Conference takeaway and way forward for ERCI research and capacity building assistance

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Session 4: RCEP Implementation, Lessons Learned and Way Forward

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Keynote speakers – setting the expectations

- RCEP signals a shared commitment to strengthen economic integration, stimulate growth, and build business confidence in the world’s most dynamic region.
- RCEP will promote transparency, predictability and standardization of trade rules.
- RCEP countries are currently laying the groundwork for the effective implementation of the Agreement
- Accounting for different level of economic development among members.
  - Implementation flexibilities are crucial feature (ex. differentiated timelines on TF and and tariff reduction)
  - Standalone chapter on economic and technical cooperation (ECOTECH) to help narrow the development gap among parties and maximize mutual benefits on RCEP utilization.
  - Priority to capacity building and technical assistance to developing and least developed Parties.
- Raising awareness on RCEP trading opportunities to ensure SMEs’ high degree of utilization
  - ASEC partnering with East Asia Business Council to engage with private sector to inform about opportunities.
- To ensure that RCEP lives up to its expectations, ASEAN need to collaborate with all stakeholders including ADB, business councils, and think tanks.
RCEP as a living agreement

- RCEP is a significant achievement, comprehensive but incomplete in many aspects. It should be living and evolving, and the “ASEAN way” should provide impetus to this process.

- As an evolving agreement, RCEP has built-in agenda, issues for future negotiations for example on services (i.e., transition from the positive list to the negative list approach), and S&D treatments.

- RCEP provisions on tariffs, NTMs, services and investment should be upgraded to international rules where CPTPP is a reference point for further liberalization and international rule-making.

- The institutional setting of RCEP must be utilized for reducing policy risks and defending the rule-based trading regime.

- Much of the possible developments and future of RCEP depends on the political will of China, Korea and Japan.

- Lots of works needs to be done to ensure that RCEP will be utilized by businesses.

- RCEP can benefit ASEAN through its provisions on (i) enhancing market access; (ii) simplifying trade rules; and (iii) managing behind the border issues.

- ADB can support RCEP implementation by: (i) working with RCEP secretariat; (ii) help RCEP members improve domestic regulations capacities, especially LDCs; and (iii) contribute to capacity building.
A country perspective - RCEP Implementation in Cambodia

- Trade in goods remain a priority for LDCs in particular market access and trade facilitation including rules of origin to foster utilization of the agreement.

- Implementation has started with issuance of COs but domestic firms are still hesitant to take advantage of FTAs.

- Priority areas for action at national level include:
  - Training and facilitating SMEs and firms;
  - Making the utilization of FTAs Simpler, Faster and Less Compliance Cost, as well as Transparent;
  - Using technologies: Digital technologies – such as a Declaration of Origin by an approved exporter; and
  - Regulating the digital economy, data flows, cybersecurity.

- Needs to extract the maximum out of RCEP by raising RCEP level of ambitions making it more attractive in selected sectors/areas. This require the following actions:
  ii. **Dissemination information, advisory services, and capacity building** at the national and provincial levels for potential exporters.
  iii. **Technical and financial assistances**.
Trade in Goods, Rules of origin, Trade facilitation

• **Paradox:** trade in goods has the highest potential for trade and regional integration but is also the most complex area to implement

• RCEP trade in goods chapter is the final product of intense negotiations protracted for a number of years where the final text reveal traces of different approaches in areas such as
  a) 38 tariff schedules with long phasing out periods
  b) Proof of origin with 3 different regimes
  c) Cumulation
  d) Tariff differentials

• No WTO plus commitments in TBT, SPS and Trade remedies and very little in trade facilitations

• Certification extremely important in terms of RCEP utilization

• Cumbersome direct consignment procedures (non-manipulation certificate, invoices, and transport documents) with language “may” or “such as”; third country invoicing, back-to-back certificates

**Policy suggestions**

• The build-in agenda should address these shortcomings by further liberalize tariffs and proof of origin

• Importance to motivate firms to export in the first place (18.9% of exporting firms in the region, ASEC survey)

• Combined analysis of tariff data, trade flows, and rules of origin (administration and PSROs) needed to support private sector

• Make utilization rates public and conduct analysis
### Trade in services and Investment

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<th>Services</th>
<th>Investment</th>
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<td><strong>Highlights</strong></td>
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<td>• Negative list approach, either on the date of entry into force, or within a defined time period,</td>
<td>• Negative List Approach of Investment Liberalisation</td>
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<td>• Market access tends to go beyond existing ASEAN+ commitments</td>
<td>• TRIMs+ performance requirements on investors as conditions for entering, expanding or operating in RCEP countries are prohibited</td>
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<td>• Level of commitment blurred by the complexity of schedules and self-judging exceptions</td>
<td><strong>Investment Facilitation (IF) in RCEP</strong></td>
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<td>• Domestic regulatory diversity is a de facto implementation challenge</td>
<td>• Flexibility could limit regional collective efforts in investment facilitation. (“subject to its laws and regulations”)</td>
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<td><strong>Selected country-specific challenges</strong></td>
<td>• Regulatory autonomy could hinder enforceability of the provision. (“to the extent possible” and “shall endeavor to” → IF obligation “best-efforts” in nature)</td>
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<td>• Higher competition for local businesses</td>
<td>• Narrow understanding of IF and a strong state-orientation.</td>
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<td>• Readiness of local businesses to adapt to RCEP requirements</td>
<td><strong>Moving forward</strong></td>
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<td>• Graduation from LDC status</td>
<td>• ISDS needed to ensure greater security and assurance for investor</td>
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<td>• Transition from positive list to negative list approach</td>
<td>• Promote enforceable IF measures especially by developing and LDCs. → engage investors in policy/rule-making and implementation</td>
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<td><strong>Moving forward</strong></td>
<td>• Strike a smart balance between regulatory autonomy and regional IF standard to account for different development levels and priorities.</td>
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<td>• Further negotiations to determine the timing/schedule of the market opening commitments and the establishment of mutual recognition standards and common trade facilities</td>
<td>• Coordination between national efforts and the international cooperation process, bilaterally and multilaterally in WTO and at bilateral levels</td>
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<td>• Support to firms to 1) read legal text, 2) understand complex schedules, exemptions, relevant domestic regulations and options in other trade agreements → ex. production of sectoral briefs</td>
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Cross-cutting issues

RCEP provides a platform and opportunities for alliance with partner companies in the region, facilitate harmonization, enabling growth of the digital technologies.

Business perspective

- Existing bottlenecks:
  - Insufficient IPR protection, especially for SMEs and local businesses, lack of clarity & transparency in legal enforcement in some of the RCEP signatory states.
  - Stringent restrictions on cross-border data flow in some of the RCEP signatory states, in the form of cybersecurity law or privacy law/regulation.
  - Absence of data – data should be a public good (shared property)
  - Lack of awareness and capacities in particular for SMEs.
- Key technologies: digital payment, blockchains, digital wallets, etc
- Public-Private partnership in the implementation to leverage technologies, expertise from different providers, public sector

E-commerce – a good starting point, especially for CPTPP non-members

- RCEP not as extensive as CPTPP: 4 provisions not included in RCEP and chapter not subject to dispute settlement.
- Cross-border data transfer rules, data localization: major exception for essential security interests (WTO language); Source code: controversial
- Challenges (non-compliance): lack of coherent and comprehensive legal framework on data privacy
- Some RCEP countries require policy space in the digital Economy.
- Complementing RCEP with Digital Economy Agreement

Intellectual Property – need for domestic reforms, in particular in developing countries and LDCs

- New issues – genetic resources, traditional knowledge, folklore
- Trademark – Domestic reforms needed. Ex. Vietnam to remove 3 criteria determining well-known marks
- Enforcement: amendments of penal codes?
- Priorities: IP enforcement in the context of e-commerce (copyrights)

Way forward: Technical assistance and enhanced regional/international cooperation for implementation and enforcement

- Digital Economy vs. Cross-border Digital Trade – Bottom-up vs Top-down approach
- No one size fits all – technical assistance to be targeted to countries needs and level of development in terms of IP/cybersecurity laws
ADB – ERCI programme to support RCEP

• Knowledge and Support Technical Assistance (KSTA): Raising the Value of Regional Trade Agreements — Key Factors for Successful Implementation and Positive Economic Impact

The Regional Comprehensive Economic Partnership Agreement
A new Paradigm in Asian Regional Cooperation?
http://dx.doi.org/10.22617/TCS220172-2

A Preliminary Assessment of the Regional Comprehensive Economic Partnership
http://dx.doi.org/10.22617/BRF220009-2

An Analysis of the Product-Specific Rules of Origin of the Regional Comprehensive Economic Partnership
http://dx.doi.org/10.22617/TCS220167-2
A lot remains to be done

A tailored research and capacity building program for negotiators and their capital-based teams

• The design and drafting of RCEP build agenda deals with refinement and completion of existing text as well as drafting solutions to liberalize behind-the-border measures.

• This requires uncommon skills and a capacity from the trade negotiators to enter into a dialogue with the regulators of such policies. A public-private dialogue in home affairs is also needed.

• Capacity building (trainings, advisory services, workshops) to disseminate research and share best practices, drafting methods, data analysis and methodologies to assess trade interests and devising negotiating strategies.

Research and Roadmap(s) on RCEP implementation with dissemination at the country level

• Comparison with other FTAs in the region is key for economic actors, either in trade in goods or services.
  ➢ ASEAN+1 FTAs: textual analysis and product-specific rules of origin, to be expanded in the future.
  ➢ An analysis of the services commitments and (in the long run) comparison with other agreements.

• Tariff data, product-specific rules of origin and services liberalization rates: how to make them publicly available in a friendly manner?
  ➢ Utilization rates database using WTO/UNCTAD model on the basis of notification of member states.

• Certification and administrative issues: firms’ survey.

• Digital trade: study the potential of Digital Economy Agreements to complement RCEP.

• Taking into account specific country characteristics is essential (ex. graduating LDCs)!
Thank you very much for your attention!

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Policy Recommendations (ADB report)

• Research and capacity building on raising the attractiveness of RCEP for the private sector
  ➢ Databases of tariff commitments and product-specific rules of origin under RCEP and other FTAs
  ➢ Policy research on certification, roadmap on SPS/TBT resolution mechanism, schedules of services commitments and non-conforming measures
  ➢ Analysis of services schedules of commitments and non-conforming measures

• Country-specific research, capacity building and financial assistance
  ➢ Account for members’ varying status and priorities
  ➢ Support domestic reforms. Ex. Implementation of trade facilitation commitments
  ➢ Selected priority area: promoting e-commerce; awareness, understanding, and effective use of intellectual property system; sharing best practices on enhancing SMEs’ capability and competitiveness

• Expand coverage and deepen commitments towards greater liberalization and regulatory coherence
  ➢ Leveraging on RCEP built-in provisions
  ➢ Institutional mechanism to bring the agenda forward
    (ex. establishment of professional services working group)

• Monitoring RCEP implementation
  ➢ Ex. mechanism of notification of utilization rates