services, information and communications technology (ICT), telecommunications, and professional services, such as accountancy services) in relation to the establishment of RCEP. We will start by highlighting the common challenges in the liberalisation of professional services and how they have affected negotiation in RCEP. This work begins with a descriptive overview of the development of trade flows within the region, the restrictions countries impose on it, and the extent of commitments in RCEP relative to other existing agreements. Then, the chapter will analyse what the effects of the regional agreement might be on trade in services. For this, we will use state-of-the-art econometric techniques, of which the general equilibrium Poisson pseudo-maximum likelihood (GE-PPML) gravity model is the anchor. As the main conclusion of this empirical exercise, we will argue that the region, especially the ASEAN Member States, has much to gain from further regional liberalisation of the restrictions on business services.

At the end of the chapter, we will discuss the global negotiating approach to services trade and the effects this may have on the ongoing development of services liberalisation in RCEP. Ultimately, RCEP will be a 'living agreement' with the work agenda to be evaluated periodically, which states targets. It is valuable to start a discussion where RCEP can play a pivotal role in supporting trade and fostering economic development. Two questions need to be answered. The first is where RCEP can make a difference and what the effect of policy interventions and enhanced collaboration would be. The second question is what this means for the organisation of RCEP and the design of policy initiatives. But first, we report some stylised facts on regional trade in modern services.

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## **Trends in Regional Modern Services Trade**

RCEP is the largest region striving to liberalise trade. Traditionally, it has been an origin of many manufactured products, but recently RCEP trade in modern services has been rising.

#### Modern services flows in the RCEP region





Note: RCEP in this figure excludes China.

Source: Author's calculations based on the WTO TISMOS database.

Figure 5.1 shows modern services (ICT, financial, and business services) trade in the region from 2005 until 2019. We have added the region's trade in transport services and have isolated the modern services trade flows for China. There is a substantial increase in transport services trade in the region, very much connected to the rise of participation in GVCs. This is not only true for countries in the region itself but is also especially true for China. However, whereas the overall trade in China in modern services has increased, for the region excluding China, such services trade has stagnated.

We dig deeper in Table 5.1 with the exports and imports (internally and externally) of the countries of modern services in the RCEP region. We will first look at the dynamics of each of the subsector shares to say more about the differences across services industries. For exports, we add up the exports of all the countries that participate in RCEP, which gives the sum of exports to the rest of the world and to other members of the bloc. In addition, we show the total trade between the member countries ('internal') of the trading bloc. The table shows the shares of the sectors and their dynamics from 2005 to 2019.

Region	Share 2005 Share 2019		Share growth	Value growth					
Transportation									
Exports	52.7	38.1	-2.3	5.0					
Imports	52.8	34.3	-3.0	4.3					
Internal	61.2	41.7	-2.7	4.8					
Insurance and pension									
Exports	4.2	4.2	-0.1	7.4					
Imports	2.2	2.8	1.7	9.4					
Internal	3.2	3.6	0.9	8.7					
Other finance									
Exports	7.0	8.7	1.6	9.2					
Imports	5.3	7.0	1.9	9.6					
Internal	2.2	4.4	5.0	13.1					

## Table 5.1 Growth in Trade Shares and Sectoral of Modern Servicesin Trade Flows, 2005–2019 (%)

Region	Share 2005	Share 2019	Share growth	Value growth	
ICT					
Exports	6.3	13.9	5.9	13.8	
Imports	7.9	15.5	4.9	12.9	
Internal	5.3	13.6	7.0	15.2	
Business services					
Exports	29.8	35.1	1.2	8.7	
Imports	31.7	40.4	1.7	9.4	
Internal	28.1	36.7	1.9	9.8	

Note: 'Exports' and 'imports' are of services by RCEP participants and India to all countries as a share of total services trade (including between the countries themselves). 'Internal' is the service trade flow between the trade partners of RCEP +India. Source: WTO-OECD Balanced Trade in Services dataset.

We plot more trends over the 2005–2019 period in Figure 5.2. Firstly, Figure 5.2 shows that the region's trade surplus in transport services has increased significantly over time. As from Table 5.1 we know that the share of this sector has decreased significantly over the period, the conclusion can therefore be drawn that the most significant global competitive advantage of the region lies in sectors whose share in trade is declining. Figure 5.2 also shows that the balance in modern services trade has deteriorated at the time these sectors have become more important in the modern economy. This result serves as a 'call to action' that the region as a whole has not been able to create a competitive advantage in modern services, which makes a difference in the digital future in which servicification is more important.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Another way of looking at this figure is to link it to the increased participation in GVCs over the period described. Of course, this strong position is a cause of the strong growth of the transport sector and with it the export of these services. But if it is the case that modern services bring more added value, then it is also an indication that an improvement in positions within value chains is somewhat lagging behind, which is a challenge for the immediate future.



#### **Figure 5.2** External Trade Balance of the RCEP Countries – Transportation and Modern Services, 2005–2019 (%)

Note: The external trade balance is exports minus imports divided by total services trade. Source: WTO–OECD Balanced Trade in Services dataset.





Source: WTO-OECD Balanced Trade in Services dataset.

Note: 'Professional services' is defined here as modern services plus transport services.
In Figure 5.3 we look in more detail at the dynamics of trade in modern services within the region. It is striking that there is a considerable difference between financial services and information technology on the one hand and consultancy services on the other. We observe that whilst the shares of financial services and ICT are rising strongly, that of business services (consultancy, engineering, etc.) has stagnated.

### Individual RCEP members and modern services trade

How important is trade in modern services to individual countries in the region? Exports and imports of modern services per capita are shown in Table 5.2. In the first two columns of the table, Singapore is an outlier: both export and import ratios are high, reflecting its role as the regional hub. Since these are the data for modern services, that is, without transport, we may also note that there is an overall trade deficit in services for many countries in the region, with Malaysia and Thailand standing out; the Philippines is the only country with a surplus. Malaysia is interesting because the deficit in modern services goes hand in hand with high exports per capita. China's modern services trade is still relatively unimportant per capita. Of course, industrial trade is considerably more important for China, with digitalisation ensuring that the share of services as inputs in industrial production increases over time. Perhaps striking are the relatively large deficits for Australia and New Zealand. Trade links with the United Kingdom and the United States are robust in terms of ICT, financial services, and business services, leading to a substantial difference between exports and imports.

Economy	Exports (US\$/capita)	Imports (US\$/capita)	Services Trade Restrictiveness Index
Brunei Darussalam	135	2805	49*
Cambodia	5	8	50*
Indonesia	20	42	56
Lao PDR	3	4	49*
Malaysia	257	400	53
Myanmar	3	6	61
Philippines	123	58	65
Singapore	11360	11505	39
Thailand	102	164	57
Viet Nam	24	31	48
Average ASEAN	156	172	54

## Table 5.2 Modern Services Trade, Internal Trade Shares,and Restrictions for 2019

Economy	Exports (US\$/capita)	Imports (US\$/capita)	Services Trade Restrictiveness Index
China, Mainland	53	47	62
Japan	386	650	35
Republic of Korea	396	511	49
Australia	639	1050	39
New Zealand	526	975	44
Average Other RCEP	100	127	46
India	59	22	64

\* Estimated from other sources by the authors.

Source: World Bank Services Trade Restrictiveness Index Data.

The last column provides an overview of the restrictions on modern business services, which we have averaged across sectors (knowing that there are quite a few differences in details between these sectors).<sup>2</sup> An interesting difference can be observed between ASEAN members and new RCEP members: restrictions on trade in services are higher in ASEAN countries than in countries in the region outside ASEAN, with China as an important exception. Also, compared to to the global level of liberalisation of modern services, two leading global service-providing countries with relatively low trade restrictions enter the new trading bloc: Japan and Australia. Within RCEP, they could form a 'motor' for reform, along with Singapore.

<sup>&</sup>lt;sup>2</sup> Our strategy has been to use the World Bank STRI estimates when available and insert the STRI from other sources when not available. We are aware that several countries have updated the STRI in recent years using individual methodologies, which is for example the case for Indonesia.

Figure 5.4 Correlation Between Modern Services Imports per Capita (US\$, Horizontal) and the STRI (Score from 100, Vertical)



Source: World Bank Services Trade Restrictiveness Index Data and the WTO–OECD Balanced Trade in Services dataset. Note: Singapore is excluded from the graph.

Figure 5.4 shows the correlation between trade in modern services per capita and the level of restrictions on trade in services (higher STRI scores are more restrictive), where we have used only the countries represented in the World Bank STRI database. Countries with a higher per capita level of services imports have lower restrictions on trade in services. In the RCEP group, there is a set of countries with relatively low income levels and low service trade imports, which have higher levels of restrictions on trade in modern services. At the other end of the spectrum, there are countries with relatively high imports of business services (and exports) in these sectors. To that extent, the graph also provides insight into the heterogeneity of the group that RCEP will form in terms of development, imports of modern services, and the restrictions on these trade flows. It also connects to the discussion on incentives for services trade negotiations later in the chapter, which are therefore divergent amongst the RCEP members.

#### Services regulatory diversity



Figure 5.5 Regulatory Diversity, 2014 and 2020

Note: The index is the unweighted average of the bilateral heterogeneity scores for the countries mentioned in the figure. The sectors included are accounting, architecture, commercial banking, engineering, telecommunications, and legal services. Source: OECD STRI database.

Following the global debate on the liberalisation of services, we notice that much attention is paid to the heterogeneity of measures that in themselves restrict trade flows in modern services. These domestic measures and frameworks of service providers differ between countries and are the reason that many qualifications are not recognised in other countries. To identify these differences in legislation relevant to modern services provision, we have used a new Organisation for Economic Co-operation and Development (OECD) database that analyses these differences at the sectoral level. We aggregate these differences at the country level to analyse which countries in the RCEP area. Based on the aggregation, we make an overall ranking in which Indonesia has the largest divergence and Japan the smallest compared to the members of RCEP.

Although it is interesting to look at individual countries, we focus on the overall picture in Figure 5.5. It appears that the ASEAN members of Indonesia, Malaysia, and Thailand, together with mainland China, stand out as having specific domestic regulations for their countries and may not have gone through the process of standardisation often initiated by multilateral institutions such as the World Trade Organization (WTO) and the OECD. On the other side of the spectrum, we see that Japan and New Zealand have low heterogeneity with the rest of the group. This implies a significant split between countries, and in order for standardising domestic regulation to not be a significant barrier in intra-RCEP services trade requires substantial adjustment, especially by the ASEAN Member States.



Figure 5.6 Correlation Between Regulatory Diversity and the STRI

Source: World Bank for the STRI and the OECD for regulatory diversity (author calculations).

To say more about potential leadership issues in shaping standardisation, and therefore increasing regional trade in services, it is interesting to analyse how regulatory heterogeneity in the region is related to the overall level of restrictions. In Figure 5.6, we can observe a positive correlation between the two, signalling that those countries with low heterogeneity in the region also have low restrictions.<sup>3</sup> The countries that have low levels of restrictions can also play a catalysing role in harmonising and standardising domestic services regulation. Thus, although Japan may be a reluctant reformer in the context of groups that include China and the Republic of Korea (hereafter, Korea), it seems well placed to play a leadership role in harmonising domestic regulation in modern services.

<sup>&</sup>lt;sup>3</sup> To some extent, it may be that there is a mechanical correlation between the overall level of restrictions and diversity of regulation. Countries with lower levels of restrictions also have less opportunity to have diverging regulation.

#### Servicification and services in value chains

When discussing international trade in services, it is important to realise that many services are traded as embodied in manufactured goods. The underlying process is servicification, a term used to indicate that the input of services becomes more critical in the value-added structure of manufactured goods. Many services are used as inputs in manufactured goods. Therefore, studies that analyse services trade flows and only consider cross-border flows (heavily) underestimate the overall importance of services in global trade. In addition, there is a second underestimation of services in international trade related to servicification – the input of services is essential for international trade itself. The most obvious example is transport, a service that functions as an input in the value-added of manufactured goods. Moreover, services often enter manufacturing goods trade digitally, for example, ICT services that support software that make manufacturing goods like cars work properly.

Although the previous section shows that cross-border trade in services is important for countries in the RCEP region, services trade through GVCs as inputs in manufactured goods may potentially be even more important. Roelfsema, Findlay, and Ye (2021) show the increased importance of servicification in trade between emerging markets from Asia and developed economies in Europe and North America. Moreover, they show that servicification is becoming more important in trade between emerging markets, especially in Asia. These results also help resolve the puzzle of the gaps between the observed importance of services in the domestic economy and the stable share of crossborder services trade in international trade over GDP. Industrialisation and, thus, trade in manufactures may be a dominant force for GDP growth, and participation in GVCs is important from a global trade perspective. Following this reasoning, only taking account of cross-border final services trade especially underestimates the importance of modern services through servicification. The paper observes that the increased input of services in manufacturing output makes them grow in tandem with industrialisation or may even outpace it.

Findlay and Roelfsema (2021) then show that restrictions on services trade may have significant consequences for participation in GVCs. If it becomes more challenging to import services, the logic is that this potentially reduces the productivity of the manufactured goods sectors and therefore reduces the ability to participate in GVCs. The analysis shows that countries in Asia with high restrictions on commercial services have difficulty participating in GVCs because in that situation, the opportunity to create value through servicification, enabling higher productivity levels, is reduced. This is especially the case with respect to forward participation in GVCs and, therefore, to upgrading positions within value chains.

Anticipating discussion on services trade negotiation in Section 4, concerning servicification, two issues are worth considering. The first is the discussion of the definition of rules of origin requirements for free trade in manufactured goods in the RCEP agreement. So far, the implicit view of rules of origin mainly has to do with intermediate goods in manufactured exports. A crucial component of the RCEP trade deal is the reduction in origin restriction rules. However, as services are increasingly important due to the servicification of manufactured goods, the liberalisation of rules of origin requirements within the region may have a substantial effect on services trade diversion, as it becomes more attractive to source services from RCEP members (for example, Singapore, but also China) when compared to countries outside the agreement, such as India. The other side of the coin is that when trade diversion is harmful because it increases the services inputs by relatively inefficient producers of services, this may have a detrimental effect on productivity in manufacturing industries and, therefore, on the participation in GVCs relative to regions in which efficient service providers dominate. One way to avoid this outcome is to multilateralise commitments for foreign investment in services (Mode 3) by businesses based in other RCEP members so that non-member providers can benefit from the rules of origin liberalisation within the regional agreements. Consideration of these issues is even more important in the context of the near-shoring forces unleashed by COVID-19.

The second component when discussing servicification in the context of regional trade agreements is regulatory coherence. This is also related to the challenges of liberalising Mode 3. When entering trade negotiations, one of the challenges is that there is little coherence between the regulation of cross-border trade and the regulation dealing with investment policies and competition. It may well be that focusing on the former does not include progress in the latter. For example, suppose foreign direct investment is heavily restricted because of state-owned companies' dominance in the service industry, for example, in banking and telecommunications. In that case, such industry structures will not only limit the benefits of servicification but also the ability of countries to participate in services trade negotiations.

## Services Trade Potential in RCEP

Recently, there have been substantial improvements to the gravity model, which allow it to be used much better to analyse counterfactuals and, therefore, to analyse policy scenarios (Anderson et al., 2018; Benz and Jaax, 2022; Yotov et al., 2016; Santos Silva and Tenreyro, 2006). The first improvement was the use of PPML estimation, which alleviates the problems of zero trade between countries as well as heteroskedasticity. In practice, these are two substantial problems for gravity estimations. The addition, connecting the estimations to general equilibrium outcomes, allows for connecting the predicted direct trade outcomes to the economic outcomes whilst taking into consideration the changes in prices and the centrality of countries in global trade. It therefore allows analysis of how different scenarios of trade liberalisation would result in changes in trade in commercial services and in national income. With respect to these scenarios, we are particularly interested in efforts that reduce services trade restrictions and improve regional opportunities for trade in modern services. Due to limitations in space and excellent treatment elsewhere, we will not discuss the 'ins and outs' of the model and instead refer to Kumar and Shepherd (2019) for an analysis of intermediate and final goods trade, Brakman, Garretsen, and Kohl (2018) for trade in value added and, more specifically, a recent paper by Benz and Jaax (2022) on trade in services using more or less the same empirical strategy as we do although not concentrating on global flows of trade and not specifying RCEP countries.

To find the likely effects of regional liberalisation of modern services, we introduce several modifications to Benz and Jaax (2022). First, we run the baseline regression to obtain the estimates for the elasticity of trade flows to changes in the STRI levels. Then, we simulate the effects of reductions in restrictions on trade flows in a general equilibrium context. The main benefit of the general equilibrium approach is that we calculate in a structured model the effects of reductions in trade restrictions on price levels for services, and therefore also demand levels, generating income effects. The last step is then to study how the simulated liberalisation affects welfare levels.

When moving from the gravity estimates to general equilibrium, the difference with other GE-PPML analyses, such as that by Brakman, Garretsen, and Kohl (2018), is that we consider a partial system of trade in services only whilst assuming trade in goods stays unchanged (instead of analysing trade in both goods and services). The increase (or decrease) in national income in the general equilibrium is, therefore, not only related to the share of the increase of service trade itself but also related to the size of the service industry relative to a country's total economic size. RCEP includes trade in goods, so our estimates on national income changes are likely to be a lower bound compared to the total effects from RCEP, and it is also likely that there will be synergies in the trade of goods and services. But our approach allows us to isolate the quantitative effects that can be attributed to modern services as well as transport services.

The main goal of the baseline regression is to find the elasticity of bilateral trade flows to changes in trade restrictions. More details of the results of this stage are presented in Appendix 1. We then calculate the general equilibria effects if the STRIs between RCEP countries reduce to 30% of the level of their national STRIs. It is not that we think RCEP will reduce restrictions by 70%. Instead, we are interested in a scenario where RCEP will converge to the situation in the European Economic Area (EEA) where the STRI against member states is on average about 30% compared to the STRI against non-EEA countries (as in OECD data). We are also interested in how the effects of this change are distributed over the member states. This last step also informs us about the political economy components of moving forward in RCEP by highlighting countries that have a strong interest (according to changes in GDP) in reducing barriers. We can also highlight within-country incentives for each of the firms and consumers by splitting the general equilibrium price effects and income effects.

	Services price effect	Services income effect	Change in GDP
Brunei Darussalam	3.31	8.15	1.52
Cambodia	3.16	5.25	1.05
Indonesia	-4.05	1.89	0.5
Lao PDR	5.82	8.39	0.9
Malaysia	-1.05	2.51	1.02
Myanmar	-0.43	3.54	1.29
Philippines	1.56	1.47	0.44
Singapore	3.1	1.21	0.93
Thailand	-1.38	1.51	0.43
Viet Nam	0.02	2.15	0.59
Non-ASEAN Members			
China, Mainland	-1.97	0.57	0.17
Japan	1.63	0.03	0.01
Republic of Korea	1.4	0.52	0.2
Australia	1	0.52	0.27
New Zealand	1.5	1.56	0.63

#### Table 5.3 General Equilibrium Effects of a 70% STRI Reduction in RCEP

Note: Service-related real income also takes into consideration the change in the price level of service imports. Source: Data sources of the GE-PPML analysis. The general equilibrium effect is complex. To illustrate, consider the price effects for Indonesia and Singapore: they are opposite. The reason is that the reduction in restrictions will increase foreign supply in Indonesia, which lowers the price level. Because Indonesia is not a prominent exporter of services, lower restrictions do not substantially increase the demand for Indonesian services. On the contrary, we see that because Singapore is a significant exporter of services, a reduction in restrictions on trade in services in the region increases the demand for its services, which can raise the price level. Also, Singapore already started from a relatively low level of restrictions, so further reducing them might not have substantial price lowering effects due to higher imports.

Another interesting case amongst the non-ASEAN members is that of New Zealand. As can be seen in the simulation, lowering restrictions in RCEP increases the price levels of services, in turn increasing the income from services. Because the service industry is relatively important in New Zealand (for example, compared to Australia), reducing barriers to trade in modern services has a substantial effect on GDP in the country. The same argument applies to Singapore. Although overall reductions in barriers to trade in services increase the price level, they have relatively little effect on services income (which is already quite high). However, because services play such an important role in income baskets and in the generation of GDP, the overall effect on GDP is substantial.

On the contrary, for China, significant reductions in restrictions strongly affect the price level given the relatively small size of the domestic services industry. However, this has only a minimal effect on GDP. It is also interesting to observe that Japan and Korea have little to gain from reducing restrictions on trade in services within the region. From a political economy perspective, this may imply a reduction in potential leadership incentives from those countries, putting the ball in New Zealand and Australia's corners amongst the non-ASEAN members.

## **Opportunities in RCEP Modern Services Negotiations**

Over the last 15 years, there have been two reasons why the international coordination of services regulation and trade restrictions has become increasingly important (Antràs, 2020). The first is that the structural transformation of economic activity has significantly increased the share of services in consumption. As a result, world trade in services has also risen dramatically and, in recent years, digitisation has also contributed to this change. Trade in services is not constrained by tariffs but mainly by differences in national legislation. Services are also commonly offered by branches abroad, which is even more

important in relation to investment policy than in relation to industrial products. Thus, the link between direct investment and regulation has given national treatment a prominent role in international law. Another reason for the increasing importance of services regulation is the increasing importance of GVCs in international trade. With the increase in outsourcing, there has been a shift from spot transactions to contractual relationships. Such contractual relations are especially important in services trade. Since it is impossible to capture all relevant contingencies in those contracts, which makes them imperfect, companies' behaviour should be governed by rules of conduct and dispute resolution so as to organise the GVCs efficiently. In that case, to capture the benefits of GVCs, building regional institutions is necessary to create a predictable regime.

## **Shifting models**

Services can be provided across borders in several different modes, depending on whether consumers or producers relocate, the scope for cross-border transactions, and the movement of people. The mix of these modes depends on a number of variables, including the business strategy, policy restrictions, and technology. Exporting firms often make use of all modes. For example, an exporter of educational services may host international students at its home campus whilst also setting up campuses offshore to which its staff also transit, whilst engaging online with students offshore in various locations. From this perspective, the modes are complementary not substitutes. In Appendix 2 we document the distribution of modern services trade over the modes. Striking is the extent of use of Mode 3, especially by most economies for both exports and imports, and also the extent of the use of Mode 1 by emerging economies (at pre-COVID-19 times).

However, some degree of substitution may be undertaken between modes, leading to less-than-efficient bundles of service provision because of the distortions introduced by trade restrictions. Generally, cross-border transactions are less restricted than other modes, and so our expectation is that the levels of cross-border trade will be higher than otherwise. That outcome, however, has triggered a series of related concerns about data management.

Another driver of shifts in the modes of supply is technological change. Digital technology has facilitated the scope to undertake services transactions at a distance, rather than face to face. The weight of cross-border transactions has also increased for this reason. Finally, whilst the services trade literature tends to focus on the four modes of supply already mentioned, there is another, as evident in our discussion of servicification. This involves the embodiment of services with goods, which is sometimes also referred to as the fifth mode of supply (Antimiani and Cernat, 2018). In this case, the use of this mode also depends on the three drivers listed above. For example, the differences in degrees

of restriction applied to goods compared to services will affect the interest in providing consumers with goods with services embodied or sold separately where that is feasible. Let us take the following example, which highlights the impact of the development of GVCs and their influence on these choices. If services are provided as inputs in manufactured goods used for exports, often foreign service affiliates (banks, management consultants, and accountants) play a prominent role in the provision of services to industry. But we also know that restrictions on foreign entry through Mode 3 are often severe. With the current wave of digitalisation, modern services may be provided more prominently through Mode 1, as cross-border supply that does not involve foreign direct investments in foreign establishments. However, when there is an increased cross-border supply of financial services, the fine-tuning of such services in GVCs, the movement of natural persons may become more important. This then feeds into the liberalisation of Mode 4, which often involves travel permits and temporary residence for specialist services plus accreditation,. The bottom line is that when GVCs become more important in shaping global trade, and services become more important in those global value chains, it shifts the relative importance of the types of trade restrictions over the modes that should be prioritised in trade negotiations – and often in unanticipated directions.

These aspects of the delivery of services complicate the negotiations with respect to barriers to trade. From a business perspective, there would be an interest we expect in taking a sectoral (cross-modal) rather than a (uni)modal view of the negotiations. One of the advantages of RCEP is that its approach to commitments on trade in services facilitates the application of business strategy, as explained in the next section.

### The rise of negative listing

Traditionally, negotiations in the General Agreement on Trade in Services (GATS) are based on positive listing, which involves making specific liberalisation commitments, often in exchange for concessions from partner countries. In many regional trade agreements, this positive listing process is copied. However, the negative-list approach (where all services are considered to be liberalised unless otherwise indicated through schedules of non-conforming measures) has been on the rise recently, and most regional trade agreements opt for this negotiating strategy. Made simple, negative listing means all things not listed in the agreement are supposed to be liberalised, which effectively means that service regulation adheres to national treatment to not discriminate between domestic and foreign service providers. A key change in RCEP is the adoption of (or transition by China, Cambodia, the Lao PDR, Myanmar, New Zealand, the Philippines, Thailand, and Viet Nam within six years to) a negative list.

It should be noted that a negative listing approach to trade liberalisation does not necessarily mean that the outcome of the negotiations will be more liberal. Under a

negative list approach, countries can specify which sectors they did not want to have been included in the agreement and reserve the right to discriminatory regulation. Also, compared to positive listing, which only allows exemptions based on national treatment and most-favoured-nation descriptions, negative listing opens the door to broader exemptions in terms of services trade liberalisation. But the overall assessment is that whilst considering the potentially restrictive nature of negative listing in many negotiations, the outcomes are more liberal than positive listings.

A negative listing approach makes it easier to accommodate business interests in the agreement. In some ways, the negative list approach is a substitute for what might be presented as a modal approach to making commitments (which we noted above). Automatically, in the negative list, cross-border modes are covered unless otherwise stated. This applies to services (and to all members once the transition is completed – support for capacity building will be important in that process). Also important to note is that commitments on investment in RCEP are also on a negative list, so effectively there will be a joint negative list for all modes.

Concerning RCEP services trade talks and the move towards negative listings, three sensitivities need to be considered. First, the incentive to have accurate information about current legislation to properly inform other countries about market access is more profound for negative listing. Consequently, this puts a more considerable burden on less developed countries in the region to create a transparent overview of the current legislation. Some countries may not feel confident with their overview of the impact of services liberalisation, which could hinder the negotiating process.

The second issue is that in less developed countries, there is only rudimentary regulation in some sectors that are important from a market access perspective. If positive listing were the approach to services trade negotiations, it would allow countries to regulate industries before moving into trade negotiations properly. However, with negative listing, sectors must be liberalised without domestic regulation to protect national interests. Hence, the outcome of services trade negotiations may be unstable in such unregulated markets and, therefore, places countries with lower levels of development both economically and institutionally 'on the back foot'.

The third upcoming sensitivity for modern services is that negative listing imperfectly considers technological advances that shape industry structures and merge industries. A benefit of negative listing is that new forms of services that emerge from technological change are traded with the expectation of no restrictions. However, at the same time, if commitments are made under negative listing, it is challenging to reintroduce regulation when technological development prompts consideration of stricter regulation of specific industries, due for example to unforeseen outcomes in privacy concerns. Such new legislation may be blocked because of its potentially discriminatory nature and is,

therefore, not in accordance with national treatment. But because it is difficult to foresee which industries may arise in the new digital world (Facebook, now Meta, just announced a virtual world, as a case in point), the application of negative listing in periods of rapid technological advancement is challenging.

Given the diversity amongst the membership of RCEP, however, these drivers of regulation will be a topic of common interest, and perhaps other members will have more experience of the issue than others. One of the assets of RCEP is its institutional arrangements for cooperation on topics such as this (Armstrong and Drysdale, 2022). Chapters on economic cooperation (15) and institutional arrangements (18) can be mobilised to arrange dialogues on these questions and facilitate a common understanding of motivations for any necessary adjustments to schedules. The progress on cooperation that supports institution-building is linked to commitments on market access, since the latter (and expectations about progress) adds pressure for participation in the former. So, the two elements are both important. A major focus of those dialogues is likely to be regulatory divergence, which we examine in the next section.

## **Divergent national service regulation**

The treatment of national regulation has been at the centre of the debate on international trade since the creation of the WTO in 1995 when, at its creation, many subjects were extended compared to the GATT. The central issue became how to create a level playing field for companies. To illustrate, suppose that there are major differences in national legislation, and this national legislation affects the costs of companies. In that case, even if there is free access to each other's markets, competitiveness differs. This aspect also plays a significant role in trade in services. For example, if there are substantial differences in the regulation of banks and, as a result, operating costs differ between banks but there are rights to provide services in each other's markets, then such differences in national legislation have a far-reaching impact on competitiveness. Francois and Hoekman (2010) argue that such instances of legislative differences behind national borders are the most problematic aspect of liberalising services. It is, therefore, often very difficult to assess how the liberalisation of services will work if there is no prior harmonisation of national policies. As a result, as we have seen, countries in the past often have reverted to a positive list approach of liberalisation where only services included in the mandate are released. Negative lists eventually emerge, but reluctantly so. Besides, a commitment to market entry still needs to be implemented, and it is sometimes felt that when the negotiating gloves are finally put down, national governments still have many opportunities to

frustrate trade in services in practice. The instruments available are fundamentally different from a tariff applied at the border, with a much higher level of transparency.<sup>4</sup>

Legislation behind national borders is also crucial for trade in services in another way. In many cases, the establishment of branches abroad is necessary for the provision of services due to agency concerns. That is, the most important mode of international trade is not to offer services across borders but to set up services through foreign direct investment (Mode 3). Staiger and Sykes (2016) argue that this mode of providing international services gives national governments many opportunities to hinder competition. An example is the imposition of a requirement for the majority of ownership in residents' hands or that nationals be in control, as is often the case with air transport and professional services. Alternatively, some services might be designated as 'vital infrastructure', in which there can be no foreign majority stakes in national establishments. Such requirements substantially restrict the scope of market access. Thus, there are often many opportunities for the effective restriction of competition, such as the ownership of real estate and participation in public tenders.

In addition, exporting countries are less able to rely on incentives to help their companies enter other markets effectively, which is possible to a limited degree with state subsidies in industrial products and is also applied quite extensively. In other words, the instruments available to national governments to make negotiations within the WTO in the field of industrial products effective are lacking as a bargaining chip or as a threat in the negotiations on the liberalisation of services. As a result, liberalisation within GATS lags far behind that in the WTO, and sectoral bilateral negotiations on trade in services are often prolonged.

However, there are often good reasons why countries have different levels of legislation in terms of, for example, the environment and intellectual property. Differences in income (and the opportunity costs of systems of regulatory design and operation), culture, and history mean that heterogeneity in legislation is desirable as well as understandable. As a result, there is a trade-off between, on the one hand, harmonising legislation between countries to reduce costs for multinational companies and, on the other hand, providing respect for heterogeneity of policy preferences between countries. For example, in the RCEP region, with significant cultural differences and income differences, this continues to be an important issue, which was resolved in part by providing options for economies to agree on common goals related to economic integration but to move on different schedules and pathways yet with an endpoint (Armstrong and Drysdale, 2022).

<sup>&</sup>lt;sup>4</sup> Lamy (2017) gives another reason why behind the border differences in legislation are costly. Although the research literature tends to focus on bilateral trade situations, it is relevant for multinational companies to operate in more than two and even more than 50 countries. If all those countries have different standards, the costs for multinational companies increase enormously, which makes international business, despite all its potential economies of scale, less competitive than local businesses.

As noted, RCEP offers its own institutional arrangements to support work on resolving impediments to integration related to regulatory divergences. The agreement lays out an important set of principles for the operation of regulatory systems in services, which is aligned with the recent outcome of negotiations under WTO auspices on services domestic regulation. The question remains, however, about the organisation of activities to implement these principles in this context. There is recently increasing attention on various structures called information platforms or value chain councils, which are designed to make progress towards the recognition of divergences in regulatory systems and the development of systems for their alignment. Findlay and Hoekman (2021) present an example of these councils and discuss how they might operate and who might participate. RCEP provides a forum for testing and refining models of this type.

#### Servicification, GVCs, and trade policy

GVCs and servicification enter the discussion on optimal trade policy at various levels. First, it should be mentioned that trade policy analysis by including GVCs has only recently begun to grow rapidly in the trade literature. So far, there is limited explicit treatment of the role of services in the nexus of GVCs and trade policy. To start with potential mechanisms, the most straightforward one is to consider services traded across borders or supplied by foreign affiliates as inputs in GVCs through backward and forward participation. Second, services themselves may enter in full-service value chains that are increasingly important in global trade. Hence, instead of thinking of services as inputs in manufactured goods only, they may also be important as inputs in other services. The input of ICT services, for example, in financial services, is a case in point. In the modern economy and especially in emerging markets, financial companies are evolving into technology firms. Then, the third level is servicification, where services are embodied in manufactured goods traded in GVCs.

To understand the services trade policy issues connected to the treatment of GVCs, it is wise to first review the effective tariff theory that has been around since its introduction by Max Corden in the 1960s. If final goods are produced with imported inputs, having high tariffs on final goods and low ones on inputs (resulting in tariff escalation), value-added increases in domestic value chains. Then move the argument forward by considering that in the modern economy, services often are an important input in final production. Therefore, in manufactured products or services, high levels of restriction on imported services or on foreign service affiliates whilst applying liberal trade regimes for final goods and services become more critical in the process of producing manufactured goods through servicification, liberalising trade in goods reduces profit margins due to 'tariff de-escalation'. Thus, the effective tariff argument works against the restrictions on services trade that are used as inputs.

The same process is relevant within value chains for services. As we noted above, the rapidly growing area of services exports in the region are those related to ICT. As the experience of other developing economies has illustrated, there is scope for all members of RCEP to participate in value chains for modern services (World Bank, 2021). Competitiveness at each point in the chain depends on access to the outputs of earlier steps and to the services, such as telecommunications, that facilitate the operation of these services value chains. The scope to add value in this way is a factor in the reduction of restrictions applied to these inputs. RCEP provides a vehicle for making relevant commitments, thereby capturing these opportunities.

## **Digital transactions**

The treatment of data flows is critical to the delivery of modern services. These services contribute to the performance of the GVCs of other goods and services and are themselves produced in that context. The chains involve the collection, aggregation, storage, processing, and application of data. These activities can be located in different economies, leading to significant movements of data across borders. The extent of these transactions is likely to increase with the application of the next round of communications technology (5G), which will facilitate people-to-people and people-to-machine interactions. It will accelerate the implementation of Baldwin's 'third unbundling'. All RCEP members have interests in these development, where there is evidence of rapid growth of ICT services exports. The processes of the third unbundling will create even more opportunities.

RCEP includes a chapter on data. It refers to cybersecurity, consumer protection, and data privacy. Members commit to protecting personal data and refrain from imposing customs duties on digital transmission (conditional on continuing WTO Ministerial support for doing so). Armstrong and Drysdale (2002) observe that whilst the chapter also apparently prohibits members from imposing barriers on cross-border data flows, there are various 'carve-outs' for doing so. Those more critical of the agreement often benchmark it against the CPTPP, and report that whilst many aspects are similar, the treatment of the location of computing facilities and the cross-border transfer of data is 'weaker' (Leblond, 2020). Hufbauer and Hogan (2021) also stress the differences from the CPTPP and say that RCEP 'does little' (p.5) to limit government intervention in digital markets. However, the structure of the agreement is important. These items are covered in the text, and the circumstances in which they might not be applied are specified. In fact, for example, the text on the location of computing facilities is 'almost a mirror' (Leblond, 2020) of that in the CPTPP. But there is the addition of a reference to public policy and to security interests as reasons for diverging from this text. The CPTPP also refers to restrictions based on legitimate public policy interests but includes the expectation that such measures will not be more restrictive than necessary. The only major item not included in RCEP is the

treatment of source code. Also, whilst the dispute settlement provisions do not apply to the relevant chapter, the novelty, complexity, and diverse experiences of the members help build the case for the application of the cooperation mechanisms in the agreement as a way of extending commitments in this area instead. Overall, therefore, RCEP has a structure relevant to the treatment of digital transactions, which provides for the scope over time to raise the level of commitment.

There are important complementarities of digital services with telecommunications. Provisions in that area in trade agreements (not including RCEP) and in the GATS are reviewed by Monteiro (2021). According to that framework, the RCEP Annex on Telecommunications contains many features of the GATS, such as references to access to networks, competitive safeguards, treatment by major suppliers, interconnection, independent regulatory bodies, universal service, scarce resources, and transparency. But it goes further to refer to flexibility in approaches to regulation, number portability, resale, co-location, roaming, access to specific assets including cables, and also flexibility in the choice of technology. The cooperation provisions of the agreement are also relevant to the alignment of standards in this sector.

## Conclusions

This study has discussed the implications of regional integration in Asia and specific developments around RCEP as far as modern services are concerned. First, we presented some facts based on data on trade in modern services. Here it emerged that transport services are still very dominant. However, information technology and financial services are also emerging regionally in terms of bilateral trade in modern services. However, these modern services are still hard to establish as a competitive advantage for the region.

The question is to what extent the lack of competitiveness (Singapore being an exception) is due to underlying comparative advantages, or whether it may also be related to traderestrictive measures and substantial differences in national legislation in the area of service provision. The data show that restrictions on trade in services in the region are still high compared to other countries and, indeed, in some new member states joining ASEAN through RCEP. This level of restrictiveness is combined with a high degree of legislative heterogeneity in the region, which contributes to the fact that regional integration in modern services is complex, and there are still many battles to be fought. Such steps are often taken on the initiative of a handful of member states, and it is difficult to judge which of them should lead the way. Leading also has to do with the incentives that different countries have to make RCEP a success in modern service delivery. To get to the bottom of this, we have carried out an econometric analysis looking at the welfare effects of lowering restrictions within the region at the country level. A general conclusion is that these welfare gains and the mechanisms by which they are achieved differ significantly between member countries. The gains are particularly significant for established service exporters, such as Singapore and to a lesser extent Australia and New Zealand, as well as some other ASEAN members. Large new member states such as Korea, Japan, and China have relatively less to gain from freer trade in the region.

We have also analysed the most important policy questions regarding the regional integration of modern services. Here, we have reviewed the shift in trade flows in terms of how services are exported, including via various modes of supply and the relationships between them. We have also reviewed the shift from positive to negative listing and the increasing importance of participation in global value chains, and how this can be stimulated through regional integration. We have paid particular attention to negative listing, in part because we argue that it helps respond to business interests in trade negations. It is also important because lower-income countries in the region will find it challenging to prepare appropriately for these negotiations and ensure that consumers' interests are protected. There also appears to be a role for regional solidarity here, not only for consultation but also financially through structural adjustment and digitalisation support. RCEP has an excellent architecture for managing issues in digital transactions, we argue, which are relatively more important for modern services. We have also discussed options for responding to divergent national regulation, including through the application of RCEP institutional arrangements.

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# CHAPTER 6

## Opportunities and Challenges for ASEAN and East Asia from the Regional Comprehensive Economic Partnership on E-Commerce

1 ICH

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The Regional Comprehensive Economic Partnership (RCEP) is a microcosm of the current tensions in negotiations on digital trade involving parties that have divergent positions on the digital economy, data, and regulation, including within the Association of Southeast Asian Nations (ASEAN) itself. It adopts a prudent approach that recognises the state parties need flexibility and policy space at the national and regional levels to develop of policy and regulation in the rapidly changing digital ecosystem and seeks to advance their collective interests through dialogue and cooperation. This paper contrasts that approach with the disciplinary nature of binding legal obligations that are enforceable by other states and their investors, as in the Trans-Pacific Partnership Agreement and similar recent treaties. The analysis of key differences focuses on matters of particular importance to ASEAN, such as local content and government procurement, data rules and flexibilities, financial data, source codes, and transparency. RCEP's cautious approach enables ASEAN members to deepen their national and regional understanding of the opportunities and challenges these agreements present, whilst developing and implementing their own digital development strategies. Yet those good efforts may be undermined through the binding and enforceable trade in services rules.

## Introduction

Electronic commerce, also called digital trade, is the most prominent 'new issue' in international trade negotiations and has become increasingly controversial. Novel rules on e-commerce that were adopted in the Trans-Pacific Partnership (TPP) Agreement in 2016 were originally designed by and for the United States (US) technology companies that dominate the digital domain globally (Kelsey, 2018). These binding and enforceable rules presumed a hands-off approach to regulation, consistent with the US model, and were carried through unchanged to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) following the United States stepping away from the original agreement.

The TPP/CPTPP precedent has since informed negotiations on digital trade in various free trade agreements (FTAs) and in a plurilateral initiative at the World Trade Organization (WTO). The most expansive agreements to date are the US–Mexico–Canada Agreement (USMCA)<sup>1</sup> and the Singapore–Australia Digital Economy Agreement,<sup>2</sup> both of which

<sup>&</sup>lt;sup>1</sup> US-Mexico-Canada Agreement, signed 10 December 2019, entered into force 1 July 2020. For example, Chapter 19 on Digital Trade extended the protection for owners of source codes in the TPP/CPTPP from disclosure requirements to include algorithms (Article 19.16).

<sup>&</sup>lt;sup>2</sup> Singapore–Australia Digital Economy Agreement, signed 6 August 2020, entered into force 8 December 2020. This agreement also extended protections for algorithms (Article 7) and has stronger requirements for cross-border data transfer (Art 23) and online consumer protection laws (Article 15).

entered into force in 2020. Agreements involving the European Union (EU), such as the EU Mercosur Trade Agreement,<sup>3</sup> use a different configuration and legal tools to achieve broadly similar goals, whilst protecting areas of sensitivity to the EU, notably on personal privacy.

However, a global convergence around a TPP-based norm should not be assumed. A regulatory regime for the digital domain needs to balance economic interests, digital development, indigenous and human rights, and national security. There are many international forums that might be considered appropriate to develop this regime. Trade agreements that have a bias towards commercial interests, rely on compliance through enforcement of legal obligations, and are commonly negotiated in secret, are particularly ill-suited to that task (UNCTAD, 2021).

There is an increasingly mature understanding amongst a number of governments, especially from developing countries, that these rules may have negative impacts on digital development, social wellbeing, and national security. There is also scepticism over the real-world effect of rules that may, on their face, look helpful to developing countries, because the unlevel global playing field means they are likely to entrench the dominance of first movers over the world's digitalised infrastructure and economy. Other provisions will constrain revenue and governments' policy and regulatory options. Some procedural and institutional obligations will also stretch countries' institutional capacity.

This caution is evident in the Regional Comprehensive Economic Partnership (RCEP) amongst the 10 ASEAN members and five other countries from the Asian region,<sup>4</sup> as it implicitly recognises the need for flexibility to determine appropriate modes of regulation and digital development strategies through cooperation and dialogue at the regional level. The final text omitted, or significantly altered, several core elements of the CPTPP e-commerce chapter. Some rules included flexibilities that give governments more policy space and ASEAN and East Asian businesses more opportunities to compete with the dominant big tech corporations than provided in the TPP/CPTPP. The moratorium on the right to impose tariffs on cross-border electronic transmissions remains temporary and tied to a multilateral decision at the WTO, whereas the TPP and some other recent FTAs have made it permanent. Crucially, RCEP's e-commerce chapter is not enforceable, subject to future review. It remains to be seen how this approach will influence the way that ASEAN countries respond to pressure to negotiate on e-commerce in future FTAs and at the WTO.

<sup>&</sup>lt;sup>3</sup> European Union Mercosur Trade Agreement, Agreement in Principle 28 June 2019, Sub-section 6 E-commerce of Section 3 Regulatory Framework, in Title XXX Trade in Services and Establishment.

<sup>&</sup>lt;sup>4</sup> India was a participant in the negotiations but withdrew in November 2019 before the RCEP agreement was signed.

The RCEP outcome also reflects a compromise between powerful states that have divergent positions on the digital economy, data, and regulation. Whereas the TPP was driven by US interests, and later championed by Singapore, Australia, and Japan in the CPTPP, the WTO and their own FTAs, China and India brought their own commercial and nationalist aspirations to the RCEP negotiating table.

Section 2 of this paper outlines the context and structure of the electronic commerce provisions in RCEP, addressing the complex configurations amongst the 16 RCEP negotiating countries in relation to e-commerce, the dominance of big tech incumbents, and the spread of e-commerce-related provisions across the e-commerce, trade in services, and financial services chapters.

Section 3 focuses on the more traditional trade-related provisions in RCEP's e-commerce chapter that deal with paperless trading, e-signatures, e-authorisation, and a legal framework for electronic transactions.

In section 4 a number of key differences between the TPP/CPTPP and RCEP are examined to highlight current sensitivities over digital trade rules, including on enforcement, revenue, local content and government procurement, data rules and flexibilities, financial data, source codes, and transparency.

Section 5 briefly discusses the general regulatory provisions that require governments to have consumer protection and personal privacy laws without specifying any minimum standards.

The paper concludes that RCEP is a microcosm of the current tensions in negotiations on digital trade. It has adopted a prudent approach that recognises that state parties need flexibility and policy space at the national and regional levels to develop policies and regulations in the rapidly changing digital ecosystem and seeks to advance their collective interests through dialogue and cooperation, in contrast to the coercive approach of legal obligations that are enforceable by other states and their investors adopted in the TPP/CPTPP.

## The Context and Content of e-Commerce in RCEP

The RCEP negotiations were launched in November 2012 and concluded 7 years later in November 2019. The agreement was signed in November 2020. It entered into force on 1 January 2022 after notification of ratification by more than the requisite six of the 10 ASEAN member states<sup>5</sup> and three of the five non-ASEAN signatory states.<sup>6</sup> Subsequent ratifications take effect 60 days after notification.<sup>7</sup>

## **E-Commerce Positions of Negotiating Parties**

The 16 states that participated in the RCEP negotiations are diverse. ASEAN operated as a single entity applying its principle of consensus, which was sometimes hard to reach; some final obligations of its members differ. The six non-ASEAN participants – Australia, China, India, Japan, New Zealand, and the Republic of Korea – all have FTAs with ASEAN, hence their collective label as ASEAN Foreign Partners. Each brought its own geopolitical, strategic, and commercial objectives to the table, which only occasionally converged. India actively pursued its specific interests throughout the negotiations before it withdrew in November 2019, shortly before the agreement was announced.

Country	Ratified RCEP	ASEAN	ТРР/СРТРР	WTO JSI
Australia	Х		Х	Х
Brunei Darussalam	Х	Х	*	Х
Cambodia	Х	Х		
China	Х		+	Х
India	٨			
Indonesia	*	Х		Х
Japan	Х		Х	Х
Lao PDR	Х	Х		Х
Malaysia	Х	Х	*	Х

#### Table 6.1 RCEP Participants' Plurilateral Digital Trade Obligations

<sup>&</sup>lt;sup>5</sup> Brunei, Cambodia, Lao People's Democratic Republic, Singapore, Thailand, Viet Nam, as per Regional Comprehensive Economic Partnership agreement, signed 15 November 2020, entered into force 1 January 2022 (RCEP) Art 20.6.2.

<sup>&</sup>lt;sup>6</sup> In fact, four non-ASEAN signatories (Australia, China, Japan, New Zealand) became original parties.

<sup>&</sup>lt;sup>7</sup> RCEP Article 20.6.3. Malaysia and the Republic of Korea subsequently submitted instruments of ratification.

Country	Ratified RCEP	ASEAN	TPP/CPTPP	WTO JSI
Myanmar	*	Х		Х
New Zealand	Х		Х	Х
Philippines	*	Х		Х
Singapore	Х	Х	Х	Х
Republic of Korea	Х		+	Х
Thailand	Х	Х		Х
Viet Nam	Х	Х	Х	

ASEAN = Association of Southeast Asian Nations, CPTTP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, JSI = Joint Statement Initiative, RCEP = Regional Comprehensive Economic Partnership, TPP = Trans-Pacific Partnership, WTO = World Trade Organization.

Notes: ^ withdrew before signing, \* signed but not yet ratified, + applied to join.

Source: Compiled by the author (as of May 2022).

Negotiating positions on e-commerce were complicated by the participating states' other FTA obligations. Seven of the sixteen, including four ASEAN Member States, are also signatories to the CPTPP: Australia, Brunei Darussalam, Japan, Malaysia, New Zealand, Singapore, and Viet Nam, although Malaysia and Brunei have not ratified the agreement. All the TPP/CPTPP countries are also participating in the plurilateral negotiations on electronic commerce at the WTO – often called the Joint Statement Initiative (JSI) – which Australia, Singapore, and Japan have jointly convened, and whose draft text broadly follows the TPP model.<sup>8</sup>

ASEAN had significant internal tensions on e-commerce. The group adopted an aspirational agreement on e-commerce in 2019,<sup>9</sup> which entered into force in 2021 alongside a broad digital masterplan (ASEAN Secretariat, 2021); the recently revised ASEAN Trade in Services Agreement is also pertinent. Whilst several ASEAN states had commitments under the TPP/CPTPP, others were developing innovative national digital strategies that required protections for their policy space. Indonesia, for example, was actively considering how to regulate and tax the digital domain (Kelsey, 2021). Viet Nam, a TPP/CPTPP Party, was still regulating data and digital transactions during its transition period before those obligations entered into force.<sup>10</sup>

<sup>&</sup>lt;sup>8</sup> The text has not been released publicly but the Revised WTO Electronic Commerce Negotiations. Updated consolidated negotiating text – September 2021, INF/ECOM/62/Rev.2 is available at https://www.bilaterals.org/?-other-292-.

<sup>&</sup>lt;sup>9</sup> ASEAN Agreement on Electronic Commerce 2019 signed on 22 January 2019. https://agreement.asean.org/media/ download/20190306035048.pdf.

<sup>&</sup>lt;sup>10</sup> Trans-Pacific Partnership Agreement (TPP) signed on 4 February 2016, and Comprehensive Agreement for Trans-Pacific Partnership (CPTPP) signed on 8 March 2018, entered into force 30 December 2018, Article 14.18 provides for non-enforcement for 2 years after the TPP's entry into force. Additional side-letters extended this for Viet Nam's laws related to cyber security for 5 years after the CPTPP's entry into force for Viet Nam. See, for example, the exchange of letters between the Governments of Viet Nam and New Zealand dated 2 March 2018. https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/Viet-Nam-New-Zealand-Cyber-Security.pdf

China and India both approached the RCEP negotiations with strong, but different, offensive and defensive interests in the digital domain. India vigorously promoted measures to benefit its cross-border services, such as outsourcing and back-office operations (known as mode 1 of trade in services) and non-permanent migration of its information technology professionals (known as mode 4). Whilst the main reason for India's withdrawal from RCEP was the potential impact of commodity imports on its domestic economy, especially from China, the failure to secure significant concessions on cross-border mobility of its professionals was another justification for its exit. India remains a strong critic of the plurilateral negotiations on e-commerce at the WTO (Sen, 2021), partly because of the institutional consequences of the unmandated JSI negotiations and because they will enable India's offensive interests to be bypassed.

China's approach was consistent with its Digital Silk Road strategy that focuses on infrastructure and the digital eco-system. Some TPP/CPTPP-style rules benefit China's tech giants, such as AliBaba and Tencent, with their integrated search engines, trading platforms, e-finance, logistical hubs, as well as data mining and engineering. China also has interests in reducing tariffs and easing technical standards for information technology and smart products and in customs facilitation for products traded through regional supply chains. At the same time, China was concerned to protect its stringent restrictions on digital operators and users within, and increasingly outside, the country under the broad rubric of 'national security'. China has taken a similar approach at the WTO (Gao, 2020). It remains to be seen how China intends to navigate these issues in its application to accede to the CPTPP.

The tensions between these diverse, and often conflicting, strategic, commercial, regulatory, security, and geopolitical interests are evident in the final RCEP text.

## First Mover Beneficiaries of e-Commerce Rules

These political complexities blunted the influence of the powerful US tech industry lobbyists on the RCEP outcome, and the final RCEP e-commerce rules walked back the binding and enforceable rules that they had secured in the TPP/CPTPP.

Nevertheless, the digital multinational enterprises (MNEs) still stand to be the principal beneficiaries of RCEP's e-commerce chapter as the main suppliers of services in or into the region. The Asian Internet Coalition, for example, represents Airbnb, Amazon, Apple, Booking.com, Cloudfare, Facebook (now Mega), Google, Expedia, Line, Linkedin, Rakuten, Sap, Twitter, and Yahoo.<sup>11</sup> These and other tech industry giants have shown themselves to be pass masters at regulatory and tax arbitrage, with complex corporate structures

<sup>&</sup>lt;sup>11</sup> For an example of the tech industry's lobbying position, see GSMA Asia-Pacific (2017).

that provide coverage under trade rules, whilst minimising their exposure in domestic jurisdictions. The RCEP e-commerce rules facilitate that model. Even though the US is not a party to RCEP, if governments' regulatory frameworks seek to differentiate between those companies and other regional or local firms, the US might initiate investigations under Section 301 of the Trade Act of 1974 and threaten unilateral sanctions, as it has done over digital services taxes (Kelsey, 2021).

Notionally, businesses in ASEAN and East Asian countries should also benefit from the RCEP rules. However, not all tech companies are equal. The digital trade rules facilitate the concentration of operations from a regional, if not global, hub. This enables the incumbents to collect, consolidate, mine, and engineer data, the essential raw material in the global digitalised economy, so as to strengthen their oligopolies. It will remain difficult for most domestic businesses to compete, or even to enter the mainstream digital market. That is especially so for micro, small, and medium-sized enterprises (MSMEs). Rules that prevent requirements for data to be stored locally will also fetter the ability of states and their businesses to benefit from data generated within their own territory to advance their digital development strategies. Those, and other, rules will constrain how governments can address a wide range of other public policy, revenue, and security issues.

Concerns over these commercial realities, the dominance of incumbents over the digital eco-system, and constraints on regulation imposed by the rules are reflected in the flexibilities and exceptions written into RCEP, in contrast to other recent agreements.

## An Overview of e-Commerce in RCEP

When a chapter carries the title of a particular subject there is a risk that people do not look beyond that to other chapters that also bear on the subject. That risk is particularly high with electronic commerce. Three substantive chapters – on Electronic Commerce, Trade in Services, and Investment – together constitute RCEP's e-commerce rules, although other agreement-wide provisions, such as definitions and exceptions, and aspects of the Intellectual Property chapter are also relevant.

Chapter 12 of RCEP is titled 'Electronic Commerce'. The chapter applies to '*measures* adopted or maintained by a Party that *affect* electronic commerce'. 'Measures' are defined expansively in the agreement to be any law, regulation, rule, procedure, decision, administrative action, or any other form of government action.<sup>12</sup> 'Affect' has a broad sweep, not limited to measures that directly target e-commerce. 'Electronic commerce' itself is not defined, but the provisions in the chapter extend far beyond cross-border online commercial transactions and include matters like personal privacy and spam.

<sup>&</sup>lt;sup>12</sup> RCEP Article 1.2.q.

The Chapter on Electronic Commerce has five sections as set out in Table 6.2. Section A *General Provisions* covers Definitions, Principles and Objectives, Scope, and Cooperation. Section B has two *Trade Facilitation* provisions: Paperless Trading, and Electronic Authentication, and Electronic Signature.

Section A. General Provisions		
12.1	Definitions	
12.2	Principles and Objectives	
12.3	Scope	
12.4	Cooperation	
Section B. Trade Facilitation		
12.5	Paperless Trading	
12.6	Electronic Authentication and Electronic Signature	
Section C. Creating a Conducive Environment for Electronic Commerce		
12.7	Online Consumer Protection	
12.8	Online Personal Information Protection	
12.9	Unsolicited Commercial Electronic Messages	
12.10	Domestic Regulatory Framework	
12.11	Customs Duties	
12.12	Transparency	
12.13	Cyber Security	
Section D. Promoting Cross-Border Electronic Commerce		
12.14	Location of Computing Facilities	
12.15	Cross-border Transfer of Information by Electronic Means	
Section E. Other Provisions		
12.16	Dialogue on Electronic Commerce	
12.17	Settlement of Disputes	

#### Table 6.2 RCEP Chapter 12 on Electronic Commerce

Source: Prepared by author from the RCEP text.

Section C, *Creating a Conducive Environment for Electronic Commerce*, has one genuine trade provision, dealing with Customs Duties. The remaining provisions in Section C – Online Consumer Protection, Online Personal Information Protection, Unsolicited Commercial Electronic Messages (also known as spam), Domestic Regulatory Frameworks, Transparency and Cyber Security – are more general regulatory issues. The increasing overreach of the 'trade' rubric into such broad areas of domestic regulation has become a significant source of criticism of the development of these e-commerce or digital trade rules.

Similarly, the two rules in Section D, *Promoting Cross Border Electronic Commerce*, which cover Location of Computer Facilities and Cross-border Transfer of Information by Electronic Means, restrict Parties' regulation of data flows and their ability to require that domestically sourced data is retained and accessible within the country.

The chapter's final section, *Other Provisions*, provides for Dialogue on Electronic Commerce, especially TPP/CPTPP matters omitted from RCEP. Crucially, it also excludes the chapter from coverage of the state–state dispute settlement chapter, for now.

Complementing the e-commerce chapter, 'measures affecting the supply of a service delivered electronically' are also covered by the relevant obligations in Chapter 8 Trade in Services and Chapter 10 Investment, subject to sectoral commitments and reservations made by Parties in those chapters.

Chapter 8 contains rules on non-discrimination, not limiting access to the domestic market, and not requiring cross-border suppliers to have a local presence; obligations in this chapter are enforceable. The chapter applies to a broad range of computer and related services, advertising, distribution, cultural, health, education, transportation, and business services, amongst others, with sectoral annexes on financial services, telecommunications, and professional services. Those rules will significantly constrain the regulation of digital and cross-border service suppliers and activities. Their application to individual Parties is subject to complex scheduling that is unlike any of their previous agreements.<sup>13</sup>

Financial institutions, public entities, and financial service suppliers are excluded from coverage of the e-commerce chapter, as are investors in financial services and institutions. However, Annex 8-A Financial Services applies some related, but different, rules to those entities and activities.

<sup>&</sup>lt;sup>13</sup> RCEP Articles 8.3, 8.7, and 8.8.

The e-commerce chapter makes several explicit references to these other chapters. The rules that restrict data localisation apply to a 'covered person', which refers to service suppliers as defined in Chapter 8 Trade in Services, and to a covered investment<sup>14</sup> and covered investors defined in Chapter 10 Investment.

This multi-chapter interface comes with further complexities. The sectoral commitments and reservations made by Parties in the services and investment chapters are imported to the e-commerce chapter only for the data transfer and location provisions, and only to the extent that measures a government adopts are protected in those schedules – which is difficult to interpret, because these commitments and reservations are framed to address different rules from those in the electronic commerce chapter.

The accumulation of these chapters creates a legal minefield for domestic regulators and digital companies.

## Facilitating Traditional Electronic Commerce Transactions

RCEP does not define electronic commerce. Clearly, it covers trade in traditional commodities which are transacted with the assistance of digital technologies. Chapter 12 has two provisions designed to facilitate that kind of trade, covering three kinds of measures: paperless trading, electronic signatures, and electronic authentication. The first two measures reflect the RCEP preference for flexibility and good faith commitments over enforceable obligations and seek to balance assistance to exporters and importers with the burdens of compliance on businesses and governments.

## **Paperless Trading**

The general obligation on Paperless Trading is mandatory ('shall').<sup>15</sup> However, it only requires parties to 'work towards' implementing paperless trading initiatives and to 'endeavour' to accept trade administration documents as the legal equivalent of paper versions and make trade administration documents available to the public in electronic form. The three ASEAN least-developed countries (LDCs) – Cambodia, the Lao People's Democratic Republic (Lao PDR), and Myanmar – have a grace period for compliance of 5 years after RCEP enters into force for them.

<sup>&</sup>lt;sup>14</sup> RCEP Article 10.1 uses a wide asset-based definition of investment to include enterprises, shares, intellectual property rights, rights under contracts and licenses, and more.

<sup>&</sup>lt;sup>15</sup> RCEP Article 12.5.

#### e-Signatures

The provision on e-signatures uses a different legal formulation to provide governments with even more flexibility: a Party cannot deny the legal validity of a signature solely because it is in electronic form 'except in circumstances otherwise provided for under its laws and regulations'.<sup>16</sup> That enables a Party to adopt or maintain laws that do not accept e-signatures as legally valid. The word 'solely' also implies that e-signatures could be denied validity on grounds additional to the fact they are in electronic form. Cambodia and Lao PDR again have a 5-year transition period, but not Myanmar.

Full implementation of these obligations would make transactions easier for ASEAN businesses to operate across the border, and potentially within the domestic economy, provided those businesses have access to the necessary technology and the relevant platforms. That proviso could be problematic for smaller businesses and those from countries with limited technology and connectivity. At the same time, full compliance could impose significant implementation costs on governments, which is why the provisions only require 'endeavours' to comply.

## e-Authentication

There is less flexibility in the third kind of measure, e-authentication,<sup>17</sup> which more closely aligns with the TPP/CPTPP. Governments must allow participants in e-transactions to decide what they consider are appropriate authentication technologies and implementation models (such as multi-factor, certificate based, biometric or token-based authentication) and not limit recognition of those technologies and models. The Party can still have laws on electronic authentication, but transactors must have the opportunity to show that the e-authentication methods they have chosen are compliant with those laws.

Whilst financial services are excluded from Chapter 12 Electronic Commerce, regulations on e-authentication might also be considered to be 'measures affecting' the supply of services electronically, such as computer and related services and financial services, under the Trade in Services chapter and its Financial Services Annex. It is unclear whether the negotiators discussed that possibility as the negotiating history is not publicly available.

The e-authentication provision potentially benefits all businesses by providing assurance of identity in sensitive transactions and minimising risks of fraud. In practice, the

<sup>&</sup>lt;sup>16</sup> RCEP Article 12.6.1.

<sup>&</sup>lt;sup>17</sup> RCEP Article 12.6.2.

technology will be dictated by the more powerful party/ies in a commercial relationship, and MSMEs may not have access to the technology or be able to afford the technology and license fees.

The provision provides some flexibility for governments to impose performance standards or certification requirements on a particular category of e-transactions. Whilst the scope of this flexibility is limited to performance measures or certification, and must apply to specified categories, the content of those measures and the number of categories is not prescribed. However, the provision appears to prevent RCEP governments from requiring the use of particular forms of cybersecurity, etc, such as two-factor authentication or encryption of personal details, unless the government frames them as 'performance standards' and designates special categories to which those standards apply.

## Legal Framework for Electronic Transactions

The Parties to RCEP must also establish or maintain a domestic legal framework to govern 'electronic transactions'.<sup>18</sup> Again, there is a lack of clarity for policymakers. Electronic transactions are not defined. It is unclear, for example, whether this refers only to commercial transactions or also covers non-monetised online activities where users access 'free' services for the price of their data.

The framework is not prescribed but must 'take into account' the relevant United Nations Commission on International Trade Law (UNCITRAL), United Nations (UN), or other international conventions and model laws on electronic commerce. The UN Convention on the Use of Electronic Communications in International Contracts, which is specifically cited, applies only to use of electronic communications in international contracts; however, the UNCITRAL Model Law on Electronic Commerce inscribes fundamental legal notions of non-discrimination, technological neutrality and functional equivalence, which makes it vital for governments to understand the scope of its application.<sup>19</sup>

Parties must 'endeavour' to avoid this legal framework imposing an 'unnecessary regulatory burden', implying a light-handed approach. Endeavour provides some flexibility, but it is still a positive obligation. Only Cambodia has a 5-year grace period for implementation.

<sup>&</sup>lt;sup>18</sup> RCEP Article 12.11.

<sup>&</sup>lt;sup>19</sup> The TPP/CPTPP more strictly requires the framework to be consistent with the UNICTRAL Model Law or UN Convention, TPP/CPTPP Article 12.14.5.1.

## Significant Differences Between the TPP/CPTPP and RCEP

The substance of the trade-related provisions discussed above were very similar across RCEP and the TPP/CPTPP; the difference was in the degree of legal obligation. At first glance, most other parts of the e-commerce chapters also seem very similar. However, there are at least six important differences between the two agreements that illustrate the tension over the balance between the commercial and regulatory elements of e-commerce rules in contemporary trade agreements.

## Enforcement

By far the most significant difference between the agreements involves enforcement. The e-commerce chapter of the TPP/CPTPP is fully enforceable through the state-state dispute settlement system. The TPP/CPTPP also provides for investor-state dispute settlement; whilst tech companies established in another Party could not directly enforce the e-commerce chapter rules, they could seek awards of compensation for the same measures by claiming that they breach the investor protection rules in the Investment Chapter.<sup>20</sup>

By contrast, the RCEP e-commerce chapter is not enforceable by state-state dispute settlement.<sup>21</sup> Disputes between the Parties over interpretation of and compliance with Chapter 12 are subject to good faith consultations. Application of the dispute settlement process to the chapter will be part of the 5-yearly general review of RCEP,<sup>22</sup> after which some RCEP Parties could elect to have it apply to them. Any such decision would only bind those RCEP Parties that so agree.

The main operational provision promotes dialogue between the Parties, under the auspices of the RCEP Joint Committee, on a number of mandated matters:<sup>23</sup> cooperation to assist MSMEs and to enhance capacity in the regulatory space, information sharing, building trust, and promoting development of e-commerce in regional and multilateral forums; current and emerging issues, including source codes and data flows and storage; and matters relating to development of e-commerce, such as anti-competitive practices, online dispute resolution, and temporary movement of professionals. The outcome of the dialogue is to be considered as part of the 5-yearly general reviews of the Agreement as a whole.<sup>24</sup>

<sup>&</sup>lt;sup>20</sup> TPP/CPTPP Article 9.6.3 says an investor cannot rely on a finding of a breach of another provision of the Agreement as establishing a breach of minimum standard of treatment for investors. However, that does not stop the investor making a claim about the same measure.

<sup>&</sup>lt;sup>21</sup> RCEP Article 12.17.

<sup>&</sup>lt;sup>22</sup> That is provided for in RCEP Article 20.8.

<sup>&</sup>lt;sup>23</sup> RCEP Article 12.16.

<sup>&</sup>lt;sup>24</sup> RCEP Article 20.8.
Chapter 10 on Investment is subject to the state–state dispute settlement chapter – but there is no investor dispute mechanism under RCEP, a matter also flagged for future discussion.<sup>25</sup> However, RCEP Chapter 8 Trade in Services is fully subject to state–state disputes, and a broad interpretation of its coverage could neutralise the unenforceability of Chapter 14.

### The Moratorium on Levying Customs Duties on Electronic Transmissions

Customs duties or tariffs on commodities is a straightforward traditional trade issue. Border taxes on digitalised transactions, services, and products are more complicated. In 1998 the WTO adopted a temporary moratorium on customs duties on electronic *transmissions* (not electronic *transactions*) as an adjunct to a Work Programme on Electronic Commerce.<sup>26</sup> The temporary moratorium has been regularly renewed since then and remains in place today.

There is disagreement on what the moratorium applies to. 'Electronic transmissions' is not defined in the WTO (or RCEP).<sup>27</sup> On the one hand, the US says the moratorium applies to all material transmitted electronically, including content such as movies or 3D printing (Kanth, 2021). But Indonesia secured confirmation from the WTO Secretary General in 2017 that the moratorium does not apply to electronically transmitted goods and services.<sup>28</sup>

Despite this lack of clarity, developed countries want the ban made permanent in the WTO and have already done so in various FTAs.<sup>29</sup> Conversely, many developing countries want the moratorium removed because of its escalating impacts on revenue and on their ability to use tariffs to support their fledgling digital industrialisation (Kanth, 2021). Research published by UNCTAD in June 2020 shows the moratorium has disproportionate and significant tariff revenue losses and development impacts for developing countries, whatever definition of e-transmissions is applied (Kozul-Wright and Banga, 2020). A recent analysis for ERIA made similar findings for ASEAN countries (Montes and Lunenborg, forthcoming).

The TPP/CPTPP and RCEP reflect these conflicting positions. The former commits the Parties to a permanent ban on customs duties on an 'electronic transmission', which it defines as 'a transmission made using any electromagnetic means', but still leaves the distinction between digital carriage (just the technology) and digital content unresolved for the purposes of the ban. Parties to RCEP that have ratified the CPTPP (which Brunei and Malaysia have not) are bound by that obligation, as will be any country that subsequently accedes to the CPTPP.

<sup>&</sup>lt;sup>25</sup> RCEP Article 10.18.

<sup>&</sup>lt;sup>26</sup> WTO General Council (1998), 'Work Programme on Electronic Commerce', adopted 25 September 1998, WT/L/274 (30 September 1998).

<sup>&</sup>lt;sup>27</sup> Taxes, fees, or other charges on electronic transmissions are explicitly excluded, but that simply clarifies the kind of tax, not what it applies to.
<sup>28</sup> World Trade Organization. 'Statement by Indonesia. Facilitator's consultation on electronic commerce. MC11 Declaration, and other relevant plenary sessions. 13 December 2017', WT/MIN(17)/68, 20 December 2017.

<sup>&</sup>lt;sup>29</sup> Of course, any State can unilaterally remove all customs duties on e-transmissions, including content.

RCEP imports the current position at the WTO: a voluntary moratorium under the 1998 WTO Work Programme on Electronic Commerce that is renewed periodically.<sup>30</sup> If WTO Members alter the status quo – which could involve a permanent ban, a roll-over, a longer term, or letting the moratorium lapse – each RCEP Party will be able to decide whether to adjust its approach to reflect that new position.

#### A Broad-based Tax Exception

Taxing the digital economy faces major challenges: the extra-territorial operation of digital MNEs; sophisticated tax planning that enables profit shifting through related party arrangements, such as arms-length contractors, royalties, and management fees; and opaqueness of the business model that relies on mining of data secured from sources for 'free' (Kelsey et al., 2020; Kelsey, 2021).

For some years, the Group of 24 Finance Ministers from developing countries, and the more dominant OECD/G20 Inclusive Framework, have been considering how to update international tax norms to deal with Base Erosion and Profit Shifting by digital MNEs. As discussions within the Inclusive Framework stalled, a number of countries, including several from ASEAN, implemented or proposed to adopt taxes on digitalised services transactions and digital multinational enterprises' revenues.<sup>31</sup>

A digital services tax could be considered a 'measure that affects' e-commerce or trade in various services, such as computer and related services, advertising or distribution services for the purposes of RCEP's trade in services and e-commerce chapters. In addition to non-discrimination rules, a number of e-commerce provisions, especially those that prevent requirements for a local presence (located in the services chapter) and for localisation of data, could hinder a government's ability to tax the digital economy effectively.

Whilst the e-commerce chapter is not enforceable, tax measures may be subject to a state-state dispute under Chapter 8 Trade in Services, discussed earlier. In its defence, governments would have to invoke the taxation exception. As with the moratorium on customs duties, there are stark differences here between the TPP/CPTPP and RCEP.

The WTO-plus obligations in the TPP/CPTPP, including on e-commerce, apply to taxation measures. There is a convoluted tax exception with complex layers of carve-ins and carve-outs.<sup>32</sup> The taxation exception in RCEP is much simpler and significantly reduces the risks

<sup>&</sup>lt;sup>30</sup> RCEP Article 12.11.

<sup>&</sup>lt;sup>31</sup> Under the high-level agreement reached by the OECD/G20 Inclusive Framework in 2021 a proposed Multilateral Convention would require the removal of existing digital services taxes and prevent the introduction of such taxes in the future. See OECD/G20 (2021).

<sup>&</sup>lt;sup>32</sup> TPPA Article 29.4.

of litigation from the adoption of new taxes.<sup>33</sup> The exception caps Parties' obligations with respect to taxation measures at those obligations which already apply in the WTO.<sup>34</sup> In other words, this protects taxation measures from new obligations in RCEP – whether in the e-commerce, trade in services, or any other chapter.

However, RCEP's tax exception only addresses problems that might be posed by its new rules. It does not resolve the existing difficulties with the WTO's exceptions on taxation of goods or services, in particular, Article XIV of the General Agreement on Trade in Services (GATS).<sup>35</sup> That exception is limited to breaches of the national treatment (non-discrimination) rule, and applies only where the measure aims to achieve the equitable and effective implementation or collection of direct taxes and the measure does not constitute arbitrary or unjustifiable discrimination between countries or a disguised restriction on trade.<sup>36</sup>

# Locally Produced Digital Products and Services

As noted earlier, the digital domain of mass and metadata, analytics, search engines, servers, digital marketplaces, and artificial intelligence is not a level playing field. Big tech companies, principally from the US, are gatekeepers to the digital ecosystem. Competition laws are ineffectual in breaking open their oligopolies, especially when MNEs are outside the local jurisdiction. That creates problems nationally and on an enterprise level for most ASEAN countries where digital industrialisation involves small enterprises and start-ups and/or state-owned or supported companies. They will need positive assistance to take advantage of the opportunities that digital technologies can provide. Common forms of support include government procurement, subsidies, local content preferences and technology transfers. Whereas the TPP/CPTPP closes off many of those options, RCEP does not.

The TPP/CPTPP requires non-discriminatory treatment of digital products, meaning preferences cannot be given to products created in the Party's territory or by its nationals, although this does not apply to subsidies and grants or to broadcasting. Local preferences for digital products and content, and requirements to use locally produced content, are not subject to restrictions in RCEP, except to the extent they are covered in the trade in services or (limited) government procurement chapters.<sup>37</sup> This matter has been flagged as a topic for future dialogue between the Parties.<sup>38</sup>

<sup>&</sup>lt;sup>33</sup> RCEP Article 17.14.

<sup>&</sup>lt;sup>34</sup> RCEP Article 17.14.

<sup>&</sup>lt;sup>35</sup> WTO General Agreement on Trade in Services Article XIV(d).

<sup>&</sup>lt;sup>36</sup> The US has targeted digital services taxes, in particular, by investigations under Section 301 of the US Trade Act 1974, resulting in threats of sanctions against countries who adopt or maintain them. The analysis in those Investigations would treat digital services taxes as failing this test. See discussion in Kelsey (2021).

<sup>&</sup>lt;sup>37</sup> The RCEP government procurement chapter is much more limited than the TPP/CPTPP and is also not subject to dispute settlement.

<sup>&</sup>lt;sup>38</sup> RCEP Article 12.16.

Government procurement is a second important means of supporting local initiatives by harnessing the purchasing power of central and local governments. Whilst use of procurement in this way this could disadvantage ASEAN exporters competing with local producers, the commercial reality is that few local firms, especially start-ups and MSMEs, will be able to compete with MNEs or large local firms for contracts at home or in other RCEP countries.

The e-commerce chapters in both the TPP/CPTPP and RCEP exclude government procurement from their scope. However, an agreement-wide definition of government procurement in the TPP/CPTPP limits the term to the process of procuring goods or services for the internal and non-commercial use of a government.<sup>39</sup> Therefore, the carveout for government procurement from the rules in the TPP/CPTPP e-commerce chapter does not apply to the substance of the procurement or inputs into governments' for-profit activities.

By contrast, RCEP does not have an agreement-wide definition of government procurement. That leaves it open for the carveout to cover both the process and substance of the procurement. This approach is consistent with the limited and non-enforceable Chapter 16 on Government Procurement.

# Data and Rights over Source Code

The next set of differences goes to the core of the new digital trade rules. Tension between competing policy considerations is especially fraught in relation to control and use of data, source codes and algorithms - elements that constitute the blood supply and the brain of the digital eco-system. The larger the database, the more sophisticated the algorithms, artificial intelligence, 3D printing, and cutting-edge new technologies will be a dynamic that entrenches the dominance of corporations that already control massive amounts of data.

The principal objective of the tech industry lobby in the TPP negotiations was therefore to secure unfettered rights to collect, accumulate, process, and exploit data in their place of choice on their own terms (Kelsey, 2018). Tech-based firms, especially the big services MNEs, want to centralise their facilities and processing of data sourced from their operations across the Asian region to maximise its value and minimise costs. They also want to decide where to locate the data so they can engage in regulatory and jurisdictional, as well as tax, arbitrage.

<sup>&</sup>lt;sup>39</sup> TPP/CPTPP Article 1.3.

Smaller businesses operating offshore likewise want to avoid duplicating facilities in the places where they operate. But they are dependent on the major players for cloud servers, and on platforms and marketplaces that determine access and product placement. Local companies, especially MSMEs, may struggle even to appear on the digital radar, let alone to compete.

Countries have to balance a variety of objectives when they are hosting foreign tech suppliers. As part of their digital development strategies, governments may want to ensure that their national firms have access to data generated locally. They may want to require companies with large holdings of data to use local storage facilities to justify their investment of public funds to build expensive infrastructure. They also need to address myriad non-commercial policy concerns about data security, cybersecurity, political manipulations, terrorist organisation and dissemination of content, human rights violations, unregulated blockchains, cryptocurrency trading, money laundering, privacy, consumer protection, and more.

## **Data Localisation**

Both the TPP/CPTPP and RCEP require covered businesses to be allowed to transfer information outside the source country for the purpose of their business and prohibit governments from requiring them to use local computing facilities, such as servers. However, the TPP/CPTPP guarantees far greater protection to commercial firms and is far more restrictive of governments than RCEP.

Both the so-called 'data localisation' provisions have an important carveout for information 'held or processed on behalf of a party'. The problematic words are 'on behalf'. This exclusion would clearly apply to national or sectoral data bases that are run by the government, or where a private firm is contracted to store and process data for government. It is less clear when it comes to projects co-developed with private interests, including for surveillance, traffic control or smart city projects, especially when a private firm collects and controls the data and integrates it with its other activities. Private firms that provide data services for public and private providers, such as health systems, may also fall outside the exclusion, unless their contract provides otherwise.

There are three major differences in the flexibility that the TPP/CPTPP and RCEP provide for governments to adopt policy measures that are inconsistent with these two rules.

The first difference relates to public policy objectives. Both data localisation rules allow a Party to adopt inconsistent measures that it considers 'necessary' to achieve a 'legitimate public policy objective'. That flexibility is subject to a proviso that the measure

is not arbitrary or unjustifiable discrimination (which could involve different treatment of technologies or categories of data that impact most on foreign firms, not just different treatment of nationalities) or in a manner that constitutes a disguised restriction on trade (which can be problematic when the measure does benefit local interests).

Whether a measure is necessary has a specific and restrictive meaning in trade jurisprudence. The government can set the standard it wants to achieve but needs to adopt the least burdensome option reasonably available to achieve that standard. In the TPP/ CPTPP, an inconsistent policy measure is open to challenge on the basis of its necessity, the legitimacy of the policy objective, and the proviso. Footnotes in RCEP neutralise part of that test by making the necessity of the measure self-judging, so the measure is open to challenge only on the grounds of the legitimacy of the public policy objective and the chapeau (recalling that the chapter not subject to state–state dispute).<sup>40</sup>

The second difference the protection of 'essential security interests'. Recent controversies over data mining, cyber-espionage, use of bots and encrypted messaging have heightened states' sensitivity. Governments have restricted sites, apps, and movement of data on the basis of national security for a variety of motivations. China's sweeping digital laws have been highlighted as being repressive (Kynge and Yu, 2021), but state censorship and surveillance in the name of national security is increasingly common in many countries.

The data transfer and storage provisions in RCEP exclude measures a Party considers necessary for its 'essential security interests'.<sup>41</sup> The exercise of this power is explicitly self-judging and reliance on the exception cannot be disputed by the other Parties. There is no similar exception in the equivalent TPP/CPTPP provisions on data localisation. However, that omission could be explained by the difference in the agreement-wide security exceptions. The TPP/CPTPP's general security exception is broad and explicitly self-judging,<sup>42</sup> whereas RCEP follows the more limited WTO approach of specifying criteria that need to be met.<sup>43</sup> The RCEP self-judging national security exception also applies only to the data transfer and storage provisions; it does not apply, for example, to the provision on e-authentication in the same chapter.

It is uncertain whether this security carveout could stretch to protecting measures that address cybersecurity risks, which may involve private and commercial data theft, industrial sabotage, and ransomware. Such an interpretation would overcome the weak provisions on cybersecurity in both agreements, which recognise the importance of cybersecurity and building national level capabilities, but merely encourage the exchange of best practices.<sup>44</sup> Even cooperation between the Parties is limited to recognising its

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<sup>&</sup>lt;sup>40</sup> RCEP Article 12.14.3(a) fn 12, Article 12.15.3(a) fn 14.

<sup>&</sup>lt;sup>41</sup> RCEP Articles 12.14.3(b) and 12.15.3(b).

<sup>&</sup>lt;sup>42</sup> TPP/CPTPP Article 29.2.

<sup>&</sup>lt;sup>43</sup> RCEP Article 17.3

<sup>&</sup>lt;sup>44</sup> TPPA/CPTPP Article 14.16; RCEP Article 12.13.

importance through current collaboration mechanisms. There is no obligation in either agreement to adopt cybersecurity laws, even of an unspecified nature, whereas there is a specific obligation to protect consumers or personal information.

The third major difference relates to phase in periods for developing countries. There is no ability for Parties to take reservations to these data-related obligations in either agreement. The CPTPP has granted Viet Nam a waiver of the dispute settlement provisions for its cybersecurity law for 5 years after entry into force, being January 2025. Brunei and Malaysia are also currently not subject to these rules, as they have not ratified the CPTPP. In RCEP all three LDCs have a grace period of 5 years from entry into force to comply, with a possible 3-year extension for both provisions. Viet Nam also has 5 years to comply. Of course, failure to meet these obligations in RCEP can only be pursued through the inter-Party consultative mechanisms, unless a complaint can be brought under Chapter 12 on Trade in Services relating to 'a measure affecting trade in services'. That would not be protected by the self-judging exceptions in the e-commerce chapter.

#### **Financial Data**

Both agreements exclude financial services from the scope of their e-commerce chapters.<sup>45</sup> The original exclusion from the TPP was at US insistence, informed by its difficulties accessing data held offshore during the finance sector collapse in 2007. Yet financial data is not excluded from either agreement altogether. Definitions of financial services in Chapter 11 of the TPP/CPTPP and Annex 8A in RCEP explicitly include the 'provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services'. Similar financial services rules apply in both the TPP/CPTPP and RCEP (for example, on non-discrimination, cross-border trade, and new financial services, compared to the TPP/CPTPP's 'measures relating to'.<sup>47</sup>

However, RCEP also has an explicit financial data transfer provision that is not in the TPP/ CPTPP.<sup>48</sup> Echoing the e-commerce chapter, it guarantees that finance firms can transfer data out of the source country for processing as an ordinary part of their business. A government can require a copy of information to be held in the country, provided that information can also be moved and stored offshore.

<sup>&</sup>lt;sup>45</sup> TPPA/CPTPP Article 14.1; RCEP Article 12.1.

<sup>&</sup>lt;sup>46</sup> RCEP Annex 8A, Article 3 provision on 'new financial services' is more flexible. It requires a Party to make 'best endeavours' to allow the supply of a financial service not already being provided in the country, or a new form of one that is already being provided, if it is being legally supplied and regulated in another RCEP country.

<sup>&</sup>lt;sup>47</sup> RCEP Annex 8A Article 2 cf TPP/CPTPP Article 11.2.1.

<sup>&</sup>lt;sup>48</sup> RCEP Annex 8A Article 9.

Governments can also maintain measures to protect privacy and confidentiality of financial data, require regulatory approval (for prudential reasons) of the recipients of that information, and require compliance with its laws about management and storage of data (including keeping a copy within the country). But the ability to adopt all these measures is subject to a potentially circular proviso that the measures cannot be used as a means of avoiding the commitment or obligation.

### Source Code

A further very significant variation relates to exclusive rights over technology, specifically source code. The TPP/CPTPP prevents Parties from requiring the owners of the source code used in mass-market software to provide access to it as a condition of the code, or products that contain it, being sold, or used in their territory, except where the code is used for critical infrastructure.<sup>49</sup> The USMCA explicitly extends this protection to algorithms expressed in source code. There is no equivalent provision on source code in RCEP, although it is flagged as a matter for future dialogue between the Parties.<sup>50</sup>

# Transparency

Finally, there is an important difference in the transparency requirements in the two agreements. The TPP/CPTPP requires prior consultation with other Parties and their commercial interests on proposed new regulation, to the extent possible.<sup>51</sup> The RCEP's transparency obligations are all post-regulation,<sup>52</sup> which reduces the potential for lobbying and threats by digital companies where governments regulate. Parties are required to make general measures that comply with this chapter available publicly, at least on the Internet, 'as promptly as possible' but only 'where feasible'. They must also respond as promptly as possible to requests from another Party for specific information about those measures.

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<sup>&</sup>lt;sup>49</sup> Later agreements, such as the USMCA, go further, covering all source code and algorithms contained in source code, although the USMCA has a broader exception than the TPP/CPTPPP to enable specific investigations by regulators.

<sup>&</sup>lt;sup>50</sup> RCEP Article 12.16.

<sup>&</sup>lt;sup>51</sup> TPPA/CPTPP Article 26.2.

<sup>&</sup>lt;sup>52</sup> RCEP Article 12.13.

# **Over-reach into Non-trade Regulation**

This paper would be incomplete without referring to Section C of Chapter 12 Electronic Commerce, which purports to create a conducive environment for e-commerce. The five provisions are designed to allow policy space for certain public policies and human rights that could be negatively impacted upon by the other e-commerce rules, especially the rules relating to data flows. However, these provisions are limited in scope and both the commercial orientation of the chapter and the exclusive focus of the chapter's objectives on promoting the use of e-commerce militate against a broad public policy interpretation.

The two most prominent provisions, on protection of consumers and of personal information, are broadly similar. Both limit the obligations on states and on digital suppliers. Parties to RCEP must have laws or regulations that provide 'protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers'.<sup>53</sup> The equivalent TPP/CPTPP provision says consumer protection laws must *proscribe* fraudulent and deceptive commercial activities that cause such harm or potential harm to consumers. However, neither agreement sets a minimum threshold for the consumer protection that a government must provide, and neither extends to other harmful actions, such as anti-competitive practices. The LDCs in RCEP have a 5-year grace period to comply.

The personal privacy provisions in the TPP/CPTPP and RCEP are also similar. Personal information is defined as 'any information, including data, about an identified or identifiable individual'. In RCEP, Parties must have a legal framework that 'ensures the protection of personal information of the users of electronic commerce'.<sup>54</sup> The TPP only requires the law to *provide* for protection of personal information of an identifiable natural person.

As with consumer protection, there is no minimum privacy standard in either agreement. Both allow Parties to comply by adopting a comprehensive personal privacy law, or sectorspecific laws, or by providing for enforcement of contractual obligations that enterprises adopt. A RCEP Party 'must' (TPP says 'should') 'take into account' international standards, guidelines, etc of relevant international bodies. The RCEP governments 'must' publish information on the protection they provide (TPP says 'should') and encourage enterprises to publish their policies online. All the LDCs have a 5-year grace period to comply with this obligation as well.

The weakness of those provisions reinforces concerns that commercially-oriented trade agreements are not appropriate legal forums for rules that address such fundamental rights and constrain their scope and application.

<sup>&</sup>lt;sup>53</sup> RCEP Article12.8.

<sup>&</sup>lt;sup>54</sup> RCEP Article12.9.

# Conclusion

It is easy to see why developing country governments and businesses might be excited by the prospect that e-commerce or digital trade rules in free trade agreements could open doors to the opportunities offered by digital technologies. However, the vehicle of a free trade agreement, and the binding and enforceable e-commerce rules that have been developed in the TPP and since, will not deliver that outcome for most countries in ASEAN and certainly not for the most digitally marginalised communities of women, the informal sector and MSMEs. As the UNCTAD Digital Economy Report 2021 observes:

there are serious questions about how suitable the trade regime is to regulate the issue of data.... Provisions in trade agreements have implications for domestic policies – such as those related to privacy, national security and industrial development – through these implications are not sufficiently considered. Furthermore, ... developing countries might face the choice of 'trading away their right (or policy space) to regulate data flows' to protect other interests in the trade agenda (UNCTAD, 2021, p.166).

Given the unequal negotiating power of state parties and the lobbying power of the technology industry, such agreements are likely to consolidate the dominance of a small number of very powerful multinationals that already control the digital eco-system and the vital resource of data (UNCTAD, 2021, p.146). The rules that are designed to serve their model work to encourage tax, data and regulatory arbitrage and further disable governments that need to find a new balance between development strategies, support for innovation, and protective regulation in the 21st century digitalised economy. The overreach of FTAs into the general regulation of the digital domain beyond traditional areas of trade has also fuelled a growing resistance to digital trade rules, including the plurilateral e-commerce negotiations in the WTO.

This paper has highlighted the significance of RCEP in promoting a more flexible approach that encourages regional cooperation on the development of appropriate policy and regulation, instead of rigid, enforceable rules that are subject to limited and uncertain exceptions. The RCEP electronic commerce chapter reflects an increasingly sophisticated understanding about these issues amongst policymakers, academics, civil society, and media analysts in the years since the TPP chapter was agreed.

The wisdom of ASEAN countries holding back from making enforceable commitments on e-commerce should allow them to deepen their national and regional understanding of the opportunities and challenges these agreements present, including through the mechanisms of dialogue and cooperation, whilst developing and implementing their own digital development strategies. Unfortunately, those good efforts may yet be undone through the back door of the binding and enforceable trade in services rules.

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# Traditional Services Trade in the Regional Comprehensive Economic Partnership

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Traditional services trade (TST), including tourism and transport services, is the basic and key component of services trade in the Regional Comprehensive Economic Partnership (RCEP). The implementation of RCEP will provide a platform for further liberalisation in TST, thus effectively promoting the growth of the whole service trade and the development of the travel and transportation industry. In this paper we will first show the trade pattern of TST in RCEP. Then, the commitments by each RCEP member will be thoroughly analysed, and the Hoekman index will be constructed to measure the liberalisation levels for the RCEP members. In the last section, we outline some impacts of the COVID-19 pandemic on TST and propose policy implications for RCEP in the post pandemic era.

# The Trade Pattern of Traditional Services Trade in RCEP

Traditional services trade (TST), including tourism and transport services, is the basic and key component of services trade in the Regional Comprehensive Economic Partnership (RCEP). The share of traditional services trade to total cross-border services trade is approximately 20% to 30%, and the RCEP member countries account for more than 20% of traditional services trade in the world. However, due to the effects of the novel coronavirus disease (COVID-19) pandemic shock in early 2020, the labour movement industries such as traditional services trade have experienced a sharp decline and collapse of economic activities. The implementation of RCEP will provide a platform for mitigating the decline and provide a framework for the recovery of the traditional services, thus effectively promoting the growth of the whole services trade and the development of the travel and transportation industry. In this paper, we will first show the trade pattern of TST in the RCEP member countries. We will examine the commitments by each RCEP member country using the key trends. We will also construct the Hoekman index to measure the liberalisation levels for the RCEP member countries. In the last section, we will provide policy discussions on the impacts of the COVID-19 pandemic on TST and policies for recovery of traditional services in East Asia and the RCEP member countries.

# **Trend of TST in RCEP**

The TST value in the RCEP member countries increased dramatically by more than three times, from \$16,755.2 billion in 2000 to \$51,495.06 billion in 2019. However, we observe that the growth rate of traditional services slowed after the global financial crisis in 2008. In 2009, both exports and imports of TST collapsed, and the trend of the growth rate stagnated at a relatively low level or even remained negative in 2015 and 2016. Figures 7.1 and Figure 7.2 presents the key trends for TST volume and growth rate, respectively.

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Figure 7.1 Volume of TST in RCEP Countries (\$ billion)

Source: World Development Indicators (WDI) Database.



## Figure 7.2 Growth Rate of TST in RCEP Countries (%)

It is clear from Figures 7.1 and Figure 7.2 that TST accounts for approximately 17% to 35% of the total services trade of the RCEP member countries. The TST share experienced a decreasing trend over the past 2 decades. From 2002 to 2008, the share of TST to total services trade grew steadily and reached a peak in 2008. Since 2009, the TST growth rate has turned negative and continued to decrease in the subsequent years. In 2019, the share of TST in services trade declined to only 23.2%, even lower than the level in 2000. Figures 7.3 and Figure 7.4 shows the share of TST in the services trade of RCEP and its growth rate.









Figure 7.4 Growth Rate of the Share of TST in Services Trade of RCEP (%)

Source: WDI Database.

# **Growth of Tourism Trade**

Tourism is an important component of TST and critical for the growth recovery of the RCEP member countries. Figure 7.5 shows the key trends, and Figure 7.6 shows the growth rate for tourism trade in RCEP. The tourism trade in RCEP experienced fast growth in past 2 decades due to greater services liberalisation in logistics, aviation, and transportation services. From 2000 to 2019, both the export and import of tourism trade for RCEP member countries continuously increased. The tourism trade volume increased from \$137 billion in 2000 to \$141 billion in 2019. There is a strong positive correlation between export and import until 2011. It is interesting to observe that after 2012, tourism imports started to increase faster than exports indicating greater services activities and intra-trade activities in the RCEP region.







Source: WDI Database.





# **Growth of Transport Services Trade**

Figure 7.7 gives the trend for RCEP transport services trade volume. Figure 7.8 gives the growth rate of transport services trade in the RECP member countries. Transport services in the RCEP member countries increased continuously, but started to decline in 2009. It recovered in 2010 and fluctuated between \$40,000 billion and \$50,000 billion in the subsequent years. In 2019, the share of transport services trade in total services trade was 23.21% in the RCEP countries, which is higher than the world average of 18.50% (WTO database).



Figure 7.7 Volume of TST in RCEP Countries (\$ billion)





Source: WDI Database.

Figure 7.9 shows the share of RCEP TST in global TST. It is important to note that RCEP plays an important role in global trade in TST, where the share of RCEP TST accounting for approximately 25% of the global services trade. The import share of RCEP to the world increases from 22% to 27%, and the export share increased from 18% to 22% respectively. We observed that the RCEP import position is relatively higher than the export position.



Figure 7.9 Share of RCEP TST in the World (%)

Figure 7.10 shows the pattern of RCEP's position in global tourism trade. The share of RCEP tourism trade in the world tourism trade has increased rapidly since 2000. The RCEP tourism import share doubled from 16% in 2000 to 31% in 2019, accounting for nearly one-third of the global tourism imports. The RCEP tourism export position has also grown in recent decades. By 2019, RCEP members' proportion in the global tourism exports reached over 21%.





Source: WDI Database.

Figure 7.11 gives RCEP's position in global transport services trade. The share of RCEP transport services trade in the world is stable until 2010, then the share of RCEP in global transport services exports started to decline. The position on transport services trade import is relatively stable, with only a marginal improvement over several years.



Figure 7.11 The Share of RCEP Transport Services Trade in the World (%)

Source: WDI Database

# Trade Pattern Between ASEAN and non-ASEAN Members

Figures 7.12 and Figure 7.13 show the pattern for TST between ASEAN members and non-ASEAN members, respectively. The TST between ASEAN and non-ASEAN RCEP members increases rapidly for the past 2 decades. The trade value drastically increased from \$36,241 billion in 2005 to \$95,541 billion in 2019, which indicates the close relationship in trade between ASEAN countries and the other five countries in RCEP (China, Japan, Republic of Korea, Australia, and New Zealand). The growth rate for traditional services trade from ASEAN to non-ASEAN countries increasing and continuously positive over the past years.



# Figure 7.12 Volume of TST Between ASEAN and Non-ASEAN Members (\$ billion)

Source: WDI Database.



traditional services export growth from ASEAN to non-ASEAN traditional services import growth from ASEAN to non-ASEAN -traditional services trade growth from ASEAN to non-ASEAN



Source: WDI Database.

-15 -20 Figure 7.14 and Figure 7.15 show the growth rate of tourism trade value and the growth rate from ASEAN to non-ASEAN countries, respectively. Tourism trade between ASEAN and non-ASEAN countries has experienced continuous growth since 2005. Most ASEAN countries have trade surpluses in tourism when trading with the other five RCEP countries, and the surplus is continuously increasing.







Figure 7.15 Growth Rate of Tourism Trade Between ASEAN and Non-ASEAN Members (%)

Source: WDI Database.

Figure 7.16 and Figure 7.17 display the volume and growth rate of transport services trade from ASEAN to non-ASEAN countries, respectively. Transport services trade between ASEAN and non-ASEAN members does not grow much. Exports and imports moved simultaneously from 2005 to 2019.



# Figure 7.16 Volume of Transport Services Trade Between ASEAN and Non-ASEAN Members (\$ billion)

Source: WDI Database.





Table 7.1 presents the growth of TST in the RCEP member countries from 2010 to 2019. As given in Table 7.1, China is the largest country in TST amongst all the RCEP member countries, followed by Singapore and Japan. In contrast, TST in Lao People's Democratic Republic (Lao PDR), Myanmar, and Brunei Darussalam is relatively low and greater capacity can be expected to develop TST in these countries. The average growth rate for TST of RCEP for the past decade is 58%, with a volume of \$769 billion in 2010 and \$1,222 billion in 2019. The growth rate of Myanmar's TST exports between 2010 and 2019 ranks first amongst all the RCEP members, this reflects that opening-up the economy will lead to huge potential for growth in TST with an increase rate of 555%. The growth rates of Myanmar, Cambodia, Lao PDR, the Philippines, China, Thailand, Viet Nam, Indonesia, and Singapore are above the RCEP average, and the growth rates of New Zealand, Australia, Brunei, Malaysia, the Republic of Korea, and Japan are below the average. For ASEAN, the average growth rate of TST is 74%, with a volume of \$25 billion in 2010 and \$44 billion in 2019. The average growth rate of TST of ASEAN is higher than the average growth rate of RCEP, even if the average traditional services trade volume of ASEAN is lower than the average traditional services trade volume of RCEP.

Ne	Country	-	TST Volume (\$ million	)
NO.	Country	2010	2019	Growth Rate (%) **
1	Myanmar	722	4,734	555.7
2	Cambodia	2,410	8,330	245.6
3	Lao PDR	663	2,190	230.3
4	Philippines	12,800	29,656	131.7
5	China	198,162	435,893	120.0
6	Thailand	50,503	100,866	99.7
7	Viet Nam	14,837	29,616	99.6
8	Indonesia	24,691	43,774	77.3
9	Singapore	101,018	166,230	64.6
10	New Zealand	14,171	20,740	46.4
11	Australia	78,609	99,838	27.0
12	Brunei Darussalam	1,172	1,468	25.3
13	Malaysia	41,584	48,815	17.4
14	Korea, Republic of	98,347	103,229	5.0
15	Japan	129,747	126,641	-2.4

#### Table 7.1 Growth of TST for RCEP Members

No.	Country	TST Volume (\$ million)				
	Country	2010	2019	Growth Rate (%) **		
	RCEP	769,436	1,222,020	58.8		
	ASEAN	25,040	43,568	74.0		

\*\*sorted from the largest to the lowest.

Note: TST volume is the sum if export and import of traditional services, all in current US\$ million.

Sources: WDI database and WTO database.

Table 7.2 presents the change in tourism trade of each member. All the RCEP members experienced fast growth in tourism trade. The RCEP average growth rate for tourism trade in the past 10 years was 105.2%, with a volume of \$354 billion in 2010 and \$728 billion in 2019. China has the largest volume of tourism trade, followed by Australia and Japan. The growth rate of tourism trade in Myanmar was the highest between 2010 and 2019 as opening up of the economy leads to huge potential for growth. For ASEAN countries, the average growth rate of tourism trade was 101.9%, with a volume of \$115.3 billion in 2010 and \$232.9 billion in 2019. Both the average growth rate and the average volume of ASEAN tourism trade are lower than those of the RCEP tourism trade.

No	Country	Tourism Se	ervices Trade Volume	(\$ million)
NO.	Country	2010	2019	Growth Rate (%) **
1	Myanmar	125	2,587	1,969.6
2	Cambodia	1,580	5,866	271.3
3	Lao PDR	585	1,911	226.7
4	Viet Nam	5,920	17,980	203.7
5	Thailand	25,731	74,759	190.5
6	China	100,694	285,201	183.2
7	Philippines	8,132	21,863	168.9
8	Indonesia	13,353	28,233	111.4
9	Korea, Republic of	29,029	47,241	62.7
10	Japan	41,066	66,319	61.5
11	Brunei Darussalam	550	879	59.8
12	New Zealand	9,554	15,159	58.7
13	Singapore	32,878	46,658	41.9
14	Australia	59,231	81,282	37.2
15	Malaysia	26,476	32,163	21.5

#### Table 7.2 Tourism Trade Growth in the Last 10 Years

No.	Country	Tourism Se	(\$ million)	
	Country	2010	2019	Growth Rate (%) **
	RCEP	354,904	728,101	105.2
	ASEAN	115,330	232,899	101.9

\*\*sorted from the largest to the lowest.

Note: Tourism Services Trade volume is the sum if export and import of travel services, in US\$ million.

Sources: WDI database and WTO database.

Table 7.3 presents the growth of transport services trade in each country. The RCEP average growth rate for transport services trade in the past 10 years was 19.2%, with a volume of \$414.5 billion in 2010 and \$493.9 billion in 2019. China has the largest volume in transport services trade, followed by Japan and Singapore. The growth rates of transport services trade in Myanmar and Lao PDR were the highest between 2010 and 2019, and we also observe Australia, Brunei, the Republic of Korea, and Japan experiencing a decline in transport services trade. For ASEAN, the average growth rate on transport services trade of \$13.5 billion in 2010 and \$20.3 billion in 2019. The average growth rate of ASEAN's transport services trade is higher than the average growth rate of RCEP's, whilst the average volume of ASEAN's transport services trade is lower than RCEP's.

No	Country	Transport Services Trade Volume (\$ million)			
NO.	Country	2010	2019	Growth Rate (%) **	
1	Myanmar	597	2,147	259.6	
2	Lao PDR	78	279	257.7	
3	Cambodia	830	2,464	196.9	
4	Singapore	68,140	119,572	75.5	
5	Philippines	4,668	7,793	66.9	
6	China	97,468	150,692	54.6	
7	Indonesia	11,338	15,541	37.1	
8	Viet Nam	8,917	11,636	30.5	
9	New Zealand	4,617	5,581	20.9	
10	Malaysia	15,108	16,652	10.2	
11	Thailand	24,772	26,107	5.4	
12	Australia	19,378	18,556	-4.2	
13	Brunei Darussalam	622	589	-5.3	

#### Table 7.3 Transport Services Trade Volume Change in the Last 10 Years

Ne	Country	Transport Services Trade Volume (\$ million)			
NO.	Country	2010	2019	Growth Rate (%) **	
14	Korea, Republic of	69,318	55,988	-19.2	
15	Japan	88,681	60,322	-32.0	
	RCEP	414,532	493,919	19.2	
	ASEAN	135,070	202,780	50.1	

\*\*sorted from the largest to the lowest.

Note: Tourism services trade volume is the sum if export and import of travel services, in US\$ million.

Sources: WDI database and WTO database.

Figure 7.18 and Table 7.4 show the tourism imports and exports as well as the trade balance of each RCEP member country in 2019. Some RCEP member countries show trade surpluses in tourism such as Thailand, Australia, Japan, Malaysia, Indonesia, Viet Nam, New Zealand, Cambodia, and Myanmar. Thailand's tourism exports were the highest amongst all the RCEP member countries, with a volume of \$60.5 billion and a trade surplus of \$46.2 billion. In contrast China, Singapore, the Republic of Korea, the Philippines, Lao PDR, and Brunei have trade deficits in tourism. China's tourism imports rank first amongst the RCEP member countries in the volume of \$250.7 billion with a trade deficit of tourism of \$46.2 billion.

Figure 7.18 Tourism Trade Balance of Individual RCEP Members in 2019 (\$ Million)



	Tourism Export	Tourism Import	Tourism Trade Balance	Rank
Thailand	60,521	14,238	46,283	1
Australia	45,373	35,909	9,464	2
Japan	45,224	21,095	24,129	3
China	34,461	250,740	-216,279	4
Singapore	20,052	26,606	-6,554	5
Malaysia	19,815	12,348	7,467	6
Korea, Rep.	17,844	29,397	-11,553	7
Indonesia	16,912	11,321	5,591	8
Viet Nam	11,830	6,150	5,680	9
New Zealand	10,739	4,420	6,319	10
Philippines	9,824	12,039	-2,215	11
Cambodia	4,944	922	4,022	12
Myanmar	2,496	91	2,405	13
Lao PDR	884	1,027	-143	14
Brunei	206	673	-467	15

# Table 7.4 Tourism Trade Balance of Individual RCEP Members in 2019(\$ million)

\*\*sorted from the largest to the lowest.

Note: Tourism services trade volume is the sum if export and import of travel services, in US\$ million.

Sources: WDI database and WTO database.

Figure 7.19 and Table 7. 5 show the proportion of tourism imports and exports in the total services trade of each RCEP member in 2019. The tourism trade share in total services trade varies amongst the RCEP countries. Cambodia, Thailand, Australia, New Zealand, Indonesia, Malaysia, Viet Nam, Myanmar, and Japan have a higher proportion of tourism exports compared with the proportion of tourism imports. For Lao PDR, Brunei, the Philippines, the Republic of Korea, China, and Singapore, the proportion of tourism imports in total services imports is higher than the proportion of exports in total services exports. The tourism export proportion of Lao PDR is the highest amongst all the RCEP member countries at 79.7% and its tourism imports at 80.2%.



Figure 7.19 Tourism Share in Total Services Exports or Imports in 2019 (%)

Source: WDI Database

# Table 7.5 Tourism Share in Total Services Exports or Importsof Each Country in 2019 (%)

Country	Tourism Export Share	Tourism Import Share	Rank
Lao PDR	79.7	80.2	1
Cambodia	79.1	28.8	2
Thailand	73.8	24.2	3
Australia	64.8	50.2	4
New Zealand	63.7	30.9	5
Indonesia	53.5	28.7	6
Malaysia	48.5	28.4	7
Viet Nam	42.9	32.8	8
Myanmar	35.2	2.6	9
Brunei	33.3	37.1	10
Philippines	24.0	43.1	11
Japan	22.1	10.4	12
Korea, Rep.	17.4	23.3	13
China	12.2	50.1	14
Singapore	9.8	13.4	15

\*\*sorted by export share from the largest to the lowest.

Sources: WDI database and WTO database.

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Figure 7.20 and Table 7. 6 show the imports and exports as well as the trade balance of transport services for each RCEP member country in 2019. The RCEP members except Brunei all have trade deficits in transport services. Singapore's transport services exports are the highest amongst all the RCEP member countries, with a volume of \$58,443 billion and a trade deficit of \$2,686 billion. China's import of transport services ranks first amongst all the RCEP member countries at \$104,723 billion, with a transport services trade deficit of \$58,754 billion. Brunei is the only country with a trade surplus in transport services of \$69 billion.



### Figure 7.20 Transport Services Trade Balance of Individual RCEP Members in 2019 (\$ billion)

Source: WDI Database

# Table 7.6 Transport Services Trade Balance of Individual RCEP Members in 2019 (\$ billion)

Country	Transport Export	Transport Import	Transport Trade Balance	Rank
Singapore	58,443	61,129	-2,686	1
China	45,969	104,723	-58,754	2
Korea, Rep.	26,317	29,671	-3,354	3
Japan	26,222	34,100	-7,878	4
Thailand	7,197	18,910	-11,713	5

Country	Transport Export	Transport Import	Transport Trade Balance	Rank
Australia	5,564	12,992	-7,428	6
Malaysia	5,211	11,441	-6,230	7
Indonesia	3,919	11,622	-7,703	8
Viet Nam	3,306	8,330	-5,024	9
Philippines	2,872	4,921	-2,049	10
New Zealand	2,242	3,339	-1,097	11
Cambodia	793	1,671	878	12
Myanmar	572	1,575	-1,003	13
Brunei	329	260	69	14
Lao PDR	138	141	-3	15

Note: Tourism services trade volume is the sum if export and import of travel services, in US\$ (million). Sources: WDI database and WTO database.

Figure 7.21 and Table 7.7 presents the exports in each subsector of transport services of sea transport, air transport and others for the individual RCEP members. For Brunei, Cambodia, Lao PDR, Malaysia, New Zealand, the Philippines, and Viet Nam, air transport services export is the key compared to other transport services. For China, Japan, the Republic of Korea, Myanmar, and Singapore, the sea transport services export seems to be more important. China has the largest volume of air transport services exports amongst all the RCEP countries at \$14,083 billion. Singapore's sea transport services exports are the highest at \$53,226 billion.



## Figure 7.21 Exports in the Transport Sector of Individual RCEP Countries in 2019 (\$ billion)



Source: WDI Database.

## Table 7.7 Exports in the Transport Sector of Individual RCEP Countries in 2019 (\$ billion)

Country	Sea Transport Export	Air Transport Export	Other Transport Export
Brunei	75	201	53
Cambodia	76*	688*	29*
China	28,578*	14,083*	3,308*
Japan	18,673	7,343	206
Korea, Rep.	19,349*	7,081*	0*
Lao PDR	0	140	27
Malaysia	1,720	3,066	425
Myanmar	192	119	261
New Zealand	445	1,776	21
Philippines	689	2,178	5
Singapore	53,226	8,417	255
Viet Nam	831	2,360	115

\* are estimated values.

Sources: WDI database and WTO database.

Figure 7.22 and Table 7.8 give the imports in each transport subsector for the RCEP member countries. The imports of air transport dominate the others in Lao PDR and New Zealand. The imports of sea transport occupy the greatest share in Brunei, Cambodia, China, Japan, the Republic of Korea, Malaysia, Myanmar, the Philippines, Singapore, and Viet Nam. China has the largest volume of air and sea transport imports amongst all the RCEP countries.





Source: WDI Database.

#### Table 7.8 Imports in the Transport Subsector of Individual RCEP Countries in 2019 (\$ Billion)

Country	Sea Transport Import	Air Transport Import	Other Transport Import
Brunei	202	31	27
Cambodia	1,280	366	25
China	66,694*	30,468*	7,561*
Japan	23,853	10,186	61
Korea, Rep.	23,245*	6,226*	200*
Lao PDR	1	19	121
Country	Sea Transport Import	Air Transport Import	Other Transport Import
-------------	-------------------------	-------------------------	---------------------------
Malaysia	6,710	3,631	1,100
Myanmar	1,493	86	21
New Zealand	1,436	1,817	86
Philippines	3,849	1,314	0
Singapore	51,861	11,512	742
Viet Nam	7,172	1,101	57

\* are estimated values.

Source: WTO database.

Figure 7.23 and Table 7.9 show the share of imports and exports of transport in the total services trade of each RCEP member country in 2019. The proportion of transport trade in total services trade also varies across RCEP countries. Brunei, the Republic of Korea, and Lao PDR have a higher proportion of transport exports compared with the proportion of transport imports. In the Philippines, China, Cambodia, Thailand, Australia, New Zealand, Indonesia, Malaysia, Viet Nam, Myanmar, Japan, and Singapore, the proportion of transport imports is higher than the proportion of exports. Brunei's transport export proportion is the highest amongst all the RCEP member countries at 53.2%. Cambodia's transport services import proportion is the highest amongst all the RCEP member countries at 52.2%.

Figure 7.23 Transport Services Share in Total Services Exports or Imports in 2019 (%) 60.0



Source: WDI Database.

# Table 7.9 Transport Services Share in Total Services Exports or Importsin 2019 (%)

Country	Transport Export Share	Transport Import Share	Rank
Brunei	53.2	14.3	1
Singapore	28.5	30.7	2
Korea, Rep.	25.7	23.5	3
China	16.2	20.9	4
New Zealand	13.3	23.3	5
Japan	12.8	16.7	6
Malaysia	12.7	26.3	7
Cambodia	12.7	52.2	8
Lao PDR	12.4	11.0	9
Indonesia	12.4	29.5	10
Viet Nam	12.0	44.4	11
Thailand	8.8	32.2	12
Myanmar	8.1	44.6	13
Australia	8.0	18.2	14
Philippines	7.0	17.6	15

Note: Sorted by export share from the largest to the lowest.

Source: WTO database (reported values).

Figure 7.24 presents the proportion of transport exports in each subsector in total transport services exports for the RCEP member countries. The highest proportion of air transport exports in transport exports is 86% in Cambodia. The highest proportion of sea transport exports in transport exports is 86% in Singapore.

Figure 7.24 Proportion of Transport Subsector Exports of Individual RCEP Countries in 2019



Source: WDI Database.

The highest proportion of air transport imports to total transport imports is 54% in New Zealand. The highest proportion of sea transport imports is 93% in Myanmar, as shown in Figure 7.25.



### Figure 7.25 Proportion of Transport Subsector Imports of Individual RCEP Countries in 2019

Source: WDI Database.

### **Bilateral TST Position in RCEP**

In this subsection, we display the bilateral trade position between the RCEP members. We first show the bilateral trade position of tourism trade from the perspective of both exports and imports. China, as a partner of another RCEP member, takes an important position both in tourism exports and imports. Table 7. 10 presents each country's position as another country's tourism export partner. The rows represent countries as export partners, and the columns represent the exporting countries. For example, BRN–AUS=11 means that the volume of Australia's tourism exports to Brunei ranks 11 amongst all Australia's exports to RCEP export partners. It is noticeable that China, as a partner of other RCEP member countries' exports, always ranks first. This is followed by Australia and Japan, which always rank second or third as exporting partners of another country.

Rank	AUS	BRN	кнм	СНМ	IDN	JPN	KOR	LA0	MYS	MMR	NZL	PHL	SGP	ТНА	VNM
AUS	-	8	6	2	2	3	4	8	6	7	1	3	3	2	2
BRN	11	-	12	13	11	11	11	13	5	11	11	11	10	13	13
KHM	12	11	-	12	12	12	12	10	11	13	12	12	12	11	11
CHN	1	2	1	-	1	1	1	1	2	1	2	1	1	1	1
IDN	6	4	9	8	-	8	8	9	3	6	8	8	4	6	8
JPN	9	5	2	3	5	-	2	3	7	4	5	2	5	3	3
KOR	2	9	7	1	6	2	-	6	8	5	3	5	6	7	5
LAO	13	12	13	11	13	13	13	-	13	14	13	13	13	10	12
MYS	5	1	5	4	4	9	10	7	-	8	9	7	2	5	7
MMR	14	13	14	14	14	14	14	14	14	-	14	14	14	14	14
NZL	3	14	11	10	10	10	9	11	12	12	-	10	11	12	10
PHL	10	7	10	9	8	7	5	12	9	10	7	-	8	9	9
SGP	4	3	3	5	3	6	3	5	1	3	4	4	-	4	4
THA	7	6	4	7	7	4	7	2	4	2	6	6	9	-	6
VNM	8	10	8	6	9	5	6	4	10	9	10	9	7	8	

Table 7.10 Rank of Member Countries on Bilateral Tourism Exports

AUS = Australia, BRN = Brunei Darussalam, KHM = Cambodia, CHN = China, IDN = Indonesia, JPN = Japan, KOR = Republic of Korea, LAO = Lao People's Democratic Republic, MYS = Malaysia, MMR = Myanmar, NZL = New Zealand, PHL = Philippines, SGP = Singapore, THA = Thailand, VNM = Viet Nam.

Notes: Rows: partner countries; Columns: export countries.

BRN-AUS=11 means that the volume of Australia's tourism exports to Brunei ranks 11th amongst all Australia's RCEP export partners. Source: WTO Database.

As trading partners of other exporting countries, Japan, Thailand, and Singapore perform well. Table 7. 11 gives each country's position as a tourism import partner. The rows represent import partner countries, and columns represent the importing countries. For example, BRN–AUS=14 means that the volume of Australia's tourism imports from Brunei ranks 14 amongst all Australia's imports from RCEP importing partners.

Rank	AUS	BRN	кнм	СНМ	IDN	JPN	KOR	LA0	MYS	MMR	NZL	PHL	SGP	THA	VNM
AUS	-	8	9	2	4	5	2	8	4	0	1	2	3	2	2
BRN	14	-	14	14	12	14	14	14	7	0	14	13	13	14	14
KHM	11	12	-	13	13	12	12	11	12	0	11	12	12	13	11
CHN	5	3	2	-	5	2	3	2	2	0	2	5	5	4	3
IDN	4	6	7	8	-	6	6	9	5	0	6	7	4	6	7
JPN	6	4	4	1	6	-	1	3	6	0	5	3	6	1	1
KOR	9	9	8	3	8	3	-	6	11	0	7	6	8	12	6
LA0	13	14	12	12	14	13	13	-	14	0	13	14	14	10	12
MYS	10	1	5	7	1	9	10	7	-	0	10	8	1	3	8
MMR	12	11	13	11	11	10	11	13	13	-	12	11	11	9	13
NZL	1	13	11	9	9	11	8	12	10	0	-	9	10	11	10
PHL	8	7	10	10	10	7	7	10	9	0	8	-	9	8	9
SGP	3	2	3	5	2	4	5	5	1	0	4	4	-	5	5
THA	2	5	1	4	3	1	4	1	3	0	3	1	2	-	4
VNM	7	10	6	6	7	8	9	4	8	0	9	10	7	7	

 Table 7.11 Rank of Member Countries on Bilateral Tourism Imports

AUS = Australia, BRN = Brunei Darussalam, KHM = Cambodia, CHN = China, IDN = Indonesia, JPN = Japan, KOR = Republic of Korea, LAO = Lao People's Democratic Republic, MYS = Malaysia, MMR = Myanmar, NZL = New Zealand, PHL = Philippines, SGP = Singapore, THA = Thailand, VNM = Viet Nam.

Notes: Column: import countries, Row: partner countries.

BRN-AUS=14 means that the volume of Australia's tourism imports from Brunei ranks 14th amongst all Australia's RCEP import partners. Source: WTO Database.

In Table 7. 12, we show each RCEP member country's position in transport services exports and imports as a partner of another RCEP member country. China, Singapore, and Australia have large demands for transport services. The rows represent export partner country, and columns represent the exporting country. China, as a partner of six other exporting countries, ranks first. The following are Singapore and Australia, which for some times rank first as tourism export partners of other RCEP member countries.

Table 7. 13 gives each country's position as an import partner of transport services. The rows represent partner countries, and the columns represent the importing countries. Singapore ranks at the top as an import partner of many other RCEP member countries in transport services imports. China ranks first only as an import partner of the Republic of Korea. Japan ranks second when trading with India, the Republic of Korea, the Philippines, Singapore, and Thailand.

Rank	AUS	BRN	кнм	СНМ	IDN	JPN	KOR	LA0	MYS	MMR	NZL	PHL	SGP	тна	VNM
AUS	-	4	1	5	5	5	4	8	4	6	1	1	2	5	2
BRN	12	-	10	12	12	12	12	9	12	11	12	3	12	12	1
KHM	13	13	-	13	13	13	13	10	13	12	13	1	13	13	4
CHN	1	2	3	-	2	1	1	1	1	2	2	2	1	4	5
IDN	6	6	11	8	-	8	8	11	5	7	8	2	5	8	3
JPN	3	5	1	3	4	-	2	3	3	3	3	1	3	2	6
KOR	5	8	6	2	6	3	-	5	7	5	5	1	7	7	7
LAO	14	14	12	14	14	14	14	-	14	13	14	2	14	14	10
MYS	9	1	7	4	3	7	5	12	-	8	6	3	4	3	9
MMR	11	11	8	11	8	10	11	6	11	-	11	2	11	6	11
NZL	4	12	13	10	11	11	10	13	8	14	-	1	9	10	12
PHL	10	9	14	9	9	9	9	14	10	9	9	-	10	11	8
SGP	2	3	2	1	1	2	3	4	2	1	4	3	-	1	13
THA	7	7	4	6	7	4	6	2	6	4	7	2	6	-	14
VNM	8	10	9	7	10	6	7	7	9	10	10	3	8	9	

### Table 7.12 Rank of Member Countries on Bilateral Transport Services Exports

AUS = Australia, BRN = Brunei Darussalam, KHM = Cambodia, CHN = China, IDN = Indonesia, JPN = Japan, KOR = Republic of Korea, LAO = Lao People's Democratic Republic, MYS = Malaysia, MMR = Myanmar, NZL = New Zealand, PHL = Philippines, SGP = Singapore, THA = Thailand, VNM = Viet Nam.

Notes: Column: import countries, Row: partner countries.

The BRN-AUS=12 means that the volume of Australia's transport services exports to Brunei ranks 12th amongst all Australia's RCEP export partners.

Source: WTO Database.

### Table 7.13 Rank of Member Countries on Bilateral Transport Services Imports

Rank	AUS	BRN	кнм	СНМ	IDN	JPN	KOR	LA0	MYS	MMR	NZL	PHL	SGP	ТНА	VNM
AUS	-	5	7	4	4	5	4	8	7	6	2	5	4	5	1
BRN	11	-	10	11	11	12	11	9	9	12	11	11	11	12	2
KHM	13	13	-	14	13	13	13	10	13	13	13	13	13	14	3
CHN	2	2	2	-	3	3	1	2	2	3	3	3	1	3	4
IDN	8	9	11	9	-	8	8	11	6	7	9	8	7	8	5
JPN	3	4	3	3	2	-	2	4	4	4	7	2	2	2	6
KOR	4	6	5	2	5	2	-	5	5	5	4	4	3	4	7
LA0	14	14	12	13	14	14	14	-	14	14	14	14	14	13	8
MYS	7	3	6	5	6	7	6	12	-	9	6	7	6	6	9
MMR	12	12	9	12	12	11	12	6	12	-	12	12	12	11	10

Rank	AUS	BRN	кнм	СНМ	IDN	JPN	KOR	LA0	MYS	MMR	NZL	PHL	SGP	ТНА	VNM
NZL	5	10	13	8	10	9	9	13	10	11	-	10	10	10	11
PHL	10	8	14	7	8	6	7	14	8	10	8	-	8	7	12
SGP	1	1	1	1	1	1	3	1	1	2	1	1	-	1	13
THA	6	7	4	6	7	4	5	3	3	1	5	6	5	-	14
VNM	9	11	8	10	9	10	10	7	11	8	10	9	9	9	

AUS = Australia, BRN = Brunei Darussalam, KHM = Cambodia, CHN = China, IDN = Indonesia, JPN = Japan, KOR = Republic of Korea, LAO = Lao People's Democratic Republic, MYS = Malaysia, MMR = Myanmar, NZL = New Zealand, PHL = Philippines, SGP = Singapore, THA = Thailand, VNM = Viet Nam.

Notes: Column: import countries, Row: partner countries.

The BRN-AUS=11 means that the volume of Australia's transport services imports to Brunei ranks 11th amongst all Australia's RCEP export partners.

Source: WTO Database.

For example, BRN-AUS=11 means that the volume of Australia's import of transport services from Brunei ranks 11 in all Australia's RCEP import partners.

# Analysis for TST Commitments in RCEP

In this section, we summarise and analyse the articles and commitments on the TST of each RCEP member and calculate the Hoekman index to measure the liberalisation level.

### **Commitment Approach of TST in RCEP**

There are two types of approaches to making a commitment in RCEP. One is the negative list and the other is the positive list. The negative list approach specifies sectors that are not open and gives specific limitation items on economic activities. However, under this negative list framework the other economic activities beyond those items are permitted and belong to the negative list. Countries that make commitments based on the *Schedule of Specific Reservations and Non-conforming Measures* take a negative approach. In contrast, the positive list only specifies the industries and activities with permitted market access. Industries beyond the positive list are unbound (not permitted). *Schedule of Specific Commitments for Services* is regarded as a positive list. Countries providing this list take a positive approach. This section presents the commitment approaches adopted by each RCEP member country on TST.

### **RCEP Commitment Approaches to Tourism**

In terms of commitments to the tourism sector, Table 7. 14 shows the commitment approaches adopted by different RCEP member countries in the tourism sector.

- a. China, Australia, New Zealand, Lao PDR, Myanmar, the Philippines, Thailand, and Viet Nam adopted the positive list approach,
- b. Brunei, Indonesia, and Singapore use the negative list of commitments,
- c. The Republic of Korea, Cambodia, and Malaysia adopted both positive and negative lists, and
- d. Japan gives no commitments specifically on its tourism sector, only giving related negative list of horizontal commitments.

Compared with the positive list, the negative list on tourism can further improve the transparency of tourism trade policies. The ratchet mechanism ensures that members cannot lower the level of liberalisation in their services market. Therefore, for the tourism sector, it can be considered that the Republic of Korea, Indonesia, and Malaysia, which only adopted the negative list approach, are generally more liberalised than other RCEP member countries.

Commitment Specification on Tourism	Countries
Positive approach only	China, Australia, New Zealand, Lao PDR, Myanmar, the Philippines, Thailand, Viet Nam
Negative approach only	Brunei, Indonesia, Singapore
Both negative approach and positive approach	Republic of Korea, Cambodia, Malaysia
Not given	Japan

### Table 7.14 Commitment Approaches to Tourism

Source: The authors' summary based on Schedule of Specific Commitments for Services and the Schedule of Specific Commitments on Temporary Movement of Natural Persons in RCEP.

### **RCEP Commitment Approaches to Transport**

In terms of commitments to the transport services sector, Table 7. 15 shows the commitment approach of each RCEP country.

- e. China, Cambodia, Lao PDR, Myanmar, the Philippines, Thailand, and Viet Nam adopted the positive list of commitments only.
- f. Japan, the Republic of Korea, Brunei, Indonesia, and Singapore employ the negative list of commitments.
- g. Australia, New Zealand, and Malaysia adopted both the positive list and the negative list.

Thus, countries such as Japan, the Republic of Korea, Brunei, Indonesia, and Singapore, which only use the negative list in commitment, are considered generally more liberalised than other RCEP member countries.

Commitment Specification on Transport	Countries
Positive approach only	China, Cambodia, Lao PDR, Myanmar, Philippines, Thailand, Viet Nam
Negative approach only	Japan, Republic of Korea, Brunei, Indonesia, Singapore
Both negative approach and positive approach	Australia, New Zealand, Malaysia,

### Table 7.15 Commitment Approaches to Transport

Source: The authors' summary based on Schedule of Specific Commitments for Services and the Schedule of Specific Commitments on Temporary Movement of Natural Persons in RCEP.

### Specific Commitments of RCEP to Traditional Services Trade

The liberalisation level of the services sector in RCEP is reflected in the Schedule of Specific Commitments for Services submitted by member countries. For overall services trade commitments, eight members – i.e. China, New Zealand, Thailand, the Philippines, Viet Nam, Lao PDR, Cambodia, and Myanmar, made their commitments in a positive list, which sets out the restrictions and conditions on promised market access, the conditions and qualifications of national treatment, and other promises on different modes of services supply in all subsectors. The remaining seven members – Japan, the Republic of Korea, Singapore, Malaysia, Brunei, Indonesia, and Australia made their commitments in the form of a negative list, displaying the current non-conforming measures and reserved non-conforming measures. These measures are either for all sectors or for specific services sectors and are not subject to prescribed obligations. Further, members countries who promised in the form of a positive list will be required to converted to a negative list in the future with a deadline. Based on the difference in each country's development level, there is differential treatment of the member countries in terms of the requirement for liberalisation differs in the transition period of members. China, New Zealand, Thailand, the Philippines, and Viet Nam are required to submit the Schedule of Reservations and Non-conforming Measures no later than 3 years and complete it within 6 years after RCEP comes into force. RCEP requires that the converted negative list commit to at least the same or higher level of services trade liberalisation. For Cambodia, Lao PDR, and Myanmar, the time limit for the submission and completion of the negative list can be extended to 12 years and 15 years, respectively, after the enforcement of RCEP.



In addition to the *Schedule of Specific Commitments for Services*, the RCEP members have submitted the *Schedule of Specific Commitments on Temporary Movement of Natural Persons*, which gives the conditions and restrictions of temporary entry and temporary stay of different natural persons in a positive list including short-term business visitor, intra-corporate transferee, investor, qualified professional, independent professionals, contractual service suppliers, etc. China, Japan, and Australia also made commitments to accompanying spouses and their families.

In RCEP, each member country's services trade commitments have improved the liberalisation level in different dimensions. On the basis of specific commitments, member countries such as China and New Zealand also separately list the sectors for further liberalisation. In addition to market access and national treatment, 11 members also made commitments on most-favoured-nation treatment (MFN). For sectors covered in the MFN commitment, if a certain RCEP member grants any third-party liberalisation and market access treatment, it should be granted to other RCEP members automatically. There are differences in specific tourism and transport commitments with the overall services sectors made by the RCEP member countries.

### **Commitments on Tourism of Respective RCEP Members**

*China.* China has made commitments to two tourism services subsectors. The RCEP members can construct, renovate, and operate hotel and restaurant establishments in China, and wholly foreign-owned subsidiaries are permitted. There is no restriction for the hotel subsector provided by the cross-border supply mode or the consumption abroad mode both in market access and national treatment. Moreover, China has promised the MFN treatment for subsectors such as hotels and restaurants.

*New Zealand.* In the RCEP commitment, New Zealand's tourism sector has achieved full openness. In terms of market access and national treatment, New Zealand has no restrictions on the provision of services through cross-border supply, consumption abroad, and commercial presence. Fully open tourism subsectors include hotels and restaurants, travel agencies, tour guides, and tour operator services. Overall, New Zealand has a relatively high degree of tourism liberalisation in the RCEP commitment.

**Philippines.** As a member of ASEAN, the Philippines has signed the '10+1' free trade agreements (FTAs) with China, the Republic of Korea, Australia, and New Zealand, with a commitment to relatively low-level liberalisation. In hotels and restaurants, travel agencies, and other sectors, the Philippines' commitment has deepened, which is mainly reflected in the relaxation of market access restrictions.

*Viet Nam.* In RCEP, Viet Nam promises to fully liberalise lodging services, catering services, travel agencies, and tour operator services. Foreign services suppliers are

permitted to provide services in the form of joint ventures with Vietnamese partners with no limitation on foreign capital share. Tourist guides in foreign-invested enterprises shall be Vietnamese citizens. Foreign service-supplying enterprises can only provide inbound services and domestic travel for inbound tourists as an integral part of inbound services.

**Thailand.** Compared with the other four FTAs signed with the RCEP countries, Thailand's commitments to RCEP are greatly improved. In RCEP, there are many newly incorporated open commitments on the tourism sector, including tourism and travel agency operator services.

**Lao PDR.** Tourism, as a sector included in the positive list, has basically no restrictions on the services provided by means of consumption abroad. For the commercial presence mode, there are requirements on the proportion of foreign equity participation in most sectors. The proportion of foreign investment in the services of travel agencies and tour operators shall not exceed 70%. There are limitations on personnel movement and qualifications for the natural persons.

**Myanmar.** In RCEP, there are 32 services subsectors that are fully liberalised in Myanmar, including the tourism sector. There is no restriction on market access or national treatment in terms of the tourism consultancy services provided by means of cross-border supply, consumption abroad, and commercial presence mode.

**Cambodia.** In the RCEP commitment, Cambodia is fully open in subsectors such as tour guides. In the maintenance and repair of the road transport equipment industry, there are no restrictions on market access or national treatment for services provided by the mode of cross-border supply, consumption abroad, and commercial presence.

**Australia**. Generally, Australia's services sector is highly open. Tourism in Australia is basically open, including hotels and restaurants, travel agencies, tour operator services, and tourist guide services.

**Republic of Korea.** In general, the Republic of Korea's tourism services are fully open. Some restrictions on tourism subsectors, such as tour operator services provided by cross-border supply, consumption abroad, and commercial presence, have been eliminated.

**Singapore.** Some tourism services in Singapore are generally liberalised, with only a few restrictions, such as 'To provide food or beverage catering services in Singapore, a foreign services supplier must incorporate as a limited company in Singapore, and it must apply for the food establishment license in the name of the limited company to operate a food or beverage establishment in non-government run eating facilities.'

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**Brunei.** The current non-conforming measures and reservation non-conforming measures of Brunei cover related tourism industries.

*Malaysia.* Tour operators and tour guide services in travel services are involved in the current non-conforming measures.

Indonesia. Tourism services are listed in the reserved non-conforming measures.

### **RCEP Commitment to Transport**

*China.* China has opened 18 subsectors in transportation services. The two subsectors, the maritime services agency and freight transportation by road in trucks or cars, are completely open. Regarding maritime cargo handling services, customs clearance services for maritime transport, container station and depot services and passenger transportation, RCEP members face no restrictions on entering the Chinese market in the form of commercial presence. For freight transportation by rail, storage, and warehousing services, freight forwarding agency services and freight inspection, wholly foreign-owned subsidiaries are allowed. Joint ventures are allowed in aircraft repair and maintenance services as well as computer reservation systems. Compared with other FTAs signed, China has increased its commitment to the passenger transportation sector in the RCEP commitment and has comprehensively improved the liberalisation level of commitments in maritime transport services. Moreover, China has promised the MFN treatment to some subsectors, such as couriers, rail transport services, and road transportation services.

**New Zealand.** In the RCEP commitment, New Zealand's transport services sector is already fully open. Compared with the FTA signed between New Zealand and ASEAN, New Zealand's commitments to the transport services in RCEP have been improved, and eight new services subsectors have been opened. Amongst them, New Zealand does not set restrictions in six subsectors, including aircraft repair and maintenance services, airport operation services and support services for air transport that provide services based on consumption abroad and commercial presence. For specialty air services, 100% foreign-owned equity is allowed. Compared with other bilateral FTAs signed by New Zealand, RCEP has new commitment sectors and further opening measures in some transportation areas, such as air transport services.

**The Philippines.** The Philippines' commitment to the transport services industry under RCEP has been greatly improved, and more than 70 subsectors, including transportation, have been newly opened. In the courier, maintenance and repair of aircraft, and some other subsectors, the Philippines' commitment has deepened, mainly reflected in the relaxation of restrictions on market access. Under RCEP, the Philippines is completely open in international maritime transport, maintenance and repair of aircraft, and freight forwarding services.

*Viet Nam.* In RCEP, Viet Nam promised to fully open up sales and marketing of air products services and some courier services.

**Thailand.** Compared with other FTAs signed by Thailand and other countries, RCEP has newly included the transport service sector with open commitments, including aircraft repair and maintenance services.

**Lao PDR.** Compared with the existing FTA commitments, Lao PDR has increased the level of liberalisation of the transport service industry in RCEP. In some courier sectors, the selling and marketing of air transport services and computer reservation system services are completely open. In the maintenance and repair of rail transport equipment, the proportion of foreign capital shall not exceed 51%.

**Myanmar.** The transportation services sector is one of Myanmar's fully open subsectors in which some maritime and air transportation services are not restricted to market access and national treatment.

**Cambodia.** Cambodia is fully open to couriers and other subsectors in the RCEP commitment. For the freight transportation industry, there is no restriction on market access and national treatment in the maintenance and repair of road transport equipment and some other services provided by the first three modes: cross-border supply, consumption abroad, and commercial presence.

**Australia.** National treatment restrictions are mostly reflected in the requirements for the composition of the board of directors, the identity of the service provider, the company's headquarters, and the place of registration. Taking air transport services as an example, the total foreign shareholding of a single Australian international airline (except Qantas) will not exceed 49%. The chairperson of the board and at least two-thirds of the board members must be Australian citizens, the headquarters, and operating base of the airline must be located in Australia.

**Republic of Korea.** There are different restrictions on market access and local presence in the transportation sector. For example, in aircraft maintenance and repair services, a person who supplies aircraft maintenance and repair services must establish an office in the Republic of Korea.

Japan. Japan eliminated restrictions on couriers and most maritime transport services.

*Singapore.* Different restriction measures exist in different subsectors of the transport services sectors. For example, in the maritime transport services industry, only local service suppliers are allowed to operate and manage cruise and ferry terminals.

**Brunei.** Various levels of restrictions have been imposed on the subsectors of the transportation services in Brunei. The current non-conforming measures involve railway transport services, maritime passenger transport services, and maritime freight transport services. Reserved non-conforming measures involve air, land, maritime, internal waterway transport, aerospace, and services auxiliary to all modes of transport. Malaysia. The current non-conforming measures involve domestic shipping and road freight in transportation services. Reserved non-conforming measures involve dir transport services, freight road transportation services and international maritime transport services in transportation services.

*Indonesia.* The current non-conforming measures involve maritime transport services. Reserved non-conforming measures involve maritime transport services, internal waterways transport and road freight transportation.

# Liberalisation Index for TST – the Hoekman Index

To assess the schedules of each country, a quantitative measure is required that allows for cross-country comparisons (Hoekman, 1995). To measure the liberalisation level, in this subsection, we calculate the Hoekman index for trade liberalisation of each RCEP member country in tourism and transport services.

### Tourism

Based on the commitments given by the RCEP countries, this subsection draws on the calculation method of 'average coverage of the schedule' used by Hoekman (1995) to measure the level of tourism liberalisation. The index is defined as the arithmetic mean of the scale factors allocated to each cell of market access and national treatment for four services provision modes in every tourism subsector. Specifically, (i) the scale factor of the subsector mode that eliminates restrictions (None) takes 1; (ii) the scale factor of the subsector mode where no promise is given (Unbound) takes 0; (iii) in other cases (with some restrictions), the scale factor takes 0.5. We have respectively defined the scale factor both in market access and national treatment. We then add up each of the scale factors in all tourism subsector mode cells for each member country and average them to obtain a country-level liberalisation indicator. We first use that method to calculate the Hoekman index for countries that use the positive list only. Second, for the countries that use the negative list only, we assume the scale factor of the subsector mode covered by the Schedule of Specific Reservations and Non-conforming Measures takes 0.5, whilst

the scale factor of the rest of subsector-mode takes 1. Third, for the countries that use both positive and negative approaches (Republic of Korea, Cambodia, Malaysia), we combined the two methods of calculating the negative-approach country and calculating the positive-approach country. We first calculate their Hoekman index using a positive method and then replace the scale factor of the subsector mode from 1 to 0.5 if the subsector was also listed in the Schedule of Specific Reservations and Non-conforming Measures.

Table 7. 16 shows the Hoekman index of tourism for 14 RCEP member countries except Japan. Based on this, the ranking of the liberalisation level in tourism for the RCEP member countries is Singapore, Brunei, Indonesia, New Zealand, Lao PDR, the Philippines, Myanmar, Thailand, China, Viet Nam, Cambodia, the Republic of Korea, Australia, and Malaysia. Amongst them, Singapore has the highest tourism liberalisation level of 98% amongst all the RCEP member countries in the tourism sector, whilst Malaysia does not liberalise much, with a liberalisation level of only 5%. On average, in the tourism sector, countries adopting a negative list are more liberalised than those adopting a positive list or both lists in the tourism sector.

Country	Openness in Tourism (%)	Rank in Tourism
Singapore	98.75	1
Brunei	93.75	2
Indonesia	89.375	3
New Zealand	35	4
Lao PDR	33.125	5
Philippines	30.625	6
Myanmar	28.125	7
Thailand	25	8
China	24.375	9
Viet Nam	21.25	10
Cambodia	18.125	11
Korea, Rep.	11.875	12
Australia	11.875	13
Malaysia	5	14

#### Table 7.16 Hoekman Index (Average Coverage of the Schedule) for Tourism\*

Note: \*It is not possible to calculate Japan's Hoekman Index of tourism since Japan does not give any commitment on tourism in either the negative list or positive list.

Source: The authors' summary based on Schedule of Specific Commitments for Services and the Schedule of Specific Commitments on Temporary Movement of Natural Persons in RCEP.

### Transport

Using the same calculation method of the Hoekman Index for the tourism sector, this subsection calculates the liberalisation index of the transport services sector. Table 7. 17 shows the Hoekman index of the transport sector of 15 RCEP member countries. According to the calculation result, we sort the RCEP countries from the highest to the lowest liberalisation level. The Republic of Korea has the highest trade liberalisation level of transport services trade amongst all the RCEP member countries of 86.04%, whilst Malaysia has the lowest liberalisation level of 0.65%. On average, countries adopting a negative list are more liberalised than countries adopting a positive list or both lists in the transport services sector.

Country	Openness in Tourism (%)	Rank in Tourism
Korea. Rep	86.04	1
Japan	85.88	2
Indonesia	80.36	3
Singapore	74.11	4
Brunei	68.42	5
Philippines	24.67	6
New Zealand	24.19	7
Lao PDR	18.18	8
Viet Nam	17.29	9
China	16.88	10
Myanmar	16.40	11
Thailand	11.87	12
Cambodia	11.35	13
Australia	9.62	14
Malaysia	0.65	15

### Table 7.17 Hoekman Index (Average Coverage of the Schedule) for Transport

Source: The authors' summary based on Schedule of Specific Commitments for Services and the Schedule of Specific Commitments on Temporary Movement of Natural Persons in RCEP.

# Influences and Policy Implications in the Post-pandemic Era

The COVID-19 pandemic shock in early 2020 had a huge negative economic and social impact on the East Asian region and global economies. The global economy declined into a recession. The whole world is in a pattern of 'Great Change' that is more complicated and volatile (Song and Zhu, 2021). The signing of RCEP has enabled 15 member countries, which currently account for approximately 30% of the global total population, economic volume, and total trade volume, to form an integrated market that strongly supports economic integration. RCEP contributes to promoting the recovery and further development of both the regional and the world economy.

Under RCEP, the services trade and activities are expected to be increase with greater market access to export and investment activities. TST under RCEP can bring a positive industrial transmission effect (Qiu and Gong, 2021), which will promote the development of traditional services sectors such as transport services and tourism for the RCEP economies in the pandemic and post-pandemic recovery. Focusing on tourism and transport services, this section discusses the impact of the pandemic shock and provides policy discussion to promote the growth of tourism as well as transport services under the RCEP framework.

# Influences of the COVID-19 Pandemic on Tourism and Transportation

### Tourism

Since early 2019, the COVID-19 pandemic has had a huge negative effect on tourism. The impact of the pandemic on ASEAN's cross-border tourism is devastating. Figure 7.26 gives the tourism trade volume in ASEAN after 2016. From 2016 to 2019, ASEAN tourism trade increased from \$182 billion to \$584 billion. However, in 2020 after the COVID-19 pandemic, tourism trade plunged to \$58 billion, where the tourism trade in 2020 was even lower than that we observed in 2016. It is expected that the downturn of tourism trade will continue in the post-pandemic recovery. Figure 7.27 provides evidence of tourism collapse in several countries and regions. Panel A presents the change in the number of tourist arrivals. Tourism arrivals collapsed at the beginning of 2020 with an increasingly negative growth rate. Panel B shows the results of different survey waves, including the February, April, and June Surveys, on people's willingness to travel after bans are lifted. If bans are lifted, a large number of people will delay their travel plans. For example, in the June Survey, 33% of the interviewees will wait 1 or 2 months after bans are lifted, and only 12% of them will travel immediately.

Figure 7.28 shows the annual tourism expenditure of South Australia. It seems that the tourism sector will take time to recover. In South Australia we observe a large drop in tourism spending in 2020, reflecting the impact of the COVID-19 pandemic. Both international and domestic tourism collapsed after 2020. After April 2020, tourism began to recover across the world. Figure 7.29 gives tourism indicators after 2020, including international tourist arrivals, seat capacity, occupancy rate, and travel sentiment. Collapsing in January 2020, all of those indicators began to increase after April 2020.





Source: ASEAN Database.



### Figure 7.27 Tourism Collapse and Sluggish Recovery

Sources: Figure A: CEIC Data Company; Ministry of Tourism. Republic of Maldives (https://www.tourism.gov.mv/ statistics/monthly updates/); Republic of Palau National Government (https://www.palaugov.pw/ visitor-arrivals/); Vanuatu National Statistics Office (https:// vnso.gov.vu/index.php/newreleases/monthly news/tourism-news#latest-tourism-news); Fiji Bureau of Statistics (https://www.statsfiji.gov. fj/index.php/statistics/tourism-and-migration-statistics/visitorarrivalsstatistics); Georgian National Tourism Administration (https://gnta.ge/statistics/); NagaCorp Ltd (https://www.nagacorp.com/ eng/ir/tourism.php); Census and Statistics Department. Government of Hong Kong SAR (https://www.censtatl.gov.hk/ hkstat/sub/sp130. jsp? productCode=D5600551); Tourism Tracker. Asia and Pacific Edition. Issue 4. 19 June 2020. International Monetary Fund (https://www.imf.org/-/media/Files/Countries/ResRep/pis-region/tourism-tracker/june-2020-tourismtracker.ashx? la=en). Figure B: International Air Transportation Association (https://www.iata.org/en/) (all accessed 31 August 2020).



### Figure 7.28 Annual Tourism Expenditure (year ending in June) by Type, South Australia (A\$ billion), 2006–2021

Source: South Australian Productivity Commission (2021).



Figure 7.29 Tourism Change by Indicator (%)

The COVID-19 pandemic has a direct impact on industries such as tourism in terms of lockdowns and restrictions on the movement of people by the affected countries. Since a large proportion of the tourism sector is based on the activities of small and medium-sized firms, they often lack the ability and resources to rebound quickly (Wu et al., 2020).

To control the spread of the pandemic, regulation policies have been widely implemented. A pandemic policy consists of three levels. The first level is controlling the movement of people by lockdowns and restrictions as well as nucleic acid testing. The second level is the increasing level of protection of individuals and the domestic economy. Vaccinations are required. Countries are trying to achieve a certain aggregate threshold – above 70% of the population – because affordable vaccination protection can reduce the need for hospitalisation and fatalities. Meanwhile, countries are trying to allocate healthcare infrastructure more efficiently. The third level is improving therapies, including COVID-19 pills and other therapies. This helps improve the chances of recovery. Home therapies rather than hospitalisation are allowed to reduce healthcare resources. It is important to shift towards endemicity (greater overlap with market activities). In addition, there are also concerns of the identification and policy responses to new variants. There is a policy gap with the identification of new variants, which is important and reflects a greater burden for health scientists.

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Source: United Nations World Tourism Organization Dashboard.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> https://www.unwto.org/tourism-data/unwto-tourism-recovery-tracker

The pandemic can also influence the global value chain (GVC). Value chains are defined as 'the entire sequence of activities or parties that provide or receive value in the form of products or services (Averous-Monnery and Barthel, 2019). In a tourism context, the value chain starts with travel organisations and booking services and includes transportation, accommodation, food and drinks, tourist activities, and support services. Along with the tourism GVC, the decline of cross-border tourism can also affect many other related industries. Figure 7.30 gives the structure of tourism GVC. Both the outbound country and inbound country are involved. According to the summary of the tourism GVC mentioned by Christian et al. (2011), there are two stages in the outbound country: the distribution stage and the international transport stage. The distribution stage is composed of the travel agent and tour operator. The international transport stage covers the carrier and cruise industry. In the inbound country, the tourism process includes distribution, regional transport, lodging, and excursions. The inbound country provides hotels, guides, and regional transport. During the pandemic, tourist arrivals decrease, and other related industries along the tourism value chain are seriously influenced.



### Figure 7.30 Tourism Global Value Chain

Source: Christian et al. (2011).

The COVID-19 epidemic has had a huge negative effect on tourism industries both from the supply side and the demand side. From the supply side, tourism industries such as hotels and sightseeing tours have suffered heavy losses, and corporate cash flow has been tight. On the demand side, people's consumption was suppressed during the epidemic, and the expected economic downturn had a profound impact on people's desire to consume. China's economy fell by 6.8% in the first quarter of 2020. At the end of 2021, tourism consumption was still not fully stimulated. The countries with tourism as the pillar industry suffer even more in the pandemic. For example, Thailand's tourism industry has been extremely impacted by the epidemic. According to relevant data from Thailand news, the tourist mass and income levels of more than 700 tourist spots in Thailand reached the lowest level in 2020. Many tourist places have been temporarily closed, including nearly half of the hotels. The opening rate of health care and pedicure places is only approximately 30%. Only 3% of entertainment venues can operate normally.

According to the data published by the Ministry of Tourism and Sports of Thailand,<sup>3</sup> in 2020, there were only approximately 6.7 million tourists coming to Thailand, a decrease of 83% compared with 2019. Since Thailand implemented a state of emergency and banned international flights in late March 2020, the number of inbound tourists has been almost zero. To boost tourism, Thailand introduced a 'special tourist visa' in October 2020, allowing qualified long-stay foreign tourists to enter, but it came to mute effects. In the last quarter of 2020, there were only 10,800 inbound tourists to Thailand. In mid-December 2020, a new round of the epidemic broke out in Thailand, which worsened the local tourism and related services industries. According to the report by the National Tourism Administration of Thailand, the new round of epidemics could cause an average monthly loss of B46 billion (approximately \$1.5 billion) and a quarterly loss of more than B130 billion (approximately \$4.3 billion).

### **Impacts on Transportation**

The pandemic also has had a severely negative impact on transport services trade, both on freight trade and passenger trade. Figure 7.31 shows the trend of freight transport services and passenger transport services in the eight main RCEP countries.<sup>4</sup> After 2019, both freight imports and freight exports of the eight countries dropped slightly. In contrast, the decrease in passenger transport trade was dramatically influenced by the pandemic in 2020. Both the export and import of passenger transport decrease substantially, even lower than the level in 2010.

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<sup>&</sup>lt;sup>3</sup> https://www.mots.go.th/news/category/593

<sup>&</sup>lt;sup>4</sup> Due to the data availability, we select Australia, Cambodia, Indonesia, Japan, the Republic of Korea, Malaysia, Philippines, and Thailand.





Source: WTO Database.

The reason why transport trade has decreased can be summarised in two aspects. The reasons for passenger transport have been mentioned in the tourism subsection, that is, travel restrictions and quarantine policies. The rise in freight rates and the shortage of containers are important reasons for the decline of freight trade. Due to the serious situation in some countries, ports have been blocked, and shipping is seriously hindered. A large number of container ships are not running smoothly. Ship congestion can be a serious problem. Oceanbolt data<sup>5</sup> show that on 20 August 2021, the number of bulk carriers waiting for loading and unloading along China's coast reached 994, rising to a 7-year highest level. The main reasons for port congestion include the gradual enlargement of ships, the inefficiency caused by the shortage of port infrastructure and dock workers, imperfect warehousing facilities, the lack of infrastructure for portrail intermodal transport and port-road intermodal transport, and the congestion of multimodal transport networks. Congestion at the port has contributed to a drop in transport punctuality, which will affect the stability of the global supply chain. According to statistics, the punctuality rate of arrivals and departures of global trunk routes and the punctuality rate of receiving and dispatching services dropped from 70% before the pandemic to below 20% in 2021. Major container ports in China and other countries are generally delayed. The punctuality rate has dropped to lowest level. For example, the transit time from Shanghai to the West Coast of the United States has increased from 30 days to 60 days.

<sup>&</sup>lt;sup>5</sup> Oceanbolt is a Norwegian joint venture company providing innovative market data solutions for commodities and shipping operations.

A large drop in punctuality leads to poor container transport efficiency. Taking China as an example, according to China Yuekai Securities Company's Research Report(2021),<sup>6</sup> China's main international transportation mode is ocean shipping, which occupies approximately 95% of international transportation. The majority of China's export goods are intermediate products and final goods of manufacturing, which are mainly transported in containers. Since 2020, the growth rate of container throughput at major ports has been significantly lower. Monitoring data from the China Port Association showed that the container throughput of the eight major hub ports increased by an average of 6% in early September 2021, which was significantly lower than the growth rate of imports and exports in the same month in 2019. In Shanghai and Ningbo, the 2-year compound average growth of container throughput in the first half of 2021 was 2.3% and 7%, respectively. Figure 7.32 shows the throughput of Shanghai Port and Ningbo Port. The low container throughput naturally leads to 'hard to find one container'. A shortage of containers will result in a higher freight rate, which can damage the global value chain. On the one hand, the rising freight rate makes the final products of export firms unable to be shipped and delivered, which leads to increased storage expenses and slow sales receipts. On the other hand, it leads to the shortage of intermediate inputs for production. Both of them have fractured the global value chain. Figure 7.33 gives the relationship between the pandemic, container transport, trade cost, and global value chain.





Source: Yuekai Securities Company's Research Report (2021).

<sup>6</sup> https://max.book118.com/html/2021/1014/7122111105004022.shtm

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Source: Authors.

### **Measures to Promote TST in RCEP**

### **Movement of Personnel**

TST heavily relies on the movement of personnel (mode 4) to maintain competitiveness in the region. Since 2020, restrictions on the movement of people have been the main restrictions on the development of both tourism trade and transport services trade. Under the conditions of proper control and prevention measures for the pandemic, restrictions on the movement of people across borders should be gradually reduced. The lowering of the pandemic situation relies on favourable prevention and control measures.

(a) Countries need to build herd immunity. Therefore, countries should actively promote the popularisation of vaccines. To improve the efficiency of personal movement, the RCEP countries should strengthen the mutual recognition of vaccines between countries and simplify the vaccine approval process. It is necessary to establish the identification and mapping of cities and regions with high vaccination rates.

(b) Countries should also manage the protocol on pandemic restrictions on tourism industries. For example, special business visas with multiple entries that include vaccination details should be popularised. For general tourism, more city-to-city links should be established, such as direct flights to Melbourne, Sydney, Phnom Penh, Siem Reap, Singapore, Jakarta, and Bangkok.

(c) Governments should encourage the development of new tourism products and improve tourism quality to attract more visitors. Digital transformation is critical in the domestic economy. The MICE (meeting, incentives, conferences, and exhibitions) industry will transform into digital and hybrid conferences and exhibitions. A COVID-19 tracking app can be adopted.

(d) East Asian countries should gradually open up and restore road, air, and shipping routes. Countries are also supposed to establish green channels to facilitate the movement of natural persons to re-energise the transportation and tourism industries.

(e) An international medical cooperation for health emergency response mechanism should be established. The role of public and private partnerships and coordination between the aviation, medical, and insurance industries, travel insurance, and medical healthcare are critical.

RCEP will play an important role in the recovery of regional tourism. Even if tourism has recovered to some extent worldwide, border restrictions still need to be reduced, especially in Asia. The global border restriction increased drastically in early 2020 and dropped in the middle of 2020 (World Tourism Organization<sup>7</sup>). As of 2021, border restrictions still existed. Figure 7.34 shows the border restrictions in different regions in 2021. It is relatively high in Asia and the Pacific compared to other regions. Even so, the travel sentiments are high in terms of Asia and the Pacific as destinations. Travel sentiments after March 2020 are increasing (World Tourism Organization). Figure 7.35 presents travel sentiments in terms of destination, including different regions in the world. It is relatively high when the destination is the Middle East, Asia, and the Pacific. There is a gap between high travel sentiment and the restriction of people movement. Tourism recovery in the region will be slow and uneven. As a result, regional coordination in RCEP is required to promote the movement of people. For example, under RCEP, there are no restrictions on travel agencies in China. With regard to the movement of natural persons, the hotel sector allows foreign managers, experts, including chefs and senior managers who have signed contracts to provide services in China on the basis of horizontal commitments. To promote the movement of those people, visa procedures are expected to be simplified. However, in the RCEP commitments, some countries still have restrictions on service providers, including service scope and time restrictions. According to China's Schedule of Specific Commitments on Temporary Movement of Natural Persons, the contractual service supplier (CSS) could temporarily enter and shall not stay over 1 year. The services provided by CSS are limited to specific sectors, including accounting, medical and dental, architectural, engineering, urban planning, computer and related services, construction and related engineering services, education, and tourism. To promote the movement of natural persons, more industries should be covered.

<sup>&</sup>lt;sup>7</sup> https://www.unwto.org/tourism-data/unwto-tourism-recovery-tracker



Figure 7.34 Border Restrictions in Different Regions (%)

Source: World Tourism Organization.





Source: World Tourism Organization.

### **Global Value Chains and International Cooperation in RCEP**

International cooperation should be strengthened. Some studies acknowledge that activities related to services in global value chains (GVCs) are important for maintaining the competitiveness of trade and investment (Kimura, 2018; Miroudot, 2019; Gereffi and Fernandez-Stark, 2016; Baldwin, 2012; Thangavelu, Ing, and Urata, 2015). Services are important input sources for multinational firms to reduce their cost of production and improve productivity by outsourcing inefficient activities. (Lodefalk, 2014). The GVC framework, on the other hand, illustrates the complete production processes and linkages

of manufacturing activities between countries, allowing policymakers to develop suitable regulations (Kimura et al., 2019). The RCEP countries should strengthen their value chain. Services activities are also becoming vital for domestic industries to participate in global production value chains. First, countries need to integrate different stages of the global value chain and innovate in stages of the GVC to attract foreign visitors. For example, countries can develop medical tourism, which has become popular in recent years. Foreign visitors can receive medical care or plastic surgery when traveling to the Republic of Korea. Figure 7.36 gives the details of international medical tourism. In medical tourism, outbound countries provide agents and financial services. Inbound countries provide local hospitals, local insurance, etc. International cooperation plays an important role during this process. Countries with high-quality medical resources can develop medical tourism to stimulate tourism in the pandemic era. Moreover, under the threat of global value chain fracture, countries should develop domestic and regional value chains to offset international risk. For example, in the circumstances where international tourism suffered. China developed domestic travel like short-distance skiing during the 2022 Winter Olympics, which stimulated the tourism industry and the whole economic development.



### Figure 7.36 Medical Tourism Structure

Source: Kimura et al. (2019).

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The RCEP countries need to cooperate along the GVC stage to promote TST. Regarding tourism trade, according to Figure 7.36, both the outbound country and the inbound country are involved in the tourism global value chain. Outbound countries are responsible for distribution and international transport. To promote the distribution stage, which is composed of travel agents and tour operators, countries are supposed to train professional guides and simplify the registration process for tour operator companies. For transport services trade, the international transport stage covers the carrier and cruise industry; thus, the RCEP countries can establish multinational cruise organisations. For passenger transport, services in airports and ships need to be improved. RCEP could provide the regional cooperative framework to increase the competitiveness of the traditional services sector in the GVC by focusing on (i) digitalising some of the traditional services trade, (ii) increasing the technical capacity of the labour force in the traditional services, (iii) creating a new 'pandemic' protocol for movement of people at the regional level, and (iv) green tourism. In addition, the RCEP meetings related to tourism development are needed. For example, the 25th Meeting of the ASEAN Tourism Ministers on 19 January 2022 in Sihanoukville, Cambodia endorsed the importance of tourism, and an RCEP level meeting such as this is needed.

### **Digital Technology and Transport Sectors**

Countries should actively develop digital technologies to improve the efficiency of international transport and tourism. Activities related to information and communication technologies, transportation, and logistics are regarded as important linkages that facilitate global production networks (Lodefalk, 2014). Firms are rapidly shifting to develop or expand their digital capabilities to manage highly altered supply and demand pressures. The present value chain and the new economy show some characteristics related to logistics, such as 'small batch, multiple batches, short time, and high requirements'. To adapt that, digital technology should be fully utilised to integrate the regional value chain in RCEP (Elms, 2020). Companies in the shipping industry need to take advantage of big data, cloud computing, and intelligence. By these means, the management of the transport supply chain can be strengthened, and the level and efficiency of services industries can be improved.

International cooperation on logistics and transportation is critical. The role of public and private partnerships is critical in digital technology and transportation, including smart logistics and artificial intelligence, in the logistics sector to manage the movement of people issues. Domestic reforms for the movement of goods are necessary, including evaluating the movement of goods across state borders and the digital transformation of the logistics sector, which will be critical for the development of critical services in the recovery process, for example, e-commerce.

RCEP is promoting the liberalisation of transport services trade. Under RCEP, China opened 18 subsectors in transportation services. The two subsectors, the maritime services agency and freight transportation by road in trucks or cars, are completely open. Regarding maritime cargo handling services, customs clearance services for maritime transport, container station and depot services, and passenger transportation, the RCEP members face no restrictions on entering the Chinese market in the form of commercial presence. To improve the efficiency of establishing a commercial presence for foreign transport services providers, host countries should simplify the company registration process. Due to the increase in freight rates caused by container shortages, countries should take measures to guarantee the normal production and operation of containers. Meanwhile, more dock workers should be hired to improve the efficiency of loading and unloading. In addition, countries are supposed to promote international cruise cooperation. At present, some of the RCEP member countries still focus on forming their own fleets. It is also necessary for individual countries to form a joint force within RCEP.

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# CHAPTER 8

The Investment Chapter in the Regional Comprehensive Economic Partnership: Enhanced Rules without Enforcement Mechanism

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This Chapter examines the legal rules in the investment chapter in the Regional Comprehensive Economic Partnership (RCEP). It starts with an overview and summary of the main provisions in the chapter, followed by an assessment of the rules by comparing established free trade agreements (FTAs), especially the Comprehensive and Progressive Trans-Pacific Partnership. In particular, it notes that the chapter, whilst largely following the established approaches to investment in other FTAs, also includes important twists to the common rules to favour the host states. The last part discusses the conspicuous absence of an investor–state dispute settlement mechanism, its pros and cons, and wider implications on regional integration, then concludes with some thoughts on future developments.

## Introduction

The inclusion of investment issues in trade agreements is a very recent phenomenon (Hoekman and Newfarmer, 2005), as such issues were traditionally governed by separate bilateral investment treaties (BITs). The problem with BITs, however, is that they only address investment protection issues and do not provide investment liberalisation. To deal with the problem, the Canada–United States (US) free trade agreement (FTA) concluded in 1989 became the first FTA to incorporate investment and provide both investment protection and liberalisation in one agreement. This approach was later inherited by the successor to the Canada–US FTA, the North American Free Trade Agreement (NAFTA), which was concluded in 1994. Investment chapters are popular in FTAs concluded between developed and developing countries due to the former's distrust of the latter's legal system, but in recent years, it has also become common even in FTAs amongst developing countries, with the Regional Comprehensive Economic Partnership (RCEP) as one of the latest examples. The rapid growth of FTAs with investment provisions is documented in a 2018 WTO Staff Working Paper by Crawford and Kotschwar, with the chart reproduced in Figure 8.1.

The World Trade Organization (WTO) was established at around the same time as NAFTA, and it also includes an Agreement on Trade-Related Investment Measures (TRIMs). Yet, the TRIMs Agreement does not really regulate investment. Instead, as its name suggests, it mainly targets investment measures that may distort trade, especially those contravening one of the core principles of the WTO: national treatment. It does not provide rules protecting investor's rights as commonly find in BITs or FTAs with investment chapters. As to market access for investment, they are addressed mainly

<sup>&</sup>lt;sup>1</sup> This WTO staff working paper discussed preferential trade agreements (PTAs), which are often used interchangeably with free trade agreements (FTAs), even though strictly speaking, FTAs are only a sub-category of PTAs. Unless otherwise noted, PTAs and FTAs are regarded as the same in this paper.

under the WTO's General Agreement on Trade in Services (GATS), which includes rules on market access and national treatment for one of the modes of supply of trade in services – commercial presence – also known as mode 3 under the GATS. However, breaking from the tradition from the WTO, many FTAs nowadays have separate chapters on investment, which essentially carved out mode 3 from the services chapters. This is also the approach taken by RCEP.



Figure 8.1 Trend of Free Trade Agreements with Investment Provisions

PTAs = preferential trade agreements.

Source: WTI RTA Database. http://rtais.wto.org (accessed May 2018).

## **Overview and Summary**

The investment commitments in RCEP are composed of the following:

First, a main chapter setting out the main legal rules on investment, which include 18 articles covering issues such as definitions, scope of the agreement, national treatment, most-favoured-nation (MFN) treatment, minimum standard of treatment, prohibition of performance requirements, senior management and board of directors, reservations and non-conforming measures, transfers, special formalities and disclosure of information, compensation for losses, subrogation, expropriation, denial of benefits, security exceptions, investment promotion and facilitation, and work programme.

Second, two annexes that confirm the Parties' shared understandings on the interpretations of two issues: customary international law and expropriation.

Third, the respective Schedules of Reservations and Non-Conforming Measures for Services and Investment by the Parties, which are attached to RCEP as Annex III.

Due to space constraints, this paper will focus mainly on the legal rules in the first two components, with a detailed examination and summary of the specific provisions in this section.

### **Definitions**

This article includes the definitions of nine terms, all relating in some way to investments and investors, which are the core issues in the investment chapter. As BITs were initially designed to attract foreign-direct investment (FDI), they have traditionally adopted a broad definition that takes an 'asset-based' approach, which covers 'every kind of asset' including both FDI and portfolio investment (Crawford and Kotschwar, 2018). However, due to ever-expansive interpretations by the arbitration panel in investment arbitration cases, many countries grew wary of the broad definition and shifted to a narrower 'enterprisebased' definition, as the one found in the Canada–US FTA. More recently, countries have been trying to strike a balance between the two by having a comprehensive definition of investment coupled with various techniques to make sure that assets meant to be excluded are not inadvertently covered. This is also the approach taken in the RCEP definition article, as it defines investment as 'every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment', which is followed by an open-ended list of possible forms of investment, a list that is even longer than the list under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). At the same time, it also retains considerable policy autonomy for the Parties by explicitly stating that 'covered investment' under the chapter is limited to those made 'subject to [the host Party's] relevant laws, regulations, and policies'.
## Scope

Article 10.2 in RCEP delineates the scope for the chapter by specifying both the measures it covers, as well as those that are excluded. There are three requirements for the covered measures:

First, it should be 'adopted or maintained by a Party', which include both central and sub-central governments and authorities, as well as 'non-governmental bodies in the exercise of powers delegated by' such governments and authorities.<sup>2</sup>

Second, it should relate to 'investors of another Party', which is defined to include both a natural person and a juridical person.<sup>3</sup> A natural person includes not only nationals or citizens of a Party, but also permanent residents.<sup>4</sup> A juridical person is broadly defined to include 'any entity constituted or organised under applicable law, whether or not for profit, and whether private or governmental, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation'.<sup>5</sup> It also includes 'a branch of a juridical person', but such branch is explicitly denied 'the right to make any claim against any Party' under RCEP.<sup>6</sup> This provision shall be read together with the Article on denial of benefits,<sup>7</sup> which specifies circumstances under which the benefits in the investment chapter may be denied to investors of another Party, such as ownership or control by a person from a non-Party, lack of substantial business operation, lack of diplomatic relations, or investments 'in breach of the provisions of the denying Party's laws and regulations that implement the Financial Action Task Force Recommendations'. There are also country-specific denial provisions for Thailand and the Philippines. Similar to the CPTPP, RCEP also includes in its definition of investors those seeking to make investments, which means that the pre-establishment phase of an investment is also covered.

Third, it should relate to 'covered investments', which are defined to include both existing investments at the time of entry into force of RCEP, and those which were established, acquired or expanded afterwards.<sup>8</sup> This is also subject to the requirement that such investments shall have been admitted by the host Party 'subject to its relevant laws, regulations, and policies'.

- <sup>3</sup> Art. 10.1.(e).
- <sup>4</sup> Art. 10.1.(i).
- <sup>5</sup> Art. 10.1.(f).
- <sup>6</sup> Footnote 10 of RCEP. <sup>7</sup> Art. 10.14.
- <sup>7</sup> Art. 10.14.
- <sup>8</sup> Art. 10.1.(a).

<sup>&</sup>lt;sup>2</sup> Art. 10.1.(h).

### **Investment Liberalisation Commitments**

The chapter also includes a host of investment liberalisation commitments, which mainly includes the twin provisions of non-discrimination, i.e. national treatment and most-favoured-nation treatment provision, and performance requirements. The national treatment provision under Article 10.3 serves to make sure that a covered investor would receive treatment no less favourable than that accorded by the host state to its own investor. The MFN provision under Article 10.4 requires the Parties to make sure that a covered investor receives treatment no less favourable than that accorded by the host state to its own investor receives treatment no less favourable than that accorded by the host state to the investor from anywhere, including both other Parties and a non-Party to the agreement. Article 10.6 prohibits a host of common performance requirements, such as those requiring export performance, domestic content, technology transfer, etc. These practices are similar to the ones found under the WTO's TRIMs Agreement and the CPTPP. Similarly, following the example of the CPTPP, RCEP also includes a provision banning nationality requirements for senior management, but the Parties may impose nationality or residency requirements for a majority of the board of directors.<sup>9</sup>

## Scheduling

The scheduling of market access commitments is one of the key issues in the investment chapters of FTAs, which often goes together with market access for trade in services given the close relationship between investment and mode 4 (commercial presence) of services trade. There are two ways to schedule these commitments: the positive-listing approach as found under the GATS, and the negative-listing approach inspired by NAFTA. The main difference between the two is that, under the GATS positive-listing approach, obligations such as market access and national treatment does not apply to a sector unless it is explicitly included in the schedule of specific commitments, which means the default rule is no liberalisation. In contrast, under the NAFTA negative-listing approach, all the investment liberalisation commitments discussed above apply to all sectors unless a Party has scheduled specific restrictions for a given sector, which means the default rule is full liberalisation.

In this aspect, RCEP takes an interesting hybrid approach. Whilst all the Parties schedule their investment commitments pursuant to the negative-listing approach under Article 10.8, for the scheduling of services commitments, the Parties are allowed to pick and choose from either a positive-listing approach or the negative-listing approach according to Article 8.3. This resulted in a confusing set-up when it comes to Annex III, which not only records a Party's reservations and non-conforming measures on investment for

<sup>&</sup>lt;sup>9</sup> Art. 10.7.

those that takes a positive-listing approach (Cambodia, Lao People's Democratic Republic, Myanmar, Philippines, Thailand, Viet Nam, China, and New Zealand), but also reservations and non-conforming measures on both services and investment for those that takes a negative-listing approach (Brunei Darussalam, Indonesia, Malaysia, Singapore, Australia, Japan, and the Republic of Korea).

As its title suggests, under Article 10.8, the Parties are allowed to schedule two types of restrictions: reservations and non-conforming measures. Non-conforming measures under List A of Annex III refer to the measures under the first paragraph, which are existing restrictions that the Parties are allowed to maintain. It does not allow a Party to introduce new restrictions, and thus essentially lock in the existing liberalisation such Party provides. If the Party wishes to maintain the flexibility of introducing new restrictions in the future, it can schedule it under List B of Annex III, which allows a Party to adopt new restrictions according to the second paragraph of Article 10.8. Each entry to the two lists shall list the sector or sub-sector it covers, with its classification under the Central Product Classification, which is also the basis of the services sectoral classification under the GATS.<sup>10</sup> The entry shall also specify the particular obligation it deviates from, describes the restrictions, and identifies the relevant laws and regulations that such restrictions are based on.

To avoid conflict between the investment and services chapters, Chapter 10 also explicitly states that the investment chapter does not apply to measures which are covered by either Chapter 8 on trade in services, or Chapter 9 on temporary movement of natural persons.<sup>11</sup> However, given the close relationship between commercial presence and investment, the Chapter made an exception for commercial presence by specifying that the provisions on investment protection do apply to measures affecting commercial presence to the extent that 'any such measure relates to a covered investment and an obligation under this Chapter.' <sup>12</sup>

## **Investment Protection**

In addition to national treatment and MFN treatment, the chapter also includes a specific clause on treatment of investment, which is the most important investment protection commonly found in BITs and investment chapters in FTAs. Article 10.5 requires the Parties to accord to covered investments 'fair and equitable treatment and full protection and security, in accordance with the customary international law minimum standard of treatment of Aliens'. It further elaborates the meanings of these treatments by noting that fair and equitable treatment means no denial of justice or legal protection, full protection

<sup>&</sup>lt;sup>10</sup> WTO Services Sectoral Classification List MTN.GNS/W/120, 10 July 1991.

<sup>&</sup>lt;sup>11</sup> Art. 10.2.2.

<sup>&</sup>lt;sup>12</sup> Art. 10.2.3.

and security refers to physical protection and security of investment, whilst the meaning of 'customary international law is further clarified in an annex to that which 'results from a general and consistent practice of States that they follow from a sense of legal obligation'.<sup>13</sup>

More specifically, the chapter also spells out the specific obligations regarding protection of assets and investments, which include the requirement to allow free transfers of profits or capital into and out of the host country,<sup>14</sup> not undermine investment protection through specifical formalities,<sup>15</sup> compensation for losses arising from conflicts,<sup>16</sup> recognition of the subrogation or transfer of any right or claim in respect of covered investment,<sup>17</sup> and restrictions on expropriation (either directly or indirectly)<sup>18</sup> and the right to compensation.<sup>19</sup>

## **Regulatory Autonomy**

The RCEP chapter on investment does not include explicit provisions on the right to regulate, unlike some FTAs, such as the CPTPP provision that confirms that the chapter shall not be construed to prevent a party from taking measures for environmental, health or other regulatory objectives.<sup>20</sup> However, this does not necessarily mean that the Parties have given up their regulatory autonomy. First, the annex on expropriation explicitly excludes non-discriminatory measures 'designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, public morals, the environment, and real estate price stabilisation'. Second, the general exceptions clause under Article 17.12 of RCEP applies to the investment chapter, and this clause incorporates both Article XX of the General Agreement on Tariffs and Trade (GATT) and Article XIV of the GATS. The security exceptions are also incorporated, both through Article 17.13 and Article 10.15 in the investment chapter itself. Third, as the investment chapter does not include an investor–state dispute settlement (ISDS) mechanism, there is not much an investor could do if the host government indeed takes such regulatory measures, at least for the first 5 years after the entry into force of RCEP, before the ISDS is introduced.<sup>21</sup>

<sup>14</sup> Art. 10.9.

<sup>15</sup> Art. 10.10

<sup>16</sup> Art. 10.11. <sup>17</sup> Art. 10.12.

<sup>18</sup> Annex 10B.

<sup>19</sup> Art. 10.13.

<sup>20</sup> Art. 9.16.

<sup>21</sup> Art. 10.18.

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<sup>&</sup>lt;sup>13</sup> Annex 10A.

## **Administrative Provisions**

The last three provisions of the chapter deal with various administrative provisions, such as the promotion of investment<sup>22</sup> and investment facilitation.<sup>23</sup> Both issues are not typically found in other major FTAs such as the TPP except the Chinese FTAs such as the Association of Southeast Asian Nations (ASEAN)–China Investment Agreement and the ASEAN Comprehensive Investment Agreement (ACIA),<sup>24</sup> which have mirroring languages.<sup>25</sup> They reflect the wishes of the RCEP members to attract more investment into the region. Whilst the clause on investment promotion focuses mainly on soft information exchange activities, the one on investment facilitation is more substantive and contains provisions on investment approval procedure, contact points, and mechanisms to deal with investment complaints. The inclusion of investment facilitation in RCEP is not surprising, as similar discussions were also launched in the WTO in December 2017 as a Joint Statement Initiative by 70+ WTO members, with all the non-ASEAN members of RCEP and five of the ASEAN members all part of the initiative,<sup>26</sup>

The last article set out a work programme to initiate discussions on two issues: ISDS) (addressed below), and application of Article 10.13 (Expropriation) to taxation measures that constitute expropriation. Whilst most investment treaties do provide 'clear and unequivocal' exclusions of taxation measures, they have not been effective in preventing the challenge of tax-related measures in ISDS procedures (Uribe and Montes, 2019). Moreover, despite the carve-out of taxation measures in FTAs such as NAFTA,<sup>27</sup> some FTAs such as the US-led ones have explicitly provided for the possibility of application of the expropriation provisions to taxation measures.<sup>28</sup> It is worth noting that during the negotiation process for RCEP, the Republic of Korea proposed an Annex On Taxation And Expropriation, which sets out the factors to be considered in determining whether a taxation measure shall constitute expropriation (Knowledge Economy International, 2016). It is unclear why this did not make it into the final text, but it would be interesting to see if the RCEP members decide to follow the trend established by earlier FTAs in future negotiations.

<sup>&</sup>lt;sup>22</sup> Art. 10.16.

<sup>&</sup>lt;sup>23</sup> Art. 10.17.

<sup>&</sup>lt;sup>24</sup> ASEAN Comprehensive Investment Agreement (2021).

<sup>&</sup>lt;sup>25</sup> Articles 20 and 21 of the ASEAN–China FTA; Articles 24 and 25 of the ACIA.

<sup>&</sup>lt;sup>26</sup> Joint Ministerial Statement on Investment Facilitation for Development, WT/MIN(17)/59, 13 December 2017.

<sup>&</sup>lt;sup>27</sup> Article 2103 of NAFTA.

<sup>&</sup>lt;sup>28</sup> See e.g. US–Colombia FTA Article 22.3.6, US–Oman FTA Article 21.3.6, CTPP 29.4.8.

## **Salient Features**

As can be seen from the summary above, the investment chapter of RCEP largely follows the approaches in established FTAs such as the CPTPP. At the same time, it is also worth noting that important twists that favour the host state can also be found throughout the chapter, with the main examples discussed below.

## **Limited Scopes of Coverage**

As mentioned earlier, the commonly-used definitions on investment in FTAs vary between the narrower enterprise-based approach and the broader asset-based approach. During the RCEP negotiations, India proposed the former, whilst the other Parties all opted for the latter. With India's withdrawal from RCEP in the end, it is no surprise that the Parties adopted the asset-based approach, i.e. including 'every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk'. Note although, in the end, the specific examples for the forms of investment do not include 'enterprises' as under the CPTPP. Whilst this is not a problem for most enterprises due to the inclusion of 'shares, stocks, and other forms of equity participation in a juridical person', this could pose a problem for a branch of an enterprise, which has been explicitly included under the CPTPP.<sup>29</sup> Although the RCEP definitions of 'juridical person' and 'juridical person of a Party' explicitly includes the branch of a juridical person, the utility of such provision for claiming substantive legal rights under the investment chapter is arguably defeated by two footnotes, which make clear that 'a branch of a juridical person does not have any right to make any claim against any Party under this Agreement'.<sup>30</sup>

Moreover, to limit the scope of investment, the chapter also explicitly states that the term 'investment' does not include 'an order or judgment entered in a judicial or administrative action or an arbitral proceeding.' This is different from most FTAs, which only exclude 'an order or judgment entered in a judicial or administrative action'.<sup>31</sup> This is not an invention of RCEP, but follows the examples of other agreements such as the 2017 ASEAN–Hong Kong FTA<sup>32</sup> and the 2018 Indonesia–Singapore BIT.<sup>33</sup> India proposed the text in the RCEP negotiations, which is not surprising as the language mirrors the one found in India's model BIT.<sup>34</sup> Australia also supported the provision, probably due to its unpleasant

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<sup>&</sup>lt;sup>30</sup> Footnotes 10 and 13.

<sup>&</sup>lt;sup>31</sup> CPTPP, Art. 9.1.

<sup>&</sup>lt;sup>32</sup> Art. 1.(o).1, https://edit.wti.org/document/show/a3f45739-0637-4447-bc2d-230bc90dd804?textBlockId=75324fc6-4f0b-48d3-8118-260c9d60ada4&page=1

<sup>&</sup>lt;sup>33</sup> Footnote 2, https://www.mti.gov.sg/-/media/MTI/improving-trade/IIA/Legal-Text-SG-ID-BIT-(2018).pdf

<sup>&</sup>lt;sup>34</sup> Art. 1.4.(vii), https://dea.gov.in/sites/default/files/ModelBIT\_Annex\_0.pdf

experience in the investment arbitration cases on cigarettes, and this is probably why the provision was kept in the final text even after India pulled out.

Another effort to retain regulatory autonomy on investments takes the form of the additional qualification in the definition on 'covered investment', which states that only an investment that 'has been admitted by the host Party, subject to its relevant laws, regulations, and policies' is covered. Furthermore, Malaysia, Thailand, Cambodia, Indonesia and Viet Nam also specified, through footnotes to the provision,<sup>35</sup> that only those that are specifically registered or approved in writing could be regarded as those that have 'been admitted'. This can be interpreted to mean the denial of pre-establishment rights for foreign investors, which goes against the trend of expanding investors' rights from the post-establishment stage to pre-establishment phase in recent years.

## **Minimum Standard of Treatment**

Under Article 10.5, the Parties shall 'accord to covered investments fair and equitable treatment and full protection and security, in accordance with the customary international law minimum standard of treatment of aliens'. Moreover, the same article also explicitly states that 'full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment'. This essentially limits the scope of full protection and security to physical protection and security only and prevents it from being extended to cover also commercial and legal protection and security, as some arbitration panels have done (Moussly, 2019; Mundi, 2021). Such a narrow interpretation could be justified by the need to maintain a meaningful distinction between the twin obligations of the fair and equitable treatment standard and full protection and security so as to ensure that both standards are given effect according to the principle of effet utile, which dictates that all provisions in an agreement must be given effect. At the same time, it also reflects the political reality, especially as the political stability and abilities of the governments of several countries in the region have been cast in doubt by domestic turmoil in recent years. As revealed by the negotiating history, the emphasis on 'physical protection' was a joint effort by New Zealand and ASEAN, with each contributing one word to the phrase, whilst the word 'security' also shared the support of Australia, Japan, and the Republic of Korea (Knowledge Economy International, 2016).

<sup>&</sup>lt;sup>35</sup> Footnotes 1, 2, and 3.

## **Extensive Exceptions**

In addition to the exclusions and exceptions scattered throughout the investment chapter (some are discussed above), the chapter also contains broad exception clauses. First, pursuant to Article 17.12, the WTO general exceptions clauses are 'incorporated into and made part of this Agreement, *mutatis mutandis*'. There are two such general clauses under the WTO framework, with one under Article XX of the GATT and the other under Article XIV of the GATS. Whilst most chapters under RCEP only incorporate one of these exceptions, the investment chapter, along with Chapter 12 on electronic commerce, are the only two chapters where both the GATT and GATS general exceptions clauses are incorporated. This is partly due to the special nature of investment which straddles across goods and services, but it also reflects the Parties' concerns over the potential loss of regulatory autonomy as they open up investment.

Similarly, Article 17.13 of RCEP also incorporates the security exceptions to all chapters in the agreement. As if this is not enough, Article 10.15 repeats the security exceptions for the investment chapter, by stating that the commitments in the chapter shall not be construed to prevent a Party from applying measures it considers necessary for security, or require a Party to provide or allow access to information 'the disclosure of which it determines to be contrary to its essential security interests'. Such heightened emphasis on investment reflects the concerns of some Parties on the potential security implications of investments, which is not surprising given the frequent resort to national security to justify trade and investment restrictions by some of the major players in the world in recent years.

### **Investment Liberalisation**

Also, as noted earlier, the investment market access commitments under RCEP are also limited, due to its adoption of the hybrid scheduling model, which allows some Parties to list their services commitments using the positive-listing approach. At the same time, it is also interesting to note that the agreement does include some interesting features which could potentially boost investment liberalisation. Two of such provisions are standstill provisions, which serve to make sure that a Party would not retreat from existing commitments and bind liberalisation at the status quo levels; and ratchet provisions, which go a step further by binding Parties to any autonomous liberalisation they might introduce in the future.

The negative-listing approach, by definition, includes a built-in standstill mechanism in the form of the list of non-conforming measures, which prevents the Parties from introducing any new restrictions in the future. To the extent that a Party wishes to retain the flexibility to introduce future restrictions, it will need to schedule the measure in its list of reservations. As the RCEP investment chapter requires all Parties to schedule their commitments in the negative-listing approach, the standstill obligations apply to every Party for investment commitments. The same is also true for those RCEP Parties that schedule their investment-related services commitments pursuant to the negative-listing approach under Article 8.8. As to those which schedule their services commitments pursuant to the positive-listing approach under Article 8.7, a standstill provision is provided under the third paragraph of the article, which asks the Parties to identify sectors or subsectors for future liberalisation with 'FL' marked in its Schedule in Annex II (Schedules of Specific Commitments for Services). Once so marked, any applicable terms, limitations, conditions, and qualifications on market access and national treatment shall 'be limited to existing measures of that Party'.

The ratchet provision is found in Article 10.8.1(c) of the investment chapter, which states that the four investment liberalisation commitments mentioned above (national treatment. MFN, performance requirements, and senior management and board of directors) shall not apply to 'an amendment to any non-conforming ... to the extent that the amendment does not decrease the conformity of the measure'. The language mirrors the classical formulation of the ratchet clause as found in NAFTA, but interestingly, RCEP sets different reference points depending on the Party. For five ASEAN Members (Cambodia, Indonesia, Lao PDR, Myanmar, and the Philippines), the point of reference is set at the date of entry into force of RCEP, which means that post-RCEP liberalisation is not considered. For the other Parties, the reference point is set at 'immediately before the amendment', which includes both pre- and post-FTA liberalisation, as per the original wording of NAFTA. As indicated by the leaked draft of the investment chapter, ASEAN and India preferred to have no ratchet provision and India even proposed to revert to the standstill provision. ASEAN later softened its resistance but proposed the language mentioned earlier to set the reference point to the date of entry into force of RCEP, whilst the five non-ASEAN Parties proposed the classical formulation. Whilst not perfect, the current compromise language can be seen as a practical way to keep the ratchet clause despite resistance from some ASEAN members.

It is also worth noting that the ratchet provisions also found their way into the services chapter, with Articles 8.7.4 and 8.8.1(c) applying them to both those adopting the positive-listing approach and those taking the negative-listing approach. Whilst they both follow the NAFTA-style language and covers measures existed 'immediately before the amendment', there are still important differences between the two groups, with the former only applying to the national treatment and market access obligations, whilst the latter broadens the coverage to those relating to MFN treatment and local presence requirements.

Despite provisions to lock in commitments such as the standstill and ratchet clauses, the commitments under RCEP could still be eroded with the inclusion of another provision allowing modification of schedules. Under Article 8.13, those Parties which scheduled their commitments using the positive-listing approach may modify or withdraw commitments in their schedules other than those indicated with an 'FL' 3 years after the commitment has entered into force. Whilst such Parties are required to enter into negotiations with other Parties to provide compensatory adjustments and an arbitration mechanism is provided in case no agreement is reached, the most other Parties could do is to retaliate against the modifying Party in case of non-compliance with the arbitration decision. Thus, the practical efficacy of the arbitration mechanism is questionable. The modification of schedules is only allowed under the services chapter, but it could have implications for the investment chapter as well due to the close relationship between FDI and commercial presence for services.

## Investor-State Dispute Settlement Mechanism

The most conspicuous feature of the investment chapter in RCEP is the absence of an investor-state dispute settlement mechanism. The reason is certainly not the lack of trying, as China, Japan, and the Republic of Korea submitted proposed texts for an ISDS mechanism during the negotiations. The detailed text runs to 26 pages, which account for more than one-third of the consolidated draft text as of 2015. However, there was no alternative text proposed by the other Parties, which means that the rejection of an ISDS mechanism in the final agreement was probably not the result of disagreements over specific design features, but more due to categorical opposition to ISDS by the other 12 Parties. Amongst them, it is no surprise that most of the ASEAN member countries would oppose ISDS (Nottage and Thanitcul, 2016), as most developing countries tend to be suspicious of the ISDS mechanism due to the alleged biases of arbitration panels against host countries. For example, Indonesia announced in 2014 that it would terminate its existing BITs and renegotiate new ones limiting recourse to the ISDS mechanism (Bland and Donnan, 2014). But it is interesting that even Australia and New Zealand, two of the only three developed countries in RCEP, also opposed the ISDS mechanism. Australia used to favour an ISDS mechanism in the BITs and FTAs, but became disillusioned of ISDS after itself became the target of an ISDS claim by Philip Morris challenging Australia's plain packaging cigarettes legislation by invoking its old BIT with Hong Kong in 2011 (Nottage, 2019). Whilst Australia ultimately won the arbitration, it was only achieved after a messy legal battle spanning 7 years and costing \$24 million in legal fees, of which the Australian government was only able to recover half from Phillip Morris (Ranald, 2019a). As a result, the position of the Australian government has shifted from a more receptive attitude to considering ISDS provisions in FTAs 'on a case-by-case basis in light of the national interest' (Amokura and Nottage, 2017). Australia's shock with ISDS apparently reverberated through the Tasman Sea to reach New Zealand, which also announced in October 2017 that their trade negotiation officials would 'oppose ISDS in any future free trade agreements' (Amokura and Nottage, 2017). They also partially excluded ISDS in the CPTPP through bilateral side letters with several members, i.e. Brunei, Malaysia, Peru, Viet Nam, and Australia (Herbert Smith Freehills, 2018). Thus, it is not surprising that neither Australia nor New Zealand supported an ISDS mechanism in RCEP.

What are the implications of the lack of ISDS? It's hard to predict at this juncture as RCEP only entered into force on 1 January 2022 (ASEAN Secretariat, 2021), but it is useful to start with an overview of the changing perceptions on ISDS and the impetus for ISDS reform in general. It is commonly acknowledged that ISDS treaties originated after the Second World War (Van Harten, 2020; Choi, 2007), as former colonial powers sought to protect their investments in former colonies that became newly independent countries in the new wave of de-colonisation and tried to nationalise these assets. Whilst the Western countries were not successful in their efforts to establish multilateral treaty-making initiatives conferring substantive rights to foreign investors due to the resistance of developing countries (Puig and Shaffer, 2018), they were able to conclude the negotiation of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in 1965,<sup>36</sup> which led to the creation of the International Centre for Settlement of Investment Disputes at the World Bank. In the 1970s and 1980s, the United States (US) started to include direct investor claims in its BITs (Choi, 2007). With the arrival of a more favourable climate towards foreign direct investment facilitated by the fall of the Berlin Wall, the collapse of the Soviet Union, and the rise of the 'Washington Consensus' (Puig and Shaffer, 2018), the 1990s saw the growing popularity of ISDS and a boom in investment arbitration cases. As more and more investment claims were brought, however, people started to question the legitimacy of the ISDS regime (Puig and Shaffer, 2018).

Some of the criticisms of ISDS are based on the principled argument that it is not appropriate to have 'undemocratic and highly clandestine' (Puig and Shaffer, 2018) arbitration panels interfering with the policy choices made by democratically-elected governments, especially as such panels lack the accountability and transparency characterising domestic judicial tribunals. (UNCTAD, 2007) Similarly, it has been argued that the current ISDS model is based on international commercial arbitration, which by nature is ill-suited to deal with disputes involving public law and policy issues. (Puig and Shaffer, 2018).

<sup>&</sup>lt;sup>36</sup> Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 18 March 1965, 17 UST 1290, 575 UNTS 192.

Other criticisms focus on the problems arising from the actual practices of the arbitration panels, including for example, the lack of consistency in arbitration awards even when the same facts were involved, (Puig and Shaffer, 2018; UNCTAD, 2007) and the potential conflict of interests of *ad hoc* arbitrators who have the incentives to decide in favour of the investors so as not to jeopardise their chances of 'double hatting' as representatives of the claimants in future cases. (Puig and Shaffer, 2018).

Moreover, it is worth noting that these criticisms are not voiced just by developing countries. Instead, with the onset of the global financial crisis in 2007 and the filing of strategic cases to interfere with the public policies in some countries, even developed countries such as Australia now started to rethink their approach towards ISDS (Dymond, Sim, and Teo, 2021). In view of this, it is no surprise that ISDS would be eschewed by RCEP.

This does not mean, however, that all hope is lost on ISDS for the following reasons: First, as mentioned earlier, the investment chapter does include a built-in agenda for the Parties to discuss investment dispute settlement after RCEP goes into effect. According to article 10.18, the Parties shall enter into such discussions within 2 years after RCEP became effective, i.e. by 1 January 2024, and the discussions shall be concluded within 3 years of commencement of the discussions, i.e. by 1 January 2027. This means that there is possibility of bringing the ISDS mechanism into RCEP, especially as ASEAN countries start to include ISDS in the other FTAs they enter into in the meantime, and more business-friendly governments come to power in Australia and New Zealand. Of course, merely agreeing to have the discussion on such issues does not necessarily mean that the Parties would agree to ISDS in the end, as Article 10.18 explicitly states that the discussions shall be held 'without prejudice to their respective positions', and 'concluding the discussions' does not necessarily imply a positive outcome. Indeed, the wording used in the Article is neutral as it only refers to 'the settlement of investment disputes between a Party and an investor of another Party' without specifying a particular dispute settlement model like the arbitration-style ISDS mechanism commonly found in BITs and FTAs. Instead, it could be one of the many models currently under discussion, such as the professionalised multilateral investment court system championed by the European Union, the mediation model proposed by Brazil and South Africa, or those with other tweaks such as the requirement for exhaustion of domestic remedy for 5 years proposed by India, and even market mechanisms such as political risk insurance favoured by former United States Trade Representative Robert Lighthizer (Puig and Shaffer, 2018).

Second, even if in the end, the RCEP Parties, after lengthy discussion, decide not to incorporate an ISDS mechanism, this does not necessarily mean that foreign investors are left without any recourse. Instead, they could just make use of the existing ISDS mechanisms under the existing BITs and FTAs. This is explicitly confirmed by Article 20.2 of RCEP, which affirms the 'existing rights and obligations' between the Parties under

their pre-existing agreements. As noted by Nottage in his comprehensive survey of the treaty practices of Southeast Asian countries, ISDS is already widespread (Nottage, 2021). In particular, the ISDS mechanism is present in all of the ASEAN+ FTAs<sup>37</sup> and the ACIA, which means that all of the RCEP Parties are covered. Of course, when such claims are made, they can only be based on the legal obligations under the respective FTAs they rely on rather than RCEP. But as RCEP does not deviate too much from common practices in investment chapters, it would not make much difference in practice.

If we take a further step back, we can see that even the complete absence of ISDS might not discourage international investors from investing in a foreign jurisdiction. China is a good example in this regard: even though China only started to fully embrace ISDS in its second generation of BITs from the late 1990s (Berger, 2013), investors have rushed to China in the preceding 2 decades, with annual growth rates in the double digits and even triple digits (150% in 1992 and 1993) (Whalley and Xin, 2010). It is also worth noting that the US, one of the biggest sources of FDI into China, has never had an investment or trade agreement with China which includes an ISDS, but apparently this has not deterred US firms from investing huge sums of money in China. This proves that the availability of an ISDS mechanism is never a main factor affecting the decisions of investors. Instead, international investors are presumably drawn by China's huge market potential coupled with its large skilled workforce. Both factored are also present in the ASEAN region, which is now made even more attractive as a safe haven amidst the ongoing US-China trade war and an integrated market with the formation of RCEP. Thus, even without an ISDS mechanism, ASEAN, and in turn the RCEP region, could well become a popular destination for international investors.

At a broader level, the fact that ISDS was rejected after considerable discussion amongst the RCEP Parties is a reflection of the ASEAN Way. This is despite ASEAN's sustained efforts to upgrade the dispute settlement mechanism in its trade agreements, with some features such as the automatic adoption of arbitral award being even more legalistic than the WTO's Dispute Settlement Understanding (Gao, 2019).

According to Walter Woon, the ASEAN Way is not, as some observers might claim dismissively, just 'an ineffective fig-leaf, a cover for inaction' (Woon, 2012). Instead, it is more sophisticated and includes three essential aspects:

First, a desire not to lose face in public or to make other members lose face. Second, a preference for consensus rather than confrontation. Third, a rejection of the notion that states have the right to interfere without consent in the internal affairs of other states.

<sup>&</sup>lt;sup>37</sup> Nottage's article noted that Japan's FTA with ASEAN was the only exception as it did not have an investment chapter. However, this changed with the recent conclusion of the First Protocol Amending the Agreement on Comprehensive Economic Partnership amongst Member States of the Association of Southeast Asian Nations and Japan, which entered into force in August 2020. The upgraded agreement includes an investment agreement, which includes detailed provisions on ISDS. See Article 51.13. https://www.enterprisesg.gov.sg/-/media/esg/files/non-financial-assistance/for-companies/free-trade-agreements/ASEAN-Japan-CEP/AJCEP\_First\_Protocol\_to\_Amend\_the\_Agreement\_on\_AJCEP.pdf

Indeed, the negotiation history on ISDS illustrates all of the three elements:

First, with two of the biggest ASEAN member countries (Indonesia and Malaysia) and two of the biggest external countries (India and Australia) all taking the official position of opposing an ISDS mechanism (Ranald, 2019b), some Parties would definitely lose face if the rift amongst the Parties were to be made public. Adding to this the internal competition to win over ASEAN between the three main proponents of ISDS, especially between Japan versus China and the Republic of Korea respectively, it is no surprise that the topic was dropped in the end.

Second, aggressively pushing for the incorporation of ISDS would create a confrontational environment and undermine the consensus necessary for the final conclusion of RCEP, which each of the three main proponents values as a major strategic goal, albeit for differing reasons. For China, concluding RCEP helps to rebuild and strengthen its regional value chain with major economies in the Asia-Pacific region, which was disrupted by the US-led TPP that excluded China from such value chains through the inclusion of decoupling mechanisms such as the 'yarn-forwarding rule', which bans the use of inputs from non-TPP member countries. For Japan, RCEP acts as a way to counterbalance China's growing influence in the region, by involving like-minded countries such as Australia and New Zealand. The Republic of Korea, on the other hand, could not afford to miss RCEP again, as it already missed the boat before when the CPTPP was concluded.

Third, as mentioned earlier, with investment arbitration cases increasingly touching on the policy choices made by national governments of host countries, especially those relating to social policy issues, an aggressive push for an ISDS mechanism could be perceived as a plot to interfere with the internal affairs of other countries.

With all these reasons, it is understandable that the Parties decided to forego the ISDS mechanism by embracing the ASEAN Way. Yet, the rejection of ISDS does not necessarily mean that RCEP is discouraging regional integration, as ASEAN, both at the individual member level and collective level, is still enthusiastic about signing trade and investment agreements. But instead of rushing everything, they chose to forge ahead slowly but steadily, which is a better approach to prevent potential backlashes that might result from an over-zealous approach.

# Conclusion

As can be seen from the discussions above, the investment chapter in RCEP generally follows the standard formats of investment chapters in recent mainstream FTAs. Compared with previous ASEAN+ agreements concluded between ASEAN and the five external partners and the ACIA, RCEP made progress in some areas. One example is the

adoption of the negative-listing approach for investment commitments in RCEP. Amongst the previous ASEAN+ agreements, the one with China did not attempt to prohibit nonconforming measures, be it existing or new.<sup>38</sup> Whilst the others mentioned schedules of reservations<sup>39</sup> drafted according to the negative-listing approach, their applications are all subject to the result of discussions in the built-in work programme.<sup>40</sup> Whilst the agreements with Australia and the Republic of Korea both stated that such discussions shall be concluded within 5 years from the date of entry into force of the agreements, they were never concluded. The only one on track will be the investment agreement with Japan, which only entered into force on 1 August 2020 and thus could count RCEP as its deliverable (MOFA, 2020). As to the ACIA, whilst it also adopts the negative-listing approach, the sectors covered are limited to five main sectors, i.e. manufacturing, agriculture, fishery, forestry, mining and guarrying, as well as services incidental to them.<sup>41</sup> Whilst these five sectors are broad, they are mainly related to trade in goods and do not cover most services activities. The inclusion of the ratchet clause in the RCEP investment chapter is another new feature, and this makes sure that future autonomous liberalisation is also locked in, unlike the existing ASEAN+ agreements, which would not even bind the Parties' commitments to their status quo levels.

At the same time, due to the uneven levels of development, some of the new features in the RCEP investment chapter have to be compromised to be acceptable to all Parties. Such is the case of the ratchet clause, where the reference points for one third of the RCEP membership are not set as 'immediately before the amendment' as commonly found in other FTAs, but are pushed back to the much earlier date of the entry into force of RCEP.

On some of the issues, RCEP even backtracked from the previous ASEAN+ agreements as well as the ACIA, with the removal of ISDS as the prime example. Yet, this does not mean that the RCEP Parties are turning their back on foreign investors. This simply reflects the complex political reality when economic integration expands to a wider region, where the lowest common denominator becomes the standard. Moreover, as discussed earlier, the rejection of an ISDS mechanism must be understood as part of a global backlash against the mechanism. This means that, when views on ISDS become more positive at the global level, we could still see the acceptance of ISDS in RCEP. With the huge integrated market created by the new agreement, the RCEP region is poised to become the next magnet to investors from around the world.

<sup>&</sup>lt;sup>38</sup> Art. 6, Agreement on Investment of the Framework Agreement on Comprehensive Economic. Co-operation between the Association of Southeast Asian Nations and the People's Republic of China, August 2009, https://asean.org/wp-content/uploads/images/archive/22974. pdf

<sup>&</sup>lt;sup>39</sup>Art. 12, ASEAN–Australia & New Zealand Investment Agreement; Art. 9, ASEAN–Korea Investment Agreement; Art. 51.7, ASEAN–Japan FTA Chapter 7 on Investment.

<sup>&</sup>lt;sup>40</sup> Art. 16, ASEAN–Australia & New Zealand Investment Agreement; Art. 27, ASEAN–Korea Investment Agreement; Art. 51.23, ASEAN–Japan FTA Chapter 7 on Investment.

<sup>&</sup>lt;sup>41</sup> Art. 3.3, ACIA.

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# Investment Liberalisation in East and Southeast Asia§

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This chapter presents the trends and patterns in the inflows and outflows of foreign direct investment (FDI) and reviews FDI liberalisation in East and Southeast Asia. We found that inward FDI has been significantly increasing in Singapore as well as in Cambodia, Lao People's Democratic Republic, Myanmar, and Viet Nam. Outward FDI has also been increasing in China and major Association of Southeast Asian Nations (ASEAN) countries. Moreover, intraregional FDI is increasing in East and Southeast Asia. Although there has been significant liberalisation of FDI in the region, restrictions remain, especially in the primary and tertiary sectors. The estimation results of the gravity model indicate that there is room for increasing FDI by means of investment liberalisation in the nonmanufacturing in the ASEAN countries

## Introduction

The novel coronavirus disease (COVID-19) pandemic crisis caused a dramatic decline in foreign direct investment (FDI) in 2020. According to the United Nations Conference on Trade and Development, global FDI flows in 2020 declined by 35% (UNCTAD, 2021). However, flows to developing countries in Asia were resilient. Southeast Asia saw a 25% decline, and investments in China increased by 6%. Developing Asia is already the predominant recipient of FDI, accounting for more than one-half of the global amount. Specifically, members of the Regional Comprehensive Economic Partnership (RCEP) agreement, which was concluded in November 2020, will be the world's largest recipients of FDI.<sup>1</sup>

RCEP will create the world's largest free trade area, providing for investment, trade, and services, including the development of electronic commerce, which implies that RCEP may further boost FDI flows amongst members in the region. Association of Southeast Asian Nations (ASEAN) countries will continue to benefit from the relocation of production by Chinese and other multinational enterprises (MNEs) to avoid increased costs and the impact of the United States–China trade dispute as well as to build more resilient supply chain networks (UNCTAD, 2021).

The objective of this study is threefold. The first objective is to present a picture of FDI inflows and outflows in 15 RCEP countries. To highlight the characteristics in this region, we compare them with those in the member countries of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>2</sup> Second, we investigate the

<sup>&</sup>lt;sup>1</sup> RCEP includes the ASEAN members – Brunei Darussalam (BRN), Cambodia (KHM), Indonesia (IDN), Lao People's Democratic Republic (LAO), Malaysia (MYS), Myanmar (MMR), Philippines (PHL), Singapore (SGP), Thailand (THA), Viet Nam (VNM), plus Australia (AUS), China (CHN), Japan (JPN), Republic of Korea (KOR), and New Zealand (NZL).

<sup>&</sup>lt;sup>2</sup> The CPTPP member countries include Australia (AUS), Brunei Darussalam (BRN), Canada (CAN), Chile (CHL), Japan (JPN), Malaysia (MYS), Mexico (MEX), New Zealand (NZL), Peru (PER), Singapore (SGP), and Viet Nam (VNM). Seven out of 11 of the CPTPP member countries also belong to RCEP.

extent of FDI liberalisation in the 15 RCEP member countries by using the latest version of the Organisation of Economic Co-operation and Development (OECD) FDI restrictiveness index. This database includes not only OECD countries but also other developing countries, including most RCEP member countries. Third, we estimate a gravity model to examine how liberalisation affects inward FDI and discuss the potential for future inward FDI in RCEP member countries. We use the number of new MNE subsidiaries by source and destination country, calculated using the Orbis database, as a measure of bilateral FDI.

Our main findings are summarised as follows. First, while inward FDI has been increasing significantly in Singapore as well as in and Cambodia, Lao People's Democratic Republic (Lao PDR), Myanmar, and Viet Nam (collectively, CLMV), outward FDI has also been increasing in China and the major ASEAN countries. Looking at the source countries of inward FDI, we find that intraregional FDI is also increasing in East and Southeast Asia. While there is room for growth in FDI in CLMV's manufacturing sector, inward FDI of other RCEP member countries is shifting to the services sector. Second, in East and Southeast Asia, FDI liberalisation has progressed substantially; however, there are still some restrictions, especially in the primary and tertiary sectors. Third, the estimation results of the gravity model show that there is room to expand FDI through investment liberalisation in the non-manufacturing sectors in ASEAN countries.

The structure of this paper is as follows. Section 2 presents FDI trends and patterns in RCEP member countries, while Section 3 reviews FDI liberalisation. The estimation results of the gravity model are presented in Section 4. Section 5 concludes.

# Trends in Inward FDI in RCEP Member Countries

This section provides the patterns of inward and outward FDI flows in RCEP and CPTPP member countries, the data for which were drawn from the World Development Indicators database<sup>3</sup> compiled by the World Bank.

## **FDI Flows by Country**

Figure 9.1 presents the inward FDI-to-gross domestic product (GDP) ratio by country. Comparing the average inward FDI-to-GDP ratio amongst CPTPP and RCEP members, it is slightly higher for CPTPP members throughout 2000–19. This is because the ratio is



<sup>&</sup>lt;sup>3</sup> The database can be accessed through the following URL: https://databank.worldbank.org/source/world-development-indicators (accessed on 6 August 2022).

relatively lower for those RCEP countries that are not part of the CPTPP, namely, Republic of Korea (henceforth, Korea), Indonesia, and the Philippines. Conversely, comparing the 2000–04 and 2015–19 periods, the average value of an RCEP member country saw a larger increase in its FDI-to-GDP ratio, rising from 2.85 percentage points to 4.96 percentage points. This is because the inward FDI-to-GDP ratio increased significantly in RCEP member countries that were not part of the CPTPP, namely, Lao PDR, Myanmar, and Cambodia. Amongst the other countries, the ratio increased significantly in Singapore, while it declined in Korea, China, Thailand, and New Zealand. Amongst RCEP and CPTPP members, the ratio is lower in Korea, Japan, and New Zealand, the ratios of which were all less than 1% since 2010. In particular, Japan's inward FDI-to-GDP ratio was less than 0.5% for most of the 2000–19 period. To sum up, since some ASEAN countries such as Singapore, Lao PDR, Myanmar, and Cambodia exhibit an upward trend in inward FDI, there seems to be potential to boost inward FDI.

As for the outward FDI-to-GDP ratio, CPTPP member countries were relatively more active in outward FDI, compared with RCEP member countries. This is because RCEP member countries include ASEAN latecomers such as Lao PDR, Myanmar, and Cambodia, and Viet Nam (namely, the CLMV countries), which have a low outward FDI ratio. In contrast, the countries participating only in the CPTPP, such as Canada and Chile, actively invest abroad. For example, the outward FDI-to-GDP ratios were 4.5% in Canada for 2015–19 and 5.7% in Chile for the 2010–14 period.

Except for the CLMV countries, other RCEP member countries in East and Southeast Asia actively engaged in outward FDI. Amongst the ASEAN countries, Singapore was the most active in FDI, reaching 13% of GDP in 2015–19, followed by Thailand at 2.6% in 2015–19 and Malaysia at 5.3% in 2010–14. China, Japan, and Korea also increased their outward FDI-to-GDP ratios. The outward FDI ratios of China, Japan, and Korea increased from 0.5%, 0.7%, and 0.8% in 2000–04 to 1.32%, 2%, and 3.7%, respectively, in 2015–19.



#### Figure 9.1 Foreign Direct Investment, Net Inflows (as a % of GDP)

CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership, GDP = gross domestic product.

Note: For three-letter country abbreviations, see Table 8. B1 in Appendix.

Source: Author's calculation based on the World Development Indicators database (https://databank.worldbank.org/source/world-development-indicators, accessed 6 August 2022).



**Figure 9.2** Foreign Direct Investment, Net Outflows (as a % of GDP)

CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership, GDP = gross domestic product.

Note: For three-letter country abbreviations, see Table 8. B1 in Appendix.

Source: Author's calculation based on the World Development Indicators database (https://databank.worldbank.org/source/world-development-indicators, accessed 6 August 2022).

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## Inward FDI by Source Country and Industry

Share of source countries in total inward FDI								
Recipient		Period	ASEAN	China	Japan	Korea	Europe	USA
Australia	RCEP & CPTPP	2010-2014 2015-2019	8% 4%	9% 7%	18% 16%	1 % 1 %	20% 23%	28% 24%
Chile	CPTPP	2010-2014 2015-2019	0% 0%	0% 0%	4% 2%	0% 0%	37% 61%	15% 7%
China	RCEP	2010-2014 2015-2019	6% 5%		5% 3%	3% 3%	5% 6%	2% 2%
Indonesia	RCEP	2010-2014 2015-2019	49% 64%	2% 9%	32% 26%	4% 2%	3% 11%	1% -9%
Japan	RCEP & CPTPP	2010-2014 2015-2019	27% 11%	7% 3%		8% 5%	42% 36%	40% 28%
Korea Republic of	CPTPP	2010-2014 2015-2019	10% 12%	2% 5%	26% 9%		38% 36%	12% 15%
LAO PDR	CPTPP	2010-2014 2015-2019	29% 20%	34% 42%	1% 1%	3% 0%	2% 6%	0% 0%
Mexico	CPTPP	2010-2014 2015-2019	0% 0%	0% 0%	6% 7%	1% 2%	35% 31%	40% 41%
Myanmar	RCEP	2010-2014 2015-2019	28% 54%	35% 19%	1% 2%	8% 2%	7% 8%	0% 1%
Malaysia	RCEP & CPTPP	2010-2014 2015-2019	19% 20%	1% 8%	17% 13%	2% 1%	25% 24%	5% 5%
New Zealand	RCEP & CPTPP	2010-2014 2015-2019	15% 6%	0% 2%	10% 17%	0% 0%	14% -1%	-23% -9%
Philippines	RCEP	2010-2014 2015-2019	0% 6%	0% 1%	8% 4%	0% 1%	112% 53%	8% 6%
Singapore	RCEP & CPTPP	2010-2014 2015-2019	0% 0%	0% 0%	7% 6%	0% 0%	29% 25%	35% 47%
Thailand	RCEP	2010-2014 2015-2019	4% 13%	4% 5%	39% 43%	3% 2%	5% -2%	17% 11%
Viet Nam	RCEP & CPTPP	2010-2014 2015-2019	21% 18%	5% 5%	20% 17%	18% 26%	8% 6%	3% 2%

#### Table 9.1 The Share of Each Source Country in Total Inward FDI

ASEAN = Association of Southeast Asian Nations, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership, FDI = foreign direct investment, USA = United States of America.

Note: For three-letter country abbreviations, see Table 9.B1 in Appendix.

Source: Author's calculation based on International Direct Investment Statistics (ITI).

Next, we examine the share of each source country in total inward FDI for RCEP and CPTPP member countries. The data for inward FDI by source countries were obtained from the International Direct Investment Statistics Database, which were collected and compiled by the Institute for Trade and Investment (ITI) of Japan. This database is based on direct investment statistics issued by the governments of the world's major countries and regions and extracts and processes data from 65 frequently used countries and regions.<sup>4</sup>

Table 9.1 shows the share of each source country in total inward FDI flows, calculated from the ITI's FDI database for 2010–14 and 2015–19.<sup>5</sup> In the ASEAN countries, inward FDI from RCEP member countries has been increasing. For example, in Lao PDR, Malaysia, and Indonesia, China's share in total inward FDI flows has been increasing. In Lao PDR, in particular, 42% of the investment in 2015–19, on average, came from China. In Thailand, investment from Japan was increasing, reaching 43% in 2015–19, and in Viet Nam, investment from South Korea was increasing, reaching 26% in 2015–19. In addition, intra-ASEAN FDI was increasing in Indonesia, Myanmar, and Thailand. In particular, 64% and 54% of inward FDI in Indonesia and Myanmar, respectively, came from within the ASEAN in 2015–19.

Table 9.2 shows the industry share of inward FDI flow in RCEP and CPTPP member countries.<sup>6</sup> Industries are disaggregated into the manufacturing, finance, and service industries. Overall, the manufacturing sector's share of FDI has declined in many countries, especially in China, from 39% to 27%, in Indonesia from 24% to 13%, and in Korea from 42% to 35%. In Myanmar, however, manufacturing's share of FDI has been increasing, rising from 10% to 21%. These facts imply that, while we see a shift in FDI from the manufacturing sector to the service sector in most RCEP member countries, there is still potential to attract additional manufacturing FDI in the CLMV countries.

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<sup>&</sup>lt;sup>4</sup> It should be noted that the source of each statistic has a different method for collecting data and a different standard of preparation. For example, some data are collected through surveys, while others are collected through administrative processes (applications, notifications, approvals, etc.). The statistics may or may not cover all the industries and may or may not include all types of projects. Some countries report the investment flow, while others provide data for investment stocks. The data are recorded in US dollars in some countries, but other countries report it in their national currency. No work has been done to unify the definitions in this database because of their variety and the limited availability of data.

<sup>&</sup>lt;sup>5</sup> Amongst RCEP and CPTPP member countries, Brunei Darussalam and Cambodia are not included in this database. Inward FDI by source country is not available for Canada and Peru. These four countries are not included in Table 9.1.

<sup>&</sup>lt;sup>6</sup> As in Table 1, the data are obtained from the ITI's direct investment database. In addition to Brunei Darussalam, Cambodia, Canada, and Peru, inward FDI by industry was not available for Lao PDR, New Zealand, and Singapore.

#### Table 9.2 The Share of Industries in Total Inward FDI

Recipient		Year	MFG	SERVICE	Finance & Insurance
Australia	RCEP & CPTPP	2010-2014 2015-2019	9% 16%	-1% 19%	18% 18%
Chile	CPTPP	2010-2014 2015-2019	5% 2%	19% 31%	21% 11%
China	RCEP	2010-2014 2015-2019	39% 27%	9% 11%	41% 52%
Indonesia	RCEP	2010-2014 2015-2019	24% 13%		
Japan	RCEP & CPTPP	2010-2014 2015-2019	125% 83%	10% 47%	-58% -41%
Korea Republic of	CPTPP	2010-2014 2015-2019	42% 35%	23% 25%	34% 36%
Lao PDR	CPTPP	2010-2014 2015-2019			
Mexico	CPTPP	2010-2014 2015-2019	56% 49%	5% 10%	24% 24%
Myanmar	RCEP	2010-2014 2015-2019	10% 21%		
Malaysia	RCEP & CPTPP	2010-2014 2015-2019	39% 31%	15% 19%	18% 29%
New Zealand	RCEP & CPTPP	2010-2014 2015-2019			
Philippines	RCEP	2010-2014 2015-2019	7% 9%	4 % 7 %	
Singapore	RCEP & CPTPP	2010-2014 2015-2019			
Thailand	RCEP	2010-2014 2015-2019	41% 40%	25% 26%	32% 33%
Viet Nam	RCEP & CPTPP	2010-2014 2015-2019	60% 58%		25% 28%

FDI = foreign direct investment, MFG = manufacturing, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership.

Note: For three-letter country abbreviations, see Table B1 in Appendix.

Source: Author's calculation based on International Direct Investment Statistics (ITI).

# **FDI** Liberalisation

To examine FDI liberalisation in RCEP member countries, we use the FDI restrictiveness index (FDI RI) provided by OECD. This measure includes 85 countries and 22 industries. As of December 2021, the index covers the period from 1997 to 2020 for most countries; however, amongst ASEAN countries, the index values for Singapore, Cambodia, Lao PDR, and Myanmar are available only for the period between 2018 and 2020.<sup>7</sup> FDI RI assesses the restrictions of a country's FDI rules by examining the four major types of restrictions: (1) foreign equity limitations, (2) screening or approval mechanisms, (3) restrictions. It also provides an average score of the aforementioned four measures, namely, (5) all types of restrictions. FDI restrictiveness is evaluated on a scale between 0 for open and 1 for closed; a lower value of FDI RI indicates a greater level of FDI liberalisation.

In Figure 9.3, Panels (a), (b), and (c) present the trends in FDI RI in 'all type of restrictions' by region and sector. The regions include the ASEAN countries, Latin America, China, India, Japan, and Korea.<sup>8</sup> Two observations are noteworthy. First, although there is a huge gap in FDI RI across the ASEAN, East Asian, and Latin American (LA) countries in 1997, it narrowed during the 2000s and 2010s. For example, in Panel (a) of Figure 9.3, FDI RI for the primary sector in 1997 ranges between 0.5 and 0.7 for the ASEAN countries, China, India, and Korea, while FDI RI for Japan and Latin America was at a lower level of 0.7 and 0.14, respectively. FDI RI gradually declined through 2010 in Korea, China, the ASEAN countries, and India. These countries also deregulated FDI restrictions between 2014 and 2016, narrowing the gap between Japan and Latin America. These trends can also be observed in the secondary and tertiary sectors.

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<sup>&</sup>lt;sup>7</sup> For data availability, see Table A1 in Appendix.

<sup>&</sup>lt;sup>8</sup> Singapore, Lao PDR, Myanmar, and Cambodia are not included in the ASEAN because the index value for these countries is available only for the period between 2016 and 2020 for Cambodia and Lao PDR, between 2018 and 2020 for Singapore and Myanmar. The Latin American countries in Figure 9.3 include Argentina, Brazil, Chile, Colombia, Costa Rica, Dominica, Mexico, Panama, Peru, Uruguay, and Venezuela.



Figure 9.3 FDI Restrictiveness Index by Region and Sector



ASEAN = Association of Southeast Asian Nations, LA = Latin America.

Note: For three-letter country abbreviations, see Table 9.B1 in Appendix.

Source: Author's calculation based on the Organisation for Economic Co-operation and Development and the Foreign Direct Investment Restrictiveness Index database (https://www.oecd.org/investment/fdiindex.htm, accessed 6 August 2022).

Second, although FDI liberalisation has progressed over the past 20 years in many countries, the level of regulation for the primary and tertiary sectors in 2020 was higher than that of the secondary sector, especially in the ASEAN countries and China. In the secondary sector, as of 2010, the regulatory index declined to less than 0.15, except for China's secondary sector. China deregulated FDI restrictions in the secondary sector throughout the 2010s to less than 0.1 in 2018. In the secondary sector, deregulation is almost complete in the ASEAN and East Asian countries. Conversely, in the primary and tertiary sectors, the regulatory indices in China and the ASEAN countries were greater than 0.3 in 2020, indicating that regulations remain in place compared to Japan, Korea, and Latin American countries.

Figure 9.4 shows the FDI regulatory indicators and their breakdown into the type of restrictions for each country as of 2020. In the secondary sector, the average value of regulation index across RECEP and CPTPP countries is almost the same. However, RCEP member countries have a higher regulation level for the primary and tertiary sectors. The countries with the highest regulatory levels are the Philippines, Indonesia, and Thailand in the primary sector, and the Philippines, Indonesia, Thailand, and Malaysia in the tertiary sector. Amongst the ASEAN countries, Thailand, Malaysia, the Philippines, and Indonesia have a higher FDI restriction level than the CLMV countries. The share by the type of FDI

restriction varies by country and sector. For example, we can see that the share of 'equity restrictions' is high in the primary sector and tertiary sector. In the secondary sector, while the share of regulations in 'equity restrictions' is higher in RCEP countries, CPTPP countries have a higher restrictiveness index in 'screening and approval.'



Figure 9.4 FDI Restrictiveness Index in RCEP and CPTPP Countries in 2020



FDI = foreign direct investment, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership.

Note: For three-letter country abbreviations, see Table 9.B1 in Appendix.

Source: Author's calculation based on the Organisation for Economic Co-operation and Development Foreign Direct Investment Restrictiveness Index database. (https://www.oecd.org/investment/fdiindex.htm, accessed 6 August 2022).

## **Determinants of Inward FDI**

To examine how liberalisation affects inward FDI, we conduct a regression analysis using the data on bilateral FDI provided by the Orbis database. We also consider other policy measures such as the Bilateral Investment Treaty (BIT) dummy, FDI restrictions index, and the institutional quality of the host economies.

## **Empirical Specifications**

In the literature, previous studies such as Anderson (2011), Egger (2010), and Hoshi and Kiyota (2020) have examined the determinants of FDI using the gravity model, in which FDI is modelled as a function of the origin and destination countries as well as origin–destination pair characteristics. Following these previous studies, we regress the FDI

variable, measured by the number of new MNE subsidiaries for host country i, parent country j, and subsidiary industry s, on various host country, parent country, and industry characteristics.

$$FDI_{ijst} = \exp \{\beta_1 + \beta_2 O_{it-1} + \beta_3 D_{js-1} + \beta_4 w_{ijt-1}\} \cdot \epsilon_{ijk}, (1)$$

where  $O_{it-1}$ ,  $D_{jst-1}$ , and  $w_{ijt-1}$  denote origin country, destination country, and origin–destination pair characteristics in year t – 1. For origin and destination country characteristics, we include the log of the home and host countries' GDP as a measure of production capacity or market size. We also include several host country characteristics, such as FDI policy measures and institutional quality measures. For origin–destination pair characteristics, the bilateral geographical and cultural distances between the host and home countries are included. To deal with the issue of zero FDI, we estimate Equation (1) using the Poisson pseudo maximum likelihood method.

#### Data

For the data source for bilateral FDI, we use the number of new MNE subsidiaries, which was obtained from the firm-level panel dataset in the Bureau van Dijk's Orbis database compiled by Kurita and Matsuura (2020). Orbis is one of the leading sources of company information, including firm-level financial and ownership information, location, and detailed industry classifications for more than 100 million firms worldwide. In this study, we obtained data on MNE subsidiaries located in 20 European countries, 13 countries in North and South America, 11 Asian countries, and two countries in Oceania.<sup>9</sup> Amongst RCEP member countries, Cambodia, Lao PDR, and Myanmar were not included due to insufficient observations. One strength of this dataset is that it enables us to identify differences between industries as well as between source and destination countries.<sup>10</sup>

For origin and destination characteristics, we use GDP as the production capacity of the home country or the market size of the host country, which was obtained from the World Bank's World Development Indicators database. We also include Trade Openness, which is the sum of export and import normalised by GDP and is often used as a measure of trade liberalisation. Country pair variables include geographical or cultural distances between the origin and destination country. For the bilateral distance between two

<sup>&</sup>lt;sup>9</sup> For details regarding the data from the Orbis database, see Appendix B.

<sup>&</sup>lt;sup>10</sup> As a source of bilateral FDI flows, OECD's FDI statistics is an alternative option. However, it features some limitations. First, their reporting countries are restricted to OECD member countries, implying that FDI from non-member countries such as China or Singapore are not included. Second, it is difficult to obtain data by industry, especially for non-OECD member countries. As we see in Figures 3 and 4, the progress in FDI liberalisation varies by industry, and, when using OECD data, it is difficult to examine the industry-level relationship between FDI liberalisation and its impact.

countries, we used the population-weighted bilateral distance (*Distw*) obtained from the Centre d'Études Prospectives et d'Informations Internationales (CEPII) gravity database.<sup>11</sup> This variable is calculated by measuring the distance between the largest cities in those two countries, weighted by the share of the city in the country's overall population. To control for the cultural ties between two countries, we use a dummy variable that takes the value of 1 if the host and home countries have the same official or national language (*Comlang\_off*) and 0 otherwise, and a colony dummy variable (*Colony*) that takes the value of 1 if the countries have a coloniser–colony relationship and 0 otherwise. Both variables were obtained from the CEPII gravity database.

For policy factor variables, we include the FDI Restrictiveness Index (FDI-RI), which is provided by OECD. In our baseline estimation, we use the index for 'all types of restrictions.' We also include Bilateral Investment Treaty (BIT) dummy variables that equal 1 if the two countries have a BIT and 0 otherwise. Information on BITs is obtained through the web appendix in Hoshi and Kiyota (2020).<sup>12</sup> As a measure of institutional quality, we use the World Bank's World Governance Indicator database produced by Kaufmann and Kraay. This database provides aggregated governance indicators for over 200 countries for the period between 1996 and 2020 in terms of six dimensions of governance as follows: 1) Voice and Accountability, 2) Political Stability and Absence of Violence/Terrorism, 3) Government Effectiveness, 4) Regulatory Quality, 5) Rule of Law, and 6) Control of Corruption. We use the index for regulatory burden as a measure of governance quality, as it is frequently used in the FDI and development literature, such as in Kimura and Todo (2010). Host country and year fixed effects are also included. The sample periods for our estimation extend from 2011 through 2016 due to the data restrictions of the Orbis and CEPII's gravity databases. As destination countries, we focus on 15 RECEP plus CPTPP member countries, India, as well as eight Latin American countries.

#### **Estimation Results**

Table 9.3 presents the estimation results of Equation (1). Column (1) is our baseline result. While the GDP of the origin countries are positive and significant, the coefficient in destination countries become negative but insignificant. This is probably because most destination countries in our sample are developing countries. The coefficients of bilateral geographical distance and cultural ties, namely *Colony* and *Comlang\_off*, Trade Openness, and BIT dummy are all positive and significant. The FDI RI, the variable of interest, has negative and significant impact on inward FDI. Since a lower value of FDI RI indicates more liberalisation, this result implies that liberalisation promotes FDI. We also found that the coefficient of the regulatory quality is positive and weakly significant.

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<sup>&</sup>lt;sup>11</sup> For details, see the following link: http://www.cepii.fr/cepii/en/bdd\_modele/bdd.asp.

<sup>&</sup>lt;sup>12</sup> We thank Prof. Kiyota for allowing us to use this index. Hoshi and Kiyota (2020) used the entry into force date of BIT, obtained from the World Bank database of Bilateral Investment Treaties.

As we explained in Section 3, the FDI restrictiveness index can be decomposed into four factors, 'Equity restrictions,' 'Screening and approval,' 'Key foreign personnel,' and 'Other restrictions.' In Columns (2) through (5), we use these specific restrictiveness measures in place of 'All types of restrictions' to estimate the model for inward FDI. We found 'Equity restrictions,' 'Key foreign personnel,' and 'Other restrictions' have a negative and significant impact.

Region	(1)	(2)	(3)	(4)	(5)
InGDP <sub>i</sub>	0.878*** (0.0181)	0.878*** (0.0181)	0.878*** (0.0181)	0.878*** (0.0181)	0.878*** (0.0181)
InGDP <sub>i</sub>	-0.313 (0.307)	-0.237 (0.309)	-0.162 (0.309)	-0.161 (0.310)	-0.300 (0.312)
InDistw <sub>ij</sub>	-0.927*** (0.0428)	-0.927*** (0.0428)	-0.927*** (0.0429)	-0.927*** (0.0430)	-0.927*** (0.0429)
Trade Openness <sub>j</sub>	2.239*** (0.694)	2.474*** (0.707)	2.544*** (0.710)	2.536*** (0.711)	2.121*** (0.695)
BIT <sub>ij</sub>	0.906*** (0.1000)	0.906*** (0.1000)	0.906*** (0.101)	0.906*** (0.100)	0.906*** (0.100)
Colony <sub>j</sub>	0.847*** (0.0920)	0.847*** (0.0920)	0.847*** (0.0921)	0.847*** (0.0921)	0.848*** (0.0921)
Comlang_off <sub>j</sub>	1.243*** (0.0690)	1.243*** (0.0689)	1.243*** (0.0691)	1.243*** (0.0690)	1.243*** (0.0691)
Regulatory quality	0.0228* (0.0129)	0.0233* (0.0129)	0.0234* (0.0130)	0.0233* (0.0129)	0.0233* (0.0129)
FDI RI, total	-2.117*** (0.170)				
FDI RI I Equity restriction		-2.537*** (0.246)			
FDI RI II Screening & approval			0.111 (0.529)		
FDI RI III Key foreign personnel				-12.95*** (1.503)	
FDI RI IV Other restrictions					-4.949*** (0.944)
Observations	167,076	167,076	167,076	167,076	167,076
Log pseudolikelihood	-25303	-25292	-25592	-25514	-25556
pseudo R2	0.3209	0.3212	0.3131	0.3152	0.3141

#### Table 9.3 Estimation Results: Baseline

Note: Robust standard errors in parentheses. \*\*\*, \*\*. and \* indicate significant at 1%, 5% and 10%, respectively. Source: Author's own calculation.

	(1)	(2)	(3)	(4)	(3)	(5)		
	Manufacturing		Non-Manufacturing					
VARIABLES	Machinery	Non- machinery		Wholesale & retail	Transpor- tation & Communi- cation	Finance, Insurance, & Real estate		
InGDP <sub>i</sub>	1.028***	0.897***	0.850***	0.940***	0.928***	0.905***		
	(0.0313)	(0.0335)	(0.0228)	(0.0291)	(0.0604)	(0.0372)		
InGDP <sub>i</sub>	-0.291	-2.178***	-0.160	-0.664	0.0445	0.169		
	(0.691)	(0.706)	(0.403)	(0.603)	(1.135)	(0.710)		
InDistw <sub>ij</sub>	-0.748***	-0.986***	-0.945***	-0.933***	-0.784***	-1.161***		
	(0.0754)	(0.0589)	(0.0583)	(0.0776)	(0.139)	(0.113)		
Trade Openness <sub>j</sub>	4.715**	0.941	1.089	0.504	3.542	-0.168		
	(1.832)	(1.127)	(0.873)	(1.428)	(2.273)	(1.537)		
BIT <sub>ij</sub>	0.267	0.725***	1.164***	0.869***	1.017***	0.933***		
	(0.206)	(0.177)	(0.120)	(0.176)	(0.326)	(0.210)		
Colony <sub>j</sub>	0.457*	0.0482	0.999***	0.618***	0.767***	0.874***		
	(0.258)	(0.204)	(0.102)	(0.164)	(0.221)	(0.163)		
Comlang_off <sub>j</sub>	1.733***	1.331***	1.153***	1.237***	1.758***	1.241***		
	(0.203)	(0.142)	(0.0764)	(0.118)	(0.186)	(0.142)		
Regulatory quality	0.0151	0.00657	0.0234	0.0301	0.00739	0.00366		
	(0.0328)	(0.0201)	(0.0157)	(0.0233)	(0.0408)	(0.0309)		
FDI RI, total	-1.151	-20.57***	-4.604***	-7.436***	-0.828*	-2.444***		
	(0.820)	(3.386)	(0.286)	(2.010)	(0.431)	(0.350)		
Impact of one-S.D. change in FDI-RI on the new entry	-0.114	-1.513	-1.206	-1.661	-0.219	-0.641		
Observations	18,720	67,392	75,582	7,488	19,656	17,550		
Log pseudolikelihood	-2822	-4378	-15014	-3677	-1071	-2534		
pseudo R2	0.4556	0.3157	0.3779	0.4835	0.2915	0.4234		

### Table 9.4 Estimation Results by Industries

Note: Robust standard errors appear in parentheses. \*\*\*, \*\*. and \* indicate significance at 1%, 5% and 10%, respectively.

Source: Author's own calculation.
In Table 9.4, we divide our sample by industry, Machinery and non-Machinery Manufacturing, Wholesale and Retail, Transportation and Communication, and Finance, Insurance and Real Estate.<sup>13</sup> FDI RI affects inward FDI in most subgroups of industries except for Machinery Manufacturing. This result may reflect the fact that FDI restrictions have been lifted before our sample period has started to attract FDI in machinery manufacturers. To compare the impact of *FDI RI* across industries, we calculate how much a 1-standard deviation change in *FDI RI* affects the number of MNEs, which is also presented in Table 9.4. The impact is greater for non-Machinery Manufacturing, Wholesale and Retail; a 1-standard deviation reduction of *FDI RI* in these two industries increased the number of MNEs subsidiaries by 0.56% and 1.70%, respectively.

We examined which industries in which countries have room to increase FDI by improving the investment climate. In Table 9.5, we check the level of *FDI-RI* and the global governance indicator in terms of regulatory quality in RCEP member countries for non-Machinery manufacturing, Wholesale and Retail, Transportation and Communication, and Finance, Insurance and Real Estate. Countries with a relatively higher FDI restrictiveness index include New Zealand, Lao PDR, and Indonesia for non-Machinery manufacturing, Indonesia, Malaysia, and Lao PDR for wholesale and retail; Philippines, China, and Viet Nam for Transportation and Communication; and Thailand, Philippines, and Malaysia for the Finance, Insurance, and Real Estate industries.

Table 9.5 also provides a breakdown of regulatory indicators. In countries with relatively high regulatory indicators, 'Equity restrictions' has a relatively high value amongst the four components of *FDI RI*. Since the FDI restriction index reached a very low level in the manufacturing sector, there is room for further improvement in non-manufacturing sectors such as distribution, transportation, and communication as well as finance, especially in the ASEAN countries.



<sup>&</sup>lt;sup>13</sup> Machinery manufacturing includes the manufacturing of computers, electronics, and optical products, electrical equipment, machinery and equipment n.e.c., motor vehicles, trailers and semi-trailers, and other transport equipment.

#### Table 9.5 FDI Restrictiveness Index for Selected Industries and Regulatory Quality Index in RCEP Member Countries

	All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions
AUS	0.09	0.00	0.09	0.00	0.00
BRN	0.00	0.00	0.00	0.00	0.00
CHN	0.06	0.01	0.00	0.05	0.00
IDN	0.17	0.04	0.00	0.05	0.08
JPN	0.00	0.00	0.00	0.00	0.00
KHM	0.04	0.03	0.01	0.00	0.01
KOR	0.00	0.00	0.00	0.00	0.00
LA0	0.18	0.15	0.00	0.00	0.03
MMR	0.13	0.12	0.00	0.00	0.01
MYS	0.00	0.00	0.00	0.00	0.00
NZL	0.19	0.00	0.19	0.00	0.00
PHL	0.07	0.00	0.00	0.00	0.07
SGP	0.01	0.00	0.00	0.00	0.01
THA	0.10	0.04	0.01	0.00	0.04
VNM	0.03	0.01	0.00	0.02	0.00

a) non-Machinery manufacturing

b) Wholesale & Retail

	All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions
AUS	0.08	0.00	0.08	0.00	0.00
BRN	0.00	0.00	0.00	0.00	0.00
CHN	0.08	0.03	0.00	0.05	0.00
IDN	0.56	0.43	0.00	0.05	0.08
JPN	0.00	0.00	0.00	0.00	0.00
KHM	0.01	0.00	0.00	0.00	0.01
KOR	0.00	0.00	0.00	0.00	0.00
LA0	0.37	0.19	0.10	0.00	0.08
MMR	0.07	0.06	0.00	0.00	0.01
MYS	0.47	0.20	0.20	0.02	0.05
NZL	0.19	0.00	0.19	0.00	0.00
PHL	0.15	0.00	0.00	0.00	0.15
SGP	0.01	0.00	0.00	0.00	0.01
THA	0.07	0.00	0.03	0.00	0.04
VNM	0.13	0.03	0.05	0.02	0.03

#### c) Transportation & Communication

	All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions
AUS	0.27	0.07	0.19	0.01	0.00
BRN	0.40	0.29	0.08	0.03	0.00
CHN	0.77	0.65	0.08	0.05	0.00
IDN	0.60	0.47	0.00	0.05	0.08
JPN	0.24	0.19	0.02	0.02	0.01
KHM	0.23	0.19	0.03	0.00	0.02
KOR	0.49	0.47	0.00	0.00	0.01
LAO	0.32	0.26	0.00	0.01	0.05
MMR	0.19	0.19	0.00	0.00	0.01
MYS	0.43	0.31	0.08	0.00	0.04
NZL	0.26	0.07	0.19	0.00	0.00
PHL	0.78	0.64	0.00	0.08	0.07

#### d) Finance, Insurance, & Real Estate

	All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions
AUS	0.28	0.12	0.14	0.00	0.02
BRN	0.05	0.05	0.00	0.00	0.00
CHN	0.08	0.00	0.03	0.03	0.03
IDN	0.16	0.05	0.00	0.03	0.09
JPN	0.05	0.00	0.00	0.00	0.05
KHM	0.09	0.06	0.00	0.00	0.03
KOR	0.03	0.02	0.00	0.00	0.01
LAO	0.12	0.08	0.00	0.00	0.04
MMR	0.21	0.19	0.00	0.00	0.02
MYS	0.31	0.23	0.05	0.00	0.03
NZL	0.25	0.04	0.20	0.00	0.02
PHL	0.32	0.27	0.00	0.00	0.05

	All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions		All type of restric- tion	Equity restric- tion	Screen- ing &ap- proval	Key foreign person- nel	Other restric- tions
SGP	0.35	0.28	0.00	0.05	0.03	SGP	0.09	0.08	0.00	0.00	0.01
THA	0.48	0.35	0.03	0.04	0.05	THA	0.41	0.34	0.00	0.03	0.05
VNM	0.48	0.29	0.17	0.02	0.00	VNM	0.18	0.13	0.00	0.02	0.03

FDI = foreign direct investment, RCEP = Regional Comprehensive Economic Partnership.

Note: For three-letter country abbreviations, see Table 9.B1 in Appendix.

Source: Author's calculation based on the Organisation for Economic Co-operation and Development Foreign Direct Investment Restrictiveness Index database. (https://www.oecd.org/investment/fdiindex.htm, accessed 6 August 2022).

## Conclusion

This chapter presents the trends and patterns of FDI inflows and outflows and reviews FDI liberalisation in East and Southeast Asia. We found that inward FDI has been increasing in Singapore and the CLMV countries, and that outward FDI has been increasing in China and the major ASEAN countries. Examining the source countries of inward FDI, intraregional FDI has also been increasing in East and Southeast Asia; in the CLMV countries, there is room for growth in FDI in the manufacturing sector, while the other RCEP countries tend to shift to the service sector. We also found that in East and Southeast Asia, there has been significant FDI liberalisation, but restrictions still remain, especially in the primary and tertiary sectors. The estimation results of the gravity model show that there is room for increasing FDI through investment liberalisation in the non-manufacturing sectors of the ASEAN countries. Looking at the breakdown of FDI restrictions, 'Equity restrictions' tend to be a dominant component in countries with relatively high FDI RI.

Although this study presents interesting findings, it also provides various avenues for future research. First, an interesting research agenda would be to investigate how the COVID-19 pandemic affected the global value chain and FDI flows in East and Southeast Asia. This issue is important, especially when considering the post-pandemic long-term recovery of FDI flows. Second, this paper focused on FDI liberalisation and governance quality, but other trade and investment policies such as regional trade agreements or bilateral investment treaties may also affect FDI flows. The formation of industrial clusters is seen as a key factor for attracting MNEs, so investigating the role of other policies is also an important policy agenda.

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## Appendix A

		1997	2003	2006	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Australia	RCEP& CPTPP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Brunei	RCEP& CPTPP												Х	х	х
Cambodia	RCEP										Х	Х	Х	Х	Х
Canada	CPTPP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Chile	CPTPP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
China	RCEP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Indonesia	RCEP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Japan	RCEP& CPTPP	х	х	х	х	х	Х	х	х	х	х	х	х	х	х
Korea	RCEP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Lao	RCEP										Х	Х	Х	Х	Х
Malaysia	RCEP& CPTPP	х	х	х	х	х	Х	х	Х	х	Х	х	х	Х	х
Mexico	CPTPP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Myanmar	RCEP							Х	Х	Х	Х	Х	Х	Х	Х
New Zealand	RCEP& CPTPP	х	х	х	х	х	х	х	х	х	х	х	Х	х	х
Peru	CPTPP				Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Philippines	RCEP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Singapore	RCEP& CPTPP												Х	Х	Х
Thailand	RCEP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х
Viet Nam	RCEP& CPTPP	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х

#### Table 9.A1 Data Availability of the FDI Restrictiveness Index

CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership, Lao PDR = Lao People's Democratic Republic.

Source: Author's calculation based on the Organisation for Economic Co-operation and Development Foreign Direct Investment Restrictiveness Index database (https://www.oecd.org/investment/fdiindex.htm, accessed on 6 August 2022).



## Appendix B. FDI Data by Orbis

This appendix summarises the data construction procedure of the new MNE subsidiaries, which was developed by Kurita and Matsuura (2020) using Orbis. First, we select parent companies and their foreign subsidiaries that are both located in our focal regions, namely, 20 European countries, 13 countries in North and South America, 11 Asian countries, and two countries in Oceania. A list of countries is presented in Table 9.B2. Parent companies are restricted to industrial firms to exclude ownership by individuals, governments, and financial institutions. We also exclude domestic subsidiaries, i.e. subsidiaries that are located in the same country as their parent companies. The ownership threshold for identifying the global ultimate owner is 50.01%. Our sample covers both manufacturing and non-manufacturing industries, based on each firm's Nomenclature of Economic Activities (Rev. 2) 4-digit level industry classification. We exclude parents and subsidiaries that lack an industry classification. As a measure of FDI flow, we use the number of new MNE subsidiaries, which is identified by referring to the date of incorporation for each one.

Country Name	Three-Letter Country Abbreviations
Australia	AUS
Brunei Darussalam	BRN
Canada	CAN
Chile	CHL
China	CHN
Indonesia	IDN
Japan	JPN
Cambodia	КНМ
Korea, Republic of	KOR
Lao PDR	LAO
Mexico	MEX
Myanmar	MMR
Malaysia	MYS
New Zealand	NZL
Peru	PER

#### Table 9.B1 Three-Letter Country Abbreviations

Country Name	Three-Letter Country Abbreviations			
Philippines	PHL			
Singapore	SGP			
Thailand	THA			
Viet Nam	VNM			

Lao PDR = Lao People's Democratic Republic. Source: Authors.

Europe

United Kingdom Switzerland Netherlands Germany Ireland France Spain Belgium Italy Sweden Austria Norway Portugal

#### Table 9.B2 List of Countries

North America
North America
Canada
United States
Latin America
Mexico
Brazil
Chile
Colombia
Peru
Argentina
Panama
Costa Rica
Dominican Republic
Uruguay
Venezuela

Asia					
Japan					
China					
Korea, Republic of					
Taiwan					
Indonesia					
Malaysia					
Philippines					
Singapore					
Thailand					
Viet Nam					
India					
Oceania					
Australia					
New Zealand					

#### Denmark Finland

#### **Central Europe**

Czech Republic
Hungary
Romania
Slovakia
Poland

Source: Authors.

Investment Liberalisation in East and Southeast Asia





## **Trade Remedies Chapter**

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The aim of this chapter is to analyse the trade remedies chapter in the Regional Comprehensive Economic Partnership (RCEP) agreement. Based on the comprehensive analysis method, we break down each trade remedy instrument and compare it with the World Trade Organization (WTO) Agreement and other relevant regional trade agreements to review any distinct feature in the RCEP Trade Remedies Chapter. These features are important to assess, together with this chapter's consistency with WTO Agreement, to avoid the abuse of trade remedy instruments and to provide more legal certainty.

# Importance of Trade Remedies for RCEP members

The conclusion of the Uruguay Round in 1995 resulted in a reduction of import tariffs amongst World Trade Organization (WTO) members. The average tariffs applied by WTO members for trade in goods, especially for non-agricultural products, has been reduced significantly (Fulton and Buterbaugh, 2007). In addition, there has been significant proliferation of regional and bilateral free trade agreements that further reduce tariff barriers (WTO, 2022). This liberalisation has increased international trade from \$5 trillion in 1995 to \$17 trillion in 2020 (Statista, 2021). Global value chains have made the production of goods more efficient and have resulted in many positive multiplier effects such as job creation, raised standard of living, poverty reduction, increased real income, etc. However, many countries are producing competing products that are identical or similar to those produced in other countries. The competition of imported products versus local products has been present even before the establishment of the WTO. Previously, governments imposed tariffs as one of the tools to protect local industries against import competition. Now, due to multilateral, regional, or bilateral commitments, governments have very limited policy space to protect domestic industry by increasing ordinary import duty. Although many countries impose more Non-Tariffs Measures (NTMs) to implement certain objectives, the importance of tariffs as protection tools, especially for unfairly traded goods, is still indispensable. These types of additional tariff instruments are commonly called 'trade defence' or 'trade remedies'.

Trade remedies can be in the form of antidumping measures, countervailing measures or safeguard measures. Each instrument has its own features to remedy a specific situation. When this kind of unfair trade practice causes material or threat of material injury to the domestic producers of the like products, the importing country can impose an antidumping duty to offset the unfair trade practice. Similarly, a countervailing measure defends against subsidies. A safeguard measure, on the other hand, is also an emergency trade defence instrument that can be implemented when there is a surge of imports causing or threaten to cause serious injury to the domestic industry. For a safeguard, there is no need to demonstrate the existence of unfair trade. Thus, each of the trade remedies has conditions that must be fulfilled in order to achieve their purpose. There has been a proliferation of trade remedies amongst WTO members, including Regional Comprehensive Economic Partnership (RCEP) members. From 1995 until 2020, there have been 6,300 antidumping investigations, 632 countervailing duty (CVD) investigations, and 400 safeguard investigations initiated by WTO members. There has been a significant increase of initiation of antidumping from 1995 to 2020, as seen in Figure 10.1 (WTO, 2020a, 2020b, 2020c). On average, around 49% to 66% out of those investigations end up with the application of the measures.<sup>1</sup>



Figure 10.1 Trade Remedies Initiations and Imposition 1995–2020

AD = antidumping, CVD = countervailing duty, SG = safeguarding. Source: Authors.

<sup>&</sup>lt;sup>1</sup> For antidumping, there were 6,077 initiations from 1995–2020 and 4,071 measures in place (66%). For CVD, there were 632 initiations from 1995–2020 and 344 measures in place (54%). For safeguarding, there were 400 initiations from 1995–2020 and 196 measures in place (49%).

RCEP members, especially Australia, China, Indonesia, Republic of Korea (henceforth, 'Korea'), Malaysia, Thailand, New Zealand, and Viet Nam, are frequent users of trade remedies. Australia is the biggest user of antidumping instruments by initiating 375 investigations, followed by China with 292 antidumping investigations, and Korea with 159 antidumping investigations (WTO, 2020a). For CVD, again Australia is the most frequent user, initiating 39 investigations, followed by China's 17 CVD investigations and New Zealand's nine CVD investigations (WTO, 2020b). For safeguards, Indonesia is the most frequent user amongst RCEP members, with 38 investigations, followed by the Philippines, with 20 safeguard investigations, and Thailand, Viet Nam, and Malaysia, with six investigations (WTO, 2020c). The combined total of all RCEP members' antidumping investigations from 1995–2020 accounts for 20.492% of the total initiated by all WTO members during the same period (WTO, 2020a), while for CVD and safeguards investigations from 1995–2020, initiations by RCEP members accounted for 10.443% and 21.75% of the total by all WTO members during the same period respectively (WTO, 2020c). If India is taken into account in these statistics, the numbers increase drastically since it is also one of the biggest users of trade remedy investigations (Table 10. 1).<sup>2</sup>

COUNTRIES	ANTIDUMPING	CVD	SAFEGUARD
AUSTRALIA	375	39	4
BRUNEI DARUSSALAM	0	0	0
CAMBODIA	0	0	0
CHINA	292	17	2
INDONESIA	144	0	38
JAPAN	17	1	1
LAO PDR	0	0	0
MALAYSIA	109	0	6
MYANMAR	0	0	0
NEW ZEALAND	68	9	0
PHILIPPINES	21	0	20
REPUBLIC OF KOREA	159	0	4
SINGAPORE	0	0	0
THAILAND	99	0	6
VIET NAM	32	1	6

#### Table 10.1 Trade Remedy Investigation Initiations by RCEP Members

CVD = countervailing duty, Lao PDR = Lao People's Democratic Republic, RCEP = Regional Comprehensive Economic Partnership. Source: WTO (1995 – 30 June 2021).

<sup>&</sup>lt;sup>2</sup> India initiated 1,071 AD investigations, 28 CVD investigations, and 46 safeguard investigations.

On the other hand, RCEP members are also one of the main targets of trade remedy investigations. China has been the most frequent target of antidumping instruments, being investigated 1,507 times, followed by Korea with 480 investigations and Thailand in 256 antidumping investigations (WTO, 2020a). For CVD, again China has been the most frequent target, with 193 CVD investigations followed by Korea with 32 CVD investigations and Indonesia with 30 CVD investigations (WTO, 2020b).

COUNTRIES	ANTIDUMPING	CVD
World	6,422	644
AUSTRALIA	38	4
BRUNEI DARUSSALAM	0	0
CAMBODIA	1	0
CHINA	1,507	193
INDONESIA	241	30
JAPAN	237	0
LAO PDR	0	0
MALAYSIA	188	19
MYANMAR	0	0
NEW ZEALAND	11	0
PHILIPPINES	19	2
REPUBLIC OF KOREA	480	32
SINGAPORE	69	1
THAILAND	256	22
VIET NAM	114	23

#### Table 10.2 RCEP Member Being Target of Trade Remedy Investigations

CVD = countervailing duty, Lao PDR = Lao People's Democratic Republic, RCEP = Regional Comprehensive Economic Partnership. Source: WTO (1995 – 30 June 2021)

Many RCEP members are also targeting one another in trade remedy investigations. As seen in Figure 10.2, for example, Indonesia has initiated 32 antidumping investigations against China, 19 against Korea and 13 against Malaysia, while Australia has initiated 21 CVD investigations against China, five against Viet Nam and one against Malaysia.

#### Figure 10.2 Trade Remedies Investigations Amongst RCEP Members



AD = anti-dumping, CVD = countervailing measure.

Source: Word Trade Organization statistic

All of these figures show how important investigations are for the RCEP members and could be one of the reasons why trade remedies still need to be further regulated as a separate chapter in the RCEP Agreement, although trade remedies have been regulated in the WTO Agreement and all of the RCEP members are also WTO members. Trade remedies have also been regulated in RCEP members' respective national legislations. In addition, many FTAs or regional trade agreements (RTAs) concluded by RCEP members have a trade remedies chapter. There are currently 37 FTAs/RTAs concluded by RCEP members; however, not all FTAs/RTAs have a separate trade remedies chapter,<sup>3</sup> and some FTAs do not have a trade remedies provision at all.<sup>4</sup>

<sup>&</sup>lt;sup>3</sup> For example, see the bilateral agreement between Japan and the other RCEP members; the bilateral safeguard measure has been regulated under Trade in Goods chapter.

<sup>&</sup>lt;sup>4</sup> See Trade Agreement Between the Kingdom of Thailand and Lao PDR.

FTAs/RTAs that have trade remedies may typified one of three ways. The first is only reaffirmation of the parties' rights under the WTO Agreement without any significant additional obligation or procedure.<sup>5</sup> The second is that the trade remedies only focus on the bilateral/regional safeguard measure, providing only reaffirmation for anti-dumping and countervailing measures.<sup>6</sup> Third, there are additional details for the procedure and obligation concerning trade remedies.<sup>7</sup>

Historically, there have been at least 11 disputes at WTO level arising from the imposition of trade remedy instruments amongst RCEP members, namely Korea – Stainless Steel Bars (DS 553);<sup>8</sup> Korea – Pneumatic Valves (DS 504),<sup>8</sup> initiated by Japan; Japan – DRAMs (DS 336),<sup>10</sup> launched by Korea; Korea – Certain Paper (DS 312),<sup>11</sup> where Indonesia was acting as complainant, as well as Indonesia – Safeguard on Certain Iron or Steel Products (DS 496)<sup>12</sup> where Indonesia was the respondent on the claim brought by Viet Nam; Australia – AD/CVD on Certain Products (DS 603)<sup>13</sup> where China was a complainant; China – AD/CVD on Wine (DS 602)<sup>14</sup> where Australia was complainant; China – AD on Stainless Steel (DS 601)<sup>15</sup> launched by Japan; China – AD/CVD on Barley (DS 598)<sup>16</sup> launched by Australia; Australia – Anti-Dumping Measures on A4 Copy Paper (DS 529)<sup>17</sup> where Indonesia was a

<sup>&</sup>lt;sup>5</sup> See ASEAN Trade in Goods Agreement (ATIGA), Trans-Pacific Strategic Economic Partnership (TPSEP), Indonesia – Australia Comprehensive Partnership (IA-CEPA), ASEAN, Hong Kong, China Free Trade Agreement (AHKFTA), Asia-Pacific Trade Agreement (APTA) and Preferential Trade Agreement Among D-8 Member States (PTA-D8).

<sup>&</sup>lt;sup>6</sup> See ASEAN-China Free Trade Agreement (ACFTA), ASEAN-Korea Free Trade Area (AKFTA), Korea – Singapore Free Trade Agreement (KSFTA), ASEAN – Japan Comprehensive Economic Partnership (AJCEP), ASEAN – Australia – New Zealand Free Trade Area (AANZFTA), Thailand – Australia Free Trade Agreement (TAFTA), Japan – Thailand Economic Partnership Agreement (JTEPA), China – Singapore Free Trade Agreement (CSFTA), NZ – Thailand Closer Economic Partnership, Japan – Singapore Economic Partnership (JSEPA), Japan – Viet Nam Economic Partnership Agreement, JAPAN – Australia Free Trade Agreement (CAFTA), Japan – Australia Economic Partnership Agreement (JAEPA), China – Australia Free Trade Agreement (CAFTA), Japan – Neit Nam Economic Partnership Agreement, Japan – Australia Economic Partnership Agreement (JAEPA), China – Australia Free Trade Agreement (CAFTA), Japan – Neitona Conomic Partnership Agreement, New Zealand – China Free Trade Agreement (NZCFTA), Indonesia – Japan Economic Partnership (JJEPA), Japan – Malaysia Economic Partnership Agreement, and Japan – Philippines Economic Partnership Agreement. The Malaysia – Australia FTA also focuses on bilateral safeguard measures; however there are additional obligations for the anti-dumping measure such as 'lesser duty rule' and prohibition for zeroing.

<sup>&</sup>lt;sup>7</sup> Korea – Australia Free Trade Agreement (KAFTA), China – Korea FTA, Viet Nam-Korea Free Trade Agreement, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Australia – New Zealand Closer Economic Relations Trade, Indonesia – Korea Comprehensive Economic Partnership Agreement (IK-CEPA), New Zealand – Malaysia Free Trade Agreement (MNZFTA), and New Zealand – Korea FTA.

<sup>&</sup>lt;sup>8</sup> DS 533: Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/ cases\_e/ds553\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>9</sup> DS 504: Korea – Anti Dumping Duties on Pneumatic Valves from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ ds504\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>10</sup> Japan – Countervailing Duties on Dynamic Random Access Memories from Korea, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/ cases\_e/ds336\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>11</sup> DS 312: Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/ cases\_e/ds312\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>12</sup> DS 496: Indonesia – Safeguard on Certain Iron or Steel Product, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds496\_e. htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>13</sup> At the time of writing this paper, this case was in the consultation stage. DS 603: Australia – Anti-Dumping and Countervailing Duty Measures on Certain Product from China, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds603\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>14</sup> At the time of writing this paper, the panel has composed. DS 602: China – Anti-Dumping and Countervailing Duty Measures on Wine from Australia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds602\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>15</sup> At the time of writing this paper, the panel has established but not yet composed. DS 601: China – Anti-Dumping Measures on Stainless Steel Products from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds601\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>16</sup> At the time of writing this paper, the panel has composed. DS 598: China – Anti-dumping and Countervailing Duty Measures on Barley from Australia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds598\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>17</sup> DS 529: Australia – Anti-Dumping Measures on A4 Copy Paper, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds529\_e. htm#:~:text=The%20Panel%20concluded%20that%20Australia,did%20%E2%80%9Cnot%20permit%20a%20proper (accessed 13 December 2021

complainant; and China – HP-SSST (DS 454)<sup>18</sup> launched by Japan. Interestingly, the RCEP Trade Remedies Chapter explicitly excludes the anti-dumping and CVD section, including Annex 7A from the RCEP Dispute Settlement Chapter, although it mentioned that this is subject to further review by RCEP members, which is addressed below.

### **RCEP Trade Remedies Chapter**

RCEP is an FTA amongst 15 countries in East Asia and between ASEAN countries and major trading partners: Australia, New Zealand, Japan, Korea, and China (excluding India, which decided not to join RCEP).<sup>19</sup> A free-trade area is a group of two or more custom territories in which the duties and other restrictive regulations of commerce are eliminated on nearly all the trade between the constituent territories in products originating in such territories.<sup>20</sup> RCEP is a mega-RTA which includes trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement, e-commerce, small and medium enterprises, and other issues (ASEAN, 2012). RCEP has the potential to deliver significant opportunities for businesses in the East Asia region, given the fact that the 15 RCEP participating countries account for almost half of the world's population, and contribute about 30% of global gross domestic product (GDP) and over a guarter of world exports. RCEP will become the world's largest Preferential Trade Agreement by GDP, encompassing around 28.7% of the world's economic activity based on 2019 figures,<sup>21</sup> as shown in Table 10. 3. Moreover, RCEP is the first mega-regional/plurilateral FTA in which China is a party. Therefore, RCEP has the potential to deliver strong economic advantages.

#### Table 10.3 Comparison of RTAs

Agreement	Parties	Global GDP%	Global Trade%	Global Population %
Regional Comprehensive Economic Partnership (RCEP)	15	28.7	27.8	29.65
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	11	15.03	15.43	6.64
United States-Mexico-Canada Agreement (USMCA)	3	25.82	16.11	6.45

<sup>&</sup>lt;sup>18</sup> DS 454: China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SST:) from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds454\_e.htm (accessed 13 December 2021)

<sup>&</sup>lt;sup>19</sup> India withdrew their participation in November 2019.

<sup>&</sup>lt;sup>20</sup> Paragraph 8(b) of GATT Article XXIV.

<sup>&</sup>lt;sup>21</sup> All underlying data calculated from World Bank's World Development Indicators. Global GDP percentage is the sum of GDP in US dollars in 2019 (indicator NY.GDP.MKTP.KD) for each agreement signatory divided by the world total.

Agreement	Parties	Global GDP%	Global Trade%	Global Population %
Mercosur	4	3.44	1.49	3.49
African Continental Free Trade Agreement (AfCFTA)	54	3.07	2.79	17.04
Gulf Cooperation Council (GCC)	8	1,84	3.44	0.75

RTA = regional trade agreement, GDP = gross domestic product. Source: Meyer (2021).

RCEP will provide a framework aimed at lowering trade barriers and securing improved market access for goods and services for businesses in the region. In order to achieve such a goal, RCEP: (i) reduces or eliminates custom duties imposed by each member state on originating goods approximately 92% over a period of 20 years; (ii) prohibits non-tariff measures on the importation or exportation between the RCEP members, except in accordance with the right and obligations under the WTO Agreement; (iii) stipulates trade facilitation and transparency measures; and (iv) sets out a detailed set of rules of origin (RoO) that would apply to businesses seeking to qualify their goods as originating for RCEP purposes (ASEAN, 2016).

Thus, one of the main purposes of the any RTA is to eliminate all barriers to intra-regional trade (Teh, Prusa, and Budetta, 2007). The elimination of intra-regional tariffs may cause or threaten to cause injury to domestic industries producing like products. It is very common that trade remedy instruments are used to combat unexpected circumstances. Nevertheless, not all RTAs/FTAs have a specific trade remedies chapter. Since most countries engaging in RTAs/FTAs are also members of the WTO, they feel that it is unnecessary to further regulate trade remedy instruments in their RTAs/FTAs. However, since RCEP members are very active users and targets of trade remedy instruments, the existence of a trade remedies chapter in the agreement is considered very important to secure the balance between trade liberalisation and protectionism and to further elaborate substantive and procedural issues that have not yet been regulated by the WTO. Trade remedies in the RCEP Agreement are regulated in Chapter 7 entitled 'Trade Remedies'. The chapter is divided into two broad categories namely (1) RCEP Safeguard/ Global Safeguard Measures and (2) antidumping and countervailing duties. Most of the provisions contain procedural, transparency and due process issues,<sup>22</sup> but there are some

<sup>&</sup>lt;sup>22</sup> Procedural issues include, for example, the investigation procedure regarding the transitional RCEP safeguard measure; transparency issues include, for example, the obligation of notification and disclosure of the essential fact; due process issues include, for example, the requirement of consultation.

substantive provisions as well that institutionalised WTO jurisprudences.<sup>23</sup> In addition, there is also Annex 7A entitled 'Practices Relating to Antidumping and Countervailing Duty Proceeding'. It is interesting to note, however, both Chapter 7 Section B for Anti-Dumping and Countervailing Duties and Annex 7A are explicitly excluded from the RCEP Dispute Settlement Chapter.<sup>24</sup> The applicability of the dispute settlement chapter in RCEP will be subject to general review 5 years after the date of entry into force of this Agreement.<sup>25</sup>

#### **RCEP Transitional Safeguard**

Section A of the RCEP trade remedies chapter concerns safeguard measures. These measures can be seen as transitional, allowing the import-competing industries a bulwark against the unexpected consequences of entering the RCEP Agreement. Article 7.2 of the RCEP trade remedies chapter stipulates that, because of the reduction or elimination of customs duties, members can apply this transitional safeguard measure only when a good from another Party (or RCEP Parties collectively) is being imported in such increased quantities so as to cause, or threaten to cause, serious injury to a domestic industry which produces a like or directly competitive good (New Zealand Foreign Affairs & Trade, n.d.). Below are the important features of the RCEP transitional safeguard measures with the objective to address the effect of unanticipated consequences of the regional liberalisation.

The substantive requirements of the RCEP transitional safeguard measure are quite similar to Article 2.1 and the first paragraph of Article 5 of the WTO Agreement on Safeguards. The conditions to apply the RCEP transitional safeguard measure are provided in Article 7.2 of RCEP trade remedies chapter. However, there is a difference regarding the unforeseen development requirement. At the WTO, there is a requirement to substantiate the existence of the unforeseen development and the effect of obligations incurred by WTO members resulting in the increase of imports. By contrast, the RCEP requirement is only to substantiate that the increase in imports is a result of the reduction or elimination of a customs duty under RCEP.

<sup>&</sup>lt;sup>23</sup> Substantive issues, include, for example, the prohibition of using zeroing methods in calculating dumping margins that, although not explicitly regulated, have been clarified by the WTO Appellate Body to be inconsistent with the WTO Antidumping Agreement. The first case concerning zeroing methodology is in the EC – Bed Linen case brought by India against the European Communities. However, the US is the most frequent user of the zeroing methodology even after it was found that it is inconsistent with the WTO Anti-Dumping Agreement. WTO cases involving US zeroing practices can be found in US – Zeroing (EC), US – Zeroing (Japan), US – Continued Zeroing, and US – Zeroing (Korea) for the initial investigation, and US – Anti-Dumping Measures on PET Bags for the review investigation. See below for further explanation for the most recent case of zeroing, namely US – Washing Machine.

<sup>&</sup>lt;sup>24</sup> Article 7.16 of RCEP Chapter 7 stipulates that 'the applicability of dispute settlement to this section will be subject to review in accordance with Article 20.8 (General Review)'.

<sup>&</sup>lt;sup>25</sup> Article 20.8 of RCEP.

There is also a limitation of the applicable form of the RCEP transitional safeguard measure, which prohibits imposing such measures in the form of tariff rate quotas or quantitative restriction on goods.<sup>26</sup> By contrast, the WTO allows the Party to use a quantitative restriction as a form of safeguard measure as regulated under Article 5 of the Agreement on Safeguards. The WTO Agreement on Safeguards emphasises that members should choose measures most suitable to prevent or remediate the serious injury.

Another limitation for the RCEP transitional safeguard measure is that it can only be applied either (1) to suspend the further reduction of any rate of customs duty or (2) to increase the rate of customs duty to a level not exceeding the lesser of the Most Favoured Nation-applied rate in effect on the day when the measure is applied or on the day immediately preceding the date of entry into force of RCEP for the imposing member.<sup>27</sup> The WTO safeguard measures have no such limitation and can be imposed at any level, even beyond the binding tariffs of a member set forth in its Schedule of Commitments as long as necessary to prevent or remedy serious injury and to facilitate adjustment.<sup>28</sup>

Furthermore, the duration of the RCEP transitional safeguard measure is limited. Article 7.5.1(c) of the trade remedies chapter prohibits the imposition of the measure beyond the expiration of the transitional safeguard period,<sup>29</sup> which is 8 years after the elimination or reduction of the custom duty is completed for that particular good.<sup>30</sup> It also prohibits the imposition of the RCEP transitional safeguard measure in the first year after RCEP enters into force. On the other hand, the WTO Safeguard Agreement allows for the imposition of safeguard measures at any time.

It is also important to note that the imposition period of the RCEP transitional safeguard measure is shorter than the Global Safeguard. The total duration including extension must not exceed 4 years,<sup>31</sup> while the WTO Safeguard Agreement provides that measures can be in place for 8 to 10 years depending on the status of a member. There is also a limit to the duration a safeguard measure can be reapplied for the same goods in RCEP as compared with the WTO Safeguard Agreement since in RCEP there is no differentiation between developed and developing country members.<sup>32</sup> No RCEP transitional safeguard measures shall be reapplied for the same goods for a period of time equal to the duration of the previous measure or 1 year since the expiry of such measure, whichever is longer.<sup>33</sup> There is also a time limit for an investigation to be completed within 1 year since its initiation, while the WTO Safeguard Agreement has no such time limit.

<sup>&</sup>lt;sup>26</sup> Article 7.2 of RCEP.

<sup>&</sup>lt;sup>27</sup> Article 7.2.1 of RCEP Chapter 7.

<sup>&</sup>lt;sup>28</sup> Article 5.1 of WTO Agreement on Safeguards.

<sup>&</sup>lt;sup>29</sup> Article 7.1 of RCEP for the transitional safeguard period definition.

<sup>&</sup>lt;sup>30</sup> In accordance with the Member's Schedule of tariff commitment in Annex 1 of RCEP.

<sup>&</sup>lt;sup>31</sup> Article 7.5.1 of RCEP Chapter 7.

<sup>&</sup>lt;sup>32</sup> Article 7.5.2 of RCEP.

<sup>&</sup>lt;sup>33</sup> Article 7.5.5 of RCEP Chapter 7.

There is also a particular provision concerning a special treatment for the leastdeveloped ASEAN member country. First, a provisional or transitional RCEP safeguard measure shall not be applied to a least-developed ASEAN member country.<sup>34</sup> Second, a least-developed ASEAN member country may extend its transitional RCEP safeguard measure for an additional period of 1 year.<sup>35</sup> Third, a least-developed ASEAN member country that applies or extends a transitional RCEP safeguard measure shall not be requested for any compensation by the affected members.<sup>36</sup> According to the Committee for Development Policy in United Nations, the RCEP members that are on the list of least developed countries are Cambodia, Myanmar, and Lao PDR (United Nations, 2021). This specific provision concerning the least developed countries is one of the unique features in the RCEP Agreement, considering there is no such provision in the WTO Agreements.

In addition, the compensation provision in RCEP provides that a member that intended to apply or extend a transitional safeguard measure must be in consultation with the exporting member that would be affected in order to provide mutually agreed adequate trade compensation that must be in the form of concessions. However, if such consultations do not result in agreement on trade compensation within 30 days, any contesting member may suspend the application of substantially equivalent concessions which affect the goods of the Party that is maintaining the safeguard measure. It is important to note that the right of suspension shall not be exercised for the first 3 years during which the transitional RCEP safeguard measure is in effect, as long as the measure conforms to the RCEP Agreement.<sup>37</sup> This compensation provision is rather similar to what has been provided in Article 8 of the WTO Safeguard Agreement.

The calculation of de minimis (negligible) imports for a provisional or transitional RCEP safeguard measure is a bit different than what has been provided in Article 9.1 of the WTO Agreement on Safeguards. Aside from the special treatment for the Least Developed Country member, the calculation of de minimis for imports of less than 3% (provided that they collectively account for not more than 9%) is based only on the total imports of RCEP members instead of the total imports from all countries.<sup>38</sup>

<sup>&</sup>lt;sup>34</sup> Article 7.6.2 of RCEP Chapter 7.

<sup>&</sup>lt;sup>35</sup> Article 7.5.1(b) of RCEP Chapter 7.

<sup>&</sup>lt;sup>36</sup> Article 7.7.6 of RCEP Chapter 7.

<sup>&</sup>lt;sup>37</sup> Article 7.7 of RCEP Chapter 7.

<sup>&</sup>lt;sup>38</sup> Article 7.6.1 of RCEP Chapter 7.

Based on the description above, the RCEP Trade Remedies Chapter has particular features as compared to the WTO Safeguard Agreement, inter alia, the timing of the measure,<sup>39</sup> the duration of the measure,<sup>40</sup> the limitation on form of measure,<sup>41</sup> exclusion of the measure,<sup>42</sup> and the treatment for least developed countries.<sup>43</sup>

Nevertheless, the RCEP Safeguard Measure section does not provide any special safeguard provision, unlike other RTAs.<sup>44</sup> However, during the negotiation rounds, India suggested the transitional safeguard measures 'auto-trigger and snapback' to counter a sudden surge in imports for a period of 6 months when imports from an RCEP partner exceed a particular threshold. India's suggestion is similar to the special safeguard mechanism, and the snapback provision would allow India to revert to the original higher tariffs to counter a sudden surge in imports (Kirtika, 2019). This suggestion did not go through and in the end India decided to exit the RCEP negotiation by stating that 'the present form of the RCEP Agreement does not fully reflect the basic spirit and the agreed guiding principles of RCEP'. Thus, in India's point of view, RCEP does not satisfactorily address its outstanding issues and concerns, in particular its concern that its domestic industries would have been swamped by imports considering its trade deficit with RCEP members is \$105 billion, with China alone accounting for \$53.5 billion (Panda, 2019). It is unclear why this proposed mechanism could not gain support from all RCEP members.

#### **Global Safeguard**

Global safeguard provisions are common in trade agreements in addition to regional and bilateral safeguards. In general, these provisions allow members of bilateral or regional agreements to retain their rights to impose global safeguard measures under the General Agreement on Tariffs and Trade (GATT) Article XIX and the WTO Agreement on Safeguards, although some FTAs have specific distinct rules (Kruger, Denner and Cronje, 2009).

<sup>&</sup>lt;sup>39</sup> Article 7.5.2 of RCEP Agreement.

<sup>&</sup>lt;sup>40</sup> Article 7.5.1(b) of RCEP Agreement.

<sup>&</sup>lt;sup>41</sup> Article 7.2.2 of RCEP Agreement.

<sup>&</sup>lt;sup>42</sup> Exclusion from the safeguard measure can be applied if the RCEP member's share import does not exceed 3% of total import from all members, provided that those members with less than 3% share collectively account for not more than 9%. This special treatment condition is much the same as Article 9 of the WTO Agreement on Safeguard; however, it should be noted that this kind of treatment only applies to developing country members and the calculation is compared to total imports, not just particular members. Meanwhile, according to Article 7.6 of RCEP, this condition can be applied to all RCEP members, including developed country members such as Australia, New Zealand, Japan, and Republic of Korea.

<sup>&</sup>lt;sup>43</sup> Article 7.6.2 of the RCEP Agreement provides that 'a provisional or transitional RCEP safeguard measure shall not be applied to an originating good of any least developed country party'. See also Article 7.7.6, which provides that a least developed country party that applies a provisional RCEP safeguard measure or extends a transitional one shall not be requested for any compensation by the affected parties.

<sup>&</sup>lt;sup>44</sup> Examples include the bilateral agreement between Japan and Australia, which invokes the special safeguard, and the bilateral agreement between Korea and Australia, which does likewise.

The provision of the global safeguard in the RCEP Agreement is provided in Article 7.9 of RCEP Trade Remedies Chapter stating that all RCEP members rights and obligations under Article XIX of GATT 1994 and the WTO Safeguard Agreement shall not be affected. Nevertheless, the global safeguard provision requires RCEP members to provide other members with a written notification or an electronic copy of all pertinent information as required under Articles 12.1, 12.2, and 12.4 of the WTO Safeguards Agreement when such a member initiates a safeguard investigation under Article XIX of GATT 1994 and the WTO Safeguard Agreement, including preliminary determinations and final findings. A member will be deemed to be in compliance with this obligation if it has notified the WTO Committee on Safeguards in accordance with Article 12 of the WTO Safeguards Agreement.

Lastly, the RCEP Agreement prohibits members from applying the transitional RCEP safeguard measure and the global safeguard measure (pursuant to Article XIX of GATT 1994 and WTO Safeguard Agreement) to the same product at the same time.

#### Antidumping/CVD

The second part of the RCEP Trade Remedies chapter regulates the antidumping and CVD provisions. This part starts by emphasising the RCEP member's rights and obligations under Article VI of GATT 1994, the WTO Anti-Dumping Agreement, and the WTO Subsidies and Countervailing Measures Agreement. This implies that provisions in the section are not inconsistent with the WTO Agreement but rather their purpose is to enhance the transparency and due process in antidumping and countervailing investigations under the RCEP Agreement without any fundamental change.

This section clarifies several procedures concerning the antidumping investigation such as:

- (i) The verification process, including specific timing of its notice and information; <sup>45</sup>
- (ii) the requirement to maintain a non-confidential file for each investigation and review it in either physical or electronic form;<sup>46</sup>
- (iii) the notification and consultation requirement,<sup>47</sup> including the timing to provide the written notification before initiating an investigation;<sup>48</sup>
- (iv) the requirement to provide full and meaningful disclosure of the essential facts in an antidumping or CVD investigation, including its timeline;<sup>49</sup> and
- (v) the treatment of confidential information.<sup>50</sup>

<sup>&</sup>lt;sup>45</sup> Article 7.11.2 of RCEP Agreement.

<sup>&</sup>lt;sup>46</sup> Articles 7.11.3 and 7.11.4 of RCEP Agreement.

<sup>&</sup>lt;sup>47</sup> Consultation requirement is provided for the countervailing investigation. See also Article 7.12.2 of RCEP Agreement.

<sup>&</sup>lt;sup>48</sup> Article 7.12.1 of RCEP Agreement.

<sup>&</sup>lt;sup>49</sup> Article 7.14 of RCEP Agreement.

<sup>&</sup>lt;sup>50</sup> Article 7.15 of RCEP Agreement.

All of these provisions are fundamentally still in line with the WTO Anti-Dumping Agreement.

However, there are some provisions that are not regulated under the WTO Anti-Dumping Agreement and have become additional obligations for the RCEP members, namely, inter alia, 'the prohibition on zeroing'. According to Article 7.13 of the RCEP Trade Remedies Chapter, all members shall count all individual dumping margins, whether positive or negative, for weighted average-to-weighted average or transaction-to-transaction comparisons when established, assessed or reviewed under Article 2, paragraphs 3 and 5 of Article 9, and Article 11 of the Agreement.

It should be noted that the discussion of zeroing has been disputed in many WTO litigations and has been found to be inconsistent with the legal standard of the second sentence of Article 2.4.2 of the WTO Anti-Dumping Agreement.<sup>51</sup> In a nutshell, zeroing refers to a method of calculating dumping margins, assigning zero value when the exporter's price is above their normal value. This kind of methodology, in practice, tends to increase the exporter's dumping margins and results in the imposition of higher anti-dumping duties. The US has used this calculation method in its antidumping investigation in the past.<sup>52</sup> Moreover, according to the historical report in the WTO dispute, zeroing is amongst the most litigated issues of the most contentious subject under the WTO's purview (Vermulst and Ikenson, 2007). The practice of zeroing, in general, is an issue under Article 2.4.2 of the WTO Antidumping Agreement (ADA) considering Article 2.4 provides guidance as to what constitutes a fair method for normal value and export price on a weighted averageto-weighted average or transaction-to-transaction comparison. However, a normal value established on the weighted average basis may be compared to prices of individual export transactions if the authorities find an export price pattern that differs significantly

<sup>&</sup>lt;sup>51</sup> Although there are many WTO disputes involving zeroing as a measure at issue, each case has a different application of zeroing vis-à-vis a 'fair comparison method'. For example: (i) in EC – Bed Linen, where India was complainant, the main issue was the practice of model zeroing under the weighted average-to-weighted average comparison method using the negative dumping margins (the EC did not fully take into account the entirety of the prices of some export transactions, and instead treated this export price as if they were less than what they were); (ii) in *U.S. – Softwood Lumber V* (Art.21.5), the main issue was the zeroing practice using the transaction-to-transaction method. In this case, the Appellate Body in compliance proceedings found that Article 2.4.2 does not admit an interpretation that would allow the use of zeroing under the transaction-to-transaction comparison methodology (the Appellate Board ruled against zeroing 'as applied'); and (iii) in *US – Zeroing (Japan)*, this case concerned dumping findings in several cases and contained allegations of 'as such' and 'as applied' violations of the Anti-dumping Agreement (ADA). The Appellate Body found that the US: a) acted inconsistently with Articles 2.4 and 2.4.2 of the WTO ADA by maintaining zeroing procedures when calculating dumping margins under the T-T method in original investigation, b). acted inconsistently with Articles 2.4 and 9.3 of WTO ADA and Article VI:2 of the GATT 1994 by maintaining zeroing procedures in periodic reviews, c) acted inconsistently with Articles 2.4 and 9.5 of the ADA and Article VI:2 of the GATT 1994 by maintaining zeroing procedures in new shipper reviews, and d) acted inconsistently with Article 11.3 of WTO ADA when it relied on dumping margin calculated in previous proceeding using the zeroing method for purposes of conducting sunset review investigation (for findings, points a to c are 'as such' findings).

<sup>&</sup>lt;sup>54</sup> The WTO Disputes that involve the US practice of zeroing are U.S. – Sheet/Plate from Korea, U.S. – Corrosion-Resistant Steel Sunset Review, U.S. – Softwood Lumber V, U.S. – Zeroing (EC), U.S. – Zeroing (Japan), U.S. – Shrimp AD Measure (Ecuador), U.S. – Stainless Steel (Mexico), U.S. – Shrimp (Thailand), U.S. – Continued Zeroing, U.S. – Carrier Bags, U.S. – Zeroing (Korea), U.S. – Orange Juice (Brazil), U.S. – Shrimp (Viet Nam), U.S. – Shrimp/Sawblades, U.S. – Shrimp II (Viet Nam), U.S. – Washing Machines, U.S. – Anti-Dumping Methodologies (China), and U.S. – Differential Pricing Methodology.

amongst different purchasers, regions, or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison (Vermulst and Ikenson, 2007: 239).

In summary, an investigating authority is 'normally' required to use either of the two symmetrical comparison methodologies provided and the second sentence of Article 2.4.2 of the ADA provides an asymmetrical comparison methodology to address a pattern of 'targeted dumping'. All these methodologies in relation to zeroing have been addressed in the WTO Disputes for the past few years. For example, the Appellate Body in U.S. – Washing Machines stated that the W-T comparison methodology in the second sentence of Article 2.4.2 requires a comparison between a weighted-average normal value and 'the entire universe of export transactions that fall within the pattern as properly identified under that provision, irrespective of whether the export price of individual "pattern transactions" is above or below normal value.<sup>53</sup> Thus, the Appellate Body in this case clearly found that Article 2.4.2 does not permit zeroing practice under the W-T methodology.

Moreover, there is also an additional Annex 7A that identifies a range of practices that promote the goals of transparency and due process in antidumping and CVD proceedings (New Zealand Foreign Affairs & Trade, n.d.). It is important to note that the practice in Annex 7A has been followed by some of the RCEP members in their laws and regulations. This practice includes for providing the opportunities to remedy or explain deficiencies in requests for information, procedures for offering and concluding undertakings, and public notices procedures. However, this practice is a non-binding guidance for the RCEP members pursuant to footnote 2 of Annex 7A.

All these provisions, in principle, are in accordance with the WTO Antidumping Agreement and Agreement on Subsidies and Countervailing to ensure full transparency at the regional level when initiating antidumping investigations against products originating in a RCEP member, even though there are some additional obligations that are not provided in WTO-covered Agreements, which makes this Agreement a WTO-Plus RTAs type. The antidumping and CVD measure in the RCEP Agreement does not substantially modify market access for imported goods, whether originating from RCEP members or from a third party. In RCEP, there is no specific provision to exclude other members from antidumping investigations or impositions, unlike certain types of bilateral/regional trade agreements that 'reduce' the right of their Parties to apply antidumping measures or even prohibit the application of such measures toward intra-RTA partners.<sup>54</sup>

<sup>&</sup>lt;sup>53</sup> Appellate Body Report, US – Washing Machines, para. 6.9.

<sup>&</sup>lt;sup>54</sup> See Section C below for further description.

# Trade Remedies Chapters under other RTAs/FTAs

As mentioned above, not all the regional or bilateral trade agreements have their own trade remedies chapter. Some of them are just a part of the trade in goods chapter such as: the bilateral agreement between Indonesia and Japan.<sup>55</sup> the bilateral agreement between Japan and Thailand, the bilateral agreement between Japan and Australia, the bilateral agreement between Japan and Malaysia, the bilateral agreement between Japan and Viet Nam, and the bilateral agreement between Japan and Brunei Darussalam. In fact, most of the bilateral agreements focus more on the safeguard provision with a sufficient procedural detail to allow the Parties concerned to apply this measure. For example, most of the bilateral agreements between Japan and the other RCEP members  $^{56}$  provide only the detail of the application of the bilateral safeguard measure, along with the investigation procedures, compensation, imposition duration, triggered condition, consultation, provisional measure, notice, and review. Meanwhile, for the antidumping and CVD measure, they only provide that 'the term of custom duty in the respective agreements does not include any anti-dumping or countervailing duty applied consistently with the provision of Article VI of the GATT 1994, the WTO Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures.<sup>57</sup>

In addition, there are also some bilateral agreements that only reaffirm the rights and obligations of the Parties under the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measure through a simple reference. For example, the bilateral agreement between Japan and Indonesia provides that 'a Party shall not prevent to imposing any time any anti-dumping duties or countervailing duties that applied consistently with the Article VI of the GATT 1994 and the WTO Anti-Dumping Agreement,' in relation with the elimination of custom duties in trade in goods chapter.<sup>58</sup> Other examples can also be seen in the bilateral agreement between Australia and Thailand,<sup>60</sup> the bilateral agreement between Australia and Malaysia,<sup>61</sup> the bilateral agreement between New Zealand and Thailand,<sup>62</sup> the bilateral

<sup>&</sup>lt;sup>55</sup> Most of the bilateral agreements between Japan and other RCEP members do not have a separate chapter concerning trade remedies, but they have bilateral safeguard provisions as part of the trade in goods chapter.

<sup>&</sup>lt;sup>56</sup> Japan has the bilateral agreement with Thailand, Indonesia, Malaysia, Viet Nam, Australia, Brunei Darussalam, the Philippines, and Singapore.

<sup>&</sup>lt;sup>57</sup> See Article 15 of the Agreement between Japan and the Kingdom of Thailand for an Economic Partnership; See Article 13 of the Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership; See Article 16 of the Agreement between the Government of Malaysia and the Government of Japan for an Economic Partnership; and See Article 13 of the Agreement between Japan and Brunei Darussalam for an Economic Partnership.

<sup>&</sup>lt;sup>58</sup> See Article 20.4 of the Agreement between Japan and the Republic of Indonesia for an Economic Partnership.

<sup>&</sup>lt;sup>59</sup> See Article 2.12 of the Agreement between Australia and Japan for an Economic Partnership.

<sup>&</sup>lt;sup>60</sup> See Article 206 of the Thailand-Australia Free Trade Agreement.

<sup>&</sup>lt;sup>61</sup> See Article 7.12 and Article 7.13 of the Malaysia-Australia Free Trade Agreement.

<sup>&</sup>lt;sup>62</sup> See Article 5.1 and Article 5.2 of the Thailand-New Zealand Economic Partnership Agreement.

agreement between China and Australia,<sup>63</sup> the bilateral agreement between Indonesia and Australia,<sup>64</sup> ASEAN Trade in Good Agreement,<sup>65</sup> the ASEAN-Hong Kong, China Free Trade Agreement,<sup>66</sup> and the Trans-Pacific Strategic Economic Partnership (TPSEP or P4).<sup>67</sup> The trade remedies measure will be applied in a non-discriminatory manner and substantially in line with the WTO Agreements. Therefore, these bilateral agreements do not contain any specific procedures related to the application of antidumping measures and do not establish any mechanism to address cases of dumping/antidumping other than referring to the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing in a very concise provision.

There are also different types of regional/bilateral agreements that provide a separate chapter for the trade remedies. In general, most of the regional/bilateral agreements that provide trade remedies chapters are usually divided into two main sections concerning the trade remedies measure, namely: the safeguard measure section and the antidumping and CVDs section. These types can be seen on the bilateral agreement between Korea and Viet Nam;<sup>68</sup> the bilateral agreement between Indonesia and Korea;<sup>69</sup> the bilateral agreement between New Zealand and Korea;<sup>70</sup> and the RTA, namely the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>71</sup> In these bilateral/regional agreements, there are specific procedural and additional obligations for the Parties in relation to the bilateral/regional safeguard measure and also the antidumping and CVD measure, including a regional body to oversee the implementation of the trade remedies chapter.<sup>72</sup>

For regional/bilateral trade agreements that provide the bilateral/regional safeguard measures, these are sometimes described as 'tariff snapbacks' (Voon, 2021). This is because they involve reversion to most-favoured nation (MFN) tariff rates if the conditions have been met. In general, this is in the form of a transitional measure because its application is only allowed in the transitional period explicitly stated in the agreement.

<sup>&</sup>lt;sup>63</sup> See Article 7.9 and Article 7.10 of the China-Australia Free Trade Agreement.

<sup>&</sup>lt;sup>64</sup> See Article 2.14 of the Indonesia-Australia Comprehensive Economic Partnership Agreement.

<sup>&</sup>lt;sup>65</sup> See Chapter 9 of the ASEAN Trade in Good Agreement.

<sup>&</sup>lt;sup>66</sup> See Chapter 7 of the ASEAN-Hong Kong, China Free Trade Agreement.

<sup>&</sup>lt;sup>67</sup> The Regional Trade Agreement between Brunei Darussalam, Republic of Chile, New Zealand and Republic of Singapore. See Chapter 6 of the TPSEP.

<sup>&</sup>lt;sup>68</sup> See Chapter 7 of the Viet Nam-Korea Free Trade Agreement.

<sup>&</sup>lt;sup>69</sup> See Chapter 5 of the Indonesia-Korea Comprehensive Economic Partnership Agreement.

<sup>&</sup>lt;sup>70</sup> See Chapter 7 of the New Zealand-Korea Free Trade Agreement.

<sup>&</sup>lt;sup>71</sup> The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is an FTA between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Viet Nam. See Chapter 6 of the CPTPP for Trade Remedies Chapter.

<sup>&</sup>lt;sup>72</sup> For example, the Committee on Trade Remedies in the Viet Nam-Korea Free Trade Agreement, see Article 7.11 concerning the Committee on Trade Remedies. See also Article 15 of the China-Korea Free Trade Agreement.

It is also interesting to note that the prohibition of zeroing in terms of the antidumping application has been regulated as a practice in other regional/bilateral trade agreements, even if it is only written implicitly and not explicitly as in Article 7.13 of RCEP Trade Remedies Chapter. For example, paragraph 2 in Article 6.8 of the Korea-Australia FTA stipulated that 'the Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted-to-weighted basis or transaction- to-transaction basis, or weighted-to-transaction basis'. This article confirms that the Parties are not to use the zeroing practice, even though it is not explicitly prohibited in such article. A similar provision also can be found in other bilateral/regional trade agreements such as the Indonesia-Korea Comprehensive Economic Partnership,<sup>73</sup> the Viet Nam-Korea Free Trade Agreement,<sup>74</sup> and the New Zealand-Korea Free Trade Agreement.<sup>75</sup>

In terms of safeguard measures, beside bilateral and global measures, there is also a special measure. Special safeguard mechanisms create a different threshold for imposing additional protective measures on sensitive sectors that are usually for the agricultural products, textiles, and apparel products (Teh, Prusa, and Budetta, 2007). For example, the bilateral agreement between Japan and Australia provides a special safeguard.<sup>76</sup> and the bilateral agreement between Korea and Australia also has a similar provision.<sup>77</sup> Generally, a special safeguard measure in these agreements allows the Parties to impose safeguard measures on sensitive products such as the agricultural products listed in the Party's schedule. In some cases, the condition to trigger the application is when the volume of imports of that good exceeds a trigger level that has been set under such agreement.<sup>78</sup> Once the volume of imports of goods crosses the threshold, then the Party is allowed to apply this special safeguard measure. The application of a special safeguard allows the Parties to impose additional duties, although the tariffs should not exceed the MFN rate<sup>79</sup> and this measure can be imposed even without showing a serious injury or threat of serious injury suffered by domestic industry. This special safeguard is similar to the mechanism provided under the WTO Agreement on Agriculture.

Furthermore, even though most of the bilateral/regional trade agreements only maintain or retain the rights and obligations of the Parties under the WTO Agreement in terms of the antidumping and CVD measure without any substantial change, there are some bilateral agreements that modify the WTO's threshold set up in the WTO Anti-Dumping Agreement in order to minimise using antidumping and/or CVD instruments in an arbitrary or protectionist manner. In this case, the bilateral agreement between New

<sup>&</sup>lt;sup>73</sup> See Article 5.7.3 of the Indonesia-Korea Comprehensive Economic Partnership Agreement.

<sup>&</sup>lt;sup>74</sup> See Article 7.6.3 of the Viet Nam-Korea Free Trade Agreement.

<sup>&</sup>lt;sup>75</sup> See Article 7.7.2 of the New Zealand-Korea Free Trade Agreement.

<sup>&</sup>lt;sup>76</sup> See Article 2.18 of the Japan-Australia free Trade Agreement.

<sup>&</sup>lt;sup>77</sup> See Article 6.7 of the Korea-Australia Free Trade Agreement (KAFTA).

<sup>&</sup>lt;sup>78</sup> Ibid., see also Article 2.18 of the Japan-Australia Free Trade Agreement (JAEPA) and Annex 1 of JAEPA for the specific number.

<sup>&</sup>lt;sup>79</sup> See Article 2.18.4 of JAEPA Article 6.7.2 of KAFTA.

Zealand and Singapore is one example. Article 2.17 of the New Zealand-Singapore Closer Economic Partnership provides that the Parties will minimise the opportunities to use the antidumping measure through the increase of the threshold of the requirement of de minimis dumping margin and the negligible import volume. The de minimis dumping margin threshold becomes 5% as compared to the 2% threshold provided in Article 5.8 of the WTO Anti-Dumping Agreement and the negligible import volume increases from 3% to 5%. The New Zealand-Singapore Closer Economic Partnership also reduces the period of review or termination of the antidumping duties from 5 years, as provided in Article 11.3 of the WTO Anti-Dumping Agreement, to 3 years.

Finally, there are also bilateral agreements that eliminate the possibility of using antidumping measures on goods covered by the agreement. An example is the FTA between Australia and New Zealand. In the beginning, the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which entered into force in 1983, did not change the Parties' right under the WTO as stipulated in Article 15 of the agreement. However, this agreement was modified in 1988, with the entry into force of the ANZCERTA Protocol of Acceleration of Free Trade in Goods. The Protocol also eliminated the possibility of using antidumping measures on goods covered by the agreement as stipulated in Article 4.<sup>80</sup> The Parties confirmed that Article 4 of the Protocol superseded Article 15, paragraphs 1–7, of the initial ANZCERTA with respect to goods originating in the territory of the other Party (Rey, 2012). However, the imposing of antidumping measures on goods from the third parties is still possible. Only intra-ANZCERTA antidumping measures are prohibited. It is important to note that both Australia and New Zealand are RCEP members and the RCEP Agreement maintains their right to impose trade remedies measures on other members.

To summarise, there are two types of RTAs that have been concluded by the RCEP members based on the trade remedies chapter. The first category is the WTO-Equivalent RTAs and the second category is the WTO-Plus RTAs.<sup>81</sup> The WTO-Equivalent RTA is the general provision on trade remedies with no or only minor modifications. On the other hand, the WTO-Plus RTAs provide more substantial modifications to WTO rules, i.e. by reducing the application of antidumping, CVD, or safeguard measures between RTA partners or limiting their degree.<sup>82</sup> Out of 37 RTAs between the RCEP members, most fall under first category, i.e. the WTO-Equivalent RTAs, such as ASEAN Trade in Goods Agreements, Asia – Pacific Trade Agreement, ASEAN – China Free Trade Area, etc. (there are 20 RTAs in this category). Meanwhile, there are only 16 RTAs that fall under second category namely, inter

<sup>&</sup>lt;sup>80</sup> Article 4 of the Protocol states that 'the [ANZCERTA] Member States agree that antidumping measures in respect of goods originating in the territory of the other Member States are not appropriate from the time of achievement of both free trade in goods between the [ANZCERTA] Member States on 1 July 1990 and the application of their competition laws to relevant anti-competitive conduct affecting trans-Tasman trade in goods'.

<sup>&</sup>lt;sup>81</sup> These categories are based on Voon (2010).

<sup>&</sup>lt;sup>82</sup> See also WTO Analysis of RTA trade remedy provisions, see WTO Committee on Regional Trade Agreements, Inventory of Non-Tariff Provisions in Regional Trade Agreements: Background Note by the Secretariat, WT/REG/W/26 (5 May 1998) 15 – 22.

alia, Korea – Australia Free Trade Agreement, Australia – New Zealand Closer Economic Relations Trade Agreement, and New Zealand – Thailand Closer Economic Partnership Agreement.<sup>83</sup> For the WTO-Plus RTAs, most have excluded the application of antidumping and/or global safeguard measures between the RTA members, as well as modified the WTO rules regarding trade remedies such as by imposing lesser duty rule in antidumping proceeding.<sup>84</sup> raising *de minimis* dumping margins,<sup>85</sup> the prohibition to use surrogate value in calculating normal value and/or export price,<sup>86</sup> and/or the prohibition of zeroing (even if it is only written implicitly).<sup>87</sup>

## WTO, RCEP, and National Legislations: Dispute Settlement?

Trade remedy instruments have been regulated in multilateral, regional, bilateral, and national levels. WTO provides disciplines on antidumping measures, subsidy and CVD measures and safeguard measures. RCEP and other bilateral/regional trade agreements amongst ASEAN members with other RCEP members like China, Korea, Australia and New Zealand also have trade remedies chapters.<sup>88</sup> Every RCEP member also has their own national laws and regulations as a legal basis to initiate and impose trade remedy instruments. It is desirable that all regulations at different levels complement each other (not having inconsistency with one another) and to provide more legal certainty in terms of substantive and procedural issues so that due process can be secured and disputes can be avoided.

As explained above, although there are some distinct features of the trade remedies regulations in RCEP Trade Remedies Chapter as compared to WTO laws, they are, in principle, still in line with the WTO Agreements. This view is asserted by the provision that explicitly reaffirmed the rights and obligations of RCEP members under the WTO rules and principles as stipulated in Article 7.9 paragraph 1 and Article 7.11 paragraph 1 of RCEP Trade Remedies Chapter. All national laws and regulations would also be, in principle, in line with the WTO Agreements, including trade remedies. Article XVI.4 of the Marrakesh Agreement establishing the WTO provides 'Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as

<sup>&</sup>lt;sup>83</sup> There are 16 RTAs in this category.

<sup>&</sup>lt;sup>84</sup> See for example Korea – Australia Free Trade Agreement (KAFTA), Viet Nam – Korea Free Trade Agreement (VKFTA), and Malaysia – Australia Free Trade Agreement (MAFTA).

<sup>&</sup>lt;sup>85</sup> See Article 2.17 of the New Zealand – Singapore Closer Economic Partnership.

<sup>&</sup>lt;sup>86</sup> See FTA between the Government of the People's Republic of China and the Government of the Republic of Korea.

<sup>&</sup>lt;sup>87</sup> See for example Article 6.8 of the Korea-Australia Free Trade Agreement. The similar provision can be found in other RTAs such as Indonesia-Korea Comprehensive Economic Partnership, the Viet Nam-Korea Free Trade Agreement, and the New Zealand-Korea Free Trade Agreement.

<sup>&</sup>lt;sup>88</sup> See footnotes 18–20 above.

provided in the annexed Agreements.' Thus, there should not be any conflict between what has been regulated in the multilateral, regional, and national levels.

Nevertheless, assuming arguendo, there is a conflict, at the WTO there is a principle of exclusive jurisdiction, whereby disputes regarding WTO Agreements, including those relating to trade remedies, i.e. Agreement on Safeguards, Antidumping Agreements or Agreements on Subsidy and Countervailing Measures, can only be brought to the WTO dispute settlement system<sup>89</sup> and not any other system.<sup>90</sup> Disputes regarding non-compliance with RTAs or national laws and regulations cannot be brought to the WTO dispute settlement system. RTAs/FTAs (or customs unions) can only be invoked in WTO dispute settlement proceedings as an affirmative defence pursuant to GATT 1994 Article XXIV.<sup>91</sup>

In the RCEP Agreement, the dispute settlement mechanism is provided in Chapter 19. This chapter applies to the settlement of disputes between Parties regarding the interpretation and application of RCEP and to situations where a Party considers that a measure of another Party is not in conformity with the obligations under this Agreement, or otherwise failed to carry out its obligations.<sup>92</sup> According to this chapter, RCEP members can seek consultations or other alternative forms of dispute resolution, in lieu of or before triggering the establishment of a dispute settlement panel.<sup>93</sup> However, it is important to note that this chapter does not apply to other chapters that specifically rule out Chapter 19. Nevertheless, for the Trade Remedies Chapter, the exclusion wording ruling out Chapter 19 is different from other chapters. The other chapters exempted from the applicability of Chapter 19 are Sanitary and Phytosanitary measure (Chapter 5), Competition (Chapter 13), Electronic Commerce (Chapter 12), Small and Medium Enterprises (Chapter 14), Economic and Technical Cooperation (Chapter 15), and Government Procurement (Chapter 16). In those chapters, the wording for the 'Non-Application of Dispute Settlement' provision is 'No Party shall have recourse to dispute settlement under Chapter 19 for any matter arising under this Chapter', while in Article 7.16, also entitled 'Non-Application of Dispute Settlement', a provision contains specific language that no RCEP member shall have recourse to the RCEP dispute settlement system under Chapter 19 for any matter arising under this Section or Annex 7A concerning Practices Relating to Anti-Dumping and Countervailing Duty Proceedings. Thus, there is a difference in language between Article 7.16 and the other chapters with regard to the non-application of dispute settlement

<sup>&</sup>lt;sup>89</sup> Article 23.1 of the WTO Dispute Settlement Understanding states: 'When members seek to redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this understanding.'

<sup>&</sup>lt;sup>90</sup> Panel Report, US-Section 301 Trade Act (2000), para.7.43.

<sup>&</sup>lt;sup>91</sup> The Appellate Body in *Turkey – Textile* stated that 'Article XXIV can only be invoked as a defense to a measure that is inconsistent with certain GATT provisions to the extent that the measure is introduced upon the formation of a customs union which meets the requirement in sub-paragraph 5(a) of Article XXIV relating to the duties and other regulations of commerce applied by the constituent members of the custom union to trade with third countries'. See Appellate Body Report, *Turkey – Textile*, para. 52.

<sup>92</sup> See Article 19.3(1) of RCEP.

<sup>93</sup> See Article 19.6 and 19.7 of RCEP.

provisions. The difference is between the use of the words 'chapter' and 'section'. The non-applicability in Chapter 7 only refers to specific 'sections' and not the whole 'chapter'. It refers only to Section B for antidumping and CVD measures and Annex 7A. Similarly, a specific exemption language also can be found in Chapter 17 concerning General Provisions and Exceptions. Article 17.9 (Measure against Corruption) states 'No Party shall have recourse to dispute settlement under Chapter 19 for any matter arising under this *Article*'. This clearly rules out Chapter 19 only for that particular article and not the entire chapter.

Although the applicability of this provision will be subject to review in the future, at the moment, the enforcement mechanism of the RCEP Trade Remedies Chapter for Antidumping and Countervailing Section is questionable. Should there be any RCEP member breaches of any provision of the RCEP Trade Remedies Chapter for antidumping and CVD, there is no forum available to settle the dispute. At the moment, RCEP Trade Remedies Chapter for section 7B and Annex 7A can only be seen as a soft law that relies on the good faith of RCEP members for compliance. The WTO Dispute Settlement also cannot become an option to settle any dispute arising from non-compliance with the RCEP Trade Remedies Chapter for Anti-dumping and Countervailing Section due to the exclusive jurisdiction as explained earlier, unless there are similar provisions that overlap between RCEP and the WTO. Therefore, this issue must be discussed carefully in the future; based on the historical record, there have been guite a few disputes on trade remedies amongst RCEP Parties under the WTO dispute settlement, especially concerning the antidumping and CVD measures such as: Korea – Stainless Steel Bar (Japan),<sup>94</sup> Korea – Pneumatic Valves (Japan),<sup>95</sup> Korea – Certain Paper (Indonesia),<sup>96</sup> Australia – AD/CVD on Certain Products (China),<sup>97</sup> China – AD/CVD on Wine (Australia)<sup>98</sup>, China – AD on Stainless Steel (Japan),<sup>99</sup> China – AD/CVD on Barley (Australia),<sup>100</sup> Australia – Anti-Dumping Measures on A4 Copy Paper (Indonesia),<sup>101</sup> China – HP-SSST (Japan),<sup>102</sup> and Japan – DRAMs

<sup>&</sup>lt;sup>94</sup> DS 533: Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/ cases\_e/ds553\_e.htm (accessed 1 December 2021).

<sup>&</sup>lt;sup>95</sup> DS 504: Korea – Anti-Dumping Duties on Pneumatic Valves from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ ds504\_e.htm (accessed 1 December 2021).

<sup>&</sup>lt;sup>96</sup> DS 312: Korea – Anti-Dumping Duties on imports of Certain Paper from Indonesia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/ cases\_e/ds312\_e.htm (accessed 1 December 2021).

<sup>&</sup>lt;sup>97</sup> At the time of writing this paper, this case was in the consultation stage. See DS 603: Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds603\_e.htm (accessed 1 December 2021)

<sup>&</sup>lt;sup>98</sup> At the time of writing this paper, the panel has composed. See DS 602: China – Anti-Dumping and Countervailing Duty Measures on Wine from Australia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds602\_e.htm (accessed 1 December 2021).

<sup>&</sup>lt;sup>99</sup> At the time of writing this paper, the panel has established but not yet composed. See DS 601: China – Anti-Dumping Measures on Stainless Steel Products from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds601\_e.htm (accessed 1 December 2021)

<sup>&</sup>lt;sup>100</sup> At the time of writing this paper, the panel has composed. See DS 598: China – Anti-Dumping and Countervailing Duty Measures on Barley from Australia, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds598\_e.htm (accessed 1 December 2021)

<sup>&</sup>lt;sup>101</sup> DS 529: Australia – Anti-Dumping Measures on A4 Copy Paper, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds529\_e. htm#:~:text=The%20Panel%20concluded%20that%20Australia,did%20%E2%80%9Cnot%20permit%20a%20proper (accessed 1 December 2021)

<sup>&</sup>lt;sup>102</sup> DS 454: China – Measures Imposing Anti-Dumping Duties on High Performances Stainless Steel Seamless Tubes ("HP-SSST") from Japan, WTO, https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds454\_e.htm (accessed 1 December 2021)

(Korea).<sup>103</sup> Based on this record, it is not an understatement that there is a high possibility of disputes arising between RCEP members regarding trade remedies. Therefore, the necessity of the dispute settlement procedure is crucial for the enforcement of the RCEP Trade Remedies Chapter.

However, there is also a need to anticipate the problem of forum shopping. Forum shopping has been defined as a litigant's attempt to 'have his action tried in a particular court or jurisdiction where he feels he will receive the most favourable judgment or verdict'. As explained earlier, many substantive and procedural issues of trade remedies have been regulated in multilateral, regional and national levels. Thus, there have been some instances whereby multiple forums have had recourse on the same issues to obtain favourable decisions for a particular party. Forum shopping between the WTO, on the one hand, and RTAs, on the other, has become quite common (Jain, 2007). Sometimes, the same case can also be brought to the national court or tribunal; when the verdicts conflict, that can create legal uncertainty.

One of the famous cases related to forum shopping issue is that of the North American Free Trade Agreement (NAFTA) Parties, for example Mexico – Corn Syrup. According to Gantz (1999) concerning the forum shopping issue, the cases brought before NAFTA and/or the WTO can be divided into three categories: (1) no effective choice of forum; (2) apparent choice, with legal or political considerations in some instances dictating one forum over the other; and (3) availability of parallel fora.

For the first category, a forum of choice does not effectively exist because of the exclusivity of jurisdiction of each forum. For the second category, one of the examples is the Broom<sup>104</sup> case, in which Mexico chose to settle a dispute under Chapter 20 of NAFTA due its political reason. Mexico favoured NAFTA rather than WTO because it considered that it would operate more quickly and compliance by the US was more likely (Gantz, 1999). For the last category, where antidumping and CVD duties are the main issue, one can expect actions in multiple forums, as demonstrated in the Mexican antidumping action in the high fructose corn syrup case. In this case, the American sugar industry has brought an action under NAFTA Chapter 19 challenging the Mexican administrative decision imposing antidumping duties<sup>105</sup> and a WTO panel was being formed to review the same Mexican antidumping duty determination.<sup>106</sup> Thus, in this case, there were two proceedings ongoing at the same time on the same issue. However, it is important to note that the Chapter 19 panel is limited to reviewing administrative decisions about its

<sup>&</sup>lt;sup>103</sup> DS 336: Japan – Countervailing Duties on Dynamic Random Access Memories from Korea, WTO, https://www.wto.org/english/tratop\_e/ dispu\_e/cases\_e/ds336\_e.htm (accessed 1 December 2021).

<sup>&</sup>lt;sup>104</sup> See Panel Report of Arbitral Panel Established Under Chapter Twenty of NAFTA in the matter of the U.S safeguard action taken on corn brooms from Mexico, 30 January 1998.

<sup>&</sup>lt;sup>105</sup> See Article 1904 Binational Panel Review Under NAFTA in the matter of Review of the Final Determination of the Anti-Dumping Investigation on Imports of High Fructose Corn syrup, Originating from the United States of America, 3 August 2001.

<sup>&</sup>lt;sup>106</sup> See Panel Report, Mexico – Anti-Dumping Investigation of High-Fructose from the United States, 28 January 2000.

consistency with the national antidumping law that may or may not be consistent with the WTO Agreement. In contrast, the WTO proceeding would permit a challenge to existing national law, or the national investigating authority's application thereof, on the grounds it is inconsistent with GATT Article VI or XVI or the WTO Agreements on Anti-dumping or Subsidies (Gantz, 1999).

Hence, recognising the issue of parallel adjudication mechanisms between the WTO and RTAs, the forum selection clauses are usually provided under the dispute settlement chapter. In general, this clause provides that once a party has opted to submit a dispute to given forum, that choice is irreversible and the party is precluded from taking the dispute to another forum (Zang, 2020). This clause has been provided in several RTAs such as MERCOSUR<sup>107</sup> and NAFTA.<sup>108</sup> This clause has also been regulated in the RCEP Agreement, particularly in Article 19.5 concerning 'choice of forum'. In this Article, it clearly states that 'where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to settle the dispute and that forum shall be used to the exclusion of other fora'. However, there is an exclusion in this Article if the Parties agree in writing that Article 19.5 shall not apply to a particular dispute; if the Parties agree to this exclusion, there is a high probability of the existence of parallel adjudication, although this scenario is unlikely to happen.<sup>109</sup>

## Conclusion

Trade remedy instruments are very important for RCEP members before the conclusion of the RCEP Agreement and became more indispensable when the Agreement entered into force since members are their most frequent users. Further regulations on trade remedy instruments in a dedicated chapter along with its Annex are designed to avoid their abuse and to provide more legal certainty. There have been some distinct features for each trade remedy instrument, which have not been regulated at the multilateral or even in national level. Although many of such provisions are, in principle, not in contradiction with what has been regulated at the WTO, the enforcement of the trade remedies chapter might become problematic since, at the moment, there is no forum available to settle any dispute. This will impact the implementation and enforcement of the RCEP trade remedies chapter. The options for making the RCEP trade remedies chapter into only soft law or non-binding law, the implementation of which will only rely on the good faith of the members or making it legally binding and enforceable, will depend on the existence of a RCEP trade remedies chapter dispute settlement procedure in the future.

<sup>&</sup>lt;sup>107</sup> See MERCOSUR, Article 1 of the Protocol of Olivos.

<sup>&</sup>lt;sup>108</sup> See Article 2005 of NAFTA.

<sup>&</sup>lt;sup>109</sup> See Article 19.5 of RCEP.

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## Focus Areas and Support for Small and Medium-sized Enterprises

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Regional Comprehensive Economic Partnership (RCEP) member countries differ in terms of the level of development. To ensure the benefits of RCEP are distributed equitably, economic and technical cooperation are needed between developing member countries with more developed member countries. This study attempts to identify the areas of economic and technical assistance needed by developing RCEP members. The study also aims to identify economic and technical assistance that could be implemented under RCEP to support the growth and development of SMEs in the region. A comparison between the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and RCEP provides some ideas on how economic and technical cooperation and small and medium-sized enterprise focus areas could evolve.

## Introduction

The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement (FTA) that involves 15 countries differing from each other in terms of size, economic structure, and level of development. The largest country in RCEP, China, has a 1.4 billion population, compared to Brunei Darussalam's 437,483 people (**Table 11.1**). Even though RCEP economies have been converging in terms of per capita income over time, significant cross-country differences remain (**Figure 11.1**). Singapore, the wealthiest country, has a per capita income 22 times that of Cambodia. The agriculture sector in terms of share of gross domestic product (GDP) is still important in countries such as Myanmar, Lao People's Democratic Republic (Lao PDR), Viet Nam, and Indonesia, while the sector's contribution is relatively small in Singapore, Brunei Darussalam, Japan, and Republic of Korea. The countries also differ in terms of openness as measured by the trade/GDP ratio.

The differences amongst the RCEP countries raise the question of whether countries will benefit equally from their participation in the FTA. Will, for example, more developed member economies benefit more than the less developed member economies? If this is the case, how should FTAs such as RCEP be implemented to ensure that appropriate gains are accrued to less-developed member economies?

There are several policy approaches to these questions. One is to adopt a **special and differential** treatment that provides greater flexibility for less developed economies to implement FTA provisions (Ornelas, 2016). The other is the provision of **economic and technical assistance** to less developed economies to enable them to participate in the FTA more effectively. Such assistance includes capacity-building measures that target relatively disadvantaged stakeholders such as micro, small and medium sized enterprises (MSMEs). MSMEs constitute more than 90% of business enterprises in all RCEP countries. These enterprises often face significant challenges that constrain them from participating in and benefiting from FTAs such as RCEP.

Country Name	Population	GDP Per Capita (US\$)	Agriculture Share of GDP (%)	Industry Share of GDP (%)	Services Share of GDP (%)	Trade Ratio (%)
Brunei Darussalam	437,483	62,201	1	59	40	110
Indonesia	273,523,621	11,445	14	38	48	33
Cambodia	16,718,971	4,192	22	35	43	124
Lao PDR	7,275,556	7,811	16	32	52	75
Malaysia	32,365,998	26,472	8	36	56	116
Myanmar	54,409,794	4,857	22	36	42	54
Philippines	109,581,085	7,954	10	28	61	58
Singapore	5,685,807	93,397	0	24	76	321
Thailand	69,799,978	17,285	9	33	58	98
Viet Nam	97,338,583	8,200	15	34	51	208
Australia	25,687,041	48,690	2	25	73	44
China	1,410,929,362	16,316	8	38	55	35
Japan	125,836,021	40,232	1	29	70	31
Rep. of Korea	51,780,579	42,381	2	33	66	69
New Zealand	5,084,300	42,775	6	20	74	44

#### Table 11.1 Comparisons of RCEP Countries, 2020

GDP = gross domestic product, Lao PDR = Lao People's Democratic Republic, RCEP = Regional Comprehensive Economic Partnership. Notes:

GDP per capita is measured in PPP (constant 2017 US\$)

Sectoral GDP Share: Japan (2019), New Zealand (2018)

Trade Ratio = Trade/GDP: Lao PDR (2016)

Source: https://data.worldbank.org/



Figure 11.1 Inequality in GDP Per Capita Across RCEP Countries

ASEAN = Association of Southeast Asian Nations, GDP = gross domestic product, RCEP = Regional Comprehensive Economic Partnership. Source: World Bank.

The goal of this study is to examine the role of economic and technical cooperation (ETC) in RCEP as well as identify specific areas needed by developing members. It provides a review of existing provisions for ETC in RCEP and identifies specific types that are likely to be needed by MSMEs to ensure they will benefit.

The outline of this study is as follows. Section 2 will examine the provisions on economic and technical cooperation in the RCEP agreement. The provisions on SME development in the Agreement are discussed in Section 3. Policy implications for SME development via RCEP are explored in Section 4. Section 5 examines the ETC provisions in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) to contextualise what is formulated in RCEP. The implications of the built-in agenda for ETC are explored in Section 6. Section 7 concludes.

# Economic and Technical Cooperation in RCEP

#### Goals and Scope of ETC in RCEP

The goals of ETC, as stated in the Chapter 15 of the RCEP agreement, are as follows:

The Parties agree that the economic and technical cooperation in the RCEP context aims at *narrowing development gaps among the Parties and maximising mutual benefits from the implementation and utilisation of this Agreement*. (bold and italics added, Article 15.3 of RCEP).

In terms of scope, the RCEP agreement specified that ETC activities, which include capacity building and technical assistance, should focus on **trade and investment-related activities**. The agreement goes on to list the specific areas of focus that correspond to key chapters of the agreement, namely:

- 1. trade in goods (Chapters 2–7);
- 2. trade in services (Chapter 8);
- 3. investment (Chapter 10);
- 4. intellectual property (Chapter 11);
- 5. electronic commerce (Chapter 12);
- 6. competition (Chapter 13);
- 7. SMEs (Chapter 14); and
- 8. other matters, as agreed upon amongst the Parties.

#### Areas for Economic and Technical Cooperation in RCEP

In terms of activities for ETC, the RCEP agreement provides guidance on the specific types of activities that should be prioritised. These include:<sup>1</sup>

- 1. Activities that provide **capacity building and technical assistance** to *developing country Parties and Least Developed Country Parties*;
- 2. Activities that increase **public awareness**;
- 3. Activities that enhance access to information for businesses; and
- 4. Other activities as may be agreed upon amongst the Parties.

<sup>&</sup>lt;sup>1</sup> Item No.2 in Article 15.5: Work Programme – RCEP Agreement Chapter 15, page 15-3.

In the agreement, the term **"Least Developed Country (LCD) Parties"** is defined as the least developed country parties that are member states of ASEAN (Article 15.6). Based on per capita income, these countries include Cambodia, Lao PDR, and Myanmar.

The implementation of many of the commitments under RCEP requires capacity building and technical assistance, especially to the public sector (Table 11.2). A narrow interpretation of Chapter 15 is that the capacity building and technical assistance activities in these areas are to be delivered to only ASEAN LDCs. However, it should be noted that the special and differential treatment status has been accorded to the ASEAN LDCs in some of the RCEP commitments in the form of either exemption or delayed implementation (see Table 11.2). The possible implications of the special and differential treatment for capacity building and technical assistance activities are two-fold:

- First, an **exemption** implies that capacity building and technical assistance are not needed.
- Second, **delayed implementation** implies that capacity building and technical assistance are needed during the critical period before commitments are implemented.

The special and differential treatment provisions for the ASEAN LDCs are summarised in Table 11.3. Based on these provisions, priority for capacity building and technical assistance activities for ASEAN LDCs should be accorded to e-commerce and competition. The grace period for implementation of rules of origin (ROR) and trade in services is very long for these countries. It is perhaps worth considering whether other non-LDC ASEAN countries require capacity building and technical assistance in these areas.

	Capacity Building and Technical Assistance	Public Awareness	Information for Business
Chapter 2: Trade* Tariff commitments Non-tariff measures (inc. quantitative restrictions and import licensing)	X (Public and Private)		Х
Chapter 3: Rules of Origin* Differential treatment for LDCs (20 years instead of 10 years)	X (Public)		Х
Chapter 4: Customs Procedures and Trade Facilitation	X (Public)		
Chapter 5: Sanitary and Phytosanitary Measures	X (Public and Private)		Х
Chapter 6: Standards, Technical Regulations and Conformity Assessment Procedures	X (Public and Private)		Х

#### Table 11.2 Mapping ETC activities for RCEP

	Capacity Building and Technical Assistance	Public Awareness	Information for Business
Chapter 7: Trade Remedies	X (Public)		
Chapter 8: Trade in Services*	X (Public)		Х
Chapter 9: Temporary Movement of Natural Persons	X (Public)	Х	
Chapter 10: Investment*	X (Public)	Х	Х
Chapter 11: Intellectual Property	X (Public)	Х	Х
Chapter 12: E-Commerce*	X (Public)	Х	Х
Chapter 13: Competition*	X (Public)	Х	
Chapter 14: SMEs	X (Public and Private)	Х	Х
Chapter 16: Government Procurement	X (Public)		Х

ETC = economic and technical cooperation, SMEs = small and medium-sized enterprises, LDC = least developed country, RCEP = Regional Comprehensive Economic Partnership.

Note: \* Provisions with differential treatment for ASEAN LDCs.

Source: Author.

#### Table 11.3 Special and Differential Treatment for ASEAN LDCs in RCEP

Chapters	Special and Differential Treatment for ASEAN LDCs
Chapter 2: Trade	<ul> <li>Tariff elimination:</li> <li>ASEAN LDCs: 30% of trade</li> <li>Others: Up to 65% of trade</li> <li>Time for tariff elimination:</li> <li>ASEAN LDCs: 15 years</li> <li>Others: 10 years</li> </ul>
Chapter 3: Rules of Origin	<ul> <li>1(c) a Declaration of Origin by an exporter or producer in accordance with subparagraph 1(b) of Article 3.18 (Declaration of Origin)</li> <li>Australia, Brunei Darussalam, China, Indonesia, Japan, Rep. of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Viet Nam shall implement subparagraph 1(c) no later than <b>10 years</b> after their respective dates of entry into force of this Agreement.</li> <li>Cambodia, Lao PDR, and Myanmar shall implement subparagraph 1(c) no later than <b>20 years</b> after their respective dates of entry into force of this Agreement.</li> </ul>

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Chapters	Special and Differential Treatment for ASEAN LDCs
Chapter 8: Trade in Services	Article 8.12: Transition 1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as a "transitioning Party" in this Article) shall submit a proposed Schedule of Non-Conforming Measures (hereinafter referred to as a "Proposed Schedule" in this Article) that accords with Article 8.8 (Schedules of Non-Conforming Measures) to the Committee on Services and Investment for circulation to the other Parties, no later than <b>3 years</b> , or for Cambodia, Lao PDR, and Myanmar, no later than <b>12 years</b> , after the date of entry into force of this Agreement. The process referred to in paragraphs 1 through 4 shall be completed no later than 6 years, or for Cambodia, Lao PDR, and Myanmar, no later than 15 years, after the date of entry into force of this Agreement.
Chapter 10: Investment	<ul> <li><u>Article 10.4: Most-Favoured-Nation Treatment</u> – This Article shall not apply to Cambodia, Lao PDR, Myanmar, and Viet Nam. The treatment under this Article shall not be accorded to investors of Cambodia, Lao PDR, Myanmar, and Viet Nam, and to covered investments of such investors.</li> <li><u>Article 10.6: Prohibition of Performance Requirements</u>: (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; (h) to adopt a given rate or amount of royalty under a licence contract, in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any future licence contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, this subparagraph does not apply when the licence contract is concluded between the investor and a Party. Notwithstanding this Article, subparagraphs (f) and (h) shall not apply to Cambodia, Lao PDR, and Myanmar.</li> </ul>
Chapter 12: E-Commerce	<ul> <li>Article 12.5: Paperless Trading: 1. Each Party shall: (a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by international organisations including the World Customs Organization; Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this subparagraph for a period of five years after the date of entry into force of this Agreement.</li> <li>Article 12.6: Electronic Authentication and Electronic Signature: 1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form. Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.</li> <li>Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers. Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.</li> </ul>

Chapters	Special and Differential Treatment for ASEAN LDCs
	<ul> <li>Each Party shall adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce.</li> <li>Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.</li> </ul>
Chapter 13: Competition	<ul> <li>Article 13.3: Appropriate Measures against Anti-Competitive Activities</li> <li>Grace period of 3 years for Brunei Darussalam, Cambodia, Lao PDR, and Myanmar</li> </ul>

ASEAN = Association of Southeast Asian Nations, Lao PDR = Lao People's Democratic Republic, LDC = least developed country, RCEP = Regional Comprehensive Economic Partnership.

Source: Author's compilation based on RCEP's legal text extracted from https://rcepsec.org/legal-text/

ETC activities to enhance public awareness are relevant to commitments that directly affect individuals (including individual entrepreneurs). These include RCEP commitments in investment, intellectual property, e-commerce, competition, and SMEs. ETC support for these activities can be channelled to ASEAN countries (need not be confined to ASEAN LDCs).

Finally, ETC aimed at enhancing information for businesses applies to almost all areas of RCEP. There is a need for a more detailed analysis of the priority areas. Some areas such as ROR might not be a priority area in the immediate future due to its long implementation period.

#### Institutions for Implementation of Economic and Technical Cooperation in RCEP

From an institutional perspective, RCEP-related activities are organised under four major sub-committees (Figure 11.2). The activities under ETC are placed under the subcommittee on sustainable growth. Aside from TCE, this sub-committee also covers SMEs and emerging issues. Thus, cross-committee discussions are likely to be needed for the implementation of TCE activities. It is unclear how ETC activities are to be organised. One possibility is for these activities to be centralised with the subcommittee on sustainable growth based on the compilation of requests from various subcommittees. There is a provision in the RCEP agreement on the possibility of establishing additional sub-committees should the need arise.

Article 15.4 of the RCEP agreement also specifies the various parties that can be contributors to ETC activities. These include:

- 1. RCEP countries;
- 2. Non-RCEP countries; and
- 3. Sub-regional, regional, or international organisations or institutions.

The third category can include international organisations such as the World Trade Organization, World Bank, Organisation for Economic Co-operation and Development, Asian Development Bank, Asian Infrastructure Investment Bank and the United Nations (e.g., UNCTAD and UNESCAP). This category is broad enough to cover many types of potential contributors.

Figure 11.2 Institutional Structure for RCEP Subcommittees



IP = intellectual property, SME = small and medium-sized enterprise, ETC = environmental and technical cooperation, RCEP = Regional Comprehensive Economic Partnership.

Source: Author.

## Economic and Technical Assistance for SME Development

#### **SMEs in Southeast Asia**

MSMEs are the dominant form of business enterprise in ASEAN Member States (AMS),<sup>2</sup> accounting for between 88.8% to 99.9% of total enterprises (ASEAN, 2015; Schaper, 2020). ADB (2020) estimated that MSMEs accounted for an average 97.2% of total enterprises during 2010–2019. MSMEs are also major contributors to employment, accounting for between 51.7% and 97.2% of the total for AMS (ASEAN, 2015). An important feature of MSMEs is that a significant proportion is in the services sector.<sup>3</sup> ADB (2020) estimated that 61%–89% of MSMEs are in the services sector,with only 5%–17% in the manufacturing sector. Thus, most of the MSMEs are in the non-tradable sector, which might constrain their ability to directly benefit from the trade-enhancing effects of RCEP. For manufacturing MSMEs, the proportion of firms engaging in exporting activities is also lower than their larger counterparts. MSMEs' share of total exports remains small, ranging from 10.0% to 29.9% (ASEAN, 2015).

#### Impact of RCEP on SMEs

The impact of trade liberalisation through FTAs such as RCEP on SMEs is best studied using firm-level data within the heterogeneous firm framework. Within this framework, trade liberalisation brings about the reallocation of resources across firms within industries (Melitz, 2003; Redding, 2011, Bernard et al., 2012). This occurs through the exit of low-productivity firms and the entry as well as expansion of high-productivity firms into export markets.

As SMEs tend to have lower productivity and a lower propensity for exporting, FTAs such as RCEP are expected to benefit SMEs less than large enterprises. SMEs may still benefit from RCEP through lower costs and higher quality of imported inputs but such gains are likely to be fewer than those enjoyed by large firms. SMEs are also constrained from investing in innovation activities despite the lowering of trade barriers, and they lack sufficient scale economies to overcome the fixed costs of exporting. The lowering of trade barriers would also put competitive pressures on domestically oriented SMEs (Goldberg and Pavcnik, 2016). These problems are likely to be compounded in developing AMS.

<sup>&</sup>lt;sup>2</sup> In official ASEAN documents, the term SME is often used to include micro-enterprises. Thus, the terms SME and MSME are often used interchangeably.

<sup>&</sup>lt;sup>3</sup> The services sector includes wholesale and retail trade as well as 'other services' such as accommodation and food services.

In view of the above problems, it is imperative to ensure that the benefits of RCEP are more equitably distributed. Thus, ETC needs to be extended to SMEs. The provisions related to SMEs are provided in Chapter 14 of the RCEP agreement.

#### **SMEs and RCEP**

Chapter 14 of the RCEP agreement focuses on SMEs. The stated goal of the chapter is to **increase the ability of SMEs to utilise and benefit from the opportunities created by the agreement.** The agreement also specifies two approaches to achieve this goal, namely, the promotion of information sharing and cooperation.

**Information sharing** is to be implemented through 'the establishment and maintenance of a publicly accessible **information platform, and information exchange** to share knowledge, experiences, and best practices amongst the Parties' (RCEP Legal Text, Article 14.2. Item 1). The agreement also provides details on the types of information to be placed on the platform, namely:

- full text of RCEP agreement;
- information on trade and investment-related laws and regulations relevant to SMEs; and
- additional business-related information that are useful for SMEs interested in benefitting from the opportunities provided by RCEP.

The list of activities identified for **cooperation** under the SME Chapter is quite extensive but fairly broad. The full text (RCEP legal text, Article 14.3) reads as follows:

- (a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;
- (b) improving SMEs' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;
- (c) promoting the use of electronic commerce by 9 and medium enterprises;
- (d) exploring opportunities for exchanges of experiences among Parties' entrepreneurial programmes;
- (e) encouraging innovation and use of technology;
- (f) promoting awareness, understanding, and effective use of the intellectual property system among SMEs;
- (g) promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to SME development; and
- (h) sharing best practices on enhancing the capability and competitiveness of SMEs.

The activities or measures listed under 'information sharing' and 'cooperation' in the SME chapter (14) overlap and are relevant to the activities listed under the TEC chapter (15). This is illustrated in Table 11.4, which categorises the information and cooperation activities for SMEs under the three categories of ETC measures.

Examining the activities relevant to capacity building and technical assistance, one question is whether they should be confined to ASEAN LDCs. Many of the middle-income ASEAN countries might require capacity building and technical assistance in some areas. Thus, it will be useful to identify areas requiring ETC for all or most of AMS and those specific to less developed ones. This will require going into the needs of each AMS for SME development.

	Measures (Economic a	under RCEP C and Technical C	hapter 15 Cooperation)
Measures under RCEP Chapter 14 (Small and Medium-sized Enterprises)	Capacity Building and Technical Assistance	Public Awareness	Information for Business
Information sharing			Х
Encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations	Х		
Improving small and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships amongst businesses	Х		Х
Promoting the use of electronic commerce by small and medium enterprises	Х		
Exploring opportunities for exchanges of experiences amongst Parties' entrepreneurial programmes		Х	Х
Encouraging innovation and use of technology	Х		
Promoting awareness, understanding, and effective use of the intellectual property system amongst small and medium enterprises	Х	Х	Х
Promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to small and medium enterprise development	Х		
Sharing best practices on enhancing the capability and competitiveness of small and medium enterprises		Х	Х

#### Table 11.4 SMEs and ETC in RCEP

SME = small and medium-sized enterprise, ETC = environmental and technical cooperation, RCEP = Regional Comprehensive Economic Partnership.

Source: Author.

#### Assessing ETC for SME Development

The list of measures identified under the chapters on SMEs (14) and ETC (15) is fairly broad and comprehensive. It might be useful to evaluate this list against the needs of SMEs and existing policies to develop them in AMS. Such an exercise is useful to identify potential gaps and also assist in prioritising ETC activities for SMEs. There are two dimensions to this. First, at the national level, each AMS has its own programme and policies for SME development. Second, there are also ASEAN initiatives for SME development in the form of the *ASEAN Strategic Action Plan for SME Development 2016–2025* (SAP–SMED). The national plans and ASEAN initiatives often overlap as many of the action lines identified in the SAP–SMED call for the implementation of policies and projects to develop SME at the national level.

The goals of SME development in RCEP are consistent with that of the SAP–SMED. However, the vision and mission statement of SAP–SMED are even broader.<sup>4</sup> The vision of the SAP–SMED is 'globally competitive and innovative MSMEs', while its mission statement is expressed as follows: 'By 2025, ASEAN shall create globally competitive, resilient and innovative MSMEs, seamlessly integrated to ASEAN community and inclusive development in the region.' The two aspects of the goals of the SAP–SMED are consistent with a two-track approach (AMS and developing AMS) adopted for ETC and SME development in RCEP. This is reflected in the actions and two pathways in the SAP–SMED (Figure 11.3). The two pathways are as follows (excerpted from ASEAN [2015], pp.2–3):

- **Competitive pathway**: 'Initiatives to enhance the global competitiveness of *relatively advanced AMS* (i.e., developed AMS, secondary industries, urban areas, medium-sized enterprises, etc.) in terms of diversification and innovation.'; and
- **Inclusive pathway**: 'Initiatives to facilitate the transition from the traditional economy (i.e. *developing AMS*, primary industries, peripheral regions, *micro-to-small enterprises*, etc.) through industrialisation to raise incomes.'

The implications of the two pathways in SAP–SMED for ETC in RCEP could be interpreted in the following manner. The competitiveness pathway is applicable to ETC for all AMS, while the inclusiveness pathway is applicable to developing AMS.

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<sup>&</sup>lt;sup>6</sup> Recall that the goal for SME development in RCEP is to 'increase the ability of SMEs to utilise and benefit from the opportunities created by the agreement'.

#### Figure 11.3 Actions and Pathways in ASEAN Strategic Action Plan for SME Development 2016–2025



AEC = ASEAN Economic Community, ASEAN = Association of Southeast Asian Nations, SME = small and medium-sized enterprise. Source: Author.

In the earlier discussions, it was suggested that the list of developing AMS is likely to include Cambodia, Lao PDR, and Myanmar. It might be useful to examine the current state of SME policy and the classification of AMS along the developed and developing categories. This will require country-by-country evaluation and comparisons of SME policies at the national level. In this regard, the SME Policy Index 2018 might be useful. The SME Policy Index was developed by the Organisation for Economic Co-operation and Development and the Economic Research Institute for ASEAN and East Asia, and can be used to assess the state of SME policy implementation as well as identify key promotion areas that require attention. This can be supplemented by information in ADB's Asia's Small and Medium-Sized Enterprise Monitor (ADB, 2020, 2021), as well as the *Mid-term Review of the ASEAN Strategic Action Plan for SME Development 2016–2025* (ASEAN, 2021).

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Table 11.5 SME Policy Index, 2018

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	Brunei Darus- salam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philip- pines	Singapore	Thailand	Viet Nam
Productivity, technology and innovation	3.37	2.62	4.14	2.76	5.06	2.38	4.08	5.84	4.97	3.48
Environmental policies and SMEs	2.04	1.88	3.28	1.94	5.08	1.72	3.75	5.3	4.29	3.63
Access to finance	4.38	2.89	4.58	2.36	5.35	1.83	3.93	5.69	4.87	3.81
Access to market and internationalisation	3.41	2.69	5.21	2.45	5.43	2.46	4.95	5.94	5.41	4.15
Institutional framework	4.01	2.55	4.35	2.89	5.86	2.17	4.44	5.85	4.88	4.05
Legislation, regulation and tax	3.69	2.31	3.49	2.4	4.71	2.23	3.36	5.52	3.74	3.32
Entrepreneurial education and skills	4.06	2.54	4.52	2.29	4.58	2.38	4.5	5.36	4.5	2.87
Social enterprises and inclusive entrepreneurship	2.33	2.35	3.22	2.05	4	1.71	3.65	3.96	3.1	2.43

Lao PDR = Lao People's Democratic Republic, SME = small and medium-sized enterprise.

Note: The values range from 1 to 6.

Source: OECD/ERIA (2018).

The state of SME policy implementation across key AMS areas is summarised in Table 11.5. The indices take the value from 1 (minimum implementation – least effective) to 6 (maximum implementation – most effective). From the table, it is clear that there is significant diversity in the level of SME policy implementation amongst AMS. Based on the indices, it appears that it might be useful to classify the AMS into three groups based on the level of implementation of SME policies. The three groups are as follows:

- Advanced AMS Malaysia, Singapore, and Thailand
- Middle AMS Brunei Darussalam, Indonesia, Philippines, and Viet Nam
- Developing AMS Cambodia, Lao PDR, and Myanmar

The next step would be the mapping of the SME policy areas of focus to specific groups of countries. The SME Policy Index classifies SME policies into eight broad categories (Table 11.5). We discuss the performance of AMS in these eight categories by mapping them into the list of measures under Chapter 14 and Chapter 15 in the RCEP agreement (Table 11.4). Some policy areas and activities are more directly relevant to RCEP. The categories that are not directly relevant to RCEP include:

- Environmental policies
- Access to finance
- Social enterprises and inclusive entrepreneurship

These are important areas for SME development but are not emphasised in RCEP; rather, they are promoted as part of the SAP–SMED. The relevant areas to RCEP include:

- Productivity, technology, and innovation
- Access to market and internationalisation
- Institutional framework
- Legislation, regulation, and tax
- Entrepreneurial education and skill

It would also be useful to examine and frame the above areas in terms of the changing needs of SMEs. This refers to the life cycles of industries as well as the changing nature of globalisation. The latter includes the evolution of manufacturing and services in the second and third unbundling brought about by the emergence and diffusion of ICT and other types of digital technologies (artificial intelligence, internet of things, robotics, etc.). These changes have implications for different types of support policies for established SMEs compared to new start-ups. The actions and pathways envisioned in the SAP–SMED will also need to be re-examined to ensure consistency with ETC-related measures in RCEP.

Finally, the time dimension (for inter-temporal prioritisation) is also important. Following the implementation pathways for the SAP–SMED, different periods can be assigned to the various areas of SME development under RCEP. The periods can be assigned as follows:

- Short-Term: Year 1 Year 5
- Medium-Term: Year 6 Year 10

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### Economic and Technical Cooperation for SMEs Under RCEP

A programme for ETC to support SMEs under RCEP can be formulated based on three policy documents, namely: SAP–SMED, SME Policy Index, and the RCEP agreement. Table 11.6 summarises the measures under such a programme and are discussed next.

- Information sharing This can be implemented (short-term) immediately to disseminate the relevant data and information about RCEP to the business community.
- Encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations ETC is needed in this area, especially for middle and developing AMS. The starting implementation period should be short-term given that this is one of the key sources of RCEP benefits.
- Improving SMEs' access to markets and participation in global value chains, including by promoting and facilitating partnerships amongst businesses – ETC supporting this activity is likely to take some time to develop (medium-term starting point). Given that this is a challenging area, ETC should be extended to all AMS.
- **Promoting the use of electronic commerce by SMEs** ETC for this measure should be implemented immediately (short-term). All AMS should be involved.
- Exploring opportunities for exchanges of experiences amongst Parties' entrepreneurial programmes The ETC for this measure can be implemented quickly and it should involve all AMS.
- Encouraging innovation and use of technology There are significant variations in the technology capabilities of AMS. A staggered approach for ETC is needed. The medium-term implementation should involve middle and advanced AMS first, followed by developing AMS.
- Promoting awareness, understanding, and effective use of the intellectual property system amongst SMEs Differences in the maturity of the intellectual property regimes across AMS suggest that this activity should also be staggered.
- Promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to SME development The development of regulatory institutions will require more time. This should involve all AMS and be a medium-term initiative.
- Sharing best practices on enhancing the capability and competitiveness of SMEs – This measure can be implemented quickly by commissioning studies and running workshops in the short term. All AMS should be involved.

#### Table 11.6 Implementation of ETC for SMEs Under RCEP

Measures under RCEP Chapter 14 (Small and Medium Enterprises)	SME Policy Index Category	ETC Recipients	ETC Implementation Starting Period
Information sharing	Entrepreneurial education and skills	All AMS	Short-Term
Encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations	Access to market and internationalisation	Middle AMS and Developing AMS	Short-Term
Improving small and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships amongst businesses	Access to market and internationalisation	All AMS	Medium-Term
Promoting the use of electronic commerce by small and medium enterprises	Access to market and internationalisation	All AMS	Short-Term
Exploring opportunities for exchanges of experiences amongst Parties' entrepreneurial programmes	Entrepreneurial education and skills	All AMS	Short-Term
Encouraging innovation and use of technology	Productivity, technology, and innovation	All AMS but a staggered approach	Medium-Term
Promoting awareness, understanding, and effective use of the intellectual property system amongst small and medium enterprises	Productivity, technology, and innovation	All AMS but a staggered approach	Medium-Term
Promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to SME development	Legislation, regulation, and tax	Middle AMS Developing AMS	Medium-Term
Sharing best practices on enhancing the capability and competitiveness of small and medium enterprises	Legislation, regulation, and tax	Middle AMS Developing AMS	Medium-Term

ASEAN = Association of Southeast Asian Nations, AMS = ASEAN member state, SME = small and medium-sized enterprise, ETC = environmental and technical cooperation, RCEP = Regional Comprehensive Economic Partnership.

Source: Author.

## Contextualising ETC and SMEs in FTAs: Comparing RCEP with CPTPP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is often regarded as a high-standard FTA. Implemented earlier than RCEP, the CPTPP is sometimes used as a benchmark to evaluate the comprehensiveness of FTAs. Even though it might not be useful to take this view given the greater heterogeneity of RCEP membership, it might still be useful to review and compare RCEP with CPTPP. Such an exercise will provide a useful context for assessing RCEP in terms of exploring alternative arrangements for FTAs.

ETC and SMEs are covered in three chapters in the CPTPP agreement, namely:

- Chapter 21: Cooperation and Capacity Building
- Chapter 23: Development
- Chapter 24: Small and Medium-Sized Enterprises

CPTPP Chapter 21 is roughly equivalent to RCEP Chapter 15 on technical and economic cooperation. Both chapters focus on supporting effective participation in the respective FTAs. However, there are also some differences in terms of content and scope. For one, CPTPP Chapter 21 does not provide for the notion of 'developing country Parties' and 'Least Developed Country Parties'. Thus, cooperation and capacity-building activities in RCEP are not confined to the less developed members of CPTPP. Unlike RCEP, the narrowing of the development gap does not appear to be a goal in CPTPP Chapter 21.

The focus of activities also differs. For RCEP, the focus is on increasing public awareness and enhancing access to information for businesses. The CPTPP also covers a few areas that are not included in RCEP, namely promotion of education, culture, and gender equality, as well as disaster risk management (Item 2 in Article 21.2).

The issue of the development gap is acknowledged in Chapter 23 of the RCEP agreement. It also affirms the importance of achieving broad-based economic growth. One big difference between CPTPP and RCEP is the greater emphasis on the role of women in development; one of the goals identified for cooperation in Chapter 23 is the enhancement of the ability of women (Article 23.4). The other area of focus identified in Chapter 23 is the promotion and development of education, science and technology, research and innovation. This chapter also identifies the modus operandi for advancing development issues, namely through the joint activities of various parties, i.e. government, private sector, and multilateral institutions. Hence, the carve-out and placement of development gap issues. This makes it easier to separate technical and economic cooperation activities

for all members from activities targeted for less developed members. Finally, there is also greater cognizance of the role of the private sector, for example through public and private sector partnerships, in the CPTPP compared to RCEP.

The SME chapter in CPTPP is very similar to that of RCEP. Both focus on the provision of information platforms for SMEs. The types of activities identified to support SME activities and participation in exporting and global value chains are also very similar. One minor difference is the more explicit provisions in the CPTPP on monitoring of activities and measures to support SMEs.

To sum up, compared to the CPTPP, the ETC activities in RCEP are more focused on addressing the development gap. This is achieved by prioritising ETC activities for less-developed RCEP member countries. The CPTPP, however, has a greater focus on broad-based inclusiveness issues, especially on enhancing the ability of women. Education, science and technology, and innovation also receive greater attention in the CPTPP. Future revisions of RCEP should consider increasing emphasis in these areas. These could be areas that are featured in built-in agenda discussions in the future.

## Implications of Built-In Agenda for ETC and SMEs

As a 'living document', the built-in agendas in RCEP are important in shaping the implementation and reach of the agreement. Built-in agenda refers to provisions in a trade agreement that specify how and when future review and negotiations will take place. For example, in Section 3.16 in Chapter 3 on ROR, the country deadline for the implementation of the declaration of origin by exporters or producers can be extended via unilateral notification.

The built-in agendas have implications for ETC and SMEs. As the ETC and SME provisions are aimed at building capacities and capabilities for effective participation in RCEP, the progress achieved in these areas affects the application of the built-in agenda. If, for example, ETC and SME activities aimed at improving the system for ROR declaration and assisting firms' participation make slow progress, it could trigger the extension allowed under the built-in agenda. This implies that the implementation of ETC-related activities, including those aimed at SMEs, needs to be in sync with the built-in agendas. This needs to be a dynamic process, with ETC activities providing feedback on the readiness of countries to implement provisions that have built-in agenda. This will ensure the timely implementation of these provisions in RCEP.

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## Conclusions

Given the differences in the level of development across RCEP member countries, ETC measures are needed to ensure that the benefits (and costs) of RCEP are distributed equitably. ETC measures are also needed to ensure the effective participation of all RCEP member countries.

For AMS, a useful programme for the ETC for RCEP is one that draws from three sources, namely, the *ASEAN Strategic Action Plan for SME Development 2016–2025*, the *SME Policy Index*, and the RCEP agreement. Mapping the elements of these three sources provides some indications of the key areas that can be implemented in the short-term (Year 1 to Year 5) and the medium-term (Year 6 to Year 10). Given the different levels of development, the implementation of some ETC measures should focus on developing and middle AMS. For measures that require higher level of development, for example, innovation, a staggered approach might be useful, i.e. one that initially involves advanced and middle AMS, followed by developing AMS.

The implementation of ETC measures for RCEP can also benefit from the lessons learned and recommendations given in the mid-term review of the SAP–SMED (ASEAN, 2021). These include the implementation of specific projects that are closely monitored periodically. Considerations should also be given to establishing new monitoring metrics and mechanisms for ETC implementation.

The RCEP is a living document that will evolve further. The ETC and SME focus areas within RCEP should evolve by putting more emphasis on enhancing the capability of women, education, and disaster risk management. The ETC activities should also be in sync with the built-in agenda to ensure that there are sound feedback systems that enable timely implementation of some of the provisions.

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#### Appendix 1 Summary of Cooperation in Various RCEP Agreement Chapters

Chapter 4: Customs Procedures and Trade Facilitation	<ul> <li>Article 4.19: Customs Cooperation</li> <li>1. The customs authority of each Party may, as deemed appropriate, assist the customs authorities of other Parties, in relation to: <ul> <li>(a) the implementation and operation of this Chapter;</li> <li>(b) developing and implementing customs best practice and risk management techniques;</li> <li>(c) simplifying and harmonising customs procedures;</li> <li>(d) advancing technical skills and the use of technology;</li> <li>(e) application of the Customs Valuation Agreement; and</li> <li>(f) such other customs issues as the Parties may mutually determine.</li> </ul> </li> </ul>
Chapter 5: Sanitary and Phytosanitary Measures	<ol> <li>Article 5.5: Equivalence</li> <li>The Parties shall strengthen cooperation on equivalence in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "WTO SPS Committee" in this Chapter) and international standards, guidelines, and recommendations.</li> </ol>
	<ol> <li>Article 5.7: Risk Analysis</li> <li>The Parties shall strengthen their cooperation on risk analysis in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.</li> </ol>
	<ul> <li>Article 5.13: Cooperation and Capacity Building</li> <li>1. The Parties shall explore opportunities for further cooperation among the Parties, including capacity building, technical assistance, collaboration, and information exchange, on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter, subject to the availability of appropriate resources.</li> </ul>
	In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional, or multilateral work programmes, with the objective of avoiding unnecessary duplication and maximising the use of resources.
	The Parties are encouraged to share information and the experiences of their cooperation activities with other Parties at the Committee on Goods.
Chapter 6: Standards, Technical Regulations and Conformity Assessment Procedures	<ol> <li>Article 6.9: Cooperation</li> <li>The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures, consistent with the objectives of this Chapter.</li> <li>Each Party shall, on request of another Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.</li> </ol>

	3. Such cooperation, which shall be on mutually determined terms and conditions, may include: (a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations, and conformity assessment procedures; (b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, on matters of mutual interest; (c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies; (d) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and (e) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.
Chapter 8: Trade in Services	Article 8.25: Cooperation The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.
Chapter 11: Intellectual Property	<ul> <li>Article 11.81: Technical Assistance</li> <li>1. In accordance with the objectives of Chapter 15 (Economic and Technical Cooperation), the Parties agree to undertake the necessary technical assistance, pursuant to the identified needs for the implementation of this Chapter, as set out in Annex 11B (List of Technical Assistance Requests).</li> <li>2. The technical assistance referred to in paragraph 1 shall be on mutually agreed terms, subject to the relevant rules and regulations and availability of resources of the Parties involved.</li> </ul>
Chapter 12: E-Commerce	<ul> <li>Article 12.4: Cooperation <ol> <li>Each Party shall, where appropriate, cooperate to: </li> <li>(a) work together to assist small and medium enterprises to overcome obstacles in the use of electronic commerce;</li> <li>(b) identify areas for targeted cooperation between the Parties which will help Parties implement or enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance;</li> <li>(c) share information, experiences, and best practices in addressing challenges related to the development and use of electronic commerce;</li> <li>(d) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and</li> <li>(e) actively participate in regional and multilateral fora to promote the development of electronic commerce.</li> </ol></li></ul>

Chapter 13: Competition	<ul> <li>Article 13.4: Cooperation</li> <li>The Parties recognise the importance of cooperation between or among their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may cooperate on issues relating to competition law enforcement, through their respective competition authorities, in a manner compatible with their respective laws, regulations, and important interests, and within their respective available resources. The form of such cooperation may include:</li> <li>(a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;</li> <li>(b) upon request, discussion between or amongst Parties to address any matter relating to competition law enforcement that substantially affects the important interest of the requesting Party;</li> <li>(c) upon request, exchange of information between or amongst Parties to foster understanding or to facilitate effective competition law enforcement; and</li> <li>(d) upon request, coordination in enforcement actions between or amongst Parties in relation to the same or related anti-competitive activities.</li> </ul>
Chapter 14: SMEs	<ul> <li>Article 14.3: Cooperation The Parties shall strengthen their cooperation under this Chapter, which may include: <ul> <li>(a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;</li> <li>(b) improving small and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;</li> <li>(c) promoting the use of electronic commerce by small and medium enterprises;</li> <li>(d) exploring opportunities for exchanges of experiences among Parties' entrepreneurial programmes;</li> <li>(e) encouraging innovation and use of technology;</li> <li>(f) promoting awareness, understanding, and effective use of the intellectual property system amongst small and medium enterprises;</li> <li>(g) promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to small and medium enterprise development; and</li> <li>(h) sharing best practices on enhancing the capability and competitiveness of small and medium enterprises.</li> </ul> </li> </ul>

Chapter 16: Government Procurement	<ul> <li>Article 16.5: Cooperation</li> <li>The Parties endeavour to cooperate on matters relating to government procurement with a view to achieving a better understanding of each Party's respective government procurement systems. Such cooperation may include:</li> <li>(a) exchanging information, to the extent possible, on Parties' laws, regulations, and procedures, and any modifications thereof;</li> <li>(b) providing training, technical assistance, or capacity building to Parties, and sharing information on these initiatives;</li> <li>(c) sharing information, where possible, on best practices, including those in relation to small and medium enterprises, including micro enterprises; and</li> </ul>
	(d) sharing information, where possible, on electronic procurement systems.

Source: Author.

#### Appendix 2 Summary of Technical Assistance Requests under Intellectual Property (Annex 11B for Chapter 11)

	Cambodia	Lao PDR	Myanmar	Viet Nam
Support in setting up a system for the electronic application for processing, registering, and maintenance of trademarks.	X	Х	Х	
With a view to supporting the operational needs of Myanmar, support in setting up a publicly accessible online electronic database of trademark applications and registrations.			Х	
Support in capacity building for staff members and experts involved in law amendment processes to cover sound mark protection;	X			Support in capacity building for staff members involved in law amendment processes to cover sound mark protection;
Support in capacity building for trademark examiners, with respect to the protection of sound marks;			Support in the necessary training for the trademark examiners to have competency for all types of trademarks, being not limited to traditional trademarks, which are visually perceptible marks.	Support in capacity building for trademark examiners, with respect to protection of sound marks;

	Cambodia	Lao PDR	Myanmar	Viet Nam
Support in capacity building for information technology experts, with a view to maintaining and developing an electronic application system for trademarks, patent, and new varieties of plants; and	X			Support in capacity building for information technology experts, with respect to maintenance and development of electronic systems.
Support in capacity building for staff members and experts involved in RMI, technological measures, and enforcement.	Х			
Providing expertise on accession to the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).	Х			Providing expertise on accession to the WCT, the WPPT, and the Marrakesh Treaty.
Support with respect to the operation of collective management organisations and establishment and provision of services to members of collective management organisations.			X	
Support in the implementation and development of a system with respect to the protection of geographical indications.			Х	
Support in developing capacity of customs authorities of Myanmar to effectively check pirated copyright goods and counterfeit trademark goods for enforcement by ex officio action.			X	
Support for the operational needs of Myanmar to take effective action against infringement in the digital environment.			Х	

Lao PDR = Lao People's Democratic Republic.

Source: Author.