

## ADB Working Paper Series on Regional Economic Integration



### Is Technical Assistance under Free Trade Agreements WTO-Plus? A Review of Japan–ASEAN Economic Partnership Agreements

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Shintaro Hamanaka

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## **Abstract**

What kind of technical assistance and capacity building benefits do developing countries enjoy if they sign a free trade agreement (FTA) with developed countries? This is a frequently asked question among developing country officials involved in FTA policymaking. While we tend to normatively insist that an FTA should lead to a win–win situation for all contracting parties and that developed members should provide technical assistance to developing partners so that the latter can maximize the benefits and minimize the costs of an FTA, empirical assessments of technical assistance mechanisms under FTAs have not been thoroughly conducted. This paper presents a detailed textual analysis of World Trade Organization (WTO) Agreements and several FTAs in Asia, and identifies how much additional technical assistance developing member countries can enjoy if they enter into FTAs with developed countries.

*Keywords:* Technical Assistance, FTAs, North-South Cooperation, WTO Agreements

*JEL Classification:* F51, F53, K33



## 1. Introduction

What kind of technical assistance and capacity building<sup>1</sup> benefits do developing countries enjoy if they sign a free trade agreement (FTA) with developed countries? This is a frequently asked question among developing country officials involved in FTA policymaking as they seek to understand the direct and immediate benefits of FTAs aside from the long-term and often ambiguous impacts such as productivity increases and industrial specialization based on comparative advantages. While policymakers should understand these long-term effects of FTAs, identifying the direct short-term benefits can be even more important in order to sell FTAs to a domestic audience.

We tend to normatively insist that an FTA should lead to a win-win situation for all contracting parties irrespective of developmental level. We may then propose that developed members of an FTA should provide technical assistance to developing country partners so that the latter can maximize the benefits and minimize the costs of the FTA. However, empirical assessments of technical assistance mechanisms under FTAs have not yet been thoroughly conducted.<sup>2</sup> An analysis of technical assistance mechanisms under FTAs, in terms of obligations (required actions) and the roles of concerned parties (technical assistance providers and recipients), is necessary to assess the overall effects of FTAs.

By conducting a detailed textual analysis of World Trade Organization (WTO) Agreements and various FTAs, this paper identifies whether, what type of, and how much more technical assistance can be enjoyed by developing countries if they sign an FTA, particularly with developed countries. Given that there are many WTO Agreements that include stipulations on technical assistance, it is important to compare technical assistance obligations under FTAs against those under WTO Agreements. More specifically, we tackle the question of whether technical assistance obligations in a certain issue area under FTAs are more robust than those under the WTO and whether a particular FTA has technical assistance obligations in a unique area that is not covered by WTO Agreements. In doing so, we will identify WTO-plus elements in technical assistance obligations under FTAs.

The paper is structured as follows. Section 2 explains the concept of WTO-plus technical assistance and introduces two types of WTO-plus technical assistance under FTAs: (i) additional technical assistance and (ii) unique technical assistance. Section 3 analyzes technical assistance mechanisms under WTO Agreements and identifies the level of technical assistance obligations under the WTO system. We will analyze nine Agreements under the WTO framework that have provisions for technical assistance.

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<sup>1</sup> By (trade-related) “technical assistance,” this paper refers to assistance in trade promotion and trade policy. Recently, the term “technical cooperation” has been gaining popularity because it emphasizes that development programs will work if there is collaboration between technical assistance providers and recipients. For the same reasons, the term “capacity building” is usually added to highlight the importance of local ownership and absorption of technical assistance (Kostecki 2001 and Shaffer 2006). However, this paper mainly uses the term technical assistance because the focus of the analysis is on the provision of technical assistance to developing members by developed FTA members.

<sup>2</sup> There is some literature that focuses on technical assistance in a certain issue under FTAs such as intellectual property. As an example, see Roffe, Vivas, and Veja (2007).

Section 4 analyzes technical assistance under FTAs. We first see whether FTAs have additional technical assistance obligations compared with those stipulated in each WTO Agreement. We also examine if there is a unique area of technical assistance peculiar to each FTA. We will analyze various Japan–Association of Southeast Asian Nations (ASEAN) Agreements as representative of North–South agreements with ample room for technical assistance given the differences in developmental levels among participating countries. The final section summarizes the empirical findings and concludes the argument by considering the policy implications of WTO-plus technical assistance on the debate over multilateralism versus regionalism.

## **2. Types of WTO-Plus Technical Assistance Obligations under FTAs**

Under the WTO framework, there are no specific agreements on either development or technical assistance. While some scholars argue that the WTO system should introduce a set of rules focusing on the facilitation of development under one agreement, which could be referred to as an Agreement on Development Facilitation (ADF), this has remained at the conceptual stage and failed to win widespread support in negotiations in Geneva (Lee 2006). One of the few WTO documents that directly addresses developmental issues is the Decision on Measures in Favor of Least Developed Countries, which was agreed upon by ministers participating on the Trade Negotiation Committee on 15 December 1993. While this document emphasizes the importance of technical assistance to least developed countries, it lacks operational specificity.<sup>3</sup>

Nevertheless, the WTO system has many Agreements that do include articles, provisions, or paragraphs on technical assistance. As a result, developmental issues such as technical assistance are decentralized and scattered across many Agreements under the WTO framework. Not surprisingly, provisions on technical assistance under those Agreements are very diverse. Required actions are very different across Agreements and the parties that are expected to be a provider or recipient of technical assistance also differ across Agreements. The level of ambition set in each Agreement significantly varies. While some Agreements set binding obligations, others include softening language, such as “mutually agreed terms and conditions,” and provisions for technical assistance that are not automatic.

Thus, in conducting assessments of technical assistance under FTAs, we need to identify the WTO-plus elements of such agreements.<sup>4</sup> We should compare specific obligations to provide technical assistance in a certain issue area (e.g., sanitary and phytosanitary [SPS] standards) under FTAs and WTO Agreements. If technical assistance provisions under an FTA simply repeat the same language as stipulated in

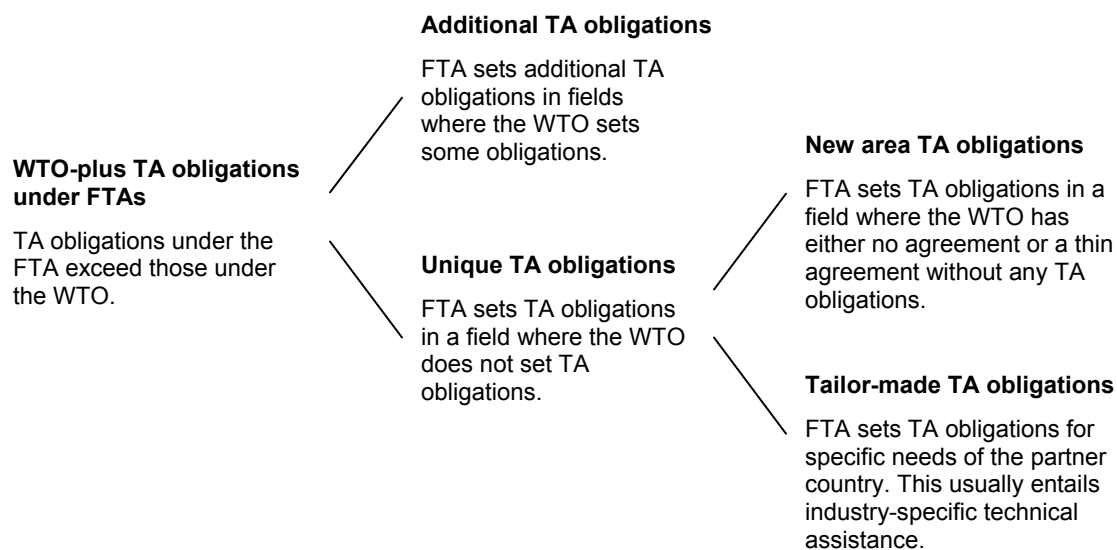
<sup>3</sup> The Decision says “[Ministers] agreed that ... Least developed countries shall be accorded substantially increased technical assistance in the development, strengthening, and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.” WTO Trade Negotiation Committee Decision on Measures in Favor of Least Developed Countries. 15 December 1993.

<sup>4</sup> For an example of comparative analysis of technical assistance between FTAs and WTO agreements, see Roffe, Vivas, and Vea (2007).

WTO Agreements, we cannot say that an FTA's technical assistance mechanism is substantial, at least from a legal perspective.

In conducting a comparative analysis of technical assistance under FTAs and the WTO, we should note that there are two types of WTO-plus technical assistance under FTAs (Figure 1). The first type of WTO-plus technical assistance is “additional” technical assistance. When WTO Agreements covering a certain issue area already have some provisions on technical assistance, the additionality that an FTA has in terms of a technical assistance obligation in the same issue area becomes a problem. We should consider whether FTAs bring additional technical assistance obligations to members, akin to the case of tariff liberalization where a preferential tariff is compared with the most favored nation (MFN) tariff (preferential margin).

**Figure 1: WTO-Plus Technical Assistance Obligations under FTAs**



FTA = free trade agreement, TA = technical assistance, WTO = World Trade Organization.  
Source: Author's illustration.

The second type of WTO-plus technical assistance that FTAs may have is “unique” technical assistance. In this case, FTA sets technical assistance obligations in a field where the WTO does not. Unique technical assistance has two sub-categories. First, when an FTA sets technical assistance obligations in a field where the WTO has either no agreement (e.g., competition) or a thin agreement without any technical assistance obligations (e.g., investment), the FTA has new area technical assistance obligations. As will be discussed later in more detail, this type of technical assistance is evident in the

so-called Singapore issues,<sup>5</sup> which have not yet been included in the WTO's purview. Second, when an FTA sets technical assistance obligations based on the specific needs of a partner country, the FTA has tailor-made technical assistance obligations. For example, if a certain FTA includes a binding obligation to provide capacity building programs for the automobile industry. Technical assistance obligations included in each FTA's chapter on cooperation usually fall under the tailor-made category.

How can we assess the significance of additional and unique obligations under each agreement? Abbott et al. (2000) identify three critical elements in analyzing the legalization of international relations: (i) the level of binding obligations, (ii) the precision of rules, and (iii) the delegation of power. The first two elements are highly relevant in analyzing obligations regarding technical assistance under FTAs and the WTO.<sup>6</sup> We need to look at whether obligations are binding or not. If the required actions are not compulsory, they may not be implemented. We should also consider whether or not the agreements set out specific obligations. If required actions are not specific and operational, obligations may not be fulfilled as expected. Thus, in total, there are four types of technical assistance: (i) binding and specific, (ii) binding and non-specific, (iii) non-binding and specific, and (iv) non-binding and non-specific (Table 1). Note that various combinations of these four types of obligations are also possible. For example, a binding and non-specific obligation, such as "member shall provide technical assistance," can be accompanied by a non-binding and specific obligation, such as "technical assistance may include the organization of seminars and exchange of staff."

**Table 1: Examples of Binding and Specific Obligations**

	Binding	Non-Binding
<b>Specific</b>	"Member shall provide technical assistance through the organization of seminars and exchange of staff."	"Technical assistance may include the organization of seminars and exchange of staff."
<b>Non-Specific</b>	"Member shall provide technical assistance."	"Members shall consider technical assistance." "Members shall provide technical assistance, on mutually agreed terms and conditions."

Source: Author's compilation.

There are two important caveats on the methodology of comparative analysis. Theoretically speaking, the degree of technical assistance, which is generally provided

<sup>5</sup> Investment, competition, trade facilitation, and transparency in government procurement are the four Singapore issues. Chapters included in regional agreements covering the first three issues sometimes include technical assistance.

<sup>6</sup> The third element of legalization is delegation of power, which is also theoretically important. Whether or not a particular dispute settlement mechanism is entitled to make a decision on the implementation of technical assistance obligations is a critical question. However, given that it is unlikely that an FTA member would use a dispute settlement mechanism to provide proof of another party's non-fulfillment of technical obligations under FTAs, the delegation of power will not be discussed in this paper.

by developed members to developing partners, depends on the level of obligation included in the agreement binding all contracting parties, including developing countries. This is because technical assistance is often required by developing countries to implement general obligations. For example, it is reasonable for the level of technical assistance obligations in the field of intellectual property to be high when the level of general obligations in intellectual property protection is demanding.<sup>7</sup> Thus, in theory, we have to compare the difference in general obligations in a certain issue area between the WTO and an FTA against the difference in technical assistance obligations in that issue area between the WTO and the FTA. In other words, WTO-plus general obligations should be compared against WTO-plus technical assistance obligations. A simple comparison of technical assistance obligations alone is not sufficient.

However, even a simple comparison focusing only on WTO-plus technical assistance obligations is useful in considering the relation between multilateralism and regionalism in the field of development issues. First, it is an interesting exercise to examine if there are any WTO-plus technical assistance obligations included in FTAs, especially North–South FTAs. While some literature suggests that a North–South FTA can be an avenue for technical assistance,<sup>8</sup> empirical evidence, particularly evidence based on analysis of binding technical assistance obligations under Asian FTAs, is quite limited.<sup>9</sup> Second, even if the receipt of technical assistance under an FTA occurs in exchange for a high level of general obligations, technical assistance provided by developed FTA partners actually contributes to capacity building in a developing country in a general manner. For example, if a certain developing country signs an FTA in which it commits to a higher level of protection for the intellectual property of its FTA partners, institutions established with technical assistance under the FTA will contribute to the developing country's intellectual property policy in general. In short, a narrowed focus on the reciprocity of obligations (WTO-plus technical assistance obligations on developed members of an FTA versus WTO-plus general obligations on developing members of the FTA) would be misleading in the case of technical assistance. We will re-visit this issue in the conclusion.

The second caveat is related to the study's narrow focus on legal text analysis, which can be classified into two sub-categories. Critics may argue that even the stipulation of binding and specific obligations on technical assistance in an agreement does not guarantee the actual provision of technical assistance. It is true that what is written in the

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<sup>7</sup> Shadlen (2008) suggests the possibility that the high level of WTO-plus commitments made by developing countries in the field of intellectual property under regional agreements (i.e. the low level of “flexibility utilization”) may be due to the form of technical assistance provided to them. However, Shadlen discusses technical assistance from global institutions such as the World Intellectual Property Organization (WIPO) and not technical assistance under regional agreements.

<sup>8</sup> For example, see Hoekman and Schiff (2002). See Stoler (2009) for FTA technical assistance obligations in the field of SPS and TBT.

<sup>9</sup> If there are WTO-plus technical assistance provisions under an FTA, the succeeding research question should be whether or not such WTO-plus technical assistance is due to the higher level of general obligations under the FTA vis-à-vis the WTO. While it has been determined that WTO-plus general obligations (e.g., intellectual property protection) are included in some regional agreements (Sell 2009), there is little discussion on WTO-plus technical assistance obligations.

legal text may differ from what will actually be implemented.<sup>10</sup> Nonetheless, a detailed analysis of commitments under FTAs is still critical, especially in the field of technical assistance. From a policymaking perspective, the inclusion of binding and specific technical assistance obligations under FTAs is a good mechanism for developing countries to request and actually receive technical assistance from FTA partner countries, despite the possibility that such an obligation may not be fulfilled.

Another problem of the narrow focus on legal text analysis relates to the fact that if obligations to provide technical assistance are not written into the text of the agreement it does not necessarily mean that technical assistance will not be provided. Again, *de jure* technical assistance differs from *de facto* technical assistance, but in a positive manner in this case. Even if some WTO Agreements do not mention the technical assistance obligations of the Secretariat, it may still provide technical assistance to Members, for instance, by organizing training courses.<sup>11</sup> Likewise, FTA members may provide technical assistance to partners even if it is not required under an FTA. In fact, even without the signing of FTAs (or any type of treaties), many developing countries provide technical assistance to developing countries. However, *de facto* technical assistance, especially bilateral versus multilateral assistance (e.g., WTO Secretariat), may not be continued in the long run. Technical assistance backed by legal instruments are more resilient to changes in the external environment.

### 3. Technical Assistance Provisions under WTO Agreements

As discussed, many Agreements under the WTO framework have stipulations on technical assistance. These Agreements include the (i) Technical Barriers to Trade (TBT) Agreement, (ii) SPS Agreement, (iii) Customs Valuation Agreement, (iv) Agreement on Preshipment Inspection, (v) General Agreement on Trade in Services (GATS), (vi) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), (vii) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), (viii) Trade Policy Review Mechanism (TPR), and (ix) Agreement on Government Procurement.

Below is the textual analysis of technical assistance provisions for each of the aforementioned WTO Agreements.<sup>12</sup> Each Agreement's obligations regarding technical assistance are discussed from two different angles. The first angle relates to the comprehensiveness of obligations. The textual analysis will identify what kind of specific actions are required and whether or not they are compulsory. The second angle relates to the scope of concerned parties. Who are the concerned parties with regard to the

<sup>10</sup> Related to this, some may argue that technical assistance is supply-side driven and does not actually contribute to the recipient's enhanced capacity to draw up necessary policies. See Deere (2005) and Jones, Deere-Birkbeck, and Woods (2010).

<sup>11</sup> See Kostecki (2001) for a discussion on technical assistance programs of the WTO Secretariat. Especially since the WTO Seattle Meeting in 1999, the technical assistance programs for capacity building of the Secretariat has enormously expanded, primarily with the help of voluntary contributions from developed countries as well as some developing countries such as the People's Republic of China.

<sup>12</sup> The WTO Secretariat's website is used as reference in summarizing the background of each WTO agreement.

implementation of the obligations? More specifically, who are the expected providers of technical assistance and who are the expected recipients of technical assistance?

### 3.1. Agreement on Technical Barrier to Trade

The TBT Agreement aims to ensure that regulations, standards, and testing and certification procedures do not create unnecessary obstacles to trade. Technical regulations and product standards may vary from country to country and differences between regulations and conformity assessment procedures adopted by various countries can result in the creation of obstacles to international trade. The TBT Agreement is the main international instrument adopted thus far in the field of technical regulations.

Article 11: Technical Assistance to Other Members is the primary article in the TBT Agreement covering technical assistance. The obligations included in this Article fall upon all WTO Members, which means that even developing country Members are expected to provide technical assistance when required. In addition, while special consideration is given to developing country Members as recipients of technical assistance, even developed country Members can be recipients of technical assistance. This is mainly because joint efforts are always necessary, for example, in order to determine the equivalence of different standards between Members.

The Article requests Members to provide various types of technical assistance to other Members. First, Members have an obligation to advise other Members on policies regarding various TBT-related issues if requested. (The term “on mutually agreed terms and conditions in this regard” is not used.) Basically, Members shall advise other Members, but in some cases, Members shall take reasonable measures so that advisory assistance is provided by regulatory bodies within their territory.<sup>13</sup> The scope of advisory technical assistance includes (i) the preparation of technical regulations (11.1); (ii) the establishment of national standardizing bodies, regulatory bodies, conformity assessment bodies, various institutions, and legal frameworks (11.2, 11.3, 11.4, 11.6, and 11.7); and (iii) participation in international standardizing bodies (11.2).

In addition to the provision of advice, the Article also requests that Members grant actual technical assistance on mutually agreed terms and conditions with regard to (i) the establishment of national standardizing bodies, regulatory bodies, conformity assessment bodies, various institutions and legal frameworks (11.2, 11.3, 11.4, 11.6, and 11.7); and (ii) participation in international standardizing bodies (11.2).<sup>14</sup> Strong language such as “shall ...grant [other Members, especially developing country Members] technical assistance” is always accompanied with softening language such as “based on mutually agreed terms and conditions.” Thus, if an envisaged technical assistance provider does not agree upon the terms and conditions of technical assistance, such assistance will not be granted. In a sense, technical assistance providers can refuse to provide assistance. Such a situation is reasonable because the

<sup>13</sup> See Article 11.3. Article 11.4 also does not state that Members shall provide advisory assistance. Instead, it requests Members to take reasonable measures.

<sup>14</sup> There is no obligation to grant technical assistance regarding the preparation of technical regulations (Article 11.1).

autonomy and ownership of both technical assistance providers and recipients are important. However, it should be noted that there is a risk that no technical assistance will be provided under such a weak arrangement. In fact, a much stronger and more operational term is used in other WTO Agreements such as the Customs Valuation Agreement (see below).

### **3.2. Sanitary and Phytosanitary Agreement**

All countries have a right to maintain measures to ensure that imported food is safe for consumption and to prevent the spread of pests or diseases among animals and plants. At the same time, however, it is important to ensure that strict health and safety regulations are not used as an excuse for protectionism. The SPS Agreement sets out basic rules for food safety and animal and plant health standards. The SPS Agreement allows countries to set their own standards on sanitary (human and animal health) and phytosanitary (plant health) measures, but it also requires that regulations be based on science. Because it is sometimes not easy for countries, especially developing countries, to formulate effective science-based SPS policies and conduct effective inspections of imported products, technical assistance is especially important in this field.

Article 9: Technical Assistance is the primary article on technical assistance in the SPS Agreement. It sets an obligation to facilitate the provision of technical assistance on all WTO Members (Article 9.1). It is important to note that the required action stipulated in this Article is not to grant technical assistance, but to facilitate the provision of technical assistance. Just like in the case of TBT, the concerned parties involved are all WTO Members, both providers and recipients of technical assistance, though emphasis is placed on developing country Members as recipients. It is possible for a developed country Member to be a recipient of technical assistance while the technical assistance provider is a developing country Member. For example, developed countries in the North may need assistance from developing countries in the South on sanitary inspection procedures for imported tropical fruits. Technical assistance granted under Article 9.1 may take the form of advice, credits, donations, or grants. Financial assistance may also be considered technical assistance under the SPS Agreement. (Other than the SPS Agreement, only the TRIPS Agreement mentions financial assistance.) It also specifically mentions that technical assistance in SPS includes the provision of technical expertise, training, and equipment to allow such countries to adjust to and comply with SPS measures.

Article 9.2 stipulates that importing Members shall consider providing technical assistance when substantial investment is required by exporting developing country Members. Article 9.2 also distinguishes exporting from importing countries in order to determine the provider and recipient of technical assistance, and does not base the decision on the distinction between developed and developing country Members. Again, what is required is the consideration, not the actual provision of, technical assistance. Thus, we can maintain our argument that this Article's level of ambition is not that high.

Partly because the requirement is limited to the facilitation or consideration of technical assistance, the term "on mutually agreed terms and conditions" is not included in the



SPS Agreement, unlike in the case of the TBT Agreement. Given that the level of ambition is low, softening language is not required.

### **3.3. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)**

For traders, the estimation of the value of a product at customs is as large a concern as the duty rate charged on imported goods, because both equally affect the amount of duties. The WTO Agreement on Customs Valuation aims for a fair, uniform, and neutral system for the valuation of goods for customs purposes. A system that conforms to commercial realities and outlaws the use of arbitrary or fictitious customs values is required. However, this is a highly technical and specialized area. There are six methods of customs valuation: (i) transaction value, (ii) transaction value of identical goods, (iii) transaction value of similar goods, (iv) deductive method, (v) computed method, and (vi) fall-back method. Naturally, specific technical assistance targeting customs offices is necessary so that they have the capacity for sophisticated customs valuation administration.

Paragraph 3 in Article 20 of Part III on Special and Differential Treatment of the Customs Valuation Agreement covers technical assistance. This Article stipulates the technical assistance obligations of developed country Members, not all WTO Members, in the field of customs valuation. The recipient of technical assistance is limited to developing country Members insofar as this Agreement is concerned. The Customs Valuation Agreement is one of the few Agreements under the WTO framework that imposes technical assistance obligations only on developed country Members and limits the recipients to developing country Members. (Other than the Customs Valuation Agreement, the TRIPS Agreement has similar provisions. For details, see Section 3.6). The Customs Valuation Agreement attempts to address developmental concerns in a direct manner.

The obligations imposed on developed country Members are also very clear in this Agreement. While the first half of Paragraph 3 mentions the provision of technical assistance on mutually agreed terms and conditions, the second half of the Article stipulates specific operational requests. It states that developed country Members shall draw up programs of technical assistance that may include the training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of the Agreement.

### **3.4. Agreement on Preshipment Inspection**

Many developing countries conduct preshipment inspections on prospective imports before they are shipped from the exporting country.<sup>15</sup> Preshipment inspection is useful primarily because the capacity of some country's customs services is often not enough

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<sup>15</sup> The Preamble of the Agreement on Preshipment Inspection states that "noting that a number of developing country members have recourse to preshipment inspection...."

to perform the full range of customs functions. The private companies that carry out the inspections verify that the price, exchange rate, financial terms, quantity, quality, and customs classification of the transaction are consistent with what was ordered.

The Agreement on Preshipment Inspection of the WTO provides that the process should not give rise to unnecessary delays or unequal treatment. It establishes an agreed upon set of transparent procedures, including deadlines for inspections, and creates an independent and impartial review body to resolve disputes between importers and preshipment inspection companies. While preshipment inspections can facilitate trade, in some cases they have led to problems for exporters, including delays in shipments, disagreements over the quantity and quality of the goods that were ordered, and failure to protect confidential business and proprietary information.

Article 3: Obligation of Exporter Members includes a provision on technical assistance (Paragraph 3). What is unique about the Agreement of Preshipment Inspection is that it uses the concept of exporter Members and user Members of preshipment inspection to define the rights and obligations of Members, including technical assistance (c.f. Article 9.2. of the SPS Agreement). A user Member is defined as “a member which the government or any government body contracts for or mandates the use of preshipment inspection activities” (Article 1.1).

With regard to the required actions, upon request exporter Members shall offer to provide on mutually agreed terms to user Members of preshipment inspection, which are usually developing country Members, technical assistance directed toward the achievement of the objectives of the Agreement. The Article uses the term “shall offer to provide...technical assistance” instead of “shall provide technical assistance”. In addition, the softening language “on mutually agreed terms and conditions” is used. A footnote in the Agreement indicates that technical assistance may be given on a bilateral, plurilateral, or multilateral basis.

### **3.5. General Agreement on Trade in Services**

One of the landmark achievements of the Uruguay Round was the creation of the GATS, which entered into force in January 1995. The GATS was inspired by essentially the same objectives as the General Agreement on Tariffs and Trade (GATT)—creating a credible and reliable system of international trade rules, ensuring fair and equitable treatment of all participants, stimulating economic activity through guaranteed policy bindings, and promoting trade and development through progressive liberalization.

Article XXV of GATS covers technical cooperation. However, technical assistance measures in the article are not substantial. While the Article includes two paragraphs, each paragraph comprises only one sentence. Article XXV:1 stipulates the use of a contact point for the purpose of technical assistance, with a special reference to Article IV:2. Developed country members, and other Members to the extent possible,<sup>16</sup> shall establish contact points to facilitate access for developing country Members’

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<sup>16</sup> It is possible to argue that the obligation is imposed only on developed country members. For more details, see Footer and George (2005).

services suppliers to information that relates to their respective markets (Article IV:2).<sup>17</sup> The party that has access to the contact points are the developing country Members' services suppliers, not the developing country Member governments. Meanwhile, Article XXV:1 states that the services suppliers of Members, which is not limited to suppliers in developing country Members,<sup>18</sup> that are in need of technical assistance shall have access to the contact points.

Article XXV:2 calls for the provision of technical assistance to developing country Members by the WTO Secretariat on a multilateral basis, with decisions made by the Council of Trade in Services. There are several important points to consider. First, the parties that receives technical assistance are developing country Members and not developing country Members' services suppliers as is the case under Article XXV:1. Second, the scope is limited to developing country Members and not all Members. Third, and most importantly, the party providing technical assistance is the Secretariat and not (developed country) Members. Thus, there are no mandatory rules or methods of cooperation imposed on developed country Members under this provision.<sup>19</sup> The obligation of the Secretariat to provide technical assistance is multilateral and not automatic since it is subject to the decision of the Council for Trade in Services.

Accordingly, it is important to read Article XXV:2 together with the Guidelines and Procedures for Negotiations on Trade in Services, which were adopted on 28 March 2001. Paragraph 14 of the guidelines states that "in accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments." Certainly, technical assistance on the assessment is essential for developing country Members to fully participate in negotiations. However, efforts to substantiate a mechanism for the Secretariat to provide technical assistance in the field of services trade have not yet been exploited within the Council of Trade in Services.<sup>20</sup> The new discipline on domestic regulation of services being negotiated in Geneva may place some technical assistance obligations on developed Members (Delimatsis 2010). It remains too early to confirm what kind of language will be used in the future domestic regulation discipline.<sup>21</sup>

### **3.6. Agreement on Trade-Related Aspects of Intellectual Property Rights**

The TRIPS Agreement is one of the most comprehensive multilateral agreements on intellectual property.<sup>22</sup> It introduces global minimum standards for protecting and enforcing nearly all forms of intellectual property rights. The TRIPS Agreement requires all WTO Members, with few exceptions, to adapt their laws to the minimum standards of

<sup>17</sup> These include (i) commercial and technical aspects of the supply of services; (ii) registration, recognition, and obtaining of professional qualifications; and (iii) availability of services technology.

<sup>18</sup> Nartova (2008).

<sup>19</sup> Nartova (2008).

<sup>20</sup> The Council for Trade in Services has agreed that the Secretariat's technical assistance in services should be budgeted annually and included in the overall allocation of the WTO's technical assistance budget. For more detail, see Footer and George (2005).

<sup>21</sup> According to Dietrich, Finke, and Tietje (2010, p. 16), the technical assistance obligation will most likely become a best endeavor clause by including the term "based on mutually agreed terms and conditions."

<sup>22</sup> For example, see the World Health Organization (WHO) website. Available at [http://www.who.int/medicines/areas/policy/wto\\_trips/en/index.html](http://www.who.int/medicines/areas/policy/wto_trips/en/index.html)

intellectual property protection. In addition, the TRIPS Agreement introduces detailed obligations for the enforcement of intellectual property rights.

The TRIPS Agreement contains provisions that allow a degree of flexibility and sufficient room for countries to accommodate their own patent and intellectual property systems, and developmental needs. This means, for example, that Members have a certain amount of freedom in modifying their regulations and that they have options in formulating national legislation to ensure a proper balance between the goals of providing incentives for the future development of new drugs and affordable access to existing medicines. For developing country Members there is an urgent need for capacity building in drawing up necessary intellectual property policies, which need to strike a delicate balance between the flexibility of accommodating their own patent and intellectual property systems and developmental needs, and international obligations for the enforcement of intellectual property rights.

Article 67: Technical Cooperation in the TRIPS Agreement specifies the technical assistance obligations of developed country Members with regard to intellectual property. It requires developed country Members, if requested, to provide technical and financial cooperation to developing country Members on mutually agreed terms and conditions. The developmental dimension is clear in this Agreement because the technical assistance providers are limited to developed country Members and the recipients are developing country Members. What is unique in the TRIPS Agreement is that financial assistance is mentioned in parallel with technical assistance. Except for the TRIPS Agreement, the SPS Agreement is the only other agreement that mentions financial assistance.

Article 67 also specifies the measures by which technical assistance is to be provided in terms of intellectual property issues. Cooperation in this field shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights, as well as on the prevention of their abuse. It shall also include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel. Because many developing country Members need to establish a domestic regulatory system, which may enable them to meet international obligations in the long-run, technical and financial assistance to establish the domestic regulatory system is critical.

### **3.7. Understanding on Rule and Procedures Governing the Settlement of Disputes**

Under the old GATT regime, the procedure for settling disputes between Members had no fixed timetables. Rulings were easily blocked and many cases dragged on inconclusively for an extended period. The Dispute Settlement Understanding (Annex 2 of the Marrakesh Agreement), which entered into force in January 1995, introduced a more structured process with clearly defined stages in the procedure. It introduced greater discipline in the length of time needed to settle a case, with flexible deadlines set at various stages of the procedure. The DSU sets out the details for the procedures and the timetable to be followed in resolving disputes. Given that dispute settlement is a

highly technical area, technical assistance is required by all Members, but especially developing country Members.

Article 27: Responsibilities of the Secretariat of the DSU is the only article under this Agreement that mentions technical assistance. This means that the responsibility for providing dispute settlement technical assistance lies with the Secretariat and not the Members. This seems only natural since irrespective of their level of development Members may have a dispute with one another and imposing technical assistance obligations on only one Member (even a developed country Member) would be counterintuitive. Thus, the Secretariat, which maintains a neutral position, has the technical assistance obligation.

The scope of technical assistance stipulated under this article include the provision of legal advice (Article 27.2). Experts are the ones actually providing legal services to developing country Members. The responsibility of the Secretariat is to make available a qualified legal expert from the WTO. The recipients of legal advisory services are limited to developing country Members (c.f. Article 27.3). The Secretariat should also monitor the experts' technical assistance in order to ensure the impartiality of the services rendered by these experts.

The Secretariat is expected to conduct special training courses on dispute settlement procedures and practices for interested Members (Article 27.3). In this case, the beneficiaries of the training courses were all interested Members of the WTO, including developed country Members. Strong language such as "the Secretariat shall conduct special training courses" appears in Article 27.3 absent any softening language such as "mutually agreed terms and conditions."

### **3.8. Trade Policy Review Mechanism**

The WTO Trade Policy Review (TPR) is a peer-review exercise designed to foster collective appreciation and understanding of the full range of individual Members' trade policies and practices, and their impact on the multilateral trading system.<sup>23</sup> While the review of Members' trade policies started under the old GATT regime in 1989, the scope was limited to trade in goods. The Marrakesh Agreement placed the TPR mechanism on a permanent footing as one of the WTO's basic functions (Article III). With the entry of the WTO into force in 1995, the mandate of the TPR Mechanism was broadened to cover services trade and intellectual property. It seeks to (i) enhance the transparency of WTO Members' trade policies and practices, and (ii) contribute to improved adherence by all Members to WTO rules and disciplines. However, because the TPR requires a huge amount of preparatory work at home, it is not easy for developing country Members to fulfill the TPR obligation.<sup>24</sup>

Annex 3: Trade Policy Review Mechanism of the Marrakesh Agreement is a three-page document without a dedicated article to technical assistance or developmental issues.

<sup>23</sup> The website of the Government of Canada is used as reference for the writing of the TPR. Available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/wto-omc/wto-ctpr.aspx>

<sup>24</sup> On the capacity constraint regarding TPR, see Ghosh (2010).

However, Paragraph D includes language on technical assistance, although the stipulation is very general. It states that the Secretariat has the responsibility for providing TPR technical assistance. In order to ensure the neutrality of the policy debate, technical assistance relating to TPR should be provided by the Secretariat and not by Members. This is similar to the DSU since Members may have disputes with one another even at the TPR sessions. Although the stipulation is not as clear as that of the DSU, the responsibility of the Secretariat is to make available technical assistance to developing country Members.<sup>25</sup>

### **3.9. Agreement on Government Procurement**

The Agreement on Government Procurement is a plurilateral Agreement under the WTO framework that is applicable only to the signatories to this particular Agreement. While the number of signatories was limited to 23 when this Agreement was launched after the Uruguay Round, as of January 2010 there were 41 countries (or economies) who were signatories to the Agreement. Most signatories are developed country Members or developing country Members that have already achieved middle income status.

While current signatories are limited to developed country Members or middle income developing country Members, it has an article on Special and Differential Treatment for Developing Countries, and its subsection, Technical Assistance for Developing Country Parties, includes three paragraphs on technical assistance (Paragraph 8, 9, and 10). It is anticipated that more developing country Members of the WTO will become signatories to the Agreement. The obligation lies on developed country parties as opposed to developed country Members of the WTO, while the recipients of technical assistance are limited to developing country parties as opposed to developing country Members of the WTO.

The most distinctive feature of the Agreement of Government Procurement in terms of technical assistance is that the provision of assistance is not based on “mutually agreed terms and conditions.” No such term, which is common in other WTO Agreements, can be found in this Agreement. Thus, when technical assistance on government procurement is required by developing country Parties, developed country Parties shall provide all technical assistance deemed appropriate. The level of automaticity is higher in this Agreement than in other WTO Agreements. The Government Procurement Agreement also clearly states that technical assistance shall be provided on the basis of non-discrimination among developing country Parties.

The scope of technical assistance is also very specific. Technical assistance that aims to solve technical problems relating to the awarding of a specific contract is of particular importance. It also includes translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO (English, French, Spanish) as designated by the entity. If developed country Parties deem such

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<sup>25</sup> This is because unlike in the case of the DSU, the TPR makes no mention of experts. The Agreement states that the Secretariat shall make available technical assistance in response to requests from developing country Members, particularly least-developed country Members.

translation to be burdensome, this obligation can be exempted if an explanation is provided to developing country parties and/or their entities (Paragraph 10).

### 3.10. WTO Agreements without Technical Assistance Provisions

Finally, some Agreements under the WTO system do not touch upon technical assistance including the (i) Agreement on Trade-Related Investment Measures (TRIMs),<sup>26</sup> (ii) Agreement on Subsidies and Countervailing Measures, and (iii) Agreement on Safeguards.<sup>27</sup> Thus, when the chapters of an FTA covering these issues include technical assistance obligations, they become unique technical assistance (new area technical assistance) obligations as defined in Section 2.

Also, the WTO system does not include Agreements in several fields that have a major impact on international trade. Customs procedures and competition,<sup>28</sup> which are two of the four Singapore issues, are illustrative examples. After the Singapore Ministerial meeting in 2003, WTO Members agreed not to include competition policy in the Doha Round negotiation agenda. Meanwhile, negotiations on trade facilitation (customs procedures) resumed in 2004 with the adoption of the July Package (Annex D), which emphasizes the importance of technical assistance in this field.<sup>29</sup> However, we need to consider whether any meaningful agreement on trade facilitation or customs procedures that entails significant technical assistance obligations is likely to be reached by the end of the Doha Round. Thus, if FTAs include technical assistance in the field of competition policy and customs procedures, these should also be classified as new area technical assistance obligations.

### 3.11. Summary of Technical Assistance under WTO Agreements

The empirical findings of the analysis above are summarized in Table 2. First, the providers and recipients of technical assistance vary from one Agreement to another. There are three main types of Agreement. First, in the case of TBT and SPS, all WTO Members are expected to provide technical assistance. In this case, all Members can be a recipient as well, but special emphasis is placed on developing country Members as recipients of technical assistance. Next, in the case of the Customs Valuation Agreement, the TRIPS Agreement, and the Agreement on Government Procurement, only developed country Members (or Parties) are required to provide technical assistance and only developing country Members (or Parties) can receive technical assistance.

<sup>26</sup> TRIMs is a thin agreement covering only trade related aspects of investment. Investment was supposed to be included in the negotiation agenda of the WTO Doha Round, but was excluded after the Cancun Ministerial Meeting in 2003.

<sup>27</sup> However, the absence of stipulations on obligations regarding technical assistance does not mean that there is no actual technical assistance given. For example, there are many capacity building training courses organized by the WTO Secretariat focusing on anti-dumping and subsidies, which target developing country officials, particularly in least developed countries.

<sup>28</sup> The existing agreements relating to customs cover only limited areas of customs administration. The Customs Valuation Agreement covers only customs valuation issues while the Agreement on Preshipment Inspection covers only preshipment inspection issues.

<sup>29</sup> The Doha negotiations on trade facilitation and customs procedures focus on three articles under the GATT: (i) GATT V (freedom of transit), (ii) GATT VIII (fees and formalities connected with importation and exportation), and (iii) GATT X (publication and administration of trade regulations).

Finally, in the case of the GATS, DSU, and TPR Mechanism, the Secretariat is the provider of technical assistance and only developing country Members can be recipients, except in the case of the DSU where all Members can be beneficiaries.

The level of binding and specificity of technical assistance obligations seems to depend on who is the expected provider of technical assistance. When technical assistance is provided by the Secretariat, the obligations are binding and softening language such as “on mutually agreed terms and conditions” is not used. Moreover, required actions by the Secretariat are sometimes very specific as in the case of the DSU, which requires the Secretariat to organize special training courses on dispute settlement.

However, when technical assistance obligations fall on WTO Members, a strong term such as “shall provide technical assistance” is usually accompanied by softening language (“on mutually agreed terms and conditions”) and the obligations become less binding. There are some Agreements that include technical assistance obligations without such softening language. However, in these cases the technical assistance obligations are not required at the outset and the scope is limited to the provision of advice and consideration (e.g., terms such as “shall advise,” “shall consider,” or “agree to facilitate” are used). With regard to the specificity of the obligation, the specific forms of technical assistance are always mentioned if the expected providers of technical assistance are developed country Members (Customs Valuation Agreement and TRIPS).<sup>30</sup> In contrast, the specific forms of technical assistance are usually not mentioned if the expected providers of technical assistance are all WTO Members (TBT).<sup>31</sup> Thus, the TRIPS Agreement is the only Agreement that has binding and specific obligations on developed country Members in the form of a combination of a non-binding and non-specific obligation, and a binding and specific obligation, although it mentions only training as a specific type of technical assistance.<sup>32</sup>

Based on the empirical analysis above, the technical assistance obligations of developed country Members under the WTO system are very limited, thereby supporting the argument that “the developing countries undertook to implement *bound* commitments in exchange for *unbound* commitments for assistance” (Finger and Winters 2002, p. 51).<sup>33</sup>

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<sup>30</sup> While the Customs Valuation Agreement uses the term “may include,” the TRIPS Agreement uses “shall include” to spell out the possible forms of technical assistance.

<sup>31</sup> However, the SPS Agreement mentions specific forms of providing technical assistance.

<sup>32</sup> In the case of the Agreement on Government Procurement, technical assistance providers are limited to its contracting parties since the agreement on government procurement is a plurilateral and not a multilateral agreement. The Agreement on Government Procurement imposes binding and specific obligations on parties (non-specific and binding, and non-binding and specific).

<sup>33</sup> Also see Finger and Schuler (2002).



**Table 2: Technical Assistance Obligations under WTO Agreements**

	Technical Assistance Obligations		Specific Forms of Technical Assistance	Concerned Parties	
	Required Action	“On mutually agreed terms”		Provider	Recipient
TBT	Shall advise	Not used	No further explanation on advise	All Members	All Members, especially developing Members
	Shall grant technical assistance	Used	Not mentioned	All Members	All Members, especially developing Members
SPS	Agree to facilitate the provision of technical assistance	Not used	May take the form of advice, credits, donations, and grants for the purpose of training personnel	All Members	All Members, especially developing Members
CVA	Shall consider providing technical assistance	Not used	Not mentioned	Importing Members	Exporting developing Members
	Shall furnish and draw up programs of technical assistance	Used	May include training personnel	Developed Members	Developing Members
PSI	Shall offer to provide technical assistance	Used	Not mentioned	Exporter Members	User Members
GATS	Shall provide technical assistance	Not used	Not mentioned	Secretariat	Developing Members
TRIPS	Shall provide technical and financial assistance	Used	Shall include training personnel	Developed Members	Developing Members
DSU	Shall make available a qualified legal expert	Not used	The obligations in the left column are already specific	Secretariat	Developing Members
	Shall conduct special training courses	Not used	The obligations in the left column are already specific	Secretariat	All Members
TPR	Shall make available technical assistance	Not used	Not mentioned	Secretariat	Developing Members
GPA	Shall provide all technical assistance	Not used	Translation of qualification documents and tenders	Developed Parties	Developing Parties

Note: TBT = Agreement on Technical Barriers to Trade, SPS = Agreement on Sanitary and Phytosanitary, CVA = Customs Valuation Agreement, PSI = Agreement on Preshipment Inspection, GATS = General Agreement on Trade in Services, TRIPS = Agreement on Trade-Related Aspects of Intellectual Property Rights, DSU = Understanding on Rules and Procedures Governing the Settlement of Disputes, TPR = Trade Policy Review, GPA = Agreement on Government Procurement.

Source: Author's compilation.

## 4. Technical Assistance under Japan's EPAs with ASEAN Member Countries

This section analyzes technical assistance obligations under FTAs including additional, new area, and tailor-made obligations. Specifically, this section will examine technical assistance obligations under the economic partnership agreements (EPAs) between Japan and the Association of Southeast Asian Nations (ASEAN).

Japan–ASEAN EPAs are useful case studies for three reasons. First, substantial empirical studies on technical assistance under Asian economic agreements are lacking when compared with literature on technical assistance under agreements in Europe and North America.<sup>34</sup> Second, North–South FTAs generally have significant potential for technical assistance obligations (Hoekman and Schiff 2002). Therefore, reviewing Japanese agreements with its Asian neighbors is relevant since such agreements are expected to include some technical assistance programs given Japan's level of development.<sup>35</sup> Finally, since Japan has signed bilateral EPAs with several ASEAN countries, a comparative analysis of these agreements would be an interesting exercise. Specifically, it will be determined if the following proposition can be empirically supported: the lower the economic development of Japan's EPA partner, the greater the amount of technical assistance obligations included in the EPA between Japan and that country.

In the textual analysis below, underlines are supplied to highlight the difference in obligations across various agreements and articles.

### 4.1. Japan–Malaysia EPA (JMEPA)

#### 4.1.1. Additional Technical Assistance under JMEPA

The SPS chapter (Chapter 6) in JMEPA includes binding and specific obligations of technical assistance. The chapter uses language such as “shall develop cooperation,” while softening language such as “on mutually agreed terms and conditions” is not used. Strong language is also included such as “both countries shall cooperate... including capacity building, technical assistance, and exchange of experts” (Chapter 6, Article 70). Thus, JMEPA imposes binding and specific obligations on the contracting parties in terms of technical assistance in the area of SPS.

Meanwhile, the TBT chapter (Chapter 5) uses “shall cooperate” but also includes weaker words in determining the scope of technical assistance: “such cooperation may include: (a) joint studies, seminars, and symposia” (Article 64). Thus, while the requirements are

<sup>34</sup> See for example the discussion of Roffe, Vivas, and Vea (2007) on technical assistance in the field of intellectual property under North–South FTAs in the Americas.

<sup>35</sup> Other North–South FTAs and EPAs in Asia, such as the EPA between Australia, New Zealand, and ASEAN, include substantial technical assistance obligations. Moreover, the agreement between the People's Republic of China (PRC) and ASEAN also includes some technical assistance, despite the fact that all parties are developing countries. Comparative analysis of technical assistance obligations under various FTAs and EPAs in Asia, especially South–South agreements (e.g., ASEAN–PRC), is an important topic for future research.

specific, they are not binding. Likewise, the intellectual property chapter (Chapter 9) uses “shall cooperate” but also states that the forms of cooperation can be set forth in the Implementing Agreement. While some details are provided in the Implementing Agreement, it states that “the forms of cooperation may include... (ii) undertaking training and exchange of expert” (Implementing Agreement, Chapter 3, Article 10). Thus, technical assistance requirements regarding SPS and intellectual property are specific and not binding.

#### 4.1.2. New Area Technical Assistance under JMEPA

While investment, customs procedures, and competition are either not covered by a specific WTO Agreement or are covered by only a very thin Agreement without any technical assistance provisions, JMEPA includes technical assistance provisions in these fields. The customs procedures chapter (Chapter 4) uses the term “shall cooperate” while softening language, such as “on mutually agreed terms and conditions,” is not included (Article 56). It also mentions specific modes of providing technical assistance or capacity building such as “exchange of experts.” The chapter uses strong terms such as “the area of cooperation ... shall include capacity building, such as training, technical assistance, and exchange of experts” (Article 57).<sup>36</sup> Thus, it can be said that JMEPA imposes binding and specific technical assistance obligations on the contracting parties in the area of customs procedures.

Meanwhile, the Investment chapter (Chapter 7, Article 92) uses “shall cooperate,” but also includes weaker language to limit the scope of activities: “through ways such as: (1) discussing effective ways on investment promotion activities and capacity building...” No further detailed stipulation on technical assistance in investment issues is provided in JMEPA or its Implementing Agreement, making it both non-binding and non-specific. In contrast, the chapter on controlling anti-competitive activities (Chapter 10) also uses “shall cooperate,” with details provided in the Implementing Agreement. Article 13 (Technical Cooperation) of the Implementing Agreement says that “the Governments agree that it is in their common interest...to work together in technical co-operation activities.” It also mentions the scope of activities using the term “may include... (a) exchange of implementing authorities’ personnel for training purposes...” Thus, in the case of competition, JMEPA has a non-binding and specific obligation.

#### 4.1.3. Tailor-Made Technical Assistance under JMEPA

Chapter 12 of JMEPA focuses on cooperation. Article 139: Basic Principles says that the governments shall promote cooperation, while Article 140: Fields of Cooperation states that such cooperation shall include cooperation in eight areas: (i) agriculture, forestry, fisheries, and plantations; (ii) education and human resource development; (iii) information and communications technology; (iv) science and technology; (v) small and medium-sized enterprises; (vi) tourism; (vii) environment; and (viii) other fields to be mutually agreed upon by the government. The forms of cooperation are provided for in the Implementing Agreement. Chapter 6 of the Implementing Agreement focuses on

<sup>36</sup> In the case of TBT (Chapter 5), it simply says that cooperation may include technical assistance and is thus not specific.

cooperation, with each section of the chapter stipulating specific areas of cooperation by using the term “the area of cooperation under this section shall include...” and then listing the method of cooperation by using the term “forms of cooperation under this section may include...” For example, the exchange of experts and holding of seminars and workshops are mentioned as a form of cooperation. Accordingly, the obligations are binding and specific enough for the contracting parties (c.f. EPA between Japan and ASEAN countries other than Malaysia).<sup>37</sup> Table 3 provides a summary of cooperation under the seven fields specified in Article 140.

**Table 3: Areas of Cooperation under the Implementing Agreement for JMEPA**

Sections	Areas of cooperation
Agriculture, Forestry, Fisheries, and Plantations	(i) sound development of food industries; (ii) efficient and sustainable utilization of natural resources; (iii) human resource development related to agriculture, forestry, fisheries, and plantations; (iv) development and promotion of technologies relating to agriculture, forestry, fisheries, and plantations; and food processing and distribution; and (v) development of rural areas
Education and Human Resource Development	(i) higher education, (ii) development of human resources with advanced knowledge and skills, (iii) technical and vocational training, (iv) young people's mutual understanding, (v) occupational safety and health, and (vi) Japanese language education
Information and Communications Technology (ICT)	(i) next generation internet, broadband networks, and ubiquitous networks; (ii) use of ICT-related services; (iii) electronic commerce, including procedures for accreditation of certification authorities for electronic signature; (iv) circulation of digital content over broadband networks; (v) human resource development relating to ICT, including skill standards; and (vi) collaboration on ICT research and development
Science and Technology	(i) science and technology suitable to provide a basis for industrial development, (ii) development of human resources with advanced knowledge and skills, and (iii) efficient utilization of natural resources
Small and Medium-Sized Enterprises (SMEs)	(i) strengthened management and competitiveness of SMEs, and (ii) human resource development relating to SMEs
Tourism	(i) tourism promotion, (ii) human resource development in the tourism sector, and (iii) sustainable development in the tourism sector
Environment	(i) conservation and improvement of the environment, and (ii) promotion of sustainable development

Source: Author's compilation.

<sup>37</sup> The term “the area of cooperation under this section may include” is used.

The chapter on trade in goods (Chapter 2) has a specific provision on cooperation in the automobile industry. Article 26: Co-operation in the Automobile Industry states that the two countries shall cooperate, with the participation of their respective automotive industries, to further enhance the competitiveness of the automotive industry in Malaysia. A technical assistance obligation that addresses a particular industry makes this EPA unique. The technical assistance mechanism also involves the private sectors in each country. At the same time, the assistance is not reciprocal as only Malaysia is the beneficiary of the technical assistance.

## **4.2. Japan–Indonesia EPA (JIEPA)**

### **4.2.1. Additional Technical Assistance under JIEPA**

JIEPA does not have chapters on TBT or SPS, two areas in which technical assistance plays an important role under WTO Agreements. Thus, no obligations can be found in JIEPA that go beyond those included in the WTO Agreements.

The intellectual property chapter (Chapter 9, Article 122) uses the term “shall cooperate,” but it also states that the forms of cooperation can be set forth in the Implementing Agreement. Some details are provided in the Implementing Agreement such as “the forms of cooperation may include... (ii) undertaking training and exchanging of experts...” (Implementing Agreement, Chapter 4, Article 10).

### **4.2.2. New Area Technical Assistance under JIEPA**

JIEPA includes a chapter on customs procedures that does not mention technical assistance. Likewise, JIEPA includes an investment chapter but it does not mention technical assistance either. Thus, JIEPA does not impose technical assistance obligations in the fields of customs procedures or investment.

The competition chapter (Chapter 11) simply states that the parties shall cooperate on the promotion of competition (Article 127). The Implementing Agreement (Chapter 5: Competition, Article 15: Technical Cooperation) stipulates that the forms of technical cooperation in support of capacity building “shall be (a) exchange of personnel of the competition authorities for training purposes; (b) participation of personnel of the competition authorities as lecturers or consultants at training courses; and (c) assistance by the competition authority of a Party to the advocacy and educational campaign of the competition authority of the other Party for the consumers, business sector, and related agencies of its Country.” Thus, JIEPA includes binding and specific technical assistance obligations with respect to competition.

### **4.2.3. Tailor-Made Technical Assistance under JIEPA**

Chapter 13 of JIEPA focuses on cooperation. Article 134: Basic Principle states that “parties shall promote cooperation” in nine fields: (i) manufacturing industries; (ii) agriculture, forestry, and fisheries; (iii) trade and investment promotion; (iv) human resource development; (v) tourism; (vi) information and communications technology; (vii) financial services; (viii) government procurement; and (ix) environment. It also states

that the forms of cooperation outlined in the chapter may be set forth in the Implementing Agreement (Article 135). The Implementing Agreement has a chapter on cooperation as well (Chapter 7) and each section stipulates “the area of cooperation under this section may include...” and then lists the forms of cooperation by using the term “forms of cooperation under this section may include...,” with specific modes of supplying technical assistance being mentioned (c.f. JMEPA uses the following language: “the area of cooperation under this section shall include...”). Table 4 is the summary of specific areas of cooperation under the nine fields covered by the Implementing Agreement for JIEPA.

**Table 4: Areas of Cooperation under the Implementing Agreement for JIEPA**

Sections	Areas of Cooperation
Manufacturing Industries	(i) strengthened competitiveness of manufacturing industries including management, technology, research and development, and industrial standards; (ii) human resource development related to manufacturing industries; and (iii) improved manufacturing industry infrastructure
Agriculture, Forestry, and Fisheries	(i) efficient and sustainable utilization of natural resources; (ii) human resource development related to agriculture, forestry, and fisheries; (iii) development and promotion of technologies related to agriculture, forestry, and fisheries; (iv) improvement of market infrastructure, including the gathering and dissemination of market information related to agriculture and fisheries; (v) improvement of productivity and quality in the field of agriculture, forestry, and fisheries; and (vi) fostering the well-being of people in rural areas
Human Resource Development	(i) development of human resources with advanced knowledge and skills; and (ii) technical and vocational training
Tourism	(i) promotion of tourism, (ii) human resource development related to tourism, and (iii) sustainable development of tourism
Information Communications Technology (ICT)	(i) next generation internet, and broadband and ubiquitous networks; (ii) use of ICT-related services; (iii) electronic commerce, including procedures for accreditation of certification authorities for electronic signatures; (iv) circulation of digital content over broadband networks; (v) further development of network infrastructure, including telecommunications centers, in rural areas; (vi) human resource development related to ICT; (vii) collaboration on ICT research and development; and (viii) disaster management using ICT, including tsunami warning systems
Financial Services	(i) implementation of sound prudential policies, and enhancement of effective supervision of financial institutions of a country operating in the other country; (ii) proper response to issues relating to globalization in financial services; (iii) maintenance of an environment that does not stifle legitimate financial market innovations; and (iv) supervision of global financial institutions to minimize systemic risks and limit contagion effects in the event of crises
Environment	(i) conservation and improvement of the environment and (ii) promotion of sustainable development including measures to address climate change such as clean development mechanisms

Note: Trade and investment promotion, and government procurement are not mentioned in the Implementing Agreement for JIEPA.

Source: Author's compilation.

JIEPA calls for the establishment of an Initiative for Manufacturing Industry Development Center to enhance the competitiveness of Indonesian industries. The Joint Statement at the signing of the EPA between Japan and the Republic of Indonesia included the following language:

Especially, in the long-term framework of "Initiative for Manufacturing Industry Development Center," the two governments will jointly work to enhance the competitiveness of the Indonesian manufacturing industry in various sectors, namely, Metalworking, Tooling (Mold & Die) Technique, Welding Technique, Energy Conservation, Small and Medium-Sized Enterprise Promotion Support, Export and Investment Promotion, Automotive/Auto parts, Electric/Electronic Equipment, Steel/Steel Products, Textile, Petrochemical, Oleo-chemical, Non Ferrous, and Food & Beverages. In order to implement cooperation projects, various schemes will be considered—Basic Study, Dispatchment of Expert, Provision of Equipment, Training, Seminar/Workshop, and Visiting Japanese Companies—based on the shared understanding of the two governments on the necessity and feasibility of projects in each sector.<sup>38</sup>

Thus, even though the main body of the Agreement does not mention technical assistance in specific industries the problem can be addressed in the negotiations on EPAs, and commitments on the provision of technical assistance can be mentioned in a political statement, which seems to be sufficient for developing countries seeking capacity building in a particular industry.

Chapter 8 of JIEPA is on energy and mining. Article 104: Cooperation states that both parties shall cooperate in the energy and mining sectors of Indonesia. It also says that areas of cooperation under this article shall include policy development, capacity building, and technology transfer. It is interesting to note that this article mentions technology transfer specifically, unlike in the case of technical assistance to the automobile industry in Malaysia under JMEPA.

Another example of sector-specific technical assistance under JIEPA can be found in the movement of natural persons. While the chapter on this subject (Chapter 7) does not include a stipulation on technical assistance, Annex 10: Specific Commitments for the Movement of Natural Persons states that "the Government of Japan shall notify the Government of Indonesia of the modalities and other related information on the training" (Section 6).<sup>39</sup> In practice, this has led to Japan organizing a 6-month course on the Japanese language for Indonesian applicants who satisfy the requirements for nurses and certified caregivers.

<sup>38</sup> The Joint Statement is available at <http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/joint.html>

<sup>39</sup> In the case of JPEPA, the same words can be found in the Implementing Agreement for the EPA.

### 4.3. Japan–Philippines EPA (JPEPA)

#### 4.3.1. Additional Technical Assistance under JPEPA

Just like in the case of JIEPA, JPEPA does not have chapters on TBT or SPS,<sup>40</sup> two areas in which technical assistance plays an important role under the relevant WTO Agreements.

The intellectual property chapter (Chapter 10) is the only chapter that includes the terms technical assistance or capacity building, with the exception of the chapter on cooperation. Chapter 10 states that parties shall develop and strengthen their cooperation in the field of intellectual property (Article 117) and specific modes of providing technical assistance are listed: “areas and forms of cooperation...may include, but not be limited to...(e) organizing international symposiums, workshops and fairs...” (Article 119). Thus, JPEPA has specific obligations related to intellectual property, but these are not binding.

#### 4.3.2. New Area Technical Assistance under JPEPA

JPEPA includes a chapter on customs procedures (Chapter 4), but the chapter does not mention technical assistance or capacity building. Likewise, JPEPA includes a chapter on investment (Chapter 8), but it also does not include any stipulation for technical assistance.

Chapter 12 of JPEPA covers competition and Article 136: Cooperation on Promoting Competition by Addressing Anti-Competitive Activities states that “the Parties shall ... cooperate in the field of promoting competition by addressing anti-competitive activities ...” The details and procedures of cooperation are provided in the Implementing Agreement, which has an article on technical assistance in the field of competition (Article 13) that lists specific modes of providing technical assistance that can be utilized, such as exchange of personnel for training purposes (e.g., “technical cooperation activities...may include...”). Thus, JPEPA has non-binding and specific requirements for technical assistance in the field of competition.

#### 4.3.3. Tailor-Made Technical Assistance under JPEPA

Chapter 14 of the JPEPA focuses on cooperation. Article 144: Basic Principle states that “Parties shall promote cooperation” and it enumerates 10 areas for such cooperation: (i) human resource development, (ii) financial services, (iii) information and communications technology, (iv) energy and environment, (v) science and technology, (vi) trade and investment promotion, (vii) small and medium-sized enterprises, (viii) tourism, (ix) transportation, and (x) road development. Avenues for cooperation are provided in Chapters 4–13 of the Implementing Agreement, with each chapter stipulating “the area of cooperation under this section may include...” and then listing the possible forms of cooperation by using the term “forms of cooperation under this section may

<sup>40</sup> The chapter on mutual recognition (Chapter 6) of JPEPA includes some elements of TBT-related issues. However, Chapter 6 does not mention technical assistance.



include....” The language is similar to that of JIEPA and unlike JMEPA. Table 5 is the summary of the specific areas of cooperation under the 10 fields.

**Table 5: Areas of Cooperation under the Implementing Agreement for JPEPA**

Sections	Areas of Cooperation
Human Resource Development	(i) language training and education on culture and social values, (ii) education and training, (iii) development of human resources with knowledge and skills at an advanced level, and (iv) harmonization of competency standards
Financial Services	(i) regulatory cooperation in the field of financial services, (ii) development of financial markets among the parties and in the Asian region, and (iii) improvement of financial market infrastructure among the parties including enhancing capabilities in monitoring financial and other relevant transactions arising from a liberalized trading environment
Information and Communications Technology (ICT)	(i) next generation internet and broadband and ubiquitous networks, (ii) use of ICT and ICT-related services, (iii) electronic commerce including procedures of accreditation of certification authorities for electronic signatures, (iv) circulation of digital content over broadband networks, (v) human resource development relating to ICT including skill standards, (vi) promotion of information exchange on development of technology, and (vii) encouragement of research and development
Energy and Environment	(i) improvement of energy utilization and (ii) protection and management of environment
Science and Technology	(i) advanced science and technology; (ii) agriculture, forestry, fisheries, and management of natural resources; and (iii) human health and nutrition
Trade and Investment Promotion	(i) exchange of views and information on trade and investment; (ii) encouraging potential investors to use the JETRO Business Support Center in the Philippines, Invest Japan Business Support Centers, and other related facilities operated by JETRO, the Department of Trade and Industry of the Philippines, and its attached agencies; (iii) seminars and other events for further expansion of trade and investment; (iv) exchange of experts, specialists, trainees, and researchers, which may include government officials, to promote knowledge on trade and investment; (v) information exchanges on the investment environment and laws and regulations related to business to promote further trade and investment and relevant business operations between the parties; and (vi) contacts between relevant government agencies and entities to maximize the benefits of cooperation
SMEs	(i) strengthened management and competitiveness of SMEs, and (ii) human resource development relating to SMEs
Tourism	(i) promotion and development of tourism, and (ii) human resource development
Transportation	(i) improvement of technology of transportation, and (ii) human resource development
Road Development	(i) improvement of the technology of road development, and (ii) human resource development

JETRO = Japan External Trade Organization, SMEs = small and medium-sized enterprises.  
Source: Author's compilation.

While the chapter on the movement of natural persons in JPEPA (Chapter 9) does not include any stipulation on technical assistance, details are provided in the Implementing Agreement. Specifically, Chapter 2, Article 10: Movement of Natural Persons covers training by stating that “the Government of Japan shall notify the Government of the Philippines of the modalities and other related information on training.” Just like in the case of JIEPA,<sup>42</sup> Japan shall organize a 6-month language and culture course for Philippine applicants who satisfy the travel requirements.

#### **4.4. Japan–Singapore EPA (JSEPA)**

##### **4.4.1. Additional Technical Assistance under JSEPA**

The scope of JSEPA is limited and it does not have a chapter on SPS or TBT,<sup>43</sup> two areas in which technical assistance plays an important role under WTO Agreements.

JSEPA’s chapter on intellectual property (Chapter 10) has specific stipulations on technical assistance. Article 96: Areas and Forms of Cooperation lists possible forms of cooperation such as training and the exchange of experts. Because it uses the term “the form of cooperation ...may include...,” the requirement is non-binding.

##### **4.4.2. New Area Technical Assistance under JSEPA**

While JSEPA has a chapter on customs procedures (Chapter 4), technical assistance is not mentioned. JSEPA includes two chapters on investment, Chapters 8 (investment) and 17 (trade and investment promotion). However, neither makes any mention of technical assistance in the field of investment policies.

The chapter on competition (Chapter 12) states that the parties shall cooperate in controlling anti-competitive activities (Article 104), with the details set forth in the Implementing Agreement. The Implementing Agreement includes an article on technical assistance in the field of competition policies (Chapter 5, Article 19), which states that “each party may render technical assistance to the other party for the effective management and adoption of laws and regulations controlling anti-competitive activities.” However, this is not a binding requirement and no specific mode of technical assistance is mentioned.

##### **4.4.3. Tailor-Made Technical Assistance under JSEPA**

What is unique in JSEPA is that the Agreement has a chapter on human resource development (Chapter 16). While Agreements between Japan and other ASEAN economies have a chapter on cooperation that includes various items, including human resource development, JSEPA has a chapter specifically focusing on how to develop human resources in the two countries’ research and government sectors, putting emphasis on mutual assistance. Article 124 in Chapter 16 states “the parties shall

<sup>41</sup> In the case of JIEPA, the same words can be found in the Annex of the EPA.

<sup>42</sup> The chapter on mutual recognition (Chapter 6) of JSEPA includes some elements of TBT-related issues. However, Chapter 6 does not mention technical assistance.

promote exchanges of their government officials with a view to mutual understanding of the policies of their respective governments.” While the requests for action are specific, they are not binding.

## **4.5. Japan–Thailand EPA (JTEPA)**

### **4.5.1. Additional Technical Assistance under JTEPA**

JTEPA does not include chapters on TBT or SPS,<sup>44</sup> two areas in which technical assistance is common under WTO Agreements. JTEPA has a substantial chapter on intellectual property (Chapter 10), which has 23 articles in total. However, technical assistance is not mentioned.

### **4.5.2. New Area Technical Assistance under JTEPA**

JTEPA includes a chapter on customs procedures (Chapter 4), although technical assistance is not mentioned. However, the Implementing Agreement (Chapter 1, Article 1) states that “the Parties shall cooperate through their customs authorities, when necessary and appropriate, in the area of research, development, and testing of new customs procedures and new enforcement aids and techniques, training activities of customs officers and exchange of personnel between them.” Thus, binding and specific obligations are imposed on the contracting parties by JTEPA. Although the term “when appropriate” is used, the level of obligation is high.

Investment and competition are covered in JTEPA. However, the investment chapter (Chapter 8) and the competition chapter (Chapter 12) of JTEPA do not make any mention of technical assistance or capacity building.

### **4.5.3. Tailor-Made Technical Assistance under JTEPA**

Chapter 13 of JTEPA focuses on cooperation. Article 152: Basic Principles states that “the Parties shall promote cooperation between the Governments of the Parties” and enumerates nine fields: (i) agriculture, forestry, and fisheries; (ii) education and human resource development; (iii) enhancement of the business environment; (iv) financial services; (v) information and communications technology; (vi) science, technology, energy and the environment; (vii) small and medium-sized enterprises; (viii) tourism; and (ix) trade and investment promotion. Nine chapters in the Implementing Agreement (Chapters 5–13) provide details on cooperation in the aforementioned fields. Each section stipulates “the areas of cooperation under this section include...” and then the “forms of cooperation under this section include....” Neither “may” nor “shall” is used before the word “include.” For example, the exchange of experts and holding of seminars and workshops are mentioned as forms of cooperation. Accordingly, the obligations are binding and specific for the contracting parties. Table 6 provides a summary of the specific areas of cooperation provided for in the Implementing Agreement.

<sup>43</sup> The chapter on mutual recognition (Chapter 6) of JTEPA includes some TBT-related issues. However, Chapter 6 does not mention technical assistance.

**Table 6: Areas of Cooperation under the Implementing Agreement for JTEPA**

Sections	Areas of Cooperation
Agriculture, Forestry, and Fisheries	(i) sound development of food industries covering all stages, from farm to market, including food distribution systems such as cold chain and packaging; (ii) human resource development; (iii) development and promotion of new technologies; (iv) quality control, inspection, and certification systems; (v) application of risk analysis; (vi) development of rural areas; (vii) human resource development; (viii) development of technical know-how and promotion of technology transfer; and (ix) promotion of joint investment leading to mutual benefits for relevant entities in both countries
Education and Human Resource Development	(i) enhancement of mutual understanding of policies of the respective parties, (ii) promotion of technical and vocational training including mould and die technologies, (iii) collaboration on academic research and institutional networking in areas of mutual interest, (iv) improvement of educational standards including those for management and development of educational institutions, (v) information and communications technology for education, (vi) promotion of technology transfer of educational tools and methods at all levels of education, (vii) Japanese and Thai language and cultural studies, (viii) joint third country training in areas of mutual interest based on the need of recipient countries, (ix) close cooperation between the educational and research institutions of the countries, and (x) promotion and facilitation of access to academic programs in both countries
Information and Communications Technology (ICT)	(i) advanced telecommunications networks including a next generation Internet and broadband network between Southeast Asia and Northeast Asia through the Asia Broadband Program; (ii) promotion of consumer, public, and private use of ICT-related services including newly emerging services such as interactive broadband multimedia services; (iii) promotion of electronic commerce and development of relating legislation and guidelines including cooperation for facilitation of procedures of accreditation or recognition of certification authorities; (iv) promotion of circulation of digital content over broadband platform; and (v) human resource development relating to ICT including skill standards
Science, Technology, Energy, and Environment	(i) science and technology suitable to provide a basis for industrial development; (ii) life sciences including biotechnology; (iii) advanced technology including material technology and engineering, nanotechnology, and biomass; (iv) standardization and certification; (v) energy including solar energy; (vi) natural resource management and environmental conservation and protection; and (vii) natural disaster risk reduction including early warning systems
Small and Medium-Sized Enterprises (SMEs)	(i) capacity building for SMEs; (ii) promotion of business collaboration and marketing development; (iii) strengthening of SMEs' management, competitiveness, and technological capability; (iv) improvement of financial access for SMEs; and (v) exchange of information on SMEs policies and best practices.
Tourism	(i) facilitation of tourism and enhanced travel connections; (ii) facilitation of application procedures for visas to promote tourism; (iii) mutual cooperation in tourism marketing and promotion including long stay, Thai spas, and Japanese hot springs ( <i>onsen</i> ), as well as marine tourism and ecotourism; and (iv) human resources development
Trade and Investment Promotion	(i) trade and investment promotion for Kitchen of the World project, (ii) Japan–Thailand Steel Industry Cooperation program, (iii) Automotive Human Resource Development Institute project, (iv) energy conservation, (v) value creation economy, (vi) public– private partnership, and (vii) textile and apparels cooperation

Note: Areas of cooperation under Enhancement of Business Environment and Financial Services are not provided for in the Implementing Agreement.

Source: Author's compilation.

## 4.6. Japan–Viet Nam EPA (JVEPA)

### 4.6.1. Additional Technical Assistance under JVEPA

The chapter on TBT (Chapter 6) in JVEPA includes an article on cooperation (Article 53), which states that parties shall cooperate in the field of TBT. The article also mentions seminars and exchange of officials as possible forms of cooperation by using the term “the forms of cooperation...may include...” Thus, the TBT chapter in JVEPA imposes specific but non-binding obligations. In contrast, the chapter on SPS (Chapter 5) does not include an article on cooperation nor does it mention technical assistance.

JVEPA includes a chapter on intellectual property (Chapter 9) in which there is an article on cooperation (Article 96). However, it simply says that the two countries shall cooperate in the field of intellectual property. The Implementing Agreement sets out the details in Article 6, stating that “Parties shall endeavor to promote through seminars and training courses, effective enforcement of border measures...” The obligation is not binding, although it is specific.

### 4.6.2. New Area Technical Assistance under JVEPA

Although JVEPA includes a chapter on customs procedures (Chapter 4), technical assistance is not mentioned there. However, the Implementing Agreement (Chapter 2, Article 2) states that “the Parties shall cooperate through their customs authorities, when necessary and appropriate, in the area of research, development, and testing of new customs procedures and new enforcement aids and techniques, training activities of customs officers, and exchange of personnel between customs authorities.” (This language is very similar to that found in the Implementing Agreement for JTEPA). Thus, binding and specific obligations are imposed on the contracting parties by JVEPA. Although the term “when appropriate” is used, the level of obligation is high.

JVEPA does not include a chapter on investment, while it does include a chapter on competition (Chapter 10). Article 102: Technical Cooperation states that “the Parties agree that it is in their common interest...to work together in technical cooperation activities related to strengthening competition policy...” No further detail on competition is provided either in this chapter or in the Implementing Agreement.

### 4.6.3. Tailor-Made Technical Assistance under JVEPA

Chapter 12 of JVEPA focuses on cooperation. Article 111: Basic Principles states that “the Parties shall promote cooperation between the Governments of the Parties” and enumerates eight fields: (i) agriculture, forestry, and fisheries; (ii) trade and investment promotion; (iii) small and medium-sized enterprises; (iv) human resource management and development; (v) tourism; (vi) information and communications technology; (vii) environment; and (viii) transportation. Eight chapters in the Implementing Agreement (Chapters 4–11) provide the modalities of cooperation in these fields in detail. Each section stipulates “the area of cooperation under this Chapter may include...” and then lists the forms of cooperation by using the term “forms of cooperation under this Chapter may include...” For example, the exchange of experts and holding of seminars and

workshops are mentioned as forms of cooperation. Accordingly, the obligations are non-binding and specific. Table 7 is the summary of the areas of cooperation under the Implementing Agreement.

**Table 7: Areas of Cooperation under the Implementing Agreement for JVEPA**

Sections	Areas of Cooperation
Agriculture, Forestry, and Fisheries	(i) human resource development related to agriculture, forestry, and fisheries
Small and Medium-Sized Enterprises (SMEs)	(i) strengthening of management and competitiveness of SMEs, (ii) human resource development related to SMEs, and (iii) development of supporting industries
Human Resource Management and Development	(i) language training and education on culture and social values, (ii) education and training, (iii) human resource management and development with knowledge and skills at an advanced level, and (iv) harmonization of competency standards
Tourism	(i) promotion and development of tourism, and (ii) human resource development related to tourism
Information and Communications Technology (ICT)	(i) human resource development related to ICT including skill standards; (ii) next generation IP-based network, broadband networks, and ubiquitous networks; (iii) mobile communications technology; (iv) promotion of information exchanges on development technology; (v) circulation of digital content over broadband networks; and (vi) research and development
Environment	(i) conservation and improvement of the environment and (ii) promotion of sustainable development including measures to address climate change (e.g., Clean Development Mechanism and the co-benefit approach)
Transportation	(i) human resource development related to transportation

Note: Specific areas of cooperation in Trade and Investment Promotion are not included in the Implementing Agreement.  
Source: Author's compilation.

#### 4.7. Summary of Empirical Findings of Technical Assistance under EPAs

The depth of technical assistance requirements set by EPAs varies in terms of both the level of binding and specificity. While technical assistance plays an important role in the WTO Agreements covering TBT and SPS issues, most EPAs do not have chapters on TBT or SPS, and a minority of the EPAs analyzed in this paper impose additional technical assistance obligations in these two fields (Table 8). Among them, JMEPA is unique in the sense that it sets binding and specific obligations of technical assistance in the field of SPS.

Intellectual property is the only area where Japan's EPAs with ASEAN member countries have significant additional technical assistance obligations vis-à-vis those

under the WTO. While the TRIPS Agreement states that Members shall furnish technical and financial assistance (and highlights training) by using the term “shall include,” the level of specificity of the mode of providing technical assistance is not high. Though the technical assistance obligations in this field under the EPAs are not binding, the intellectual property chapters of JMEPA, JIEPA, JPEPA, JSEPA, and JVEPA offer specific methods of providing technical assistance including seminars, trainings, staff exchanges, fairs, and symposiums, thereby exceeding the stipulations in the TRIPS Agreement in terms of specificity.

Investment and competition (i.e., Singapore issues) are two areas where there are either no WTO Agreements or only thin Agreements without technical assistance provisions, but the technical assistance obligations under the Japan–ASEAN EPAs in those two areas vary widely (Table 9). In the case of investment, most EPAs do not have investment chapters, with the only exception being JMEPA, which mandates only slightly deeper obligations than the WTO. In contrast, in the case of competition most EPAs include technical assistance provisions. For example, JIEPA imposes binding and specific technical assistance obligations on contracting parties, such as the exchange of personnel and their participation as lecturers in training courses. In the field of customs procedures, which is another Singapore issue, JMEPA, JTEPA, and JVEPA impose binding and specific technical assistance obligations.

One of the distinctive features of EPAs between Japan and ASEAN member countries is the inclusion of a chapter dedicated to cooperation (except JSEPA, which can be regarded as a North–North agreement). The cooperation chapter in each EPA usually lists the fields in which cooperation is required and the specific forms of assistance are usually stated in the respective Implementing Agreements (Table 10). Furthermore, industry-specific technical assistance obligations are also included in some of the EPAs. In the case of JMEPA, technical assistance to Malaysia’s automobile industry is a binding obligation. Likewise, JIEPA imposes binding obligations on Japan to provide technical assistance to Indonesia’s mining and energy sectors. JIEPA and JPEPA oblige the Japanese government to sponsor Japanese language training for Indonesian and Philippine applicants for nurses. Thus, as far as countries have a clear idea of their industrial development policies, EPAs can be an effective tool in upgrading specific industries.

The assumed negative correlation in Japan–ASEAN EPAs between developmental level and the number of technical assistance provisions does not seem to be valid. Japan’s EPAs with lower income countries in ASEAN do not necessarily cover more technical assistance or cooperation issues. For example, Japan’s EPA with Malaysia, which is a middle income country, has the most comprehensive technical assistance programs of any of Japan’s EPAs with ASEAN member countries. This is perhaps because of Malaysia’s needs to upgrade its regulatory framework in several areas. In contrast, the issues covered in both JIEPA and JPEPA are limited as neither has a chapter on TBT, for example. At the same time, JVEPA includes more technical assistance obligations than JIEPA, JPEPA, and JTEPA.

**Table 8: Summary of Additional Technical Assistance Obligations under Japan–ASEAN EPAs**

	<b>TBT</b>	<b>SPS</b>	<b>IPR</b>
<b>JMEPA</b>	Additional TA (non-binding and specific)	Additional TA (binding and specific)	Additional TA (non-binding and specific)
<b>JIEPA</b>	No chapter	No chapter	Additional TA (non-binding and specific)
<b>JPEPA</b>	No chapter	No chapter	Additional TA (non-binding and specific)
<b>JSEPA</b>	No chapter	No chapter	Additional TA (non-binding and specific)
<b>JTEPA</b>	No chapter	No chapter	No TA mentioned
<b>JVEPA</b>	Additional TA (non-binding but specific)	No TA mentioned	Additional TA (non-binding and specific)

EPAs = economic partnership agreements, IPR = intellectual property rights, JIEPA = Japan–Indonesia Economic Partnership Agreement, JMEPA = Japan–Malaysia Economic Partnership Agreement, JPEPA = Japan–Philippines Economic Partnership Agreement, JSEPA = Japan–Singapore Economic Partnership Agreement, JTEPA = Japan–Thailand Indonesia Economic Partnership Agreement, JVEPA = Japan–Viet Nam Indonesia Economic Partnership Agreement, SPS = sanitary and phytosanitary, TA = technical assistance, TBT = technical barriers to trade.  
Source: Author's compilation.

**Table 9: Summary of New Area Technical Assistance under Japan–ASEAN EPAs**

	<b>Customs Procedures</b>	<b>Investment</b>	<b>Competition</b>
<b>JMEPA</b>	TA mentioned (binding and specific)	TA mentioned (non-binding and non-specific)	TA mentioned (non-binding and specific)
<b>JIEPA</b>	No TA mentioned	No TA mentioned	TA mentioned (binding and specific)
<b>JPEPA</b>	No TA mentioned	No TA mentioned	TA mentioned (non-binding and specific)
<b>JSEPA</b>	No TA mentioned	No TA mentioned	TA mentioned (non-binding and non-specific)
<b>JTEPA</b>	TA mentioned (binding and specific)	No TA mentioned	No TA mentioned
<b>JVEPA</b>	TA mentioned (binding and specific)	No chapter	No TA mentioned

EPAs = economic partnership agreements, JIEPA = Japan–Indonesia Economic Partnership Agreement, JMEPA = Japan–Malaysia Economic Partnership Agreement, JPEPA = Japan–Philippines Economic Partnership Agreement, JSEPA = Japan–Singapore Economic Partnership Agreement, JTEPA = Japan–Thailand Indonesia Economic Partnership Agreement, JVEPA = Japan–Viet Nam Indonesia Economic Partnership Agreement, TA = technical assistance.  
Source: Author's compilation.



**Table 10: Summary of Tailor-Made Technical Assistance under Japan–ASEAN EPAs**

	Cooperation	Industry Specific
<b>JMEPA</b>	TA mentioned (binding and specific)	Automobile: TA mentioned (binding and specific)
<b>JIEPA</b>	TA mentioned (non-binding and specific)	Energy and Mining: TA mentioned (binding and specific) Nursing: TA mentioned (binding and specific)
<b>JPEPA</b>	TA mentioned (non-binding and specific)	Nursing: TA mentioned (binding and specific)
<b>JSEPA</b>	No chapter	No TA mentioned
<b>JTEPA</b>	TA mentioned (binding and specific)	No TA mentioned
<b>JVEPA</b>	TA mentioned (non-binding and specific)	No TA mentioned

EPAs = economic partnership agreements, JIEPA = Japan–Indonesia Economic Partnership Agreement, JMEPA = Japan–Malaysia Economic Partnership Agreement, JPEPA = Japan–Philippines Economic Partnership Agreement, JSEPA = Japan–Singapore Economic Partnership Agreement, JTEPA = Japan–Thailand Indonesia Economic Partnership Agreement, JVEPA = Japan–Viet Nam Indonesia Economic Partnership Agreement.  
Source: Author's compilation.

## 5. Conclusion and Implications on the Regionalism–Multilateralism Debate

Based on a comparative analysis of technical assistance obligations under the WTO and EPAs between Japan and ASEAN countries, the latter include several examples of technical assistance obligations that can be considered WTO-plus. With regard to obligations in fields where the WTO already imposes obligations on (some) Members, most Japan–ASEAN EPAs have additional specific technical assistance obligations, particularly in the field of intellectual property. Some of them also include additional technical assistance obligations in the fields of TBT and SPS.

With regard to new area technical assistance obligations covering three of the four Singapore Issues—customs procedure and trade facilitation, investment, and competition—the level of technical assistance obligations under the Japan–ASEAN EPAs are not homogeneous. While the majority of agreements set non-binding but very specific technical assistance obligations in the field of competition, only one agreement (JMEPA) has a chapter on investment that mentions the technical assistance obligations (non-binding and non-specific). However, one should not overlook the possibility that technical assistance is provided to ASEAN countries by Japan in the field of competition under respective EPAs, because those EPAs impose obligations of implementing effective competition policies on counterpart ASEAN countries. While this research focuses on WTO-plus elements in technical assistance obligations, further research is

needed on the relation between WTO-plus general obligations and WTO-plus technical assistance obligations in the field of competition.<sup>45</sup>

In addition, all Japan–ASEAN EPAs except JSEPA include a chapter on cooperation that covers various types of tailor-made technical assistance programs. Moreover, some EPAs include concrete technical assistance measures targeting a specific industry, for example, in the automobile sector under JMEPA and in the energy and mining sectors under JIEPA. Thus, the tailor-made technical assistance obligations under a number of Japan–ASEAN EPAs are substantial.

From the perspective of the regionalism–multilateralism debate, meaningful regional arrangements that deliver tangible benefits to members pose the succeeding fundamental question of whether or not such agreements contribute to the multilateral economic system. In this sense, the obligation to provide meaningful technical assistance under FTAs is not an exception. The more substantial the technical assistance mechanisms under an FTA are, the more serious its systemic implications become. How can we consider that technical assistance mechanisms under Asian FTAs contribute to the sound development of the multilateral system? In tackling this regionalism–multilateralism question on technical assistance, two issues arise.

First, the implications on capacity building of technical assistance under FTAs should be considered. In Section 2 we discussed the relationship between WTO-plus technical assistance obligations on developed countries and WTO-plus general obligations on developing countries. The argument proposed was that there is a high probability that technical assistance obligations under FTAs that build specific capacities contribute to the enhancement of developing countries' capability in drawing up policies in general. In fact, the forms of technical assistance mentioned in the Japan–ASEAN EPAs are training, seminars, and exchanges of staff, which all contribute to the general capacity of trade policy making in the recipient countries. Thus, the beneficiaries of the establishment of a proper regulatory framework through technical assistance under an FTA are not limited to FTA members.

Second, we should consider why technical assistance should be limited to FTA partners. A high degree of technical assistance commitments under FTAs is beneficial to developing country members, but we should not rule out the possibility of negative impacts on non-members. More specifically, there is the risk of crowding out effects. For example, Japan's provision of a large amount of technical assistance to ASEAN countries under Japan–ASEAN EPAs may lead to a reduction in Japan's technical assistance to African countries. In considering this issue, the stipulation in JTEPA on human resource development is helpful: "joint third country training in areas of mutual interest based on the need of recipient countries."<sup>46</sup> This is known as third-country training, where officials from countries other than Japan and Thailand are trained. Thus,

<sup>44</sup> There is a possibility that ASEAN countries undertook to implement binding commitments in exchange for binding commitments of technical assistance in the field of competition policy. See the caveat in Section 2 and Section 3 of this paper.

<sup>45</sup> Implementing Agreement for JTEPA, Chapter 6: Cooperation in the Field of Education and Human Resource Development.

we can say that Japan and Thailand have attempted to multilateralize the technical assistance obligations under their EPA to a certain degree.<sup>47</sup>

There is wide consensus that technical assistance is needed for developing countries to participate fully in international trade activities. However, there are also situations in which developing countries undertake to implement bound commitments in exchange for unbound commitments of assistance from developed countries under the WTO system (Finger and Winter 2002). FTAs have the potential to become a powerful avenue for the provision of technical assistance to developing countries. In fact, all Asian FTAs analyzed in this paper include various types of technical assistance obligations, some of which are binding as well as specific. In some cases, industry-specific capacity building programs are also included in FTAs. Capacity building through technical assistance under FTAs contributes to the enhancement of developing countries' trade-related policy making in general. Furthermore, the beneficiaries of technical assistance can also include non-members of FTAs when joint third-country training is included in an EPA as is the case with some Japan-ASEAN EPAs. Thus, technical assistance under a regional scheme can assist capacity building in both a regional and multilateral context.

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<sup>46</sup> In the case of Singapore the Japan–Singapore Partnership Programme for the 21st Century, which was launched in 1994 and included third-country training, is linked to the current JSEPA. See Joint Announcement of the Prime Ministers of Singapore and Japan at the Signing of the Agreement Between the Republic of Singapore and Japan. Available at [http://www.fta.gov.sg/jsepa/fta\\_jsepa\\_jointannouncement.pdf](http://www.fta.gov.sg/jsepa/fta_jsepa_jointannouncement.pdf)

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## **Is Technical Assistance under Free Trade Agreements WTO-Plus?**

A Review of Japan–ASEAN Economic Partnership Agreements

This paper assesses whether technical assistance obligations under free trade agreements (FTAs) are WTO-plus. By presenting a detailed textual analysis of World Trade Organization (WTO) Agreements and several FTAs in Asia, the paper identifies how much additional technical assistance developing member countries can enjoy if they sign North–South FTAs with developed countries.

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