A Preliminary Assessment of the Regional Comprehensive Economic Partnership

KEY POINTS

- The substantial gains expected from the Regional Comprehensive Economic Partnership (RCEP) depend on the agreement’s effective implementation and development of its built-in agenda in key areas.
- Trade in services, investment, e-commerce and digital trade, among other behind-the-border areas, show relatively modest commitments.
- RCEP’s complex, lengthy tariff phasing down, rules of origin, and related administrative procedures are expected to delay the Agreement’s potential benefits and may deter firms from using RCEP’s trade preferences.
- A combined agenda of implementation leveraging built-in provisions to achieve greater trade liberalization is necessary to compensate for the initial “shallow” RCEP commitments in regulatory and behind-the-border measures.
- Further intergovernmental work and strong political will are needed to unlock the potential of RCEP, overcome implementation challenges, deepen its provisions, and expand its coverage in the future.

INTRODUCTION

Mega-regional trade deals require economies to forge appropriate policy responses to navigate implementation challenges and unlock potential opportunities. The Regional Comprehensive Economic Partnership (RCEP), which entered into force on 1 January 2022, is no exception.\(^1\) Partnering 10 Southeast Asian nations with Australia, the People’s Republic of China (PRC), Japan, the Republic of Korea, and New Zealand, RCEP is the most recent plurilateral initiative to foster regional cooperation and integration in Asia and the Pacific.\(^2\) As a strong commitment to open, transparent, and inclusive trade and investment regimes, the agreement is expected to strengthen the region’s manufacturing supply chains, raise productivity, and increase wages and employment, with world income gains estimated at $263 billion (Park, Petri, and Plummer 2021).

At the same time, compared to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and other agreements in Asia and the Pacific, RCEP does not provide strong disciplines in new areas and has been qualified as a “shallow” agreement.

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\(^1\) The authors thank Regional Cooperation and Integration Division Director Cyn-Young Park and Paulo Halili for the comments and suggestions provided. The brief also benefited from comments from participants at the EUI/UNCTAD executive workshop on rules of origin for least developed countries and in selected mega-regionals of 12 October 2021, the Regional Cooperation and Integration Policy Open Dialogue (RCI-POD) on the Implementation Challenges of the Regional Comprehensive Economic Partnership of 20 October 2021, and the EUI/UNCTAD Executive Roundtable on Rules of Origin: Moving towards Convergence? of 16 November 2021. Research support was provided by Thi Hang Banh, ADB consultant.

\(^2\) The 10 signatory states that have initially deposited their instruments of ratification, acceptance, or approval are Australia, Brunei Darussalam, Cambodia, the PRC, Japan, the Lao People’s Democratic Republic, New Zealand, Singapore, Thailand, and Viet Nam. In the Republic of Korea, RCEP agreement enters into force on 1 February 2022. See https://www.meti.go.jp/english/press/2021/1103_001.html and https://www.meti.go.jp/english/press/2021/1206_002.html). See Kang et al. (2020) for an overview of the agreement and economic impact.
RCEP relies on a combined agenda of implementation and built-in provisions to achieve greater trade liberalization (known as the ASEAN Way) rather than firm commitments adopted at the outset and contained in the original text, as in the CPTPP. As such, RCEP needs to prove its value added to firms and investors relative to the existing network of free trade agreements (FTAs) that will continue to be in place and may further develop.

This policy brief sheds light on RCEP’s potential benefits, yet apparently contradictory shallow nature, to conciliate expectations through an analysis of the content of commitments and RCEP built-in agenda. It first discusses the regulatory and behind-the-border provisions to qualify the “shallow” nature of RCEP commitments compared with CPTPP. It then examines the classical elements of an FTA commonly considered quick wins—tariff concessions and rules of origin. The informed picture presented here of what RCEP may achieve in trade liberalization and regional integration leads to actionable policy recommendations for RCEP built-in agenda, a crucial component of the agreement reflecting the ASEAN Way of managing regional trade integration.

THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP IN THE REGIONAL TRADE LANDSCAPE

The RCEP membership overlaps with the two other major plurilateral agreements in the region—the ASEAN Free Trade Area and the CPTPP—resulting in four different groups of countries:

(i) RCEP members sharing membership in all three FTAs (Brunei Darussalam, Malaysia, Singapore, Viet Nam);

(ii) RCEP members excluding membership in all three FTAs (Australia, PRC, Japan, New Zealand, Republic of Korea);

(iii) Countries only sharing membership in the ASEAN Free Trade Area and the CPTPP (Indonesia, Malaysia, Thailand, Philippines);

(iv) Countries only sharing membership in the ASEAN Free Trade Area and RCEP (Viet Nam).

Table 1: Bilateral and Regional Agreements between Regional Comprehensive Economic Partnership Member Economies

<table>
<thead>
<tr>
<th>Economies/ Regions</th>
<th>RCEP (2022)</th>
<th>ASEAN</th>
<th>Australia</th>
<th>PRC</th>
<th>Japan</th>
<th>New Zealand</th>
<th>Republic of Korea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Korea</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bilateral (2015)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

AANZFTA = ASEAN–Australia–New Zealand Free Trade Area; ASEAN = Association of Southeast Asian Nations; ATIGA = ASEAN Trade in Goods Agreement; CER = closer economic relations; CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership; DEPA = Digital Economy Partnership Agreement; FTA = free trade agreement; NZ = New Zealand; PACER = Pacific Agreement on Closer Economic Relations; PRC = People’s Republic of China; RCEP = Regional Comprehensive Economic Partnership; SADEA = Singapore–Australia Digital Economy Agreement; TPSEP/P4 = Trans-Pacific Strategic Economic Partnership Agreement.

Notes: Date of entry into force reported in parentheses; countries indicated in the ASEAN row refer to bilateral agreements between ASEAN members reported in the table and the partner in the corresponding column title. The list as of 16 December 2021 may not be exhaustive.

Concluded negotiations in October 2021.

Source: Compiled by the authors based on regional and bilateral agreements texts and notifications.

The elements of this policy brief will be developed in ADB’s knowledge products under the Knowledge and Support Technical Assistance “Raising the Value of Regional Trade Agreements Key Factors for Successful Implementation and Positive Economic Impact” (https://www.adb.org/projects/55004–001/main). For example, see the forthcoming ADB report “The Regional Comprehensive Economic Partnership (RCEP) Agreement: A New Paradigm in Asian Regional Cooperation.”
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(i) members of both RCEP and ASEAN FTA, but not of CPTPP (Cambodia, Indonesia, Lao People’s Democratic Republic [PDR], Myanmar, Philippines, Thailand);
(ii) members of both RCEP and CPTPP, but not ASEAN FTA (Australia, Japan, New Zealand); and
(iii) members of both RCEP and CPTPP, but not ASEAN FTA (Cambodia, Indonesia, the Lao People’s Democratic Republic [PDR], Myanmar, Philippines, Thailand); and
(iv) the PRC and the Republic of Korea, which joined RCEP, but are not members of ASEAN FTA or CPTPP.

Moreover, the existing network of FTAs in Asia and the Pacific is not restricted to the abovementioned plurilateral agreements. A persistent trend of new negotiated FTAs at the bilateral level is adding complexity to the noodle bowl of overlapping FTAs in the region (Table 1). The mega-regional RCEP and CPTPP were expected to minimize such effects, yet new bilateral FTAs have been signed even after the entry into force of RCEP, such as the PRC–Cambodia FTA (October 2020), the Indonesia–Republic of Korea FTA (December 2020), and Cambodia–Republic of Korea FTA concluded negotiations on February 2021. This quest for market access by entering into new and overlapping FTAs may be dictated by policy or strategic considerations. Yet, from a trade and economic perspective, one may question the incremental trade liberalization brought by new FTAs. As such, RCEP must prove itself as a genuine newcomer on the Asia and Pacific trade scene that can propel trade liberalization and create new trading and investment opportunities for firms.

### ANALYSIS OF COMMITMENTS IN REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP REGULATORY AND BEHIND-THE-BORDERS CHAPTERS

#### Sanitary and phytosanitary measures and technical barriers to trade

Trivedi et al. (2019) set up benchmarks to compare key World Trade Organization (WTO) provisions and elements regulating technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) in different FTAs. Applying their methodology, RCEP obtains an SPS score of 11 out of 15 benchmark provisions, against 14 in the CPTPP. The CPTPP text also provides more comprehensive coverage of the key benchmarks to effectively regulate TBT in FTAs, with 9 provisions out of 9, while RCEP has been found to include only 5. Overall, RCEP does not show any World Trade Organization-plus provision and its coverage of key SPS and TBT commitments is less extensive than the CPTPP. Most importantly, unlike the CPTPP, RCEP does not provide for the establishment of an SPS or a TBT committee where experts of such highly technical disciplines could meet to bring forward the negotiation agenda toward deeper regional integration efforts for the elimination of these non-tariff measures.

#### Trade remedies

The RCEP chapter on trade remedies shows no significant WTO-plus provisions, as the CPTPP’s does, and contains a series of procedural guarantees for on-the-spot investigation, notification, and consultation, which are usually included in FTAs. The most relevant aspect of this chapter is the overwhelming importance given to safeguard measures during the transitional period of implementation of the tariff offers. Compared with the CPTPP text, the relevant provisions and the overall drafting of the transitional RCEP safeguard measures appear to leave more discretion to the investigating authorities and member states on the application and duration of these measures, casting further doubt on the effective implementation and predictability of the tariff concessions.

#### Customs procedures and trade facilitation

The chapter covers virtually the same areas as those contained in the WTO’s Trade Facilitation Agreement and the CPTPP. RCEP appears to go further than the Trade Facilitation Agreement’s ambitions on two WTO-plus topics, yet the hortatory language used in these provisions cast doubts on their credibility: (i) RCEP calls for customs clearance of goods within 48 hours of arrival. For express consignments, the time limit is reduced to 6 hours. It also (ii) contains improved advance ruling provisions and a time limit of 150 days for the issuance of advance rulings. RCEP contains a “CPTPP-plus” provision, i.e., a 6-hour limit on customs clearance of perishable goods. Yet, some parties opted for a longer time for full implementation of their commitments (RCEP Article 4.21 and annex 4).

#### Trade in services, including financial and professional services, and telecommunications

The scope and structure of the RCEP chapter on trade in services essentially replicates those in the more recent ASEAN+1 FTAs and the CPTPP. RCEP will not result in a single, user-friendly set of rules for the whole region, as earlier expected, because its most-favored nation (MFN) provision does not extend the benefits of previous market access concessions by a party to the other parties. Therefore, RCEP rules exacerbate the “noodle bowl” effect created by more than 30 preferential trading agreements already signed or in force between RCEP members and by the participation of the majority of them in either the CPTPP or FTAs with non-CPTPP parties, or both.

However, through ground-breaking adoption of negative list schedules by all members (albeit with different timelines) and greater market access in specific sectors, RCEP covers a greater share of overall trade in services between the parties, despite the overlapping provisions in the other FTAs. New market access opportunities have been identified in a variety of sectors, including educational, health, computer-related, and other business services, in such countries as the PRC, Indonesia, the Philippines, and Thailand. However, deep comparative analysis of schedules of commitments and non-conforming measures is needed to impart more transparency in this area.4

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4 ADB and Economic Research Institute for ASEAN and East Asia are currently conducting research on RCEP Services Schedules Liberalization Rates as part of ADB’s ongoing research and capacity building program KSTA 6740–REG.
The RCEP chapter on trade in services is also provided with three specific annexes on financial services, telecommunications, and professional services, with commitments and frameworks for enhanced cooperation. On financial services, compared to ASEAN+1 FTAs, the incremental value is constituted by higher foreign equity caps in some commitments and coverage of “new financial services.” On telecommunications, the RCEP’s value added results from (i) coverage of mobile services, including number portability and provisions on flexibility in the choice of technology; and (ii) new market access opportunities stemming from the commitments made by Indonesia, the Lao PDR, Malaysia, and Thailand. In professional services, new commitments creating greater market access have been made by Cambodia, the PRC, Indonesia, the Republic of Korea, the Lao PDR, Malaysia, the Philippines, and Thailand. These commitments would benefit firms supplying legal, architectural, planning, engineering, veterinary, accounting, auditing, and bookkeeping services.

Investment
The value added of the RCEP chapter in enhanced investment liberalization and protection is likely to be small, because of several factors:

(i) RCEP investors are already covered by many international investment agreements and FTAs with investment provisions among parties;
(ii) The absence of investor–state dispute settlement is likely to induce investors to use investor–state dispute settlement available in several FTAs and international investment agreements, rather than the cumbersome and politically sensitive state–state dispute settlement mechanism under RCEP.

Despite these shortcomings, the chapter has several positive features, including:

(i) Adoption by all Parties of a negative-list approach on entry into force, although the list of exemptions from the coverage of the chapter is very long and affects many sectors;
(ii) trade-related investment measures—plus prohibition of performance requirements extended to forced transfer of a particular technology, production process, or other proprietary knowledge as well as forced adoption of a given rate or amount of royalty under a license contract; and
(iii) greater market access mostly resulting from the alignment of RCEP commitments with those under the CPTPP.

Intellectual property
The RCEP chapter on intellectual property can be called a quantum leap when examined against the subdued treatment of this subject in ASEAN FTAs. It covers the standard set of areas enshrined in the Trade–Related Aspects of Intellectual Property Rights Agreement, although with widely varying degrees of detail, as well as a new field—namely genetic resources, traditional knowledge, and folklore.

However, the value added of the intellectual property provisions contained in RCEP would vary from country to country. For the seven RCEP countries that are also CPTPP members (Australia, Brunei Darussalam, Japan, Malaysia, New Zealand, Singapore, Viet Nam) the impact on their intellectual property system would be marginal. They nevertheless would benefit, as trading partners, from the eventual improvements in the intellectual property regimes of the remaining eight countries. For the PRC, RCEP is expected to have some positive, albeit limited, effects on intellectual property protection. In this area, it would be interesting to study how RCEP provisions on Intellectual Property Rights will impact the enforcement of the revised or new intellectual property laws in the PRC and the further alignment of intellectual property protection at the regional level.

Electronic commerce and digital trade
The electronic commerce provisions have been heavily influenced by those originally embodied in the Trans-Pacific Partnership (TPP) and then reproduced, with no changes, in the CPTPP. According to many observers, e-commerce and other digital-trade-related rules were “the most transformative measures” in the whole TPP. Most provisions are in fact similar or identical across RCEP and CPTPP. However, a major breakthrough was made on provisions related to data flows and data localization, with RCEP members agreeing to not “require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that Party’s territory” (RCEP Art. 12.14) or “prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person” (RCEP Art. 12.15). These commitments are the first of this kind for non-CPTPP members, going beyond those in FTAs between RCEP countries and the ASEAN Agreement on Electronic Commerce.

In practice, it is important to keep in mind that both provisions are overshadowed by national security concerns allowing members to adopt “any measure that it considers necessary for the protection of its essential security interests.” Such security measures “shall not be disputed by other Parties,” and are not subject to legal challenge. In addition, an exception applies in the case of “any measure ... that [the implementing Party] considers necessary to achieve a legitimate public policy objective,” leaving significant leeway to members in invoking such clauses.

This being said, another interesting feature of this chapter is the establishment of a forum among parties, called the Dialogue on Electronic Commerce, to discuss such topics as cooperation, current and emerging issues, and matters relevant to the development and use of electronic commerce. This dialogue may eventually help narrow the scope of exceptions on data flows, data localization, source code, and treatment of digital products (and, hence, potential impediments to digital trade) in the future.

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5 The RCEP chapter on e-commerce is carved out from the normal dispute settlement procedure.
More broadly on digital trade, Table 2 summarizes the different provisions categorized as “digital” in RCEP, ASEAN Agreement on Electronic Commerce, and CPTPP. Overall, RCEP has similar coverage of ASEAN Agreement on Electronic Commerce, but with notable differences, such as in the area of regulatory autonomy. CPTPP stands out, with 16 categories covered by the agreement against 12 for RCEP and, therefore, may reflect a stronger commitment by member economies.

### Competition
RCEP competition provisions reflect both parties’ growing awareness of the importance of competition law and policy and, at the same time, the recognition of the significant differences in the capacity and national regimes of RCEP countries. Recent progress in national legislation has translated into much deeper competition law and policy provisions in RCEP compared to ASEAN+1 FTAs.

#### Table 2: Digital Provisions in Regional Comprehensive Economic Partnership, Association of Southeast Asian Nations Agreement on Electronic Commerce, and Comprehensive and Progressive Agreement for Trans-Pacific Partnership

<table>
<thead>
<tr>
<th>Categories</th>
<th>Number of Provisions</th>
<th>ASEAN Agreement on Electronic Commerce</th>
<th>RCEP</th>
<th>CPTPP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trade Facilitation</strong></td>
<td></td>
<td>5</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Provisions designed to create a facilitating environment for digital trade in general</td>
<td>Ban on Customs Duties on e-transmission</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Nondiscriminatory treatment of digital products</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Domestic electronic transactions framework</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Electronic authentication</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Electronic signatures</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Paperless trading</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Enabling Business</strong></td>
<td></td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Provisions to minimize the commercial and regulatory burden for digital trade providers</td>
<td>Access to and use of the internet for e-commerce</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Free flow of data</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Prohibition of data localization</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Prohibition on forced transfer of source code</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Open government data</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Consumer Protection</strong></td>
<td></td>
<td>3</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Provisions to protect interests and enhance trust of consumers</td>
<td>Online consumer protection</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Personal information protection</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Unsolicited commercial electronic messages</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Regulatory Autonomy</strong></td>
<td></td>
<td>2</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Provisions to help governments to reserve the space necessary to address various social policy objectives</td>
<td>Cybersecurity</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Exceptions</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Cooperation</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Dispute settlement</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>12</td>
<td>12</td>
<td>16</td>
</tr>
</tbody>
</table>

ASEAN = Association of Southeast Asian Nations, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, RCEP = Regional Comprehensive Economic Partnership.

Notes: 1 = at least one specific provision is included in the agreement; *Provisions might ostensibly be inconsistent with various obligations under the digital trade chapter.

Source: Compiled by the Asian Development Bank based on RCEP, ASEAN, and CPTPP legal texts.

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5 The analysis needs to be read with caution as it relates to the coverage of digital provisions only, but does not provide information on their specific content.
While RCEP and CPTPP have many similarities in the competition law and policy field, several major divergences also exist. CPTPP devotes an entire separate chapter to state-owned enterprises, unlike RCEP, which contains no specific provisions for them. The absence in RCEP of a commitment on the private right of action constitutes one of the most conspicuous differences. More generally, CPTPP's provisions are much deeper, involving obligations in other critical areas, such as procedural fairness in competition law enforcement and transparency.

**Government procurement**

The provisions contained in the government procurement chapter are perhaps the shortest and most modest in scope and depth in the whole agreement. Given the PRC's long-standing reluctance to negotiate concessions in this area, it should not be a surprise that the chapter is rather shallow. However, these are the first rules on procurement affecting RCEP parties that have not joined the CPTPP or the WTO's Government Procurement Agreement (including Cambodia, the PRC, Indonesia, the Lao PDR, the Philippines, Thailand).

The procurement provisions are very similar in RCEP and CPTPP, although they are more up-to-date in CPTPP, which includes build–operate–transfer contracts. Further, in contrast to CPTPP, RCEP contains no provisions regarding international labor rights, reflecting the position of a number of RCEP developing countries, including the PRC.

**Making the Regional Comprehensive Economic Partnership Immediately Attractive—An Initial Assessment of Tariff Reductions and Rules of Origin**

Given the complex network of existing FTAs in the region, RCEP is considered as having the potential to significantly boost trade liberalization in its most classical form, that is, tariff reductions and streamlined rules of origin, by providing not only additional market access compared to existing FTAs, but also by creating a preferential platform for countries not previously engaged in an FTA with each other (such as the PRC and Japan). Preliminary analysis of the tariff structure (38 tariff offers) and the phase-out periods (in some cases, over 20 years) nevertheless provides sobering expectations (see Crivelli and Inama 2021).

The absence of an MFN provision for the inclusion of previous tariff liberalizations existing in other FTAs indicates that RCEP will coexist with ASEAN Trade in Goods Agreement (ATIGA), ASEAN+ 1 FTAs and other bilateral FTAs. In addition, many RCEP countries have presented differentiated offers, even among ASEAN member states. This tariff structure has created another layer of complexity in implementing the tariff reduction with the introduction of tariff differentials and related provisions.

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**Figure 1: An Example of Tariff Liberalization Effects within the Regional Comprehensive Economic Partnership**

FTA = free trade agreement, HS = Harmonized System, MFN = most favored nation, PRC = People's Republic of China, RCEP = Regional Comprehensive Economic Partnership, RoO = rules of origin, TL = tariff line.

Source: Elaborated by the authors.
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Tariff liberalization in practice

Let us consider the example of a laser manufactured in the Republic of Korea from parts originating in Japan (Figure 1). With no RCEP agreement in place, the parts to manufacture, such as the laser, are subject to an MFN duty of 8% when imported in the Republic of Korea from Japan.7 In addition, a duty of 2.4% is applied when the finished laser is exported from the Republic of Korea to the PRC, assuming that the rules of origin under the PRC–Republic of Korea FTA8 are met. If the origin requirement is not met, the MFN tariff of 6% will be paid.9 In contrast, with full implementation of RCEP commitments, no duties will be collected in this value chain once rules of origin and related procedures are complied with. Most importantly, given RCEP diagonal cumulation,10 inputs from Japan will be considered as originating in RCEP, making it easier for Korean manufacturers to comply with the rule of origin when exporting the final good to the PRC.

It follows that the conspicuous savings generated by trade liberalization can only be captured if rules of origin and associated procedures are adhered to. Studies assessing the value of RCEP should, therefore, take into account all the variables and determinants of market access that are not only tariffs, but also rules of origin and utilization rates.11

RCEP tariff reductions

The potential attraction for firms using RCEP is high given the important preference margins—the difference between the MFN applied rate of duty and the preferential rate. MFN tariff rates on intra-regional imports vary from 0.3% in Brunei Darussalam to 13.1% in the Republic of Korea, with an average of 5.6% for all RCEP countries. In addition to the Republic of Korea, the additional market access would eventually be provided mostly by Cambodia, Indonesia, the Lao PDR, and Thailand in terms of new preference margins, not weighted, however, by the widely different market sizes (Crivelli and Inama 2021).

Preliminary analysis of the tariff structure (38 tariff offers) and the phase-out periods (in some cases, over 20 years) nevertheless provides for modest expectations (see Crivelli and Inama 2021). Most of RCEP intra-regional imports (54%) is already MFN-free, ranging between 43% for the Republic of Korea and 71% for Japan (Figure 2). Some tariff lines are excluded from the tariff offers, representing about 7% of intra-regional imports, with a maximum of 10% in the case of the Republic of Korea. Finally, out of the remaining 39% of intra-regional dutiable imports expected to be liberalized under RCEP, 16% will be fully liberalized upon entry into force, 16% between year 10 and 16, and 3% only 20 or 21 years after entry into force.

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7 Parts of lasers classified under the Korean tariff line 90139020.
8 Laser of subheading 901320 of Harmonized Commodity Description and Coding System (HS).
10 See next section and Box 1 in Kang et al. (2020).
11 This utilization rate is the ratio of the value of imports that benefited from preferences with the value of dutiable imports eligible for the preferential treatment. Dutiable imports exclude duty-free trade that cannot, by definition, benefit from any trade preference. Utilization rates are increasingly used to monitor the effective use of preferential trading arrangements of a reciprocal or autonomous nature. As Crivelli, Inama, and Kasteng (2021) observe, low utilization rates are mostly linked to inadequate rules of origin and related administrative procedures.
after entry into force. Excluding duty-free tariff lines and focusing exclusively on the trade that can potentially be liberalized though RCEP, that is, excluding duty-free tariff lines (category O), Figure 3 shows that 61% of intra-regional trade could be fully liberalized after 10 years, 77% after 15 years, and 89% after 20 years. Such long phasing-out periods for many tariff lines and the complete exclusion from tariff liberalization for others, cast doubt over the real value of such offers in terms of competitive market access beyond what is already provided under existing FTAs. In addition, as shown in Figure 4, the majority of excluded tariff lines present an initial MFN tariff (base rate) above 10% and after the entry into force (excluding group A1), the next significant portion of liberalization (27% of tariff lines on average) will take place 10–16 years after entry into force.

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Figure 3: Regional Comprehensive Economic Partnership Intra-Regional Dutiable Import Shares in 2019 and RCEP Tariff Phasing-Down over Years

RCEP = Regional Comprehensive Economic Partnership.

Notes: (i) tariff lines with a base rate of 0% (non-dutiable goods) and tariff lines subject to non-ad valorem duties are excluded; (ii) import at the national tariff line level is computed by using the share of tariff line in each HS6 category as a proxy for the proportion of trade of each tariff line within each HS6 category.

Source: Elaborated by the authors based on COMTRADE and official RCEP tariff commitments.

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Figure 4: Regional Comprehensive Economic Partnership Initial Most Favored Nation Base Rate and Tariff Reduction—Percentage of Tariff Lines by Tariff Phasing-Down Categories

MFN = most favored nation, RCEP = Regional Comprehensive Economic Partnership.

Notes: O = non-dutiable goods; AX = ad-valorem tariff to be reduced gradually to zero after X year(s); ABX = ad-valorem tariff to be reduced to a lower, but positive tariff after X year(s); U = are excluded from any tariff reduction or elimination. The size of each bubble represents the average RCEP intra-regional import share.

Source: Elaborated by the authors based on COMTRADE and official RCEP tariff commitments.
The complexity of tariff differentials
One systemic and important difference between RCEP and CPTPP is the structure and architecture of the tariff offers. CPTPP partners have opted for one single tariff offer relative to all other partners. In contrast, six RCEP countries have opted for differentiated tariff schedules: different schedules and phase-out of customs duties depending on the RCEP partner (Table 3).

Some ASEAN countries have made differentiated offers toward other ASEAN members while tariffs have been almost totally eliminated under ATIGA. In reality, the existence of a tariff schedule among ASEAN countries is the result of a trade policy choice made by RCEP countries of not including a MFN clause for the automatic extension of trade preferences granted under other FTAs. In other words, the ASEAN countries even if they have negotiated, as a bloc, have chosen not to transpose the ATIGA “acquis,” i.e., the tariff trade liberalization achieved under ATIGA, into RCEP.

This, in turn, means that RCEP is an entirely new FTA for ASEAN countries wishing to trade among themselves under the RCEP trade regime. This holds true not only for ASEAN countries, but also for all other parties to RCEP, unless their RCEP tariff schedule takes into account the previous tariff liberalization under prior FTAs in force with RCEP partners.

Tariff differentials have crucial implications for the administration of rules of origin and cumulation provisions during the phasing-down period. In a nutshell, if a firm wishes to use the favorable cumulation provisions under RCEP, this may turn the clock back relative to existing bilateral or plurilateral FTAs, since duties may be applicable under RCEP, while they were completely abolished under the previous FTAs. The complex tariff structure presented in Table 3 coupled with rules on the application of tariff differentials creates a costly layer of complexity in using RCEP and in calculating what could be its incremental value compared with existing FTAs (Box).

Product-specific rules of origin (PSRO) and cumulation provisions—a game changer? Preliminary assessment of the form and restrictiveness of PSRO
RCEP has been welcomed as a game changer in the area of rules of origin thanks to (i) the possibility to cumulate inputs within the whole RCEP region to qualify as a RCEP originating product and (ii) to bring under a single FTA the thousands of product-specific rules of origin (PSROs) scattered in many ASEAN FTAs.

Initial research points out that there are several issues undermining these expectations (Crivelli and Inama 2021; Crivelli, Inama, and Pearson forthcoming). A rational profit-maximizing firm uses the FTA that is providing the best combination in terms of tariff offer and rules of origin. Hence, if the preferential margin is better under a competing FTA with favorable rules of origin, there might be no incentive to use RCEP and its cumulation provisions. Furthermore, the kind of cumulation provided under RCEP is limited to cumulation of inputs originating in other RCEP countries (diagonal cumulation), but not to working or processing carried out in other RCEP countries and subject to the application of tariff differentials (Box). Last, but not least, the RCEP text on administration of the proof of origin (the so-called Certificate of Origin) does not provide for self-certification, but still relies, albeit with some flexibility, on the use of Certificates of Origin stamped with official seals and signatures of the certifying authorities.

Table 3: Regional Comprehensive Economic Partnership Tariff Differentials

<table>
<thead>
<tr>
<th>Countries</th>
<th>Partners Receiving Differentiated Offers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>ASEAN, Australia, Japan, New Zealand, PRC, Republic of Korea</td>
</tr>
<tr>
<td>Japan*</td>
<td>ASEAN, Australia, New Zealand, PRC, Republic of Korea</td>
</tr>
<tr>
<td>Philippines</td>
<td>Australia, Japan, New Zealand, PRC, Republic of Korea</td>
</tr>
<tr>
<td>PRC</td>
<td>ASEAN, Australia, Japan, New Zealand, Republic of Korea</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>ASEAN, Australia, Japan, New Zealand, PRC</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>ASEAN, Australia, Japan, New Zealand, PRC</td>
</tr>
</tbody>
</table>

ASEAN = Association of Southeast Asian Nations, PRC = People’s Republic of China, RCEP = Regional Comprehensive Economic Partnership.

*“Hybrid” schedule with only one document and most of the tariff lines applicable to all RCEP countries, but with some differentiated tariff rates and reduction timelines on specific tariff lines for different parties.

Source: Compiled by the authors based on the RCEP legal text.

12 Through ATIGA, Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand have eliminated intra-ASEAN import duties on 99.65% of their tariff lines. The other ASEAN member countries have reduced their import duties to 0%–5% on 98.86% of their tariff lines.
13 Some member states have introduced an approved exporters system and a built-in agenda is contained in RCEP article 3.16, para. 4. Yet RCEP provisions on “approved exporters” are subject to a series of conditionalities casting doubts about the applicability of this trade facilitation opportunity.
The structure of the tariff offer of Viet Nam under the Regional Comprehensive Economic Partnership (RCEP) includes a complete schedule of tariff phase down for products originating in member countries of the Association of Southeast Asian Nations (ASEAN). This tariff schedule contains different categories of products with different tariff phase-out periods ranging from immediate duty free at entry into force to elimination of duties over 20–25 years. Some products are excluded from tariff reductions.

A closer analysis matching the Viet Nam tariff offer with imports from ASEAN countries shows that one of most imported products, with a trade value of $709 million, is air-conditioning machines (Harmonized System [HS] 841510), with an average most-favored nation (MFN) duty of 25% subject to tariff phase down over a 10–20 year period depending on national tariff lines. This tariff offer is associated with a product-specific rule of origin (PSRO) requiring a change of tariff classification at subheading level or regional value content of 40%.

This PSRO expressed in form of a change in tariff subheading is identical to the PSRO in ASEAN Trade in Goods Agreement (ATIGA), which is lenient, allowing use of non-originating parts classified in HS 841590, meaning that the assembly of non-originating parts of an air-conditioning machine into a complete one is “origin conferring.” This combination of tariff offers and PSRO under RCEP does not introduce any increased form of market access with respect to ATIGA, since under ATIGA, duty-free entry is already in force and the PSRO is liberal enough to make the advantage of cumulation under RCEP irrelevant.

Similar observations may be valid for the tariff concessions for vehicles (HS8703), with an average MFN rate of 58%, that are either excluded from the tariff offer or subject to a phase down period of 10–20 years or to other conditions, with a PSRO requiring regional value content of 40%. Imports from ASEAN countries under this heading are significant. In this specific case, the additional market access of RCEP with respect to ATIGA, absent in terms of tariff offer, may be found on the possibility to cumulate parts of vehicles originating in, for instance, the Republic of Korea, Japan, or the People’s Republic of China (PRC) to locate, as an example, a manufacturing plant in Cambodia for exports of vehicles to Viet Nam under RCEP.

However, to benefit from such a possibility, further local content requirements embedded in the tariff differentials as a cross cutting provision have to be met: “...no less than 20 per cent of the total value of the originating good has been added in the production of that originating good, as calculated, mutatis mutandis, under Article 3.5 (Calculation of Regional Value Content).” This requirement, as further specified in the Viet Nam tariff differential provision, does not allow to count originating materials from other RCEP parties as local content, therefore, severely limiting the scope for cumulation.

In simple words, a car manufacturing plant established in Cambodia and wishing to benefit from Viet Nam RCEP tariff offers using parts of cars originating in the PRC, the Republic of Korea, or Japan, must at least contain 20% value added to the free on board (FOB) price of the car in Cambodia. Complying with such a requirement, consisting in practice in requiring that labor costs and local materials in Cambodia represent at least 20% of the FOB price of the finished car, might not be commercially viable. In case of noncompliance with the tariff differentials provisions, the car manufactured in Cambodia using inputs from the PRC, Republic of Korea, or Japan and exported to Viet Nam will be considered a Chinese, Korean, or Japanese product, instead of a Cambodian good (i.e., as non-originating in Cambodia) with the consequent application of a less generous tariff schedule.

Different tariff offers with the same tariff differentials rules apply in the case of Viet Nam, not only to ASEAN, but also to other RCEP countries receiving differentiated offers (see Table 3 in the main text) leading to a heavy administrative burden.

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Box: Tariff Differentials and Conditional Application of Cumulation Provision in Regional Comprehensive Economic Partnership—An Example Based on the Viet Nam Tariff Schedule

The structure of the tariff offer of Viet Nam under the Regional Comprehensive Economic Partnership (RCEP) includes a complete schedule of tariff phase down for products originating in member countries of the Association of Southeast Asian Nations (ASEAN). This tariff schedule contains different categories of products with different tariff phase-out periods ranging from immediate duty free at entry into force to elimination of duties over 20–25 years. Some products are excluded from tariff reductions.

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1 Viet Nam’s tariff schedule to ASEAN under RCEP for HS heading 8703 is as follows: (i) tariffs eliminated after 10 years from the entry into force for 3 national tariff lines at the HS8-digit level, (ii) tariffs reduced to a lower, but positive rate over 20 years for 8 tariff lines, (iii) 53 tariff lines excluded from the tariff reduction. Other conditions are contained in the Viet Nam tariff schedule phase out.


Source: Authors.

continued on next page
A preliminary assessment of the Regional Comprehensive Economic Partnership (RCEP) is provided, focusing on the comparison of its product-specific rules of origin (PSROs) with other FTAs. The RCEP is described as having 3,321 PSROs, with many similar rules to those in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which has 3,292 PSROs. The RCEP’s rules are ranked better than those in the Asia-Pacific Trade in Goods Agreement (ATIGA), despite ATIGA’s higher number of PSROs (1,774).

Table 4: Restrictiveness of Product-Specific Rules of Origin Comparison

<table>
<thead>
<tr>
<th>Restrictiveness Code</th>
<th>ATIGA</th>
<th>RCEP</th>
<th>CPTPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Least restrictive</td>
<td>3,321</td>
<td>1,774</td>
<td>2,706</td>
</tr>
<tr>
<td>2: Intermediate</td>
<td>1,807</td>
<td>3,292</td>
<td>1,386</td>
</tr>
<tr>
<td>3: Most restrictive</td>
<td>75</td>
<td>137</td>
<td>1,111</td>
</tr>
</tbody>
</table>

ATIGA = ASEAN Trade in Goods Agreement, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, FTA = free trade agreement, RCEP = Regional Comprehensive Economic Partnership.


Notes:
- Gears of HS 870840 are excluded from the Cambodia tariff commitment under the ASEAN–Japan FTA; * 70% applies to a large portion of tariff lines, but Viet Nam’s import tariff on motor cars vary according to the type of car.
- For a discussion of the difference of “form” and “substance” of PSROs, see Hoekman and Inama (2018).
- FTAs can have the same number on the same HS6 line if the rule is of the same stringency, and thus the totals for 1, 2, and 3 will not add up to the total number of PSROs; this is expected.
- These initial results of the comparative analysis and coding contained in Crivelli, Inama, and Pearson (forthcoming) need to be further linked to volume of trade flows, preferential margins, and RCEP tariff phase out. This extensive analysis is currently taking place under an ongoing ADB research program: KSTA 6740-REG.

For a discussion of the difference of “form” and “substance” of PSROs, see Hoekman and Inama (2018).
From a policy agenda perspective, two key findings emerge from this analysis, dampening the main expectations for RCEP in the area of rules of origin:

(i) The possibility to cumulate across the RCEP region is substantially diminished by the application of tariff differentials and the provision that only cumulation of materials is possible, not of working and processing operations.

(ii) RCEP PSROs are not systematically more liberal than those under ATIGA and CPTPP. Thus, the expectation of RCEP to provide a common umbrella of a single set of rules of origin for RCEP partners may be limited by the fact that competing pairs of rules of origin and tariff offers may be more advantageous under other FTAs.

Yet the analysis has shown that there is significant convergence on PSROs among the CPTPP, RCEP, and ATIGA. Out of total of 5,203 PSROs comparatively analyzed among RCEP, CPTPP, and ATIGA, it has been found that 769 PSROs are identical across the three FTAs and 2,340 PSROs have shown partial convergence, meaning that two FTAs have a similar or identical PSRO, with one FTA having a divergent PSRO. This brings the total of convergent PSROs to 3,109 showing great potential for simplification (Crivelli, Inama, and Pearson forthcoming).

The RCEP built-in agenda may trigger efforts by RCEP partners toward convergence and simplification of rules of origin within RCEP and among other FTAs, with a view to progressively enlarge it to the whole region. However, such a convergence agenda on PSRO will not address the shortcomings of RCEP tariff offers with respect to competing FTAs.

BRINGING FORWARD REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP IMPLEMENTATION AND BUILT-IN AGENDA—ISSUES IDENTIFIED AND POLICY RECOMMENDATIONS

This early assessment of RCEP shows that commitments in the regulatory and behind-the-border chapters of RCEP are relatively modest. This contrasts with the emphasis on the strategic nature of the agreement.

RCEP has adopted a built-in agenda according to the ASEAN style of regional governance often defined as the ASEAN Way of achieving integration by consensus taking. To effectively play the role of a common umbrella over and above the panoply of proliferating FTAs in Asia and the Pacific, policy makers need to quickly activate this built-in agenda, leveraging the provisions existing in RCEP.

The adoption of a negative list in the services chapter is certainly one promising aspect, as are other provisions in the investment, trade facilitation, and other areas. However, bearing in mind the history of ASEAN trade in the services agenda, it remains to be seen whether RCEP built-in provisions for further liberalization will effectively take place at a pace and timing leading to effective services liberalization.

In other areas, such as SPS and TBT, there is obvious scope for resuming the work undertaken to provide more scope for regional integration under RCEP, also taking into account the increasing incidence of non-tariff measures in Asia and the Pacific.

Moving to the “classical” instruments of liberalization introduced by an FTA, i.e., tariffs and rules of origin, the tariffs concessions and rules of origin contained under RCEP are competing with other FTAs and are structured in a manner that may be difficult for firms to use effectively, especially when the provisions on tariff differentials are taken into account. Such provision of tariff differential drastically diminishes the potential for cumulation that has been highlighted as one of the potential catalysts of RCEP toward strengthening regional value chains.

To overcome such constraints, RCEP negotiators should fast-track an improved market access strategy, activating the RCEP article 2.5 acceleration of tariff commitments and article 2.21 sectoral initiatives to achieve greater and faster tariff liberalization. Such faster and better structured tariff liberalization should lessen the scope and use of tariff differentials that are diminishing the trade liberalizing effect of cumulation.

The results of an in-depth analysis have shown that there is ample scope to review RCEP product-specific rules of origin toward convergence across FTAs in Asia and the Pacific. In addition, it is recommended to expand the scope of cumulation to working and processing carried out in RCEP as envisaged in article 3.4, introduce self-certification as a preferred proof of origin, where possible, and implement as soon as possible the approved exporters mechanism.

Further analysis should be carried out to clearly identify the areas and sectors where further liberalization efforts are needed to make RCEP more competitive than the network of existing FTAs and ensure that newly created trade opportunities are seized to full potential.
REFERENCES


Trivedi, J. et al. 2019. “Non-Tariff Measures in Regional Trade Agreements in Asia and the Pacific: SPS, TBT and Government Procurement.” UNESCAP.