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Presentation for the conference on
Regional Comprehensive Economic Partnership (RCEP): A New Paradigm in Asia's Trading Architecture
Session 2 Trade in services and Investment
3 May 2022, virtual

Assessment of services and investment provisions in RCEP

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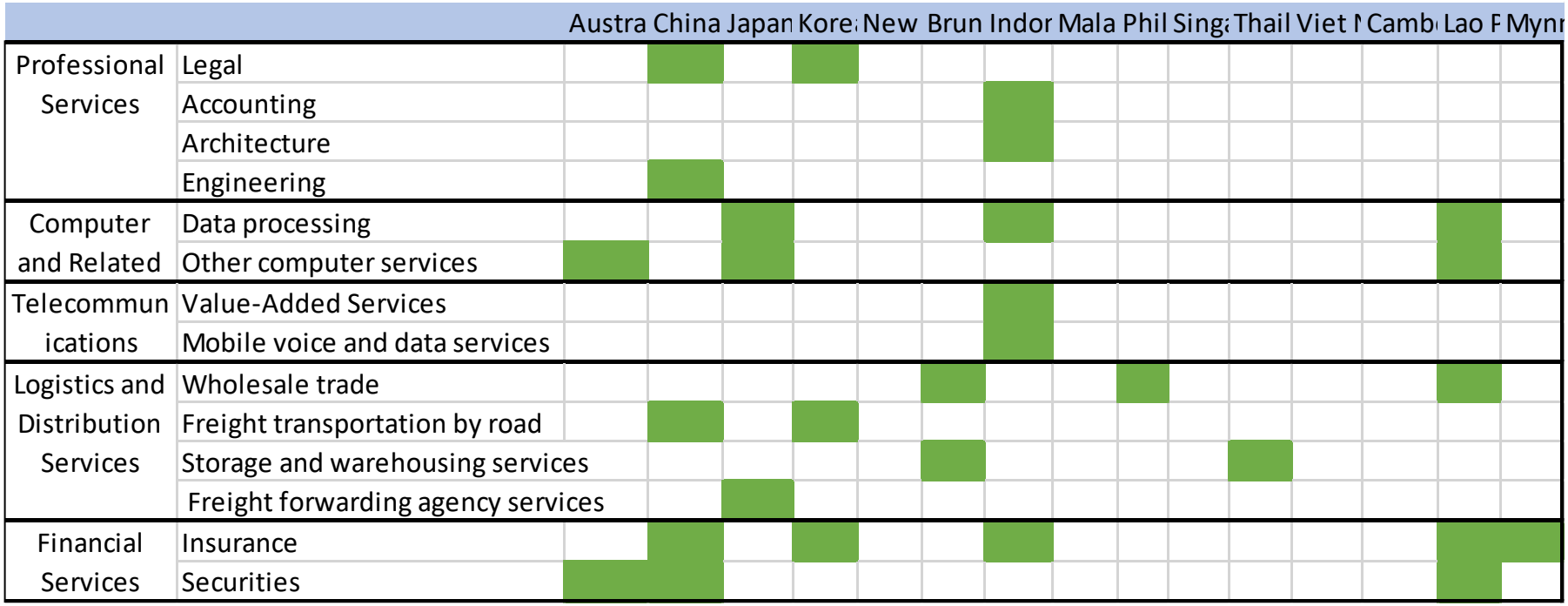
Key features

- Compared to ASEAN, ASEAN+1, RCEP is **an enhancement** as it covers areas that are not included in ASEAN plus one agreements. .
- The agreement covers 20 chapters and the main agreement text runs into 510 pages. Various annexes are added to the main agreement.
- The Services Chapter prescribes that RCEP members will schedule their services commitments using **the negative list approach**, either on *the date of entry into force* of the RCEP Agreement, or *within a defined time* period after the date of entry into force. The negative list approach provides greater certainty for service suppliers of other Parties.
- In services the agreement covers **specific provisions on financial services; telecommunication services; and professional services**, as well as **the temporary movement of natural person**s.
- The Investment Chapter aims to create an enabling investment environment in the region. This Chapter contains provisions covering **the four pillars of investments - protection, liberalisation, promotion, and facilitation**.
- The RCEP Agreement also includes **a built-in work programme on investor-state dispute settlement provisions.**

Market access tends to go beyond existing ASEAN+ commitments

Countries offering market access beyond ASEAN+ agreements



Source: Singapore's Ministry of Trade and Industry, Understanding the RCEP Services, Investment, E-Commerce Chapters: Benefits for Businesses

The level of commitment are blurred by 1) the complexity of schedules,

Examples from Japan's schedule of reservations and non-conforming measures for services and investment	Implications
…the right to adopt or maintain any measure relating to investment or the supply of services in industries which were **not technically feasible at the time of entry into force** of this Agreement.	Excluding new services (Horizonal)
…. **other than those recognised or other than those that should have been recognised by** the Government ..	Excluding … services (Horizontal)
….reserves the right to adopt or maintain any measure that accords **differential treatment to countries under any bilateral or multilateral agreement in force on, or signed prior** to, …and any amendment to and the successor agreement ….	Violating MFN (Horizontal)
….. reserves the right to adopt or maintain any measure with respect to the supply of the services through **the mode of supply referred to in subparagraph (r)(iv) of Article 8.1** (Definitions)	Excluding Mode 4 (Horizontal)

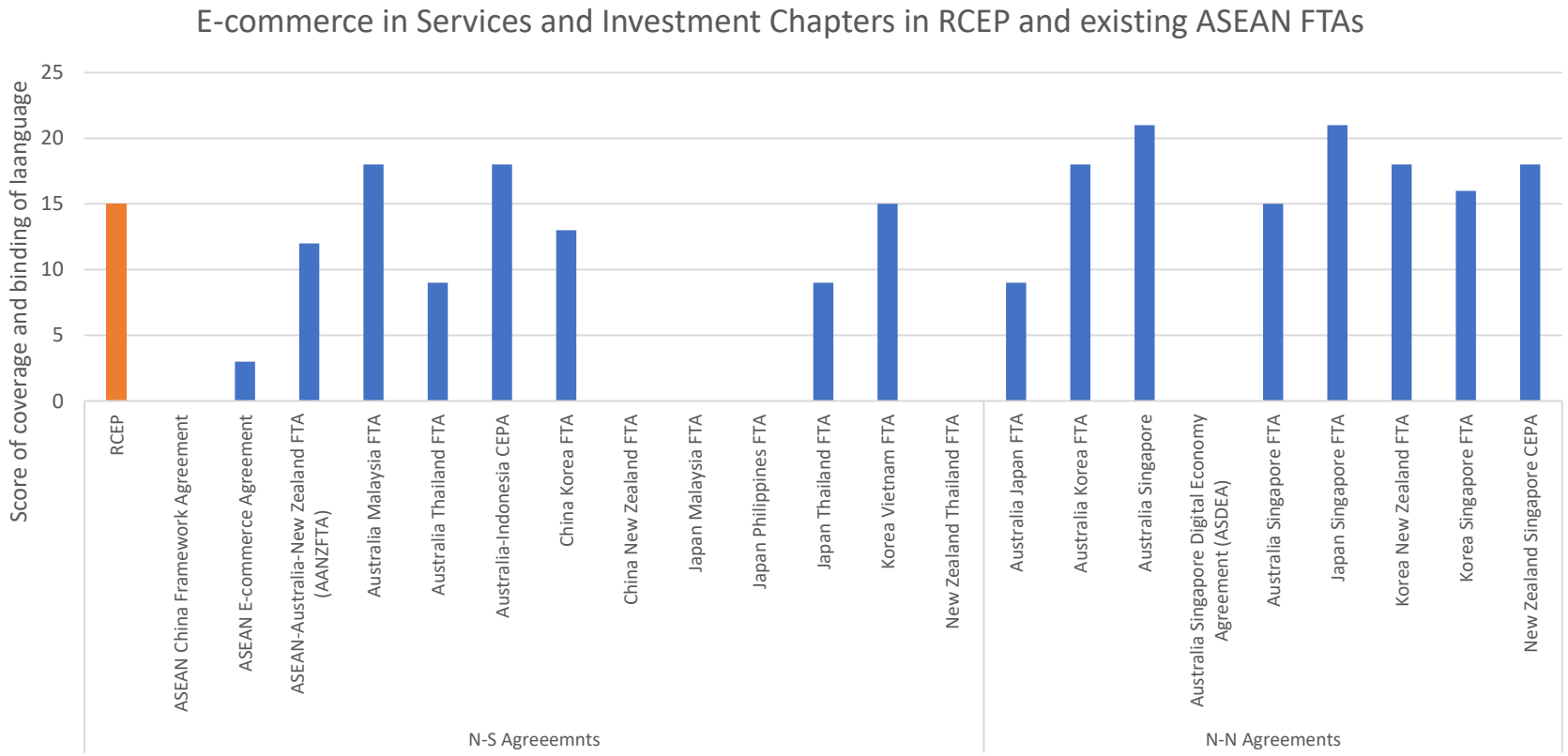
2) Self-judging exceptions,

	Implications
Prudential exception for financial services	Financial services (Annex 8A, Art. 4)
Security exceptions: ..the protection of its essential security interests.	General exception (Art.17.13) Investment (Art 10.15)
Emergency safeguard	Services (Art 8.21)
Allowing the renegotiation of specific commitments or reservations … at any time after three years..	Services (Art 8.13)
Allowing measures to counter balance-of-payments difficulties	Services (Art. 8.19) Investment (Art. 17.5)

3) Multiple rules of origin for juridical persons.

A juridical person of a party is	
constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; **Commercial presence:** Owned or controlled by a natural person or juridical person of a party	All except Thailand and Viet Nam
i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party; **ii)** **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; **iii)** **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;	Thailand and Viet Nam
Registered in Thailand, and foreign equity must not exceed sector-specific commitment: 49%, 50%+, 70%+	Thailand's Mode 3 horizontal commitment

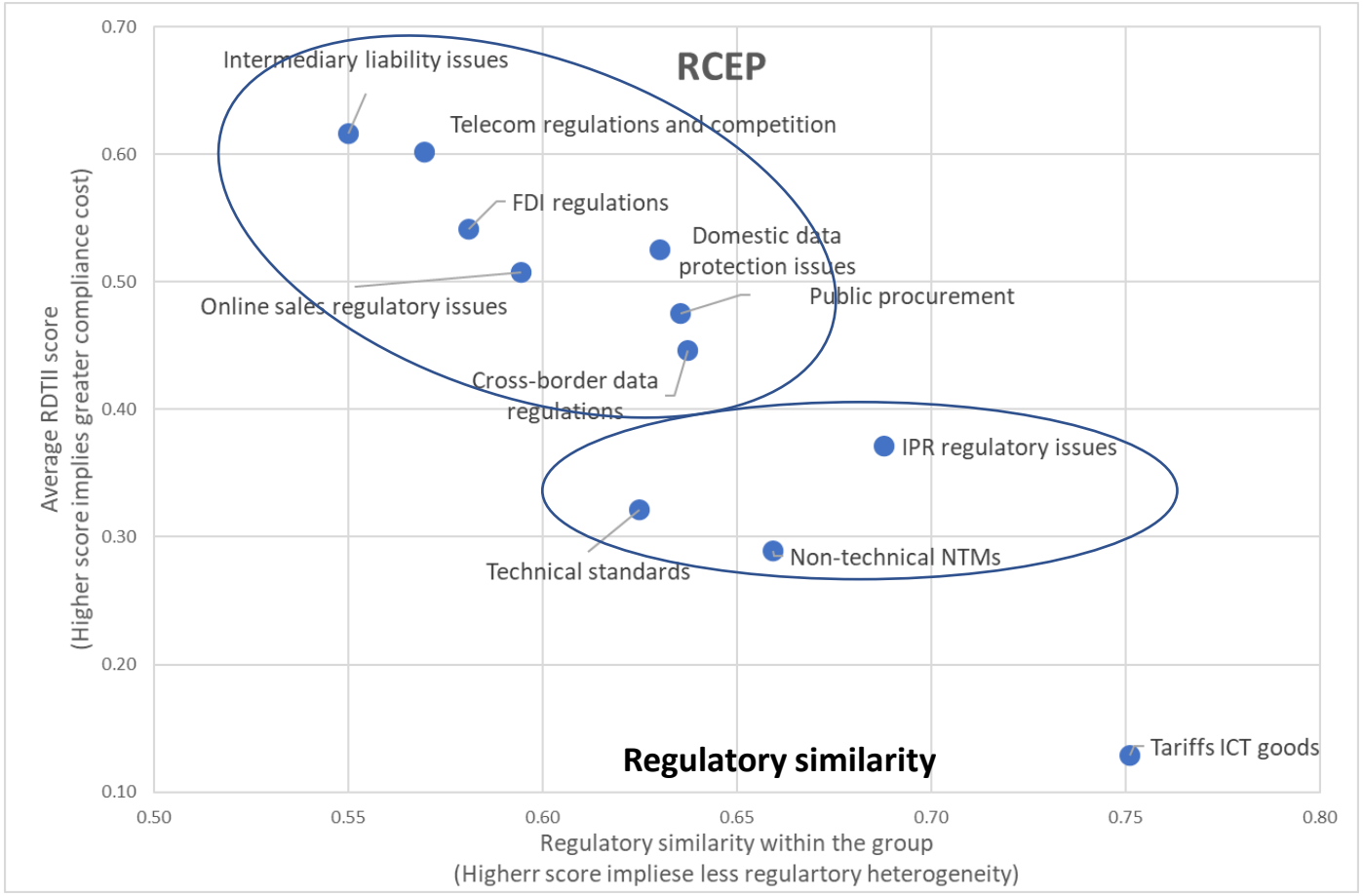
Quite an enhancement over ASEAN in digital services trade issues



Source: Author's compilation from TAPED database, accessed May 20222

Domestic regulatory diversity is also a de facto challenge of implementation.

Examples from digital trade regulations of RCEP countries



Source: Author's based on ESCAP database for the Region Digital Trade Integration Index (RDTII)

Going forward

- **Helping firms**, especially small firms, to understand the complex schedules, exemptions, relevant domestic regulations and options in other trade agreements.
- For MSMEs to read legal texts that run in thousand of pages and understand them is difficult. A simple and **sectoral briefs** on what countries are offering would be a good way to disseminate the information.
- **An online query, call centre and one-stop support centre** would be important step to help exporters and importers utilize the benefits of FTAs.
- Maintain, change, or adopt new measures with a clear **understanding about tradeoffs**.
- For professional services market access**, mutual recognition agreements and acceptance** o**f educational qualifications** of other Parties is essential.

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