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Deepening Trade Facilitation in ASEAN External Agreements: From ASEAN+1 FTAs to CEPs

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ABSTRACT

Trade facilitation is a key driver of economic integration within ASEAN and its external trade agreements. However, the depth, binding level, and legal enforceability of trade facilitation commitments in some Free Trade Agreements (FTAs) and Comprehensive Economic Partnership Agreements (CEPs) with external partners are uneven. This study examines the evolution of trade facilitation provisions in several ASEAN+1 FTAs and CEPs, including ACFTA, AKFTA, AJCEP, AIFTA, AANZFTA, AHKFTA, and the Regional Comprehensive Economic Partnership (RCEP). The paper employs a doctrinal and comparative legal analysis of treaty texts, supported by Baldwin's theory of 21st-century regionalism and the concept of incremental legal institutionalism under the ASEAN Way as analytical frameworks. The paper argues that the design of ASEAN's external trade facilitation in ASEAN+1 FTAs and CEPs with partners reflects a gradual shift from traditional regionalism to supply chain-oriented integration. While earlier ASEAN+1 FTAs contained fragmented, cooperation-oriented provisions, later agreements introduced more consolidated and operational disciplines. Findings indicate that this evolution of trade facilitation demonstrates a pattern of transitional deep integration, following the ASEAN Way with best-endavours language, flexible commitments, and selective dispute settlement. The study concludes that future agreements should consolidate dispersed provisions into operational disciplines and strengthen implementation mechanisms to enhance enforceability.

Keywords: ASEAN; Free trade agreements; Comprehensive Economic Partnership agreements; Trade facilitation



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1. Introduction

In recent decades, the Association of Southeast Asian Nations (ASEAN) has made a concerted effort to bolster its cooperation with a range of partners across diverse fields, with a particular emphasis on trade and economic development. A landmark achievement in this regard was the establishment of the ASEAN Economic Community (AEC), which represents a pivotal advancement in ASEAN's integration into the global economic landscape. The AEC aims to enhance the region's competitiveness and economic resilience by positioning "ASEAN Centrality" in external economic relations. This has been facilitated through various measures such as its negotiations for Free Trade Agreement (FTA) and Comprehensive Economic Partnership Agreements (CEP) (ASEAN, 2021, p. 25). The AEC Blueprint 2025 outlines a comprehensive vision for ASEAN's continued integration into the worldwide economy. It emphasizes the importance of FTAs and CEPs with key trading partners, including major economies like China, Japan, South Korea, India, Australia, and New Zealand (ASEAN, 2021, p. 35). These agreements aim to expand trade and address deeper economic ties, thereby fostering a more interconnected regional market. Furthermore, ongoing negotiations for significant trade agreements such as the Regional Comprehensive Economic Partnership (RCEP) and the ASEAN-Hong Kong Free Trade Agreement (FTA) illustrate ASEAN's proactive approach to solidifying its trade relations (ASEAN, 2021).

The FTAs and CEPs between ASEAN and its trading partners incorporate essential provisions geared towards the liberalization of goods trade and the enhancement of trade facilitation processes. Trade facilitation plays an integral role in bolstering economic development and fostering regional integration by effectively reducing transaction costs and enhancing the overall efficiency of cross-border trade (Tran, 2021, p.1). By facilitating smoother customs procedures and streamlining regulations, trade facilitation enables greater participation in global supply chains, thus encouraging robust engagement from the private sector in international trade. Nevertheless, trade facilitation has long been a critical concern in ASEAN's economic and trade relations with its partners. Traditional FTAs between ASEAN and its partners have primarily focused on provisions related to the liberalization of goods trade, such as tariff commitments, rules of origin, and non-tariff measures. Additionally, it is noteworthy that the provisions related to trade facilitation within these FTAs and CEPs vary significantly in their structure. While many agreements incorporate trade facilitation provisions across different sections, others, such as AANZFTA and the RCEP, approach trade facilitation in more focused and dedicated chapters. According to Marn-Hoong Wong and Marie Isabella Pellan, the trade facilitation provisions in ASEAN+1 FTAs generally lack specific clauses and commitments when compared to those in the ASEAN Trade in Goods Agreement (ATIGA) and the ASEAN Economic Community (AEC) Blueprint (Wong & Pellan, 2012, p. 3). This discrepancy highlights the need for ongoing dialogue and collaboration among ASEAN member states and their partners to

further enhance trade facilitation measures, ensuring that they support economic growth and development throughout the region.

Currently, researchers have paid relatively little attention to trade facilitation between ASEAN FTAs/CEPs and their external partners. Most existing studies tend to focus on the intra ASEAN trade facilitation. For instance, Brent Layton examined trade facilitation in the context of the ASEAN Economic Community Blueprint (AEC Blueprint), adopting a broad perspective consistent with ASEAN's approach. He viewed trade facilitation not merely as improving information flows related to traded goods, but also as encompassing enhancement in trade logistics (Layton, 2008). Similarly, Yann Duval (2011, p. 6) analyzed the scope of trade facilitation under the Trade Facilitation Work Programme as defined in the ASEAN Trade in Goods Agreements (ATIGA) without providing a specific definition of trade facilitation. According to ATIGA, the scope of the Trade Facilitation Work Programme covers customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, the ASEAN Single Window, and other areas identified by the ASEAN Free Trade Area Council (AFTA Council).

Among the limited number of scholars who have examined trade facilitation between ASEAN and its external partners, Wong and Pellan examined trade facilitation provision in ASEAN and five ASEAN+1 FTAs, namely ASEAN–Australia–New Zealand, ASEAN–China, ASEAN–India, ASEAN–Japan, and ASEAN–Korea. When compared with the trade facilitation coverage under the ATIGA and the AEC Blueprint, the authors found that the provisions in ASEAN+1 FTAs are generally less precise and have shallower commitments. Additionally, there appears to be no consistent approach to trade facilitation across the five ASEAN+1 FTAs (Wong & Pellan, 2012).

2. Methodology

This study utilizes a doctrinal and comparative legal approach to examine the evolution of trade facilitation provisions in ASEAN+1 FTAs and CEPs. The paper restricts its analysis to the trade facilitation discipline, namely, customs procedures, transparency in trade regulations, standards, conformity assessments, and private sector participation and business facilitation, which reflects ASEAN's prevailing approach.

The paper adopts Baldwin's methodology of 21st-century regionalism (Baldwin, 2011) through legally observable indicators within trade facilitation provisions. Baldwin distinguishes between 20th-century regional trade agreements, which were shallower, focusing on tariffs and rules of origin, and 21st-century regional trade agreements, which are deeper, with tariff preferences no longer being as important on a global scale. In this study, three analytical dimensions are used to assess the depth of trade facilitation commitments in ASEAN+1 FTAs and CEPs: i) Supply-chain centric facilitation: whether custom provisions introduce tools to reduce border time and administrative uncertainty, including risk management, advance rulings and single window systems; ii) Depth and precision of behind the border obligations: whether trade regulations, standards and conformity assessments

impose specific and legally precise disciplines rather than minoring WTO principles; iii) The degree of institutionalisation of business and SME facilitation mechanism: whether cooperation mechanism meaningfully support the participation of private sector in regional supply chains.

Parallel to this, the study is based on the concept of incremental legal institutionalism of the ASEAN way to explain how to design trade facilitation provisions in ASEAN's FTAs/CEPs with its partners. ASEAN's regional practice reflects the ASEAN way, particularly its emphasis on gradualism and respect for regulatory autonomy. To capture this dynamic, the study evaluates trade facilitation provisions based on several variables: normative language (mandatory or best-endeavour formulation), the specificity of commitments (the inclusion of timelines or clearly defined implementation requirements), and availability of dispute settlement (whether obligations are subject to or exempt from such mechanisms).

With Baldwin's deep integration of 21st-century and ASEAN incremental institutionalism under the ASEAN Way, the paper evaluates whether the evolution from ASEAN+1 FTAs to CEP represents juridical depth in trade facilitation or continued reliance on a flexible, cooperation-based mechanism. This provides the basis for evaluating ASEAN's evolving trade facilitation architecture with partners in the post-ASEAN Economic Community 2025 context.

3. Discussion

3.1 The Notion of Trade Facilitation Provisions From the Asean Perspective

Currently, there is no unified definition of trade facilitation. Within the framework of the World Trade Organization (WTO), trade facilitation refers to the simplification and harmonization of international trade procedures. This includes activities, practices, and processes for assessing conformity, as well as the handling of data or other information necessary for the movement of goods in international trade (Asian Development Bank & United Nations Economic and Social Commission for Asia and the Pacific, 2013, p. 4). According to the World Customs Organization (WCO), the goal of trade facilitation is to reduce unnecessary trade barriers by implementing modern techniques and technologies that enhance management quality in accordance with international standards (Asian Development Bank & United Nations Economic and Social Commission for Asia and the Pacific, 2013). In free trade agreements (FTAs) or preferential trade agreements, trade facilitation is defined as 'the process of simplifying and harmonizing procedures, utilizing new technologies, and implementing measures to address administrative obstacles to trade' (Tran, 2021, p.8). Overall, trade facilitation encompasses the simplification and harmonization of procedures, ultimately reducing transaction costs in international trade.

To date, ASEAN has not provided a specific definition for trade facilitation in goods. ASEAN's current documents only acknowledge trade facilitation as a driving force for

economic development and regional integration, outlining the goals, principles, and scope of trade facilitation within the bloc. These elements are aligned with the WTO Trade Facilitation Agreement (TFA) and the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures. However, they are broader in certain areas. Under ASEAN's Framework on Trade Facilitation, the scope of trade facilitation includes customs procedures, transparency in trade regulations, standards and conformity assessments, private sector involvement, and creating a business-friendly environment and other specific areas (such as ASEAN Single Window and the ASEAN Customs and Transit System).¹ This framework corresponds with the ASEAN Trade Facilitation Work Programme under the ASEAN Trade in Goods Agreement, which covers customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, ASEAN Single Window, and other areas.² While the WTO Trade Facilitation Agreement focuses primarily on simplifying, harmonizing, and increasing transparency in customs procedures and border control to expedite the movement, release, and clearance of goods. Interestingly, the scope defined in the above ASEAN instruments appears mainly focused on intra-trade rather than trade between SEAN and external partners. No existing FTAs/CEPs between ASEAN and external partners explain the scope of trade facilitation; therefore, in this paper, the author will define the scope of trade facilitation, being consistent with ATIGA, which encompasses customs procedures, transparency in trade regulations, standards and conformity assessments, private sector involvement, and creating a business-friendly environment and other specific areas.

3.2 The Chronological Development of Trade Facilitation Provisions in ASEAN+1 FTAs and CEPs

The development of trade facilitation provisions in ASEAN+1 FTAs and CEPs demonstrates a shift from fragmented and cooperation-oriented disciplines to more consolidated frameworks. As of now, ASEAN has signed FTAs or CEPs with partners, including China, South Korea, Japan, India, Hong Kong, Australia, and New Zealand, as well as the Regional Comprehensive Economic Partnership (RCEP) with five partners (China, South Korea, Japan, New Zealand, and Australia). Notably, trade facilitation provisions under these FTAs/CEPs are articulated in a single article or chapter concerning customs procedures and trade facilitation, or the articles pertaining to trade facilitation are dispersed throughout different articles under the Trade in Goods Agreement.

In earlier ASEAN+1 FTAs agreements such as ACFTA, AKFTA, AJCEP, and AIFTA, trade facilitation elements were embedded within various clauses in the Trade in Goods Agreement, with no specific chapter dedicated solely to this content. For instance, in the ASEAN-China Free Trade Area (ACFTA), transparency in trade regulations is addressed

¹ ASEAN Trade Facilitation Framework (adopted 21 November 2015) pt. II, s. 5, <https://asean.org/wp-content/uploads/2022/03/ASEAN-Trade-Facilitation-Framework.pdf>.

² ASEAN Trade in Goods Agreement (ATIGA) (signed 26 February 2009, entered into force 17 May 2010), art. 46, <https://asean.org/wp-content/uploads/2020/12/ASEAN-Trade-in-Goods-Agreement.pdf>.

within clauses related to quantitative restrictions and non-tariff barriers. Meanwhile, standards and conformity assessments are governed by articles concerning WTO rules and protocols on technical trade barriers and sanitary and phytosanitary measures. Similarly, Article 1 of the Third Protocol to Amend the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among the Government of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea govern transparency, custom procedures, and trade facilitation. These agreements do not establish a dedicated chapter on custom procedures and trade facilitation, which reflects a conventional tariff-centric approach to regional integration.

In the second phase of development, the emergence of the AANZFTA and AHKFTA demonstrates a progressive transformation in ASEAN's approach to trade facilitation with its partners. These agreements introduced standalone chapters on customs procedures and trade facilitation and incorporated more detailed disciplines, transparency of trade procedures and regulations, standards, technical regulations, conformity assessment procedures, and cooperation in promoting in the SMSs participation. These changes occurred in the context of ASEAN's objective to enhance competitiveness and facilitate the integration of the ASEAN single market (Association of Southeast Asian Nations, 2015), thereby positioning ASEAN as a dynamic segment of the global value chain.

The most recent phase is exemplified by RCEP, which establishes the largest free trade area in the world, accounting for approximately 30% of global GDP (Trung tâm WTO và Hội nhập, Vietnam Chamber of Commerce and Industry, n.d.), stipulates trade facilitation in a chapter dedicated to customs procedures and trade facilitation, along with several related chapters. RCEP contains a dedicated Chapter 4 on customs procedures and complements it with some specialised chapters on sanitary and phytosanitary measures³, and on standards, technical regulations, and conformity assessments⁴. The distinctions between RCEP and previous free trade agreements (FTAs) stem from the fact that ASEAN's FTAs with countries such as South Korea, China, Japan, India, Australia, and New Zealand are categorized as traditional FTAs. These traditional FTAs typically "include only commitments related to trade liberalization in goods." In contrast, new-generation FTAs, such as RCEP, "have a broader scope and more robust levels of liberalization." Fukunari Kimura and his colleagues (Kimura et al., 2022, p. 24) have noted that while RCEP may not create revolutionary trade governance changes, it alters the nature of ASEAN's FTAs. Beyond its initial goal of consolidating ASEAN+1 FTAs, RCEP enhances the quality of agreements by incorporating new rules about competition, intellectual property, e-commerce, and public procurement. Nevertheless, the design of trade facilitation under RCEP is more deliberate. The majority of clauses reveal weak enforcement, emphasize cooperation rather than binding obligations, and selective dispute settlement coverage toward some trade facilitation measures.

³ Regional Comprehensive Economic Partnership (RCEP) Agreement (adopted 15 November 2020, entered into force 1 January 2022) ch. 5, <https://asean.org/wp-content/uploads/2024/10/Regional-Comprehensive-Economic-Partnership-RCEP-Agreement-Full-Text.pdf>.

⁴ RCEP, ch. 6.

3.3 Some Comparative Analysis of the Provisions on Trade Facilitation in ASEAN+1 FTAs/CEPs

In this paper, trade facilitation in ASEAN+1 FTAs/CEPs addresses the following issues: customs procedures; transparency of trade procedures and regulations; standards, technical regulations, and conformity assessment procedures; private sector participation; and business facilitation. The existing provisions on trade facilitation in the five ASEAN+1 FTAs/CEPs are described in Table 1.

Table 1. The provisions related to trade facilitation in AANZFTA, ACFTA, AKFTA, AJCEP, AHKFTA, AIFTA, and RCEP⁵

Ordinal number	FTAs/CEPs	Custom procedures	Transparency of trade procedures and regulations	Standards, technical regulations, and conformity assessment procedures	Private sector Participation and business facilitation
a	AANZFTA	Chapter 4 Custom to Procedures	Article 6 Publication and administration of trade regulations	Chapter 6 Standards, technical regulations and conformity assessment procedures	Chapter 16 Micro, small and medium enterprises of the Second Protocol to amend AANZFTA

⁵ Source: The author's compilation based on the above agreements as published on the ASEAN website, <https://asean.org/our-communities/economic-community-2/>.

b	ACFTA	Section B Custom Procedures and trade facilitation. of Protocol to amend Framework Agreement on Comprehensiv e Economic Co-operation and certain Agreements thereunder between ASEAN and the People's Republic of China	Article 4 Transparency- Agreement on trade in goods of the Framework Agreement on Comprehensiv e Economic Co-operation between ASEAN and the People's Republic of China	Article 7 WTO Disciplines – Agreement on trade in goods of the Framework Agreement on Comprehensiv e Economic Co-operation between ASEAN and the People's Republic of China	Article 7 (2) Other areas of economic co- operation – Framework Agreement on Comprehensiv e Economic Co-operation between ASEAN and the People's Republic of China
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c	AKFTA	Article 1 Annex-the Framework Agreement on Comprehensive Economic Cooperation among ASEAN and the Republic of Korea	Article 4 Transparency – Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation among ASEAN and the Republic of Korea	Article 7 WTO Discipline, Article 8 Quantitative Restrictions and Non-tariff Barriers and Sanitary and Phytosanitary Measures – Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among ASEAN and the Republic of Korea	Article 3 – Annex of the Framework Agreement on Comprehensive Economic Cooperation among ASEAN and the Republic of Korea
d	AJCEP	Article 22 Custom Procedure – Agreement on Comprehensive Economic Partnership among ASEAN and Japan	Article 4 Transparency-Agreement on Comprehensive Economic Partnership among ASEAN and Japan	Chapter 5 Standards, Technical Regulations and Conformity Assessment Procedures-Agreement on Comprehensive Economic Partnership among ASEAN and Japan	Chapter 8 Economic Cooperation-Agreement on Comprehensive Economic Partnership among ASEAN and Japan

e	AHKFTA	Chapter 4 Custom Procedure and Trade Facilitation – ASEAN-Hong Kong, China Free Trade Agreement	Article 8 Publication and Administratio n of Trade Regulations- ASEAN-Hong Kong, China Free Trade Agreement	Chapter 6 Standards, Technical Regulations and Conformity Assessment Procedures- ASEAN-Hong Kong, China Free Trade Agreement	Chapter 9 Economic Cooperation- ASEAN-Hong Kong, China Free Trade Agreement
f	AIFTA	Article 14 Custom Procedure – Agreement on Trade in Goods under the Framework Agreement on Comprehensiv e Economic Cooperation between ASEAN and the Republic of India	Article 14 Custom Procedure – Agreement on Trade in Goods under the Framework Agreement on Comprehensiv e Economic Cooperation between ASEAN and the Republic of India		
g	RCEP	Chapter 4 Custom Procedure and Trade Facilitation	Article 4.5 Transparency	Chapter 6 Standards, Technical Regulations, and Conformity Assessment Procedures	Chapter 14 Small and Medium Enterprises

3.3.1 The Provisions on Customs Procedures

Customs procedures constitute a core component of trade facilitation, as outlined in most FTAs/CEPs between ASEAN and its partners. However, the provisions regarding customs

procedures vary significantly among these agreements, reflecting the evolving priorities of ASEAN with each partner.

Earlier-generation agreements such as the AJCEP, ACFTA, and AKFTA tend to treat customs procedures as an area for future cooperation (Wong & Pellan, 2012, p. 4) or address them through a concise provision. In contrast, later-generation agreements, such as the AANZFTA, AHKFTA, and RCEP, demonstrate a shift toward deeper commitments by incorporating a dedicated chapter on customs procedures and trade facilitation.⁶ These provisions aim to ensure predictability, consistency, and transparency in the application of customs laws and regulations. They also promote the efficient management of customs processes and the speedy clearance of goods. Notably, in agreements such as the RCEP or AHKFTA, the objective extends further to the simplification and harmonization of customs procedures with international standards, which some parts go beyond the scope of the WTO Trade Facilitation Agreement (Association of Southeast Asian Nations, n.d., p. 3). 3).

To achieve these objectives, the provisions on customs procedures and trade facilitation in later agreements tend to specifically mention some operational measures, including risk management, advance rulings, and single-window systems. These contribute to improving administrative certainty and expediting the clearance and release of goods, which reflects a more supply chain-oriented approach to customs governance compared to earlier ASEAN+1 FTAs. For instance, in accordance with AHKFTA, to simplify customs procedures, each member state's customs administration shall utilize information technology in customs operations based on internationally recognized standards. The agreement⁷ further requires that member states' administrative authorities implement risk management technique to greater control over high-risk goods, while expediting the clearance of low-risk goods. Furthermore, parties are committed to establishing and operating a single-window customs system that allows businesses to submit all documentation or data requirements for the import, export, or transit of goods at a single point to the relevant authorities.⁸ In contrast, earlier FTAs such as AJCEP, ACFTA, AIFTA, and AKFTA contain general provisions regarding these measures, often recognizing custom procedure implications and harmonization with the relevant international standards and recommended practices.⁹

⁶ Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) (adopted 27 February 2009, entered into force 1 January 2010) vol. 2672 United Nations Treaty Series, p. 3, ch. 4, <https://www.dfat.gov.au/trade/agreements/in-force/aanzfta/official-documents/agreement-establishing-asean-australia-new-zealand-free-trade-area-aanzfta/chapter-4-customs-procedures-and-trade-facilitation>; Free Trade Agreement between the Association of Southeast Asian Nations and the Hong Kong Special Administrative Region of the People's Republic of China (AHKFTA) (adopted 12 November 2017, entered into force 11 June 2019) ch. 4, <https://asean.org/wp-content/uploads/2012/05/AHKFTA-compressed.pdf>; RCEP, ch. 4.

⁷ AHKFTA, ch. 4, art. 6.

⁸ AHKFTA, ch. 9, art. 9.

⁹ Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations (AIFTA) (13 August 2009, entered into force 1 January 2010), art. 14(3), <https://www.asean.org/wp-content/uploads/images/2013/economic/afta/ASEAN%20India%20TIG%20>

Baldwin's 21st century regionalism reflects ASEAN's gradual evolution from a classic tariff-centric to a supply chain-oriented trade approach.

Nevertheless, under the incremental legal institutional of the ASEAN Way, the depth of this transition remains cautious. Several trade facilitation provisions across ASEAN+1 FTAs and CEP remain flexible, best-endeavor language, with the aim of preserving domestic regulatory autonomy, which can weaken the enforceability, such as: "shall endeavor," "where possible and to the extent permitted by their perspective custom law", "Where applicable," and "encourage." Moreover, in later agreements, such as RCEP and AHKFTA, certain trade facilitation measures are either subject to general exceptions.¹⁰ The limited justiciability of these provisions, combined with the prevalence of soft-law formulations, weakens the capacity of dispute-settlement procedures to ensure compliance.

3.3.2 The Provisions on Transparency of Trade Procedures and Regulations

In terms of transparency in trade procedures and regulations, most ASEAN+1 FTAs/CEPs incorporate Article X of GATT on the publication and administration of trade regulations.¹¹ RCEP is the only agreement with a concrete transparency article.¹² It requires transparency of information on procedures for import, export, and transit; applied tariffs and taxes; fees and charges imposed by government agencies; rules on customs valuation and classification; rules of origin; import, export, or transit restrictions or prohibitions; agreements relating to import, export, or transit; and tariff quota administration procedures. Member states are further obligated to publish and update the above information online promptly, on the internet to the extent possible, in a non-discriminatory and easily accessible manner. Under Baldwin's 21st-century regionalism, this enhanced transparency architect reflects an evolution from traditional border measures to the establishment of deeper behind-the-border regulatory discipline. This discipline helps reduce information frictions, a typical barrier arising from asymmetries of information among trading partners. Simultaneously, from the perspective of the incremental legal institutional of the ASEAN Way, the continued reliance on a flexible approach through language, such as "to the extent possible," "to the

%20CTC%20scan%20(complete).pdf; Agreement on Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan (AJCEP) (adopted 14 April 2008, entered into force 1 December 2008), art. 22, <https://asean.org/wp-content/uploads/2021/08/Agreement.pdf>.

¹⁰ AHKFTA, ch. 11, art. 2; RCEP, ch. 17, art. 17.13.

¹¹ AANZFTA, ch. 4, art. 6; Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China (ACFTA) (adopted 19 November 2012, entered into force 1 January 2013), art. 4, <https://www.asean.org/wp-content/uploads/images/2013/economic/afta/ACFTA/1-%20ACFTA%20-%20Protocol%20to%20Incorporate%20SPS-TBT%20-%202012%20-%20CTC%20scan.pdf>; Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea (AKFTA) (adopted 13 December 2005, entered into force 1 July 2006), art. 4, https://asean.org/wp-content/uploads/2024/11/ASEAN-Korea-FA-D-0904_Redacted.pdf; AJCEP, art. 4; AHKFTA, art. 8; AIFTA, art. 5.

¹² RCEP, art. 4.5.

extent practicable and in a manner consistent with its laws, regulations, and legal system,” and the lack of enforcement mechanism, proves ASEAN’s incremental and flexible approach to economic integration.

3.3.3 The Provisions on Standards, Technical Regulations, and Conformity Assessment Procedures

In AJCEP, AANZFTA, AHKFTA, and RCEP, standards, technical regulations, and conformity assessment procedures are organized into a distinct chapter.¹³ However, ACFTA, AKFTA, and AIFTA lack explicit provisions on these matters. The chapters on standards, technical regulations, and conformity assessment procedures in AJCEP, AANZFTA, and AKCFTA typically address technical trade barriers (TBT) and sanitary and phytosanitary (SPS) measures. This framework helps ensure that TBT and SPS regulations among member countries are harmonized and aligned with international standards. Specifically, RCEP’s Chapter 06 highlights the importance of adhering to the principles outlined in the WTO’s TBT Agreement.¹⁴ In terms of standards, RCEP requires that national standards be developed based on relevant international standards, as indicated in Annex 3 of the TBT Agreement.¹⁵ For technical regulations, RCEP mandates that member countries consistently apply these regulations within their territories. Member countries must provide explanations upon request if there are deviations from international standards. Regarding conformity assessment procedures, RCEP stipulates that these procedures should be based on relevant international standards, and when necessary, the conformity assessment results from other member countries should be accepted, even if the assessment processes are different.¹⁶

Conversely, the ACFTA, AKFTA, and AIFTA do not provide precise provisions on standards, technical regulations, and conformity assessment procedures. For example, the ACFTA mentions technical barriers in Article 7, referring to WTO principles and reaffirming commitments under WTO rules concerning TBT and SPS measures. However, in 2012, ASEAN and China signed a Protocol to integrate technical barriers to trade and SPS measures into the Trade in Goods Agreement under the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China.¹⁷ This Protocol addresses the transparency of information exchange, standards, and related measures among member countries. Transparency in the application of TBT and SPS measures is mandatory, minimizing misunderstandings and disputes between parties. To oversee the

¹³ AJCEP, ch. 5; AHKFTA, ch. 6.

¹⁴ The Summary of Chapter 6 RCEP Standards, Technical Regulations, and Conformity Assessment Procedures (STRACAP), <https://trungtamwto.vn/pdfviewer/21567/tom-tat-chuong-6-rcep.pdf>.

¹⁵ RCEP, art. 6.6.

¹⁶ STRACAP.

¹⁷ Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People’s Republic of China (ACFTA).

implementation of the protocol, subcommittees for TBT and SPS were formed, including representatives from relevant government agencies. Therefore, among the three FTAs that lack provisions on standards, technical regulations, and conformity assessment procedures, only the ACFTA has included such provisions.

From Baldwin's perspective, it continues to demonstrate a shift toward deeper behind-the-border obligations aimed at reducing regulatory divergence and facilitating the operation of cross-border production networks. Viewed through the ASEAN way lens, regulatory cooperation remains cautiously calibrated. Many provisions mention alignment with international standards, such as the WTO TBT Agreement and international standards on conformity assessment, which rely on cooperation and encourage harmonization among member states.

3.3.4 The Provisions on Private Sector Participation and Business Facilitation

The ACFTA, AKFTA, AJFTA, and AHKFTA all address small and medium-sized enterprises (SMEs) in their articles related to economic cooperation.¹⁸ These agreements indicate that the parties involved should explore and undertake economic collaboration activities concerning SMEs. However, most of these FTAs do not specify measures to enhance SMEs' market access or promote the use of electronic commerce. The AKFTA is one of the few FTAs that mentions specific actions to facilitate collaboration and share best practices among SMEs. These include areas such as management skill development, technology transfers, product quality improvements, supply chain linkages, information technology, access to financing, technical assistance, facilitating investment flows, sharing information and experience in developing SME policy and programs.¹⁹ However, these commitments seem cooperation-oriented rather than clear, binding disciplines. Baldwin's explanation of 21st-century regionalism and the general treatment of SMEs in earlier ASEAN+1 FTAs reflects the limited integration at the firm and supply chain levels, a prominent characteristic of traditional economic regionalism. The inclusion of more structured SME disciplines in later agreements, such as the AKFTA, signals ASEAN's gradual recognition of the participation of small and medium enterprises in cross-border production networks. It also confirms ASEAN's cautious approach in institutionalizing SME support while drawing from the ASEAN Way lens.

In contrast, the AANZFTA and RCEP agreements represent a significant advancement by including dedicated chapters focused on SMEs—Chapter 16 in AANZFTA and Chapter 14 in RCEP. In particular, SMEs are governed by Article 9 within Chapter 10 on electronic commerce and Chapter 16 of the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area. This Protocol offers notable benefits for

¹⁸ Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China (ACFTA), arts. 7(2)–(3), https://asean.org/wp-content/uploads/2021/08/Framework-Agreement-on-Comprehensive-Economic-Co-Operation_ASEAN-Rep-of-China.pdf; AKFTA, ch. 3, art. 3.1; AHKFTA, ch. 9.

¹⁹ AKFTA, art. 3.1.

MSMEs (Micro Small and Medium Enterprises) by improving their access to markets, facilitating participation in global value chains, and promoting the use of electronic commerce. Under the RCEP, the chapter on SMEs mandates that participating countries promote and share information related to the agreement with SMEs. This is to be achieved by establishing and maintaining a public information platform that includes the full text of the RCEP Agreement, relevant laws, and regulations concerning trade and investment for SMEs, and other business information that can help SMEs capitalize on the RCEP Agreement. Chapter 14 also emphasizes enhancing cooperation in e-commerce, intellectual property rights, market access, participation in global supply chains, and sharing best practices to improve SME capacity and competitiveness. From Baldwin's standpoint, these institutional changes reflect a gradual shift toward embedding SME participation into the trade-investment services nexus, but the ASEAN Way continues to define the depth of commitments. These commitments are at the cooperative level to facilitate SME participation in international trade.²⁰ Besides, instead of defining the 'rigid' scope of SMEs cooperation, some provisions indicate a more open approach to areas of cooperation by using the term "may".²¹ Additionally, the exclusion of a dispute settlement mechanism from this chapter creates legal uncertainty regarding SME cooperation.

Overall, FTAs or CEPs among ASEAN and partners reveals an evolutionary trend from less deep toward more operational disciplines in trade facilitation. Earlier agreements such as AJCEP, ACFTA, AIFTA, AKFTA typical contain general provisions on custom procedures, transparency of trade procedures and regulations. While later agreements such as AANZFTA, AHKFTA, and especially RCEP regulates these areas in dedicated chapters with concrete commitments. These include measures to simply and harmonize custom procedures with international standards, improve the transparency through mandatory obligation to publish and update trade regulations and procedures. A similar pattern is observable in the regulation of standards, technical regulations, and conformity assessment procedures. The AJCEP, AANZFTA, AHKFTA, and RCEP address these matters in standalone chapters covering TBT, SPS measures, and promoting alignment with international standards. The rest of the FTAs and CEPs, such as the ACFTA, AKFTA, and AIFTA, lack explicit provisions in these areas. Nevertheless, the ACFTA filled this gap through the Protocol to incorporate technical barriers to trade and sanitary and phytosanitary measures into the ASEAN–China trade in goods agreement.

While most FTAs or CEPs between ASEAN and its partners address SMEs only under the provisions on economic cooperation, AANZFTA and RCEP make a significant advancement by establishing a dedicated chapter on SMEs aimed at improving their market access, supporting participation in global value chains, and promoting e-commerce

²⁰ Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (signed 21 August 2023, entered into force 21 April 2025), ch. 16, art. 1(2), <https://asean.org/wp-content/uploads/2024/11/0-Consolidated-Main-Text-of-Second-Protocol-to-Amend-AANZFTA.pdf>; RCEP, ch. 14 art. 14.1(2).

²¹ Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, ch. 16, art. 3(1); RCEP, ch. 14 art. 14.3.

integration. These evolutions reflect a gradual but uneven depth of ASEAN's trade facilitation commitments, moving toward supply-chain-centric integration while continuing to uphold the ASEAN Way of incremental, flexible, and state-sovereignty-preserving integration. These provisions, to some extent, reinforce the principles and core scope of the trade facilitation work programme mentioned in ATIGA²² and relevant documents,²³ thereby supporting a degree of regulatory convergence. It aligns with one of the strategic measures adopted in the AEC Blueprint 2025 to promote trade in goods in ASEAN, which aims toward convergence in trade facilitation regimes across its members and more closely with global best practices.²⁴

3.4 Implications for Post-AEC 2025 Trade Facilitation

In the context of the rapid development of digital trade, along with complex changes in the international and regional environment, the negative impacts of the COVID-19 pandemic have caused widespread disruptions to global supply chains. These disruptions, along with difficulties in global trade, have made countries increasingly aware of the importance of strengthening economic cooperation. Between 2015 and 2020, the growth rate of FTAs slowed, partly because of the financial crisis. However, following the pandemic, the trend of signing and expanding FTAs has seen significant growth, both in terms of quantity and quality (Nguyen, 2022). This indicates a growing demand among countries to establish new-generation FTAs to enhance adaptability, promote economic growth, and mitigate the risks of supply chain breakdowns.

In line with this trend, countries around the world have been actively negotiating, signing, upgrading, and modernizing traditional FTAs (Nguyen, 2022), creating a 'new-generation FTAs' with additional provisions on trade facilitation, consumer protection, sustainable development, and digital trade. ASEAN is no exception to this trend, taking strong steps to upgrade several FTAs and committing to establishing new provisions to help businesses in the region overcome challenges and seize opportunities in global trade. Currently, only a few of ASEAN's FTAs have been upgraded, with some of them incorporating specific provisions on trade facilitation to improve the efficiency of trade among member countries.

ACFTA is one of the typical FTAs that has been amended to include provisions on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures. In 2013, the ACFTA was upgraded with the signing of the Protocol amending the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, which introduced new provisions on customs procedures and trade facilitation. This was a significant step that helped improve market access for member countries, ensured

²² ATIGA, arts. 4 and 46.

²³ ASEAN Trade Facilitation Framework, pt. II, s. 5.

²⁴ ASEAN Economic Community Blueprint 2025 (adopted 22 November 2015, entered into force 1 January 2016), para. 10(iii), <https://asean.org/book/asean-economic-community-blueprint-2025/>.

transparency, and simplified customs processes, thereby reducing risks for businesses. In addition to the ACFTA, other ASEAN FTAs have also been amended. For example, AJCEP was amended in 2019 but did not include provisions on trade facilitation. Meanwhile, AANZFTA was amended in 2014, but although it did not update the chapter on customs procedures and trade facilitation,²⁵ it upgraded provisions on public procurement, consumer protection, trade, and sustainable development (Association of Southeast Asian Nations, n.d.), reflecting the trend of developing FTAs to meet new requirements for comprehensive and sustainable economic integration.

In addition to these FTAs, some recently signed agreements such as AHKFTA and RCEP are in the early stages of implementation. This implementation requires member countries to continually improve administrative capacity to ensure efficiency and transparency in implementing commitments. Meanwhile, these new FTAs, with comprehensive provisions on trade facilitation, digital trade, and customs cooperation, not only promote trade among member countries but also open opportunities for businesses inside and outside the ASEAN region to access markets more easily and transparently, thereby boosting regional economic integration. However, challenges arise when implementing the trade facilitation provisions in these agreements, including soft obligation, no specific requirements regarding implementation timing, and the exclusion of dispute settlement led to prolonged implementation and are given priority by the member states. Regulatory harmonization is another obstacle to implementing these agreements, especially RCEP, which requires multilateral coordination at a greater scale. While some external partners press for higher regulatory standards, several ASEAN members favor more cautious and adaptable commitments, leading to varying degrees of harmonization across agreements. Capacity is uneven, which makes it difficult to implement trade facilitation commitments. Siow indicates that RCEP member countries are simultaneously engaged in RCEP negotiations, finalizing the AEC by 2015, and pursuing agreements among China, Japan, and South Korea, and other multilateral and bilateral agreements, thereby placing significant strain on the limited negotiating and implementation capacities of low-income and small economies (Chia, 2015, p. 22).

Tatiana Yastreba (2016) believes that regional trade agreements (RTAs) today is comprehensive, covering many issues such as trade in goods and services, investments and government procurement, intellectual property rights, sustainable development, competition, trade facilitation, and electronic commerce. The author also notes that the process of signing multilateral RTAs has recently intensified, including the consolidation of previously concluded bilateral agreements. Consistent with Yastreba's insight, ASEAN's evolving agreement practice reveals several legal implications for the design and improvement of the effectiveness of trade facilitation disciplines in FTAs/CEPs between ASEAN and its partners, as follows:

²⁵ First Protocol to amend the Agreement on Comprehensive Economic Partnership among ASEAN and Japan (adopted 2019, entered into force 1 August 2020), <https://asean.org/wp-content/uploads/2021/08/AJCEP-Prcl-CTC.pdf>.

The first, issuance of Protocols for FTAs/CEP between ASEAN and its partners without specific trade facilitation provision. For agreements that currently lack of dedicated trade facilitation provisions, the adoption of a Protocol is increasingly favoured. The experience of ACFTA demonstrates that Protocol based incorporation can progressively strengthen customs and trade facilitation disciplines. This method enables participating parties to collectively establish unified customs rules and trade facilitation frameworks, improving consistency in regional supply chains. However, to avoid regulatory fragmentation, which is a prevailing issue in the current FTAs+1 Agreement between ASEAN and its external partners, ASEAN should consider developing a model trade facilitation chapter anchored by the WTO Trade Facilitation Agreement and ATIGA, with appropriate selection of emerging mega FTAs like RCEP.

The second, adjustment and consolidation for existing existing FTAs/CEPs that have provisions on trade facilitation but are scattered across different clauses, such as those concerning trade in goods or economic cooperation. Future upgrades should move beyond incremental textual adjustments toward legally operational disciplines, including national single-window systems, advance rulings, and risk management, which assist in optimizing customs procedures and create opportunities for growth and economic integration for local businesses. Additionally, in the post-AEC 2025 context, the scope of trade facilitation should progressively prioritize cross-border paperless and digital trade facilitation and green facilitation, while ASEAN considers trade digitalization critical to sustaining dynamic and resilient economic growth.

Continued effective implementation and upgrading of FTAs or CEPs that already have dedicated trade facilitation chapters. The incremental and consensus-based nature of the ASEAN way has significantly impacted the design of trade facilitation provisions in ASEAN+1 FTAs and CEP. Many commitments are expressed in best-endeavours language, lack specific implementation timelines, or are partially excluded from dispute settlement mechanisms. While such flexibility creates more opportunities for broader participation among partners at various levels of development, it can also weaken the practical enforceability of trade facilitation disciplines. To ensure that these provisions operate effectively in practice, future efforts should prioritize strengthening implementation mechanisms, including establishing clearer administrative guidelines, improving transparency in the application of customs procedures, enhancing monitoring and reporting mechanisms for implementation progress, and expanding technical cooperation to address capacity disparities among member states, and even consider building trade facilitation indicators to measure the implementation process among states. Moreover, its partners need to selectively harden certain disciplines, for example, by moving SME support from purely information-sharing frameworks toward more enforceable market-access facilitation measures, while preserving flexibility for lower-capacity members.

4. Conclusion

Trade facilitation is a pivotal element in FTAs or CEPs between ASEAN and its external partners. These agreements encompass various aspects of trade facilitation, although they often address these issues within a patchwork of provisions. Key areas include customs procedures, transparency of trade procedures and standards, technical regulations, conformity assessment procedures, private sector participation, and business facilitation. Importantly, these agreements also underscore the critical role of small and medium-sized enterprises (SMEs) and micro, small, and medium enterprises (MSMEs) in driving economic collaboration and fostering regional growth. In contrast to traditional FTAs such as ACFTA, AKFTA, AIFTA, and AJFTA, which primarily focus on trade liberalization in goods, RCEP and AHKFTA take a more holistic approach by dedicating entire chapters to customs procedures and trade facilitation. This marks the evolution of ASEAN's external trade facilitation from fragmented and cooperation-oriented provisions in early ASEAN+1 FTAs toward more structured and operational disciplines in later agreements. This reflects a gradual shift toward supply-oriented regulatory disciplines from Baldwin's viewpoint of 21st-century regionalism.

Nevertheless, the analysis reveals that the depth of trade facilitation commitments in these agreements remains cautious and uneven. Many provisions are designed using best-effort language, flexible commitments, and selective exclusion from dispute settlement mechanisms. Such a design reflects the influence of the ASEAN Way, which emphasizes consensus, gradualism, and the preservation of domestic regulatory autonomy on trade facilitation provisions, particularly for FTAs or CEPs among ASEAN and partners. As a result, it demonstrates greater institutional consolidation and procedural sophistication, the enforceability of several trade facilitation disciplines remains limited.

Against this background, ASEAN's future trade facilitation negotiations and upgrades will likely depend less on expanding the scope of treaty commitments and more on improving their operational effectiveness. Agreements lacking dedicated trade facilitation chapters may continue to rely on upgrading protocols as transitional instruments, although greater structural coherence could be achieved through the development of a model trade facilitation chapter drawing on the WTO Trade Facilitation Agreement, ATIGA, and selected newer agreements, such as RCEP. For agreements in which trade facilitation provisions remain fragmented across different chapters, future revisions may focus on consolidating these provisions and introducing more operational disciplines, including digital trade facilitation, cross-border paperless trade, and green facilitation. For agreements that already contain comprehensive trade facilitation chapters, the next stage of development should prioritize effective implementation, stronger monitoring mechanisms, and selective strengthening of key disciplines while maintaining flexibility for members with different levels of institutional capacity.

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This study did not involve human or animal subjects or personal data and therefore did not require ethical approval.

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The author utilizes tools such as Grammarly and Quillbot for checking spelling and grammar.

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