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Mainstreaming sustainable development in regional trade agreements: Comparative analysis and way forward for RCEP

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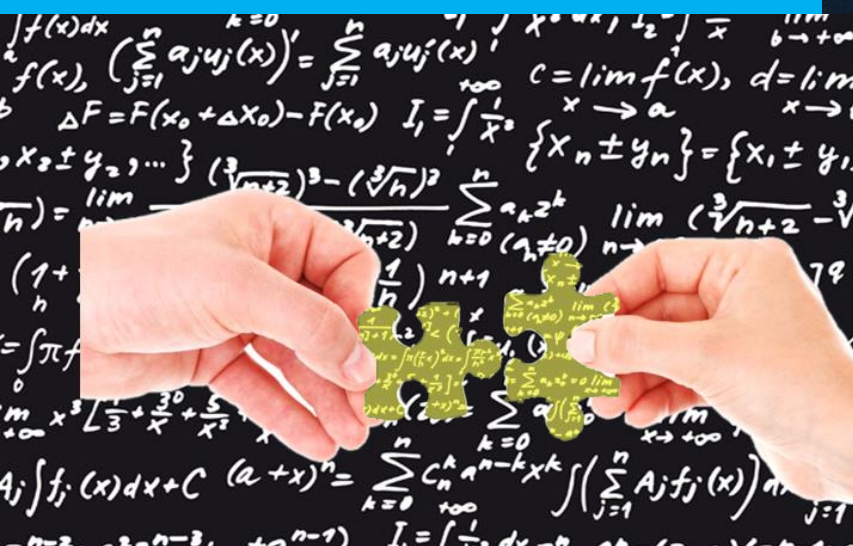
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Mainstreaming sustainable development in regional trade agreements: Comparative analysis and way forward for RCEP



Louise Malingrey
Yann Duval

ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE

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ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE

WORKING PAPER

Mainstreaming sustainable development in regional trade agreements: Comparative analysis and way forward for RCEP

Louise Malingrey, Yann Duval¹

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Abstract

In this paper, we review the sustainable development content of regional trade agreements (RTAs) globally using a new ESCAP RTA Text Analysis tool, followed by a comparative analysis of sustainable development related provisions in the Regional Comprehensive Economic Partnership (RCEP) and two other recent “mega” regional trade agreements (RTAs), namely the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union – Japan Economic Partnership Agreement (EU – Japan EPA). The EU-Japan EPA and the CPTPP follow different approaches as they have been drafted under the influence of the EU and the United States, respectively, while the RCEP was driven from within Asia-Pacific.

The analysis covers seven sustainable development-related topics: (1) sustainable development as a concept, (2) labour rights and standards, (3) environment (4) human rights, (5) small and medium-sized enterprises, (6) gender, and (7) health. The global review of RTA texts confirms the increasing reference to sustainable development and related areas in RTAs signed over the past decade. The comparative analysis of the three mega-RTAs in turn confirms the large gaps of RCEP in terms of sustainable development coverage. However, it also points to specific and practical ways through which RCEP could address these gaps in time to support the achievement of the 2030 Agenda for Sustainable Development – also drawing upon the interest expressed by many RCEP countries in joining CPTPP.

A two-step path forward and different options for integrating sustainable development in RCEP are proposed, based on existing provisions and the differing approaches of the CPTPP and the EU-Japan EPA. We hope this paper will provide useful guidance to RCEP members for enhancing the sustainable development content of the agreement in time for its upcoming five-year review.

Keywords: international trade, sustainable development, RCEP, regional trade agreements, sustainability provisions

JEL Codes: F13, K33

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List of abbreviations

ACSDSD	ASEAN Centre for Sustainable Development Studies and Dialogue
ASEAN	Association of Southeast Asian Nations
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EPA	Economic Partnership Agreement
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FTAs	Free Trade Agreements
GDP	Gross Domestic Product
ILO	International Labour Organization
IP	Intellectual Property
IUU	Illegal, Unreported and Unregulated
RCEP	Regional Comprehensive Economic Partnership
RFMOs	Regional Fisheries Management Organisations
RTAs	Regional Trade Agreements
SDGs	Sustainable Development Goals
SMEs	Small and medium-sized enterprises
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
WTO	World Trade Organization

1. Introduction

The Regional Comprehensive Economic Partnership (RCEP) gathering fifteen economies from Asia and Pacific is to date the world's biggest trade agreement in terms of its share in world GDP, trade and population (capturing about 30% of the world gross domestic product (GDP) and nearly a third of the world population and trade). Entered into force on 1 January 2022,² it promises tariff elimination on 90% of goods over a period of twenty years (UNCTAD, 2021),³ and covers many areas not included in most existing ASEAN +1 trade agreements, such as e-commerce or government procurement (Pitakdumrongkit, 2021). Centered around ASEAN and its ten member states, RCEP was originally expected to bring all ASEAN+1 regional partners into one common framework. However, India ultimately pulled out of the negotiations, although it keeps a special right to join again at any time now that it has been enforced (Chongkittavorn, K., 2021).

The RCEP is expected to boost trade in the region, thanks to trade creation through lower tariffs and trade diversion from non-members to RCEP members (UNCTAD, 2021). RCEP commitments in many areas are deeper than those in existing ASEAN agreements, so bigger gains may be achieved in the long term. At the very least, it is expected to help reduce the noodle bowl effect associated with the many existing overlapping agreements in the region (Mohamas, 2021, [APTIAD](#)). Many are also expecting benefits from implementation of provisions on trade in services, as well as chapters dedicated to investment or intellectual property (IP) protection. However, many analysts have pointed to the relative lack of sustainable development provisions in the agreement e.g., provisions on labour rights or the environment (Kelsey, J., 2021; Kostrzewa, B., Maruyama, W. and Stoel, J., 2021). Chi (2022) moderates these remarks by highlighting the integration of sustainable development goals in the investment chapter through exceptions and noting that the three pillars of sustainable development are mentioned in the preamble of the agreement. RCEP also establishes a permanent Secretariat, various institutional bodies to support implementation and a general review mechanism enabling further negotiations among parties (European Parliament, 2021).

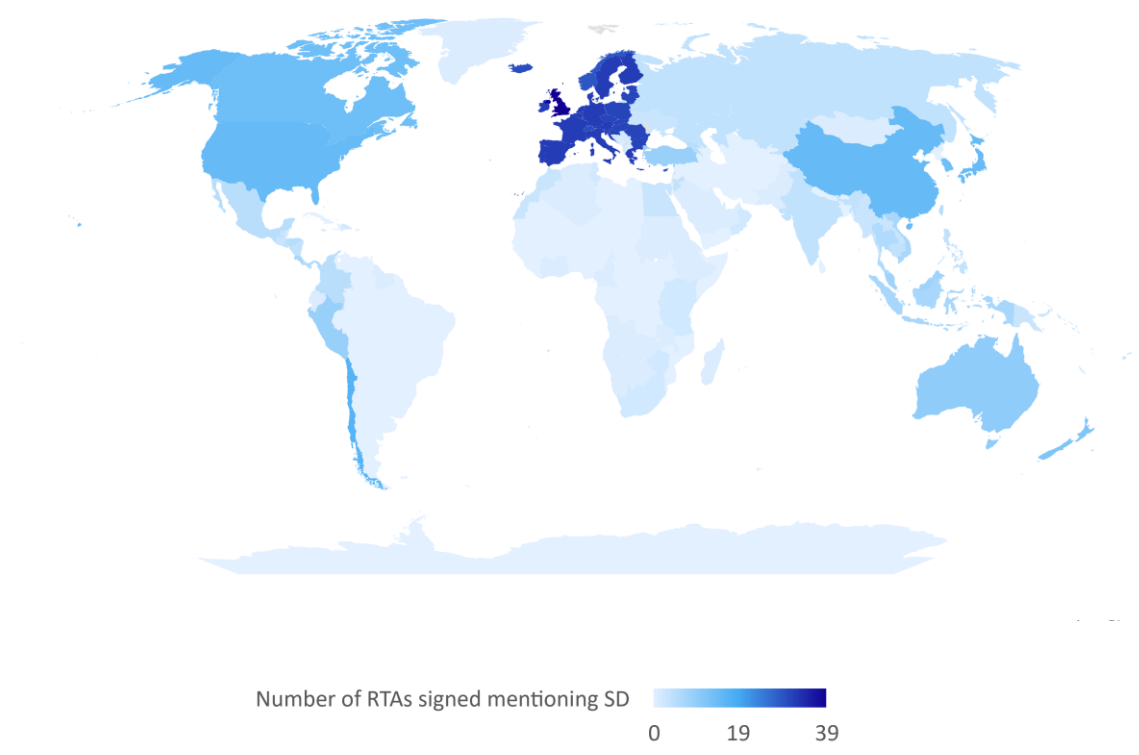
The importance of linking trade rules with sustainable development objectives has been increasingly recognized and many economies now routinely include the notion of sustainable development in the RTAs they signed - in particular developed economies (ESCAP, 2021), as illustrated in Figure 1. In that context, this paper provides a brief overview of sustainable development in RTAs in general, based on a new online ESCAP

² With the Republic of Korea joining in February 2022.

³ The remaining goods belong to strategic sectors such as agriculture or automotive.

database⁴ enabling text analysis of over 440 RTAs and identifying seven distinct sustainable development areas in the process⁵. The next section then compares the sustainable development content of the RCEP with that of two recent “mega” and “deep” trade agreements involving key Asia-Pacific economies, namely the CPTPP and the EU-Japan EPA. On that basis, options for including sustainable development in RCEP are proposed.

Figure 1: Economies having signed trade agreements mentioning the "sustainable development" at least once



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 26 April 2022

Disclaimer: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Note: This map, created with excel using data provided from the ESCAP Trade Agreement Text Analysis Tool, shows the number of RTAs signed per country with at least one mention of the keywords “sustainable & development”.

⁴ Semenova, Maria. Kravchenko, Alexey. Duval, Yann (2022). Text analysis using R: Online tool for mapping provisions in texts of trade agreements and beyond. Technical paper. Trade, Investment and Innovation Division, ESCAP: Bangkok, Available at <https://tiid.shinyapps.io/text-analysis-tool/>.

⁵ The list of keywords referring to the seven topics used in the analysis are in Annex 1. Data was obtained using the ESCAP Trade Agreement Text Analysis Tool.

2. Sustainable development in RTAs – A brief overview

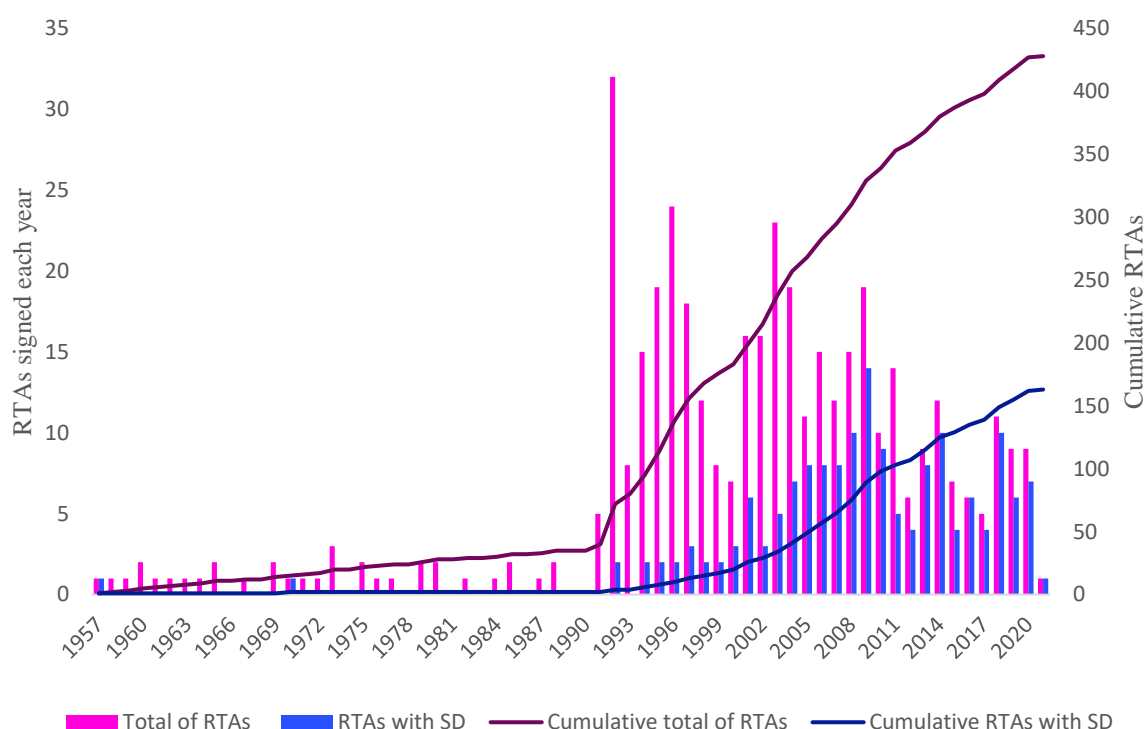
Sustainable development has been generally defined as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*" (WCED, 1987). It is based on three pillars: economic development, social development, and environmental protection with a view to preserve and promote human wellbeing, strengthen social progress while preserving the environment. As part of the 2030 Agenda for Sustainable Development, United Nations member States agreed on a list of seventeen Sustainable Development Goals (SDGs). They highlighted the role of trade as one of the key "Means of Implementation" of sustainable development in the Agenda.

Trade has long been connected to sustainable development through its role in economic growth and potential for poverty reduction (UNCTAD, 2016). Trade can also enable economies to access goods and services unavailable domestically but that have key social and environmental impacts, such as education services or green energy technologies (United Nations, ESCAP, 2017)]. Consequently, more and more trade agreements integrate provisions focusing on sustainable development concerns. Such provisions are found in all parts of RTAs, from the preamble to paragraphs, side agreements, or even now in standalone chapters dedicated to one or more sustainable development issue.

When considering all RTAs concluded since 1948, including agreements no longer in force, more than a third (38%) mention sustainable development at least once. But the integration of sustainable development in RTAs developed over time, as shown in Figure 2.⁶ Mention of sustainable development in RTAs really began in the 1990s and accelerated after 2000, to the extent that two-thirds of RTAs signed after 2005 include at least one reference to sustainable development.

⁶ Please note that the RTA text database linked to the ESCAP RTA mapping provisions tool used in this study features only the "most updated" available version of the texts. For example, the text of the Treaty of Rome establishing the European Community in 1957, and which is found to contain "sustainable development" as per Figure 2, is from a version issued in 2012.

Figure 2: RTAs mentioning "sustainable development" at least once



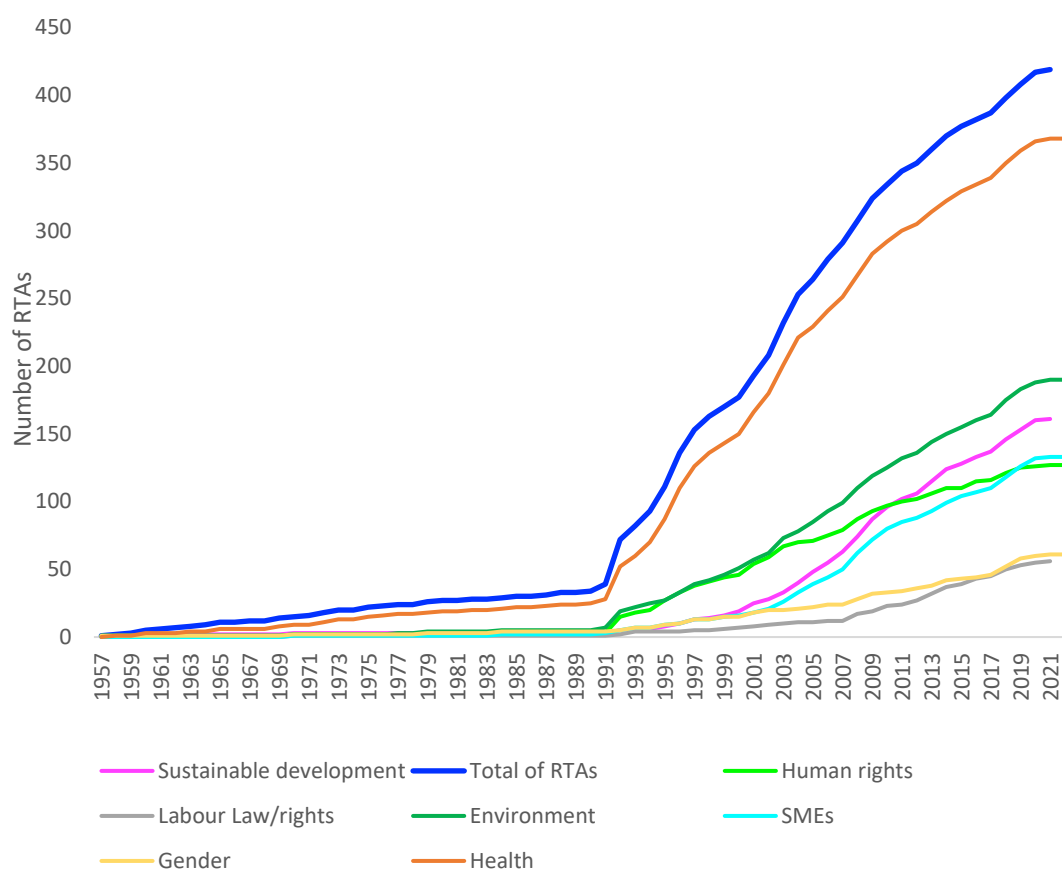
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Sustainable development remains a broad concept with a range of provisions that can be related to the concept (ESCAP, 2021). As a result, integrating sustainable development provisions in trade agreements may differ largely from one trade agreement to another. The European Commission refers to four topics in designing sustainable development provisions in European Union Agreements: social justice, respect for human rights, labour standards and environmental standards (European Commission, 2022).

In this analysis, we focus on RTA text and provisions related to the following: (1) sustainable development as a concept, (2) labour rights and standards, (3) human rights, (4) the environment, (5) small and medium-sized enterprises, (6) health and (7) gender.⁷ Figure 3 shows the frequency with which each area has been incorporated into RTAs over time. Health-related provisions are by far the most frequent, in large part due to the incorporation of sanitary and phytosanitary (SPS) provisions inspired from the related WTO SPS agreement. No specific WTO agreement exist for any of the other six sustainable development related areas covered in this study.

⁷ Find additional figures of the occurrence of each topic in global RTAs in Annex 2.

Figure 3: RTAs with sustainable development-related topics

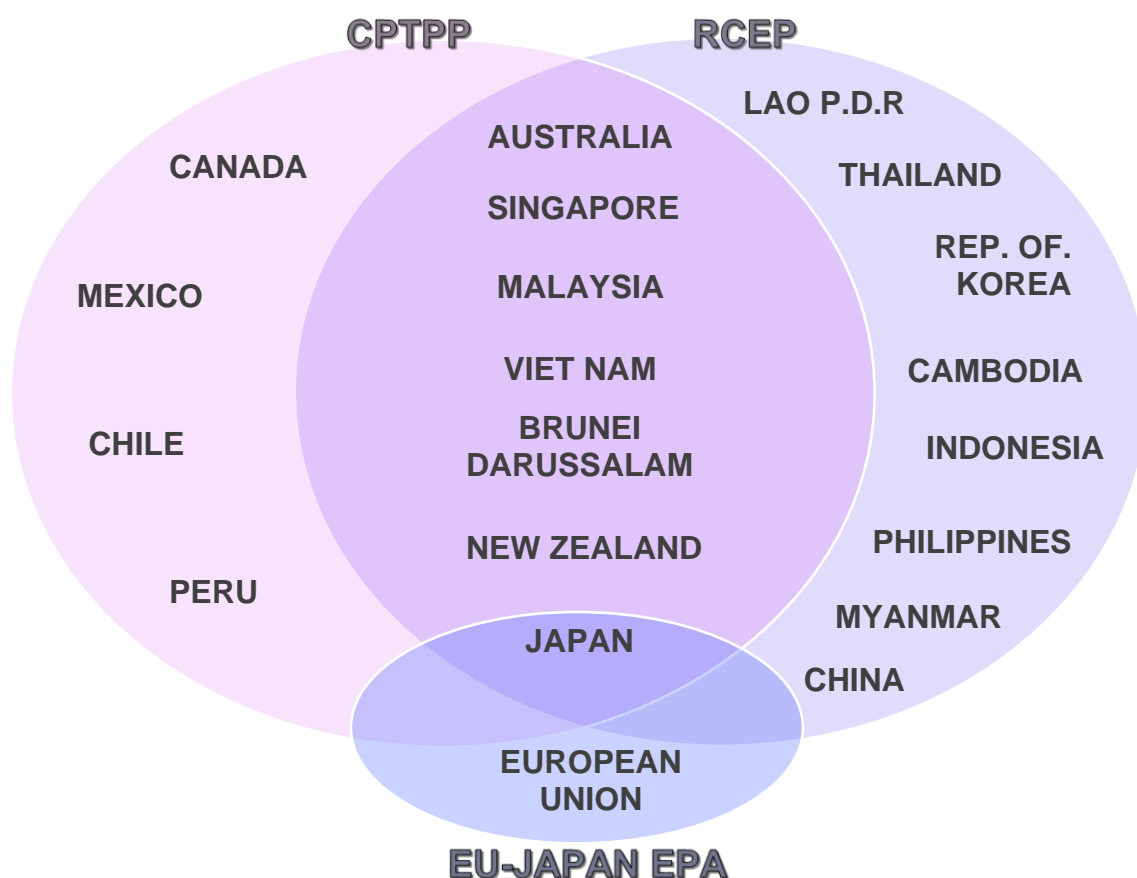


Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

3. Sustainable development in RCEP compared

RCEP is most often compared to CPTPP, given the overlapping membership and the perceived competition between the two agreements during their negotiation – RCEP negotiations were led by ASEAN and China; and CPTPP, earlier called the TPP, by the USA until it withdrew (see Figure 4). The CPTPP covers a market of about US\$10.6 trillion, 13.3% of the world GDP, representing 499 million people, and 14.4% of global trade. By comparison, the RCEP is a market of US \$26.3 trillion, about 29% of global GDP, representing 2.3 billion people and 28% of global trade (Australian Government Department of Foreign Affairs and Trade). The CPTPP is considered a deep and ambitious agreement, providing a useful point of comparison with RCEP. It entered into force in December 2018.

Figure 4: Signatories of the selected Regional Trade Agreements



Source: Authors

The European Union (EU) is arguably the global leader in including sustainable development provisions in RTAs (as shown in Figure 1) and it has systematically done so in all its recent trade agreements (ESCAP, 2021). We therefore include the Economic Partnership Agreement (EPA) signed between the EU and Japan in July 2018 as a reference agreement for our analysis of RCEP. Like the RCEP and CPTPP, the EU-Japan EPA is an economic partnership agreement including not only trade in goods and services but also other areas (French Ministry of European and Foreign Affairs, 2019; Irish Department of Enterprise, Trade and Employment, undated; European Union Council, 2018). Also, the EU-Japan EPA is of comparable economic size with RCEP and CPTPP, accounting for almost 30% of global GDP and covering 640 million inhabitants at the time of signature.

3.1 Sustainable development coverage of the three mega RTAs

3.1.1 Sustainable development as a concept

Sustainable development is not completely absent from RCEP. The preamble of the Agreement recognizes that *“the three pillars of sustainable development are interdependent and mutually reinforcing, and that economic partnership can play an important role in promoting sustainable development”* (see table 1). However, apart from this recognition, the core of the agreement is essentially silent on the subject. Sustainability as a concept only makes a come back in the eighteenth chapter when the RCEP specifies that a Committee on Sustainable Growth is to be created,⁸ suggesting that sustainable development has not been forgotten but is rather a matter for the future.

In contrast, sustainable development is mentioned extensively in both the CPTPP and the EU-Japan EPA. Both Agreements also refer to sustainable development in their preamble. The CPTPP *“reaffirm[s] the importance of promoting [...] sustainable development”* among other social issues that can be classified as sustainable development-related topics, such as labour rights, gender equality or environmental protection; while the EU-Japan EPA puts sustainable development as a principle that must be combined with trade. Both agreements also refer to sustainable development several times in the core chapters, mentioned eight times in the CPTPP and fifteen times in the EU-Japan EPA.

Table 1: Sustainable Development in RCEP, CPTPP and EU-Japan EPA

	Dedicated chapter	Preamble text
RCEP	No	Recognizing that the three pillars of sustainable development are interdependent and mutually reinforcing, and that economic partnership can play an important role in promoting sustainable development
CPTPP	Yes (Chapter 23: Development)	Reaffirm the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest

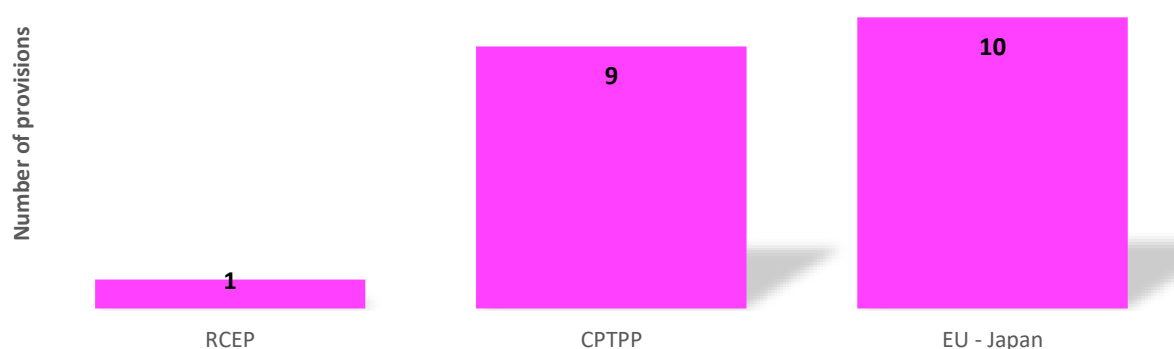
⁸ Article 18.6 on Subsidiary Bodies of RCEP Joint Committee.

EU-Japan EPA	Yes (Chapter 16: Trade and Sustainable Development)	Recognizing the importance of strengthening their economic, trade and investment relations, in accordance with the objective of sustainable development in the economic, social and environmental dimensions, and of promoting trade and investment between them, mindful of the needs of the business communities of each Party, in particular small and medium-sized enterprises, and of high levels of environmental and labour protection through relevant internationally recognized standards and international agreements to which both Parties are party
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Source: Authors

The EU-Japan EPA exceeds the simple integration of sustainable development in the provisions of the agreement as it even dedicates a chapter to the subject. Chapter 16 is indeed named “Trade and Sustainable Development”. Beyond the strict mention of sustainable development, the CPTPP also has a chapter named “Development” in which the Parties commit to promote social and economic progress and, among others, mention the sustainable development goals as well as sustainable economic growth. This chapter also highlights different topics of sustainable development. Even if it does not bear the name “sustainable development”, it can be easily deduced that it is the subject of the chapter. In this way, beyond the few occurrences of “sustainable development” in the text of the RCEP, the two other agreements clearly make sustainable development a core area of cooperation.

Figure 5: Number of provisions specifically referring to sustainable development in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

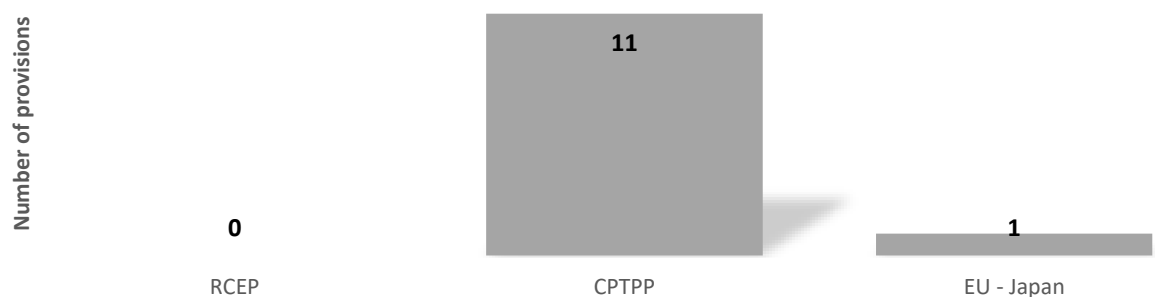
Sustainable development is however a notion that gathers multiple elements, it then may be addressed by some trade issues without saying it explicitly. One can first refer to the different chapters of an agreement to have an idea of the areas it covers. Indeed, when looking at the table of contents of the EU-Japan EPA, some chapters seem to refer to sustainable development issues: chapter 13 on state-owned enterprises, enterprises

granted special rights or privileges and designated monopolies, chapter 15 on corporate governance, chapter 16 on trade and sustainable development or chapter 20 on small and medium-sized enterprises. When it comes to the CPTPP, there are chapters dedicated to “labour”, “environment”, “development”, “small and medium-sized enterprises”; “transparency and anti-corruption”. Finally, even though the RCEP is low in sustainable development provisions, one chapter focuses on small and medium enterprises.

3.1.2 Labour provisions

About labour, when looking for provisions addressing “labour rights” or “labour law”, there are two entries in the EU-Japan EPA, prohibiting the parties from “*encourag[ing] trade or investment by relaxing or lowering the level of protection provided by their [...] labour laws and regulations*” and “*not [to] use their respective [...] labour laws*” to discriminate or restrict international trade. These provisions come in a chapter recognizing the right of the parties to regulate. The CPTPP contains these terms in three different chapters and in the preamble. This is not surprising to the extent that the nineteenth chapter specifically addresses “labour”. However, when reviewing the RCEP text, there is nothing about labour laws or labour rights (standards).

Figure 6: Labour-related provisions in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

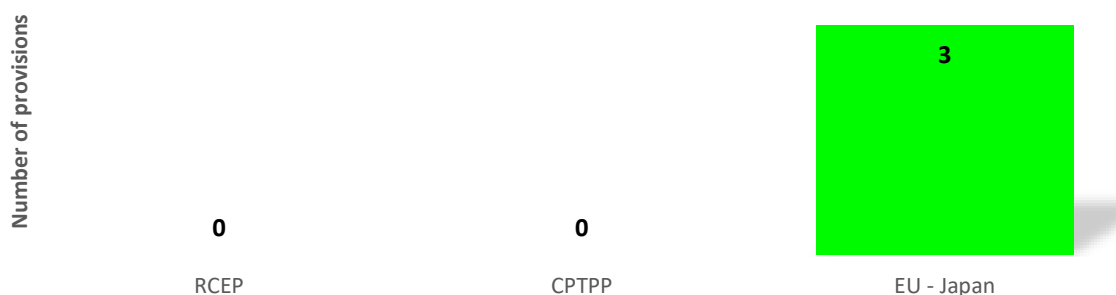
Note: The figure is developed based on a list of keywords available in Annex 1

3.1.3 Human rights provisions

The same test and a similar analysis are made with human rights. The RCEP contains no reference to human rights, but it is not unique as the CPTPP does not mention it either. However, the EU-Japan EPA, as a standard EU trade agreement (ESCAP, 2021) includes this subject in the text. It first reaffirms commitment to the principles of the Universal Declaration of Human Rights and then uses it twice in exception clauses for

denial of benefits. Human rights are not integrated into positive commitments but have the merit of being present.

Figure 7: Human rights-related provisions in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

3.1.4 Environment provisions

Another research has been done with a core principle of sustainable development, namely the environment. At first sight, it is surprising to find more than twenty occurrences of the word environment in the RCEP. But when taking a closer look, one can realize that many times environment refers to a context: the “investment environment”, “business environment” or “digital environment” and does not refer to the environment as the natural world. With a second research on the protection of the environment, the results decrease. The protection of the environment is used three times as exceptions to the text of the agreement.

However, the CPTPP is abundant in using the term “environment”, in its preamble it commits to:

“Reaffirm the importance of promoting [...] environmental protection and conservation,”

And the preamble of the TPP which is integrated in the CPTPP:

“Promote high levels of environmental protection, including through effective enforcement of environmental laws, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices”.

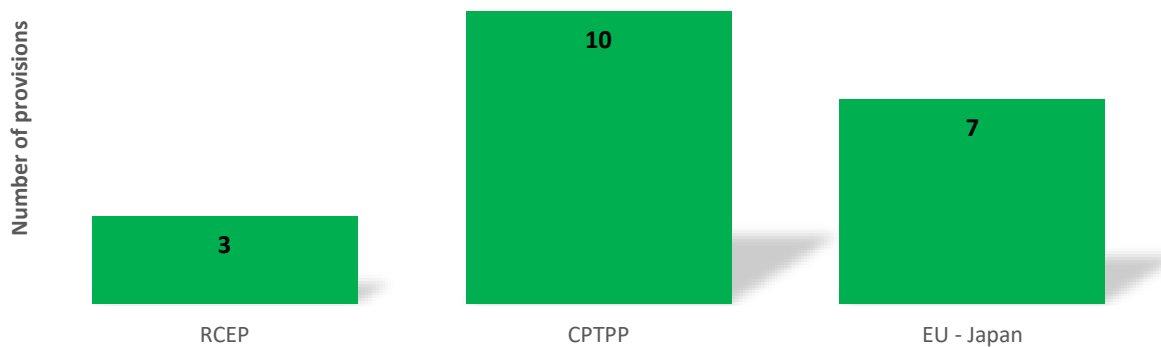
But the CPTPP does not stop with statements of intent of the preamble as it goes until dedicating a whole chapter on the topic recognizing the rights of the parties to legislate environmental laws and the duty to protect the environment by implementing its environmental laws. This chapter is very detailed and thorough; it is not limited to a

general affirmation about the environment but also provides for several specific areas such as the protection of the Ozone layer, and protection of the Marine Environment from Ship Pollution or invasive alien species.

The EU-Japan EPA also refers to the protection of the environment in the principles included in its preamble. The reference to the environment is found again in chapters dealing with technical barriers to trade, and trade in services, to reaffirm the rights of the Parties to regulate environmental laws. The sixteenth chapter dedicated to trade and sustainable development addresses the subject several times as part of the objective of promoting sustainable development, as such it basically officially reaffirms the right to legislate in the area, commits enforcing international conventions and standards. Some specific issues related to the environment are here again targeted such as the biological diversity, the sustainable management of forests and timber products or the use of fisheries resources and sustainable aquaculture.

It is interesting noting that only the EU-Japan EPA is concerned by climate change and refers to it several times, not only by reaffirming commitments to the United Nations Convention Framework on Climate Change but also by stressing the importance of this topic and including it in the trade and sustainable development framework. On the contrary, none of the RCEP or the CPTPP deals with it, not even in the preamble or with environmental provisions.

Figure 8: Environment-related provisions in RCEP, CPTPP, EU-Japan EPA



Sources: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

3.1.5 Small and medium-sized enterprises provisions

Small and medium-sized enterprises (SMEs) are the most targeted of the sustainable development-related topics by the three trade agreements, including the RCEP that makes reference to them in seven different chapters. Besides, it is the only sustainable development-related issue that is targeted by a whole chapter in the RCEP. Chapter 14

entitled “Small and Medium Enterprises” contains five articles, it first defines the objectives of the chapter i.e., recognizing the role of SMEs in economic growth, employment and innovation, then requires the parties to share information relevant for SMEs and cooperate to help SMEs benefit from the Agreement. Each signatory shall in addition designate a contact point to that end. Other provisions related to SMEs in the RCEP mostly require the countries to take SMEs into account in the different areas of the agreements or recognize their specific needs. SMEs are also addressed in the missions of one of the subsidiary bodies (The Committee on Sustainable Growth) established by the agreement. In that field, the RCEP makes no exception compared to the two other agreements. Both the EU-Japan EPA and the CPTPP dedicate a standalone chapter to SMEs and several references all along with the provisions. Also, the contents of the dedicated chapters are quite similar to the RCEP one; they both provide for information sharing for SMEs and set up contact points for each country. It is worth noting that for the first time the RCEP chapter is the most comprehensive of the three agreements.

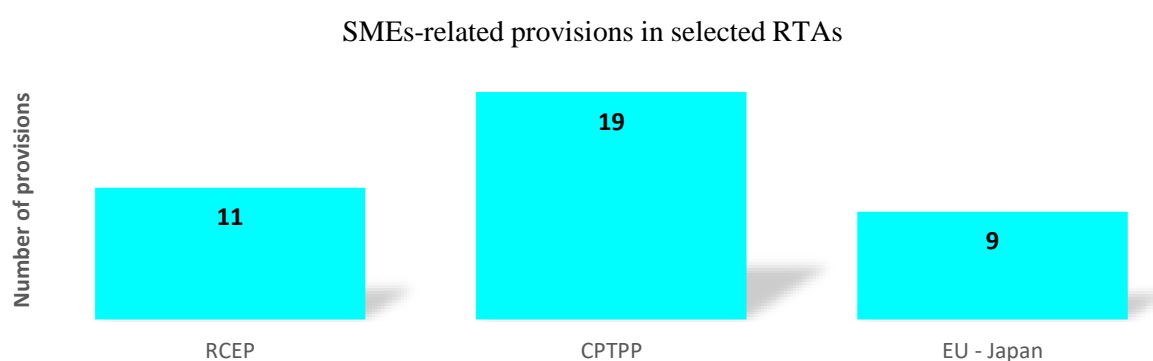
Table 1: SMEs provisions in RCEP, CPTPP, EU-Japan EPA

	RCEP <i>Chapter 14</i>	CPTPP <i>Chapter 24</i>	EU-Japan EPA <i>Chapter 20</i>
Objectives	Recognition of SMEs as contributors to economic growth, employment, and innovation		Recognition of the importance of the provisions aiming at enhancing cooperation on matters relating to SMEs
Information Sharing	Information sharing related to the Agreement relevant to SMEs through an information platform and information exchange. Sharing of the Agreement, information and trade and investment-related laws and regulations and all additional useful information	Information sharing through a public website with information concerning the Agreement and information relevant to the SMEs, as well as information to access other Parties' websites and relevant authorities' websites.	Information sharing through a public website with information regarding the Agreement, information relevant for SMEs and access to other Parties' websites and relevant authorities' websites.
Cooperation	Commitments to cooperation to help and promote SME's business		

Institutional arrangements	Designation by each country of a contact point to implement SMEs provisions	Creation of a Committee on SMEs responsible for helping and supporting SMEs benefiting from the Agreement, monitoring the information sharing and making further recommendations regarding SMEs provisions	Designation by each country of a contact point for the implementation of the chapter, helping SMEs benefiting from the Agreement and making recommendations on the matter to the Joint Committee and other matters relevant to the SMEs
Dispute Settlement Mechanism	Exclusion from the Dispute Settlement mechanism	Exclusion from the Dispute Settlement mechanism	Exclusion from the Dispute Settlement mechanism

Source: Authors

Figure 9: SMEs-related provisions in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

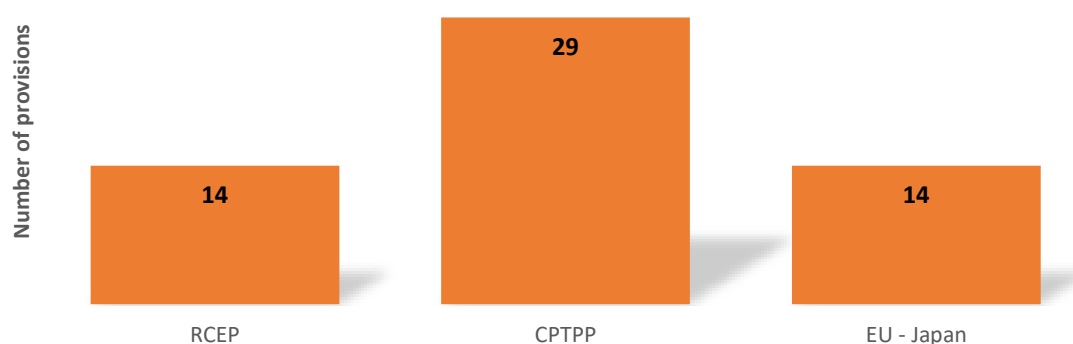
Note: The figure is developed based on a list of keywords available in Annex 1

3.1.6 Health-related provisions

Health is a common issue in the three agreements, it is mainly covered by the standard provisions regarding sanitary and phytosanitary measures and technical barriers to trade. It is however rarely a topic in itself in the agreements in contrast to labour or environment. Indeed, it mainly appears as an exception to trade provisions. It is considered as being part of some concerned issues of the CPTPP. It is indeed related to health when dealing with worki conditions, the protection of the environment in a way to prevent a danger to human life or health, similar with the protection of ozone layer or fight against invasive alien species, it also highlights that economic growth can help peoples living healthy. However, health is still considered by itself when linked with intellectual property in which the parties reaffirm their commitment to protecting public health and consequently being authorized to take measures to protect public health and promote access to medicines.

While the CPTPP integrates health as a consideration, the RCEP is limited to exception clauses. The RCEP still contains a clause similar to the CPTPP one dealing with public health as part of its Intellectual Property chapter. As part of this clause, it reaffirms the commitment of the parties to the Doha Declaration on the TRIPS Agreement and Public Health and their possibility to adopt measures necessary to protect public health and access to medicines. On that topic, the EU-Japan EPA is quite close to the RCEP because it deals with health as an exception to trade provisions and contains a clause referring to commitments to the Doha Declaration on the TRIPS Agreement and Public Health.

Figure 10: Health-related provisions in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

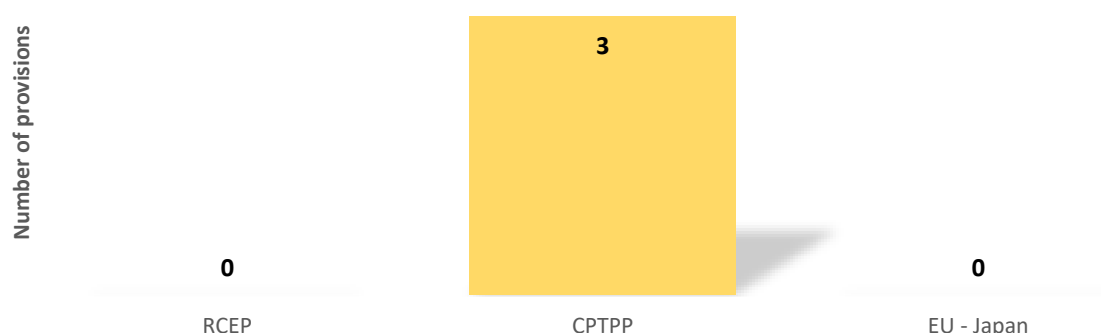
3.1.7 Gender-related provisions

Gender is a cross-cutting issue that encompasses one basic topic. It can indeed be included in gender-related topics such as labour rights, vulnerable groups, or human rights. (J.-A., Monteiro, 2018) As these issues are already addressed by the above sections, the gender-related provisions research will focus on a narrow definition, using strict keywords highlighted in the work of J.-A. Monteiro i.e., female, gender, girl/boy, male, mother, pregnancy/pregnant, maternity, sex, and woman/women. The research also includes two relevant international instruments namely the Beijing Declaration (Platform for Action) and the Convention on the elimination of All Forms of Discrimination Against Women.

The search was done fast as none of the three agreements contains the two international instruments. Then, when it comes to keywords, the RCEP and the EU-Japan also have none of all the mentioned keywords. On the other hand, the CPTPP contains some provisions with the relevant keywords. The CPTPP in its labour chapter addresses the inequality issue and then promotes “equality of, elimination of discrimination against, and

the employment interests of women”. In terms of cooperation, the CPTPP encourages the parties to cooperate for promoting education, culture, and gender equality. Finally, the CPTPP addresses specifically women in a dedicated clause named “Women and Economic Growth” in its development chapter, the provision recognizes that “*enhancing opportunities for women [...] to participate in the domestic and global economy contributes to economic development*”. The CPTPP encourages the Parties to undertake cooperative activities to enhance the ability of women to benefit from the opportunities created by the Agreement.

Figure 11: Gender-related provisions in RCEP, CPTPP, EU-Japan EPA



Sources: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

Overall, as summarized in table 3 and figure 17, the RCEP has much more limited sustainable development related content than the other two recent mega trade agreements involving Asian economies. However, the potential impact of an agreement may not only be measured by the areas covered but also by the enforceability of its content. This is explored in the next subsection.

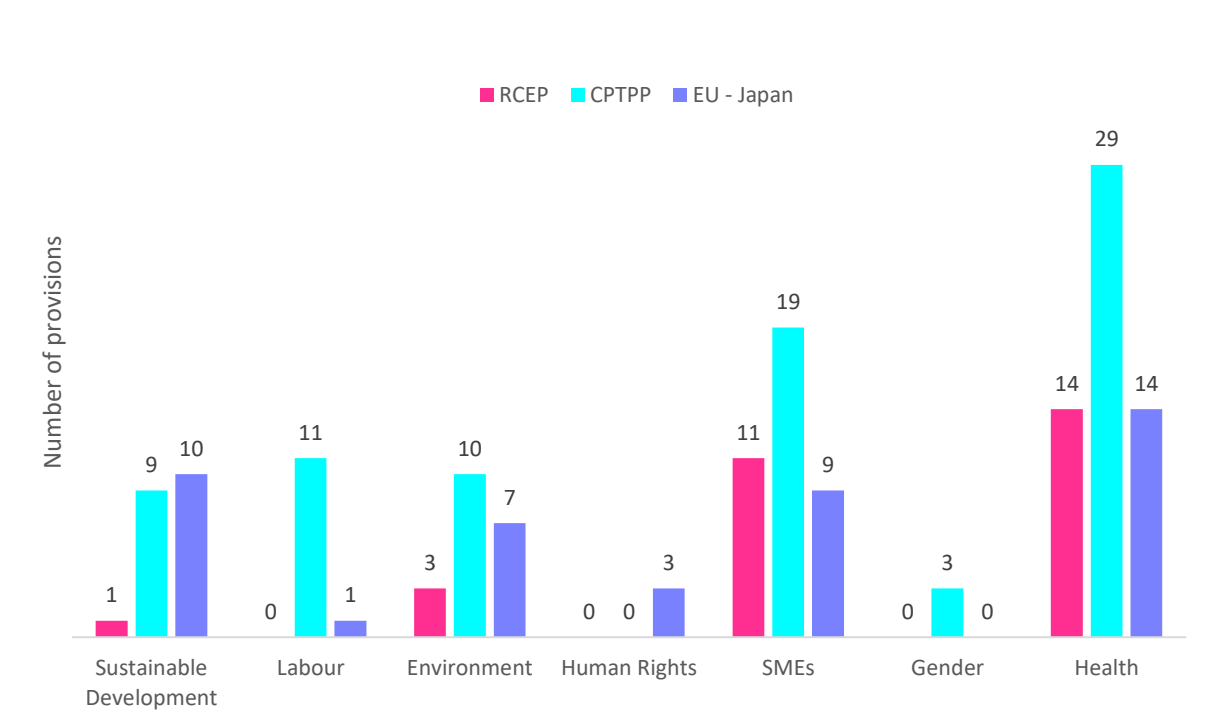
Table 2: Sustainable Development-related provisions in RCEP, CPTPP, EU-Japan EPA – A summary

	RCEP	CPTPP	EU-JAPAN EPA
Sustainable Development	Mentioned in the preamble and Chapter 18	Chap. 23: Development, <i>And mentioned in the preamble, Chapters 19 and 20</i>	Chap. 16: Trade and Sustainable Development <i>And mentioned in the preamble, Chapters 19, and 22</i>
Labour	None	Chap. 19: Labour	Chap. 16: Trade and Sustainable Development

		<i>And mentioned in the preamble, Chapters 28 and 15</i>	
Environment	<i>Mentioned in Chapters 6 and 10</i>	Chap 20: Environment <i>And mentioned in the preamble, Chapters 8, and 15</i>	Chap. 16: Trade and Sustainable Development <i>And mentioned in the preamble, Chapters 7, and 8</i>
Human Rights	None	None	<i>Mentioned in the Preamble and chapter 8</i>
SMEs	Chap. 14: Small and Medium Enterprises <i>And mentioned in Chapters 1, 4, 12, 15, 16, 18</i>	Chap. 24: Small and Medium-Sized Enterprises <i>And mentioned in the Preamble, Chapters 1,5, 14, 15, 18, 19, 21, 22, 23,25 and 26</i>	Chap. 20: Small and medium-sized enterprises <i>And mentioned in the Preamble, Chapters 4, 8, 14 and 18</i>
Health	Chapter 11: Intellectual Property <i>And mentioned in Chapters 5, 6, 10, 17</i>	Chapter 18: Intellectual Property <i>And mentioned in Chapters 7, 8, 9, 11, 15, 19, 20, 23, 29</i>	Chapter 14: Intellectual Property <i>And mentioned in Chapters 2, 4, 6, 7, 8, 7, 8, 18</i>
Gender	None	Chapter 23: Development <i>And mentioned in Chapter 19</i>	None

Source: Authors

Figure 12: Sustainable Development related provisions in RCEP, CPTPP, EU-Japan EPA



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 27 April 2022

Note: The figure is developed based on a list of keywords available in Annex 1

3.2 The level of enforceability of sustainable development provisions

3.2.1 Dispute settlement mechanisms

When it comes to dispute settlement mechanisms allowing the contracting states to challenge each other about non-implementation of the agreement, the three agreements include necessary provisions. The CPTPP provides for several mechanisms in its twenty-eighth chapter: consultations, goods offices, conciliation and mediation or a panel. The same mechanisms are incorporated in the RCEP. Consultations, mediations, and panels of arbitrators are also present in the EU-Japan EPA.

However, these dispute settlement mechanisms are not applicable to all chapters and provisions. In fact, sustainable development related commitments tend to be specifically excluded from these general mechanisms. The CPTPP explicitly excludes the chapters concerning development, small and medium-sized enterprises, and transparency and anti-corruption from the dispute settlement mechanisms. The same is done in the EU-Japan EPA regarding chapters on corporate social responsibility, small and medium-sized enterprises and trade and sustainable development. As for RCEP, the chapter on small and medium-sized enterprises, the only one that can be said to address specifically

the sustainable development, contains a clause stating: “*Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter*”.

A more careful review of CPTPP and EU-Japan EPA show that they do not exclude all sustainable development related provisions from the dispute settlement mechanisms. Starting with the CPTPP, environment and labour chapters are not excluded from the scope of the mechanisms; it is then possible to initiate, for example, panel proceedings for measures non-compliant with labour laws provisions. However, special provisions in addition to the general mechanisms apply. Both environment and labour chapters provide for specific consultations. The labour chapter requires the party to try seeking an agreement by consultation before being authorized to resort to a panel established by the dispute settlement chapter. A step differs in the labour consultations from the general mechanism, if the parties fail to reach an agreement, they may request to submit the dispute to the Labour Council representatives. Similarly, the environment chapter sets up several steps: environment consultations, in case of failure senior representative consultations and then Ministerial consultations. It is only after following each step that the requesting party is allowed to resort to general consultations or a panel of the dispute resolution mechanism.

When it comes to the EU-Japan EPA, most sustainable-development-related provisions are excluded from the general dispute resolution mechanism, but special mechanisms are established instead. The main chapter dedicated to the subject, namely chapter 16 on trade and sustainable development, provides for consultations in case of disputes. When the consultations are not sufficient to solve the matter, they may refer to the relevant Committee that will seek a mutually satisfactory resolution. It finally establishes a final step which consists in gathering a panel of three experts who will examine the dispute and issue an interim and a final report. However, the final panel will only constitute a basis for discussions among the Parties on the measures to adopt to end the dispute. The final implementation is monitored by the same Committee, noting that the mechanism decisions regarding sustainable development are ultimately not binding for the requested states.

As noted before, the RCEP does not provide for special mechanisms that could be applied to sustainable development provisions, it limits itself to unconditionally excluding such provisions from its dispute settlement mechanism. Addressing this issue (e.g. in the SME chapter) could constitute a first step to enhancing sustainability in the RCEP. A non-binding mechanism like the EU-Japan EPA with consultative reports on a dispute may be first envisaged. This mechanism would help encourage the contracting parties to implement the related provisions and provide a remedy for others, without the coercive aspect.

3.2.2 Institutional bodies responsible for the implementation

All the Agreements set up institutional bodies with different functions but especially ensuring the implementation of the text, discussing further negotiations, or solving problems. Some bodies may be dedicated to sustainable development issues provided for in the agreements.

As such, the EU-Japan EPA establishes a committee on trade and sustainable development “responsible for the effective implementation and operation” of the chapter on trade and sustainable development. It will then ensure that the chapter is fully implemented by the contracting states and try to find solutions for disputes related to the topic between the parties. Similarly, the CPTPP sets up a Labour Council responsible for the related chapter, an environment Committee for cooperation and coordination purposes, to serve as a forum of discussion and to implement the environment chapter, or also a committee on Development and on small and medium-sized enterprises. The RCEP also follows a similar approach by establishing a Committee on Sustainable Growth which will deal with topics related to its chapter on small and medium enterprises and particularly “monitoring [its] implementation”.

4. Enhancing sustainable development provisions in the RCEP

4.1 Paving the way for evolution of the agreement

As discussed above, the RCEP contains few sustainable development provisions; while some of these issues were discussed in the first round of negotiations, they were removed from the table of negotiations in the Fifth Round in 2017 (A.D. Rillo, A.M.R.D. Robeniol and S. M. Buban, 2022). The RCEP however seems to leave the door open to further sustainable development commitments. Indeed, it institutes institutional bodies: a general one named RCEP Joint Committee that can propose amendments and consider and take decisions on issues referred to by its subsidiary bodies. RCEP Article 18.6 also provides for subsidiary bodies and particularly a Committee on Sustainable Growth. This body is in charge of the work on “small and medium enterprises; economic and technical cooperation; and emerging issues”. Addressing sustainable development certainly fits as one of the “emerging issues” for RCEP.

Both bodies, the Joint Committee and the Committee on Sustainable Growth, are to meet every year and can make decisions by consensus. Issues discussed by the Committee on Sustainable Growth may be referred to the Joint Committee, which can then refer them to RCEP Ministers for endorsement. Besides, the agreement provides the possibility for amendments. Indeed, article 20.8 of the RCEP establishes a General Review mechanism forcing the contracting states to “*undertake a general review of the Agreement with a view to updating and enhancing this Agreement to ensure that this Agreement remains relevant to the trade and investment issues and challenges*”.

confronting the Parties". This mechanism shall be carried out "*five years after the date of entry into force of [the] Agreement, and every five years thereafter*". As part of this general review, the Parties shall consider the work of the subsidiary bodies, i.e., the Committee on Sustainable Growth and its work on emerging issues. They also must consider developments in international fora.

Much has happened since 2017 and the call for integrating sustainable development issues in trade agreements have grown stronger at both regional and multilateral levels. The COVID-19 and climate change crises, as well as the backlash against globalization over the past five years have shown that trade policy needs to more fully and directly account for its impact on society and the environment. A clear path exists for RCEP members to do so well before 2030, taking advantage of the general review of the agreement that needs to be completed by 2027.

Out of the eight RCEP members that are not parties of the CPTPP, five of them declared being interested in joining the CPTPP at a later stage. The Philippines, China and the Republic of Korea began the process for accession to membership, while Thailand and Indonesia expressed some interest. As demonstrated above, the CPTPP is richer in sustainable development clauses than the RCEP. The interest of these members to join the Agreement suggests that ASEAN states are not categorically opposed to this type of clause in their trade agreements. Indeed, if these five countries finally join the CPTPP, twelve out of the fifteen members of the RCEP would be committed to sustainable development clauses, these twelve members would then be likely to agree on the same type of provisions in the RCEP.

Among all RCEP members, only Myanmar, Lao P.D.R. and Cambodia have not expressed interest in joining the sustainable development-rich CPTPP and might need some convincing to commit to sustainable development topics. However, these three countries are parties to trade agreements and initiatives concluded by ASEAN, which launched the ASEAN Centre for Sustainable Development Studies and Dialogue (ACSDSD) in 2019 to promote sustainable development cooperation in the region (ASEAN, 2019) and is currently negotiating an update to its ASEAN trade agreement where development-related provisions are likely to feature more prominently than before.⁹ In that context, roadblocks to the inclusion of significant sustainable development provisions in RCEP before the 2030 Agenda expires are likely to be surmountable - provided there is sufficient political will for action among key existing members.

⁹ Although sustainable development is not specifically mentioned in the priorities for ATIGA update, issues of inclusiveness, resilience and development are. See <https://asean.org/asean-launches-negotiations-to-upgrade-asean-trade-in-goods-agreement/>

4.2 Proposals for enhancing sustainable development in the RCEP

As noted, many RCEP members are already CPTPP members, and several others are in a process to join. It then makes sense to take inspiration from the CPTPP to draw the future provisions of the RCEP. The SMEs chapter of the RCEP is well furnished, and the health topic is covered in a similar way in all three mega trade agreements reviewed. The main sustainable development areas integrated into both the CPTPP and the EU-Japan EPA but missing in the RCEP are labour and environment provisions, along with a dedicated chapter to sustainable development. Focusing on these areas and a dedicated chapter may be considered in the first step towards integration of sustainable development of RCEP. The other two areas covered in our analysis, namely human rights and gender, are not consistently found in recent RTAs: Human rights are absent from the CPTPP, and gender is absent from the EU-Japan EPA. One or both of these areas may then be considered in a second step, building on the successful completion of the first.

Taking into account that most RCEP members are – or are about to be – also CPTPP members, an imitation of the CPTPP clauses could be more easily adopted, but the EU-Japan EPA approach also presents some advantages to be considered by RCEP members.¹⁰ Options for introducing general sustainable development provisions, as well as labour and environment provisions are accordingly proposed below.

4.2.1 Introducing general sustainable development provisions

Based on the above reference agreements, sustainable development is always mentioned in general before going into specific topics. The RCEP may follow the same model.

As noted earlier, the dedicated development chapter of the CPTPP is mostly of a best endeavor nature. The chapter also reflects principles that are integrated into the preamble of the RCEP. The RCEP preamble states that the parties are “*aspiring to strengthen their economic partnership to create new employment opportunities, raise living standards and improve the general welfare of their peoples*”. While the first paragraph of the first article of the development chapter of the CPTPP states that “*The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty, raise living standards and create new employment opportunities in support of development.*” Also, the second article of the development chapter in CPTPP promotes development and also reflects the RCEP preamble that aims to “*strengthen[ing] economic growth and equitable economic development*” while taking into account “*the different levels of development*”

¹⁰ In particular, EU-Japan EPA sustainable development clauses follow this scheme: (1) commitment to existing international standards/instruments and (2) reaffirmation of a right to regulate in derogation to trade commitments.

among the Parties". Special and differential treatment is already provided for in the RCEP, as is the recognition of the importance of good governance, a predictable, transparent and consistent business environment. These similarities suggest that introducing such sustainable development provisions in the RCEP would not be a difficult obstacle to overcome.

In comparison, the EU-Japan EPA sustainable development provisions refer to several international instruments, added with a reaffirmation of the right to regulate. The content of these instruments is then more developed and precise than the statements of intent of the CPTPP. However, these international instruments are already adopted by most if not all RCEP members, as they are mainly declaration issued by international organizations whom all RCEP members are parties, e.g., the Agreement refers to the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, which commits all ILO members, and United Nations Declarations; and all RCEP members are also members of the United Nations and the ILO. It is then easily conceivable for them to reaffirm their commitments in a regional trade agreement. Drafting provisions by referring to international instruments allow members to draft a comprehensive and specific clause that could more easily be agreed upon. The systematic reaffirmation of the right to regulate also provide a concrete provision to invoke for implementation of sustainable development-related measures. Overall, the EU-Japan EPA may be seen as going beyond CPTPP provisions on providing policy space for sustainable development as a whole.

Recommendation 1: To draft a dedicated sustainable development chapter, RCEP members may choose between drafting general commitments to sustainable development (option 1) or referring to existing international instruments (option 2).

Two options for an RCEP chapter on sustainable development

Option 1: General commitments to Sustainable Development based on the CPTPP– Articles 23.1, 23.2 and 23.3

Article 1: General Provisions

1. The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty, raise living standards and create new employment opportunities in support of development.
2. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of jobs, and the alleviation of poverty.
3. The Parties acknowledge that economic growth and development contribute to achieving the objectives of this Agreement of promoting regional economic integration.
4. The Parties also acknowledge that effective domestic coordination of trade, investment and development policies can contribute to sustainable economic growth.

Article 2: Promotion of Development

1. The Parties acknowledge the importance of each Party's leadership in implementing development policies, including policies that are designed for its nationals to maximise the use of the opportunities created by this Agreement.
2. The Parties acknowledge that this Agreement has been designed in a manner that takes into account the different levels of economic development of the Parties, including through provisions that support and enable the achievement of national development goals.
3. The Parties further recognise that transparency, good governance and accountability contribute to the effectiveness of development policies.

Article 3: Broad-Based Economic Growth

1. The Parties acknowledge that broad-based economic growth reduces poverty, enables sustainable delivery of basic services, and expands opportunities for people to live healthy and productive lives.
2. The Parties recognise that broad-based economic growth promotes peace, stability, democratic institutions, attractive investment opportunities, and effectiveness in addressing regional and global challenges.

3. The Parties also recognise that generating and sustaining broad-based economic growth requires sustained high-level commitment by their governments to effectively and efficiently administer public institutions, invest in public infrastructure, welfare, health and education systems, and foster entrepreneurship and access to economic opportunity.

4. The Parties may enhance broad-based economic growth through policies that take advantage of trade and investment opportunities created by this Agreement in order to contribute to, among other things, sustainable development and the reduction of poverty. These policies may include those related to the promotion of market-based approaches aimed at improving trading conditions and access to finance for vulnerable areas or populations, and SMEs.

Option 2: References to international standards based on the EU-Japan EPA – Articles 16.1 and 16.2

Article 1: Context and objectives

1. The Parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations, taking into consideration the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference on 18 June 1998, the Plan of Implementation adopted by the World Summit on Sustainable Development on 4 September 2002, the Ministerial Declaration entitled "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" adopted by the Economic and Social Council of the United Nations on 5 July 2006, the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference on 10 June 2008, the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want" adopted by the General Assembly of the United Nations on 27 July 2012, and the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled "Transforming our world: the 2030 Agenda for Sustainable Development" adopted by the General Assembly of the United Nations on 25 September 2015.

2. The Parties recognise the contribution of this Agreement to the promotion of sustainable development, of which economic development, social development and environmental protection are mutually reinforcing components. The Parties further recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development and is not to harmonise the environment or labour standards of the Parties.

Article 2: Right to regulate

1. Recognising the right of each Party to determine its sustainable development policies and priorities, [...] and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitments to the internationally recognised standards and international agreements to which the Party is party, each Party shall strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection.

[...]

4.2.2 Introducing environmental provisions

Both the CPTPP and the EU-Japan EPA cover extensively the environment, including environment-related issues such as marine capture fisheries. Again, the CPTPP constitutes a possible baseline as most RCEP members are committed to joining it, also noting that the ASEAN +1 FTAs involving half of RCEP members have no environmental provisions. Apart from specific issues, the CPTPP includes three types of environmental-related provisions: (1) Recognition of the objective to support trade and environmental policies; (2) General commitments of the parties such as supporting environmental policies, determining their own level of environmental protection, enforcing their domestic laws; and (3) references to multilateral environmental agreements.

The CPTPP provisions on environment are essentially best endeavour statements rather than binding commitments. Similarly, the EU-Japan EPA “*stress[es] the importance of multilateral environmental agreements, commit the parties to implement domestic laws and share relevant information with other parties*” and includes environmental protection in its article relating to the reaffirmation of its right to regulate. As such, the EU-Japan EPA and CPTPP commitments are comparable. They mark a first step in introducing environmental provisions and cover most of soft laws existing in the field.

RCEP members then have the choice to follow the CPTPP path or decide to go further and adopt more concrete and binding provisions, e.g., provisions aiming at promoting trade in environmental goods and services (with a negotiated list of such goods and services presumably attached).¹¹ It is, however, worth noting that Environmental Goods Agreement negotiation at the WTO have made little progress and involved only five of the RCEP members, namely Australia, New Zealand, China, Republic of Korea, and

¹¹ See Chapter 4 of ESCAP Asia-Pacific Trade and Investment Report 2021 on climate-smart trade for a recent and detailed discussion of climate change related provisions in RTAs. <https://www.unescap.org/kp/APTIR2021>

Japan, suggesting that only one-third of RCEP members may be disposed to explore such options.¹²

Recommendation 2: To draft an environment chapter, RCEP members may:

- 1. Adopt baseline provisions, such as CPTPP (option 1) or EU-Japan EPA clauses (option 2)**
- 2. Consider going beyond baseline by adopting provisions for promoting trade of environmental goods and services (additional option 1)**
- 3. Consider introducing specific provisions in environmental-related areas of importance for the region (additional option 2)**

Options for RCEP environment provisions

Option 1: baseline based on the CPTPP – Articles 20.2, 20.3 and 20.4

Article 1: Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.
2. Taking account of their respective national priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance and complement the objectives of this Agreement.
3. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 2: General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.
2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

¹² The outcome of the 12th ministerial conference held in June 2022 includes an agreement on fisheries subsidies and arguably provides renewed hope for progress on trade and environmental issues in the coming years.

3. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

4. No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement for that Party.

5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

6. Without prejudice to paragraph 2, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

7. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 3: Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

Option 2: baseline based on the EU – Japan EPA – Article 16.4

Article 1: Multilateral environmental agreements

1. The Parties stress the importance of multilateral environmental agreements, in particular those to which both Parties are party, as a means of multilateral environmental

governance for the international community to address global or regional environmental challenges. The Parties further stress the importance of achieving mutual supportiveness between trade and environment. In this context, the Parties shall exchange views and information on trade-related environmental matters of mutual interest in the meetings of the Committee on Trade and Sustainable Development, and as appropriate in other for a.

2. Each Party reaffirms its commitment to effectively implement in its laws, regulations and practices the multilateral environmental agreements to which it is party.

3. Each Party shall exchange information with the other Party on its respective situation and advancements regarding ratification, acceptance or approval of, or accession to, multilateral environmental agreements, including their amendments, which each Party considers appropriate to be bound by, as well as implementation of such agreements.

4. The Parties recognise the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as "UNFCCC"), in order to address the urgent threat of climate change, and the role of trade to that end. The Parties reaffirm their commitments to effectively implement the UNFCCC and the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session. The Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development. The Parties commit to working together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement.

5. Nothing in this Agreement prevents a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is party, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade.

Additional Option 1: Trade in environmental goods based on the New Zealand-Korea FTA, Article 16.4

Article 1: Trade Favouring Environment

1. The Parties recognise the importance of trade and investment in environmental goods and services beneficial to the environment in their economies as a contribution to sustainable development.

2. The Parties resolve to make efforts to facilitate and promote trade and investment in environmental goods and services beneficial to the environment, including environmental technologies, renewable energy, and energy-efficient goods and services.

Additional Option 2: Example of environmental-related areas based on EU-Japan EPA, Article 16.8

Article 1: Trade and sustainable use of fisheries resources and sustainable aquaculture

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable use and management of fisheries resources, safeguarding marine ecosystems, and promoting responsible and sustainable aquaculture.

2. In that context, the Parties shall:

(a) comply with the United Nations Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November 1993, and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 August 1995, take measures to achieve the objectives and principles of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October 1995, encourage the implementation of port state measures both at global and regional levels, and, as appropriate, encourage third countries to ratify, accept, approve, or accede to, relevant international agreements to which both Parties are party;

(b) promote conservation and sustainable use of fisheries resources through appropriate international organisations or bodies in which both Parties participate, including regional fisheries management organisations (hereinafter referred to as "RFMOs"), by means of, where applicable, effective monitoring, control or enforcement of the RFMOs' resolutions, recommendations or measures, and implementation of their catch documentation or certification schemes;

(c) adopt and implement their respective effective tools for combating illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing, including through legal instruments, and, where appropriate, control, monitoring and enforcement, and capacity management measures, recognising that voluntary sharing of information on IUU fishing will enhance the effectiveness of these tools in the fight against IUU fishing, and underlining the crucial role of the members of RFMOs with major fisheries markets to leverage a sustainable use of fisheries resources; and

(d) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects

4.2.3 Introducing labour rights and standards provisions

The CPTPP provides a rather exhaustive model in terms of Labour provisions and presents a list of common clauses existing in labour provisions, as follows:

- Commitments to ILO Declaration

- Commitment to implement Labour rights stated in the ILO Declaration
- Non-derogation of existing labour laws
- Enforcement of domestic labour laws
- Recognition of the objective to eliminate all forms of forced or compulsory labour
- Encourage to promote corporate social responsibility
- Public awareness of domestic labour laws
- Access to justice
- Possibility of public submissions
- Cooperation to effectively enforce the labour provisions
- And a dedicated dispute settlement mechanism

The EU-Japan EPA adopts a different approach by referring to international labour standards and conventions and reaffirming a right to regulate in this area. Taken together, the two mega-RTAs cover between them most types of labour-related provisions. The CPTPP model allows members to determine each subject they want to deal with and leave others out, but it needs to gather all members' approbation on all topics. The EU-Japan EPA model is easier to draft because the international instruments are already existing, they just need to be included by the members, but there is less flexibility to draft its own provisions.

Recommendation 3: To draft a labour chapter, RCEP members may choose a path between drafting each labour right commitment as done in CPTPP clauses (option 1) or referring to existing international instruments as in the EU-Japan EPA (option 2).

Options for RCEP labour rights and standards provisions

Option 1: Compilation of labour-related provisions based on the CPTPP – Articles 19.2, 19.3, 19.54, 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10

Article 1: Statement of Shared Commitment

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.
2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

Article 2: Labour Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration;
 - (a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Article 3: Non-Derogation

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

[...]

in a manner affecting trade or investment between the Parties.

Article 4: Enforcement of Labour Laws

1. No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions with regard to the allocation of enforcement resources between labour enforcement activities among the fundamental labour rights and acceptable conditions of work enumerated in Article 19.3.1 (Labour Rights) and Article 19.3.2, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party.

Article 5: Forced or Compulsory Labour

Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.⁶

Article 6: Corporate Social Responsibility

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

Article 7: Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws: are fair, equitable and transparent; comply with due process of law; and do not entail unreasonable fees or time limits or unwarranted delays. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

[...]

Article 8: Public Submissions

1. Each Party, through its contact point designated under Article 19.13 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

[...]

Article 9: Cooperation

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.

[...]

Option 2: Reference to international instruments based on the EU – Japan EPA – Articles 16.3 and 16.2

Article 1: International labour standards and conventions

1. The Parties recognise full and productive employment and decent work for all as key elements to respond to economic, labour and social challenges. The Parties further

recognise the importance of promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all. In that context, the Parties shall exchange views and information on trade-related labour issues of mutual interest in the meetings of the Committee on Trade and Sustainable Development established pursuant to Article 22.3, and as appropriate in other fora.

2. The Parties reaffirm their obligations deriving from the International Labour Organisation (hereinafter referred to as "ILO") membership. The Parties further reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Accordingly, the Parties shall respect, promote and realise in their laws, regulations and practices the internationally recognised principles concerning the fundamental rights at work, which are:

- (a) the freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions and other ILO Conventions which each Party considers appropriate to ratify.

The Parties shall exchange information on their respective situations as regards the ratification of ILO Conventions and Protocols, including the fundamental ILO Conventions.

5. Each Party reaffirms its commitments to effectively implement in its laws, regulations and practices ILO Conventions ratified by Japan and the Member States of the European Union respectively.

6. The Parties recognise that the violation of the internationally recognised principles concerning the fundamental rights at work referred to in paragraph 2 cannot be invoked or otherwise used as a legitimate comparative advantage, and that labour standards should not be used for protectionist trade purposes.

Article 2: Right to regulate and levels of protection

1. Recognising the right of each Party to establish its own levels of labour protection, and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitments to the internationally recognised standards and international agreements to which the Party is party, each Party shall strive to ensure that its laws, regulations and related policies provide high levels of labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection.

2. The Parties shall not encourage trade or investment by relaxing or lowering the level of protection provided by their respective labour laws and regulations. To that effect, the Parties shall not waive or otherwise derogate from those laws and regulations or fail to effectively enforce them through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.

3. The Parties shall not use their respective labour laws and regulations in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on international trade.

4.2.4 Shaping a dispute mechanism

Sustainable development issues are excluded from the general dispute settlement mechanisms in both CPTPP and EU-Japan EPA and provide for separate mechanisms. The mechanisms in the two agreements are both based on the search for a mutually satisfactory resolution of tensions but still follow a different approach: the CPTPP introduces consultation mechanisms that can lead to the general and binding dispute settlement mechanism of the agreement; while the EU-Japan EPA implements several steps of consultations that can only lead to the publication of a non-binding report. The EU-Japan EPA mechanism is therefore the least binding of the two.

Recommendation 4: To draft a dispute settlement mechanism dedicated to sustainable development-related provisions, RCEP members may decide whether they want a non-binding mechanism (option 1) or a mechanism able to lead to a binding solution (option 2).

Options for RCEP sustainable development dispute settlement mechanism

Option 1: Non-binding report based on the EU-Japan EPA – Articles 16.17, 16.18 and 16.19

Article 1: Government consultations

1. In the event of disagreement between the Parties on any matter regarding the interpretation or application of this Chapter, the Parties shall only have recourse to the procedures set out in this Article and Article 2. The provisions of this Chapter shall not be subject to dispute settlement.

2. A Party may request in writing consultations with the other Party on any matter concerning the interpretation and application of this Chapter. The Party requesting consultations shall set out the reasons for the request, including identification of the matter and an indication of its factual and legal basis, specifying the relevant provisions of this Chapter.

3. When a Party requests consultation pursuant to paragraph 2, the other Party shall reply promptly and enter into consultations with a view to reaching a mutually satisfactory resolution of the matter.

4. During consultations, each Party shall provide sufficient information to enable a full examination of the matter in question. The Parties shall take into account the activities of the ILO and other relevant international organisations or bodies in which both Parties participate and, as may be required by the Parties on an ad hoc basis, may seek advice from those international organisations or bodies, or other experts. The Parties shall discuss appropriate measures to be implemented, taking into account that advice.

5. If no solution is reached through the consultations held in accordance with paragraphs 2 to 4, the Committee [on sustainable growth] shall be convened promptly on request of a Party to consider the matter in question.

6. The Parties shall ensure that the solutions reached through the consultations under this Article will be jointly made publicly available, unless the Parties agree otherwise.

Article 2: Panel of experts

1. If, no later than 75 days of the date of the request by a Party to convene the Committee pursuant to paragraph 5 of Article 1, the Parties do not reach a mutually satisfactory resolution of the matter concerning the interpretation or application of the relevant Articles of this Chapter, a Party may request that a panel of experts be convened to examine the matter in accordance with the terms of reference referred to in paragraph 2. Such request shall be made in writing through the contact point of the other Party referred to in Article 16.14 and shall identify the reasons for the request, including the identification of the matter to be resolved and an indication of its factual and legal basis.

2. The Committee shall, within one year of the date of entry into force of this Agreement, adopt the rules of procedure and the terms of reference for the panel of experts. The rules of procedure shall identify the procedures for finding the relevant information. The panel shall interpret the relevant Articles of this Chapter in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. [...]

3. The panel of experts may obtain information from any source it deems appropriate. For matters related to ILO instruments or multilateral environmental agreements, it should seek information and advice from the relevant international organisations or bodies. Any information obtained pursuant to this paragraph shall be submitted to the Parties for their comments.

4. The panel shall be composed of three experts. They shall be selected in accordance with subparagraphs (a) to (e).

[...]

5. The panel of experts shall issue an interim and a final report to the Parties setting out the findings of facts, the interpretation or the applicability of the relevant Articles and the

basic rationale behind any findings and suggestions. No later than 45 days after the date of receipt of the interim report, which shall be issued no later than 90 days after the date of establishment of the panel, the Parties may submit written comments on that report. After considering any such written comments, the panel of experts may modify the report and make any further examination it considers appropriate. The final report shall be issued no later than 180 days after the date of establishment of the panel, unless the chairperson of the panel notifies the Parties in writing that the deadline cannot be met. In that case, the final report shall be issued no later than 200 days after the date of establishment of the panel, unless the Parties agree otherwise. The final report shall be made publicly available. The Parties shall ensure the protection of confidential information.

6. The Parties shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and its suggestions. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report. The follow-up actions or measures shall be monitored by the Committee. The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee.

Article 3: Review

1. The Committee shall discuss, as necessary, the implementation and operation of the institutional and consultation provisions contained in Articles 1, 2 and 3, taking into account, inter alia, the experience gained through the implementation and operation of this Chapter and the developments of the relevant policies of each Party. Such discussions may concern possible amendments to these Articles.

2. Taking into account the outcome of the discussions referred to in paragraph 1, the Committee may recommend to the Joint Committee amendments to the Articles referred to in paragraph 1.

Option 2: Consultations leading to binding settlement mechanisms based on the CPTPP – Article 19.15

Article 1: Labour Consultation

1. The Parties shall make every effort through cooperation and consultation based on the principle of mutual respect to resolve any matter arising under this Chapter.

2. A Party (requesting Party) may, at any time, request labour consultations with another Party (responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter. The requesting Party shall circulate the request to the other Parties through their respective contact points.

[...]

8. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The consulting Parties may request advice from an independent expert or experts chosen by the consulting Parties to assist them. The consulting Parties may have recourse to such procedures as good offices, conciliation or mediation.

[...]

10. If the consulting Parties are unable to resolve the matter, any consulting Party may request that the Council representatives of the consulting Parties convene to consider the matter by delivering a written request to the other consulting Party through its contact point. The Party making that request shall inform the other Parties through their contact points. The Council representatives of the consulting Parties shall convene no later than 30 days after the date of receipt of the request, unless the consulting Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation or mediation.

11. If the consulting Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon. The consulting Parties shall make the outcome available to the other Parties and to the public, unless they agree otherwise.

12. If the consulting Parties have failed to resolve the matter no later than 60 days after the date of receipt of a request under paragraph 2, the requesting Party may request the establishment of a Panel and thereafter have recourse to the other provisions of the Dispute Settlement Chapter.

13. No Party shall have recourse to dispute settlement under the Dispute Settlement Chapter for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

[...]

15. Labour consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

5. Conclusion

The RCEP has recently entered into force and is the world's biggest trade agreement by most metrics. It may expand further as India is entitled to join without further negotiations and Hong-Kong, China also applied to join (Nikkei Asia, 2022). However, the sustainable development content of RCEP is currently extremely limited. The global review of RTAs

presented in this paper show a significant increase in the number of sustainable development related provisions in recent agreements. Both the CPTPP and the EU-Japan EPA, of comparable size to RCEP, contain a much greater number of sustainable development related provisions compared to RCEP, covering topics such as labour rights, environment, health, SMEs and gender issues.

However, the RCEP is a living agreement allowing for amendments and providing for a general review of the agreement every five years. RCEP implementation also involves the establishment of a committee to work on emerging issues, whose work will be submitted to the parties for the general review. Given the date of entry into force, the first review and possible amendments are expected to take place in 2027. It is therefore possible for RCEP members to take concrete steps towards integrating sustainable development provisions in the agreement in time for a successful implementation of the 2030 Agenda for Sustainable Development.

Based on the detailed comparative analysis presented earlier, a two-step path forward may be followed. Focus may be first placed on negotiating a sustainable development chapter as well as labour rights and environmental provisions; Provisions addressing gender and human rights issues may be discussed in a second step. Given the fact that many RCEP members are either already part of the CPTPP, or have expressed interest in joining it, modelling sustainable development provisions based on CPTPP might be most practical. However, RCEP members are encouraged to also consider other options presented in the paper, such as those based on the EU-Japan EPA, including to ensure a suitable enforcement mechanism is put in place for these new provisions.

Looking ahead, ASEAN might be able to take the lead in enhancing sustainable development coverage of RCEP since it is currently working on modernizing its own trade in goods agreement, as well as that with Australia and New-Zealand. Early establishment of the RCEP Committee on Sustainable Growth and inclusion of the sustainable development areas discussed in this paper in its work programme may enable timely progress, should sufficient political will exist among existing RCEP parties.

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Annexes

Annex 1: List of keywords used in the UNESCAP Trade Agreement text analysis tool¹³

Find below the list of keywords used in the UNESCAP Trade Agreement Text Analysis Tool, by topic.

Sustainable development: Sustainable&development

Environment: (Environment#&Protection|Protection&ENVIRONMENT#)

Labour: labo#r&(right#|law#)

Human rights: Human&right#

SMEs: (small&medium&enterpris#|SMEs)

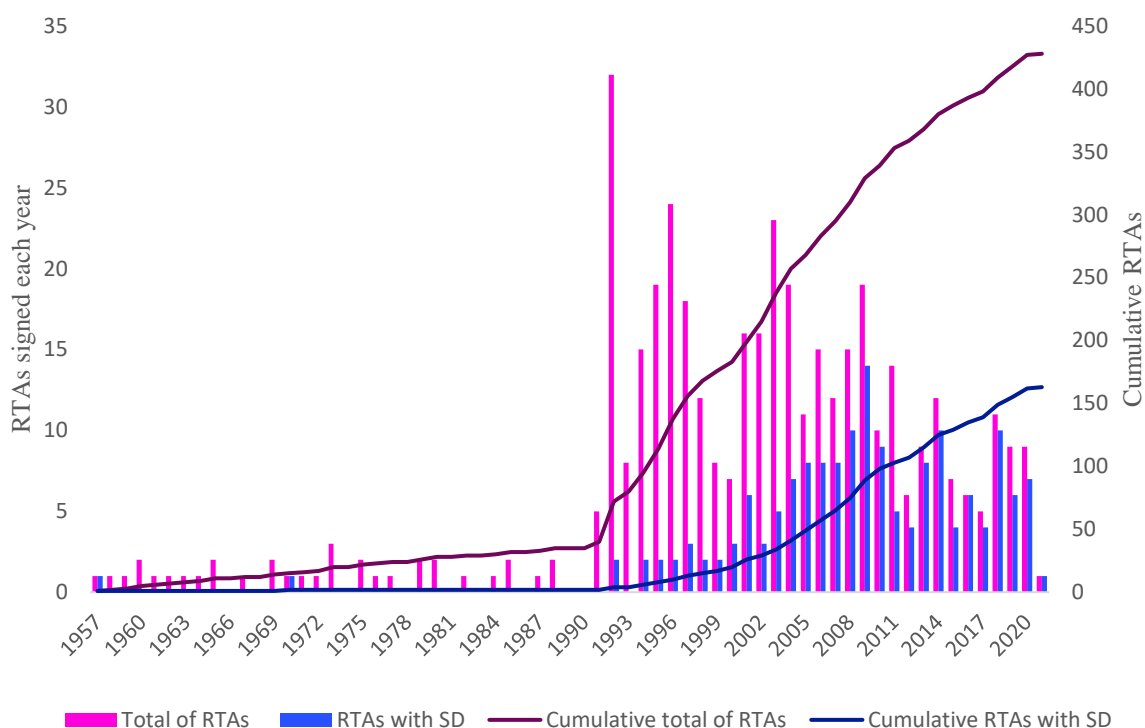
Gender: (female|gender|girl|boy|male|mother|pregnan#|maternity|sex|woman|women)

Health: "health"

¹³ UNESCAP Trade Agreement text analysis tool available at <https://tiid.shinyapps.io/text-analysis-tool/>

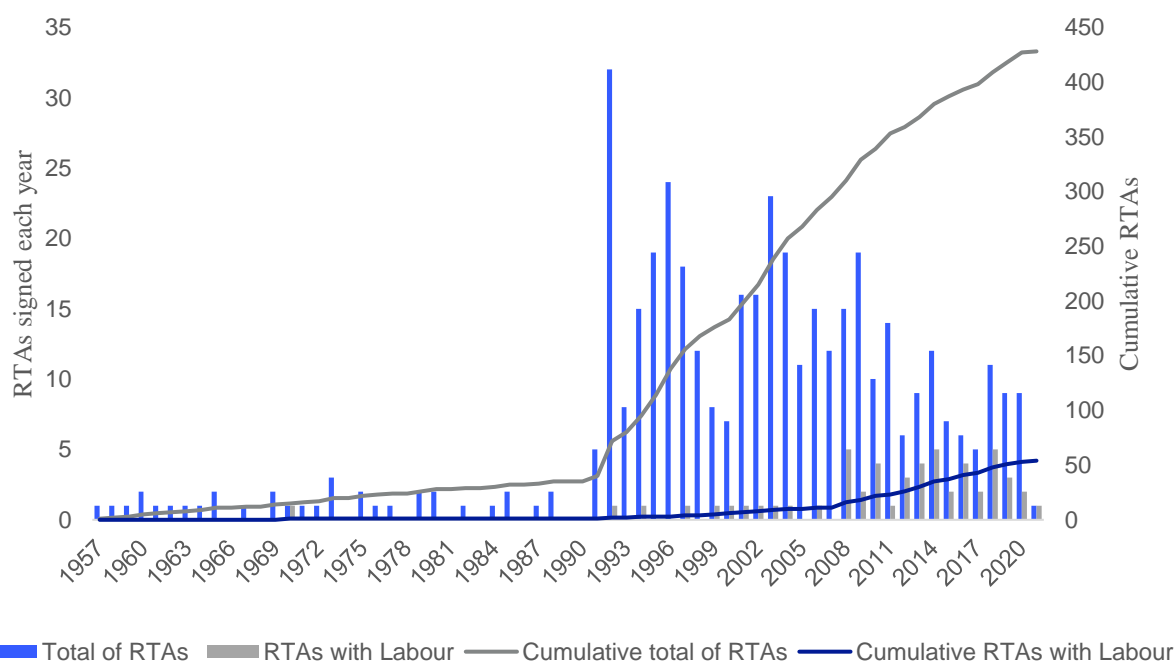
Annex 2: Evolution of sustainable development-related provisions in RTAs

Figure 13: Sustainable Development provisions in RTAs



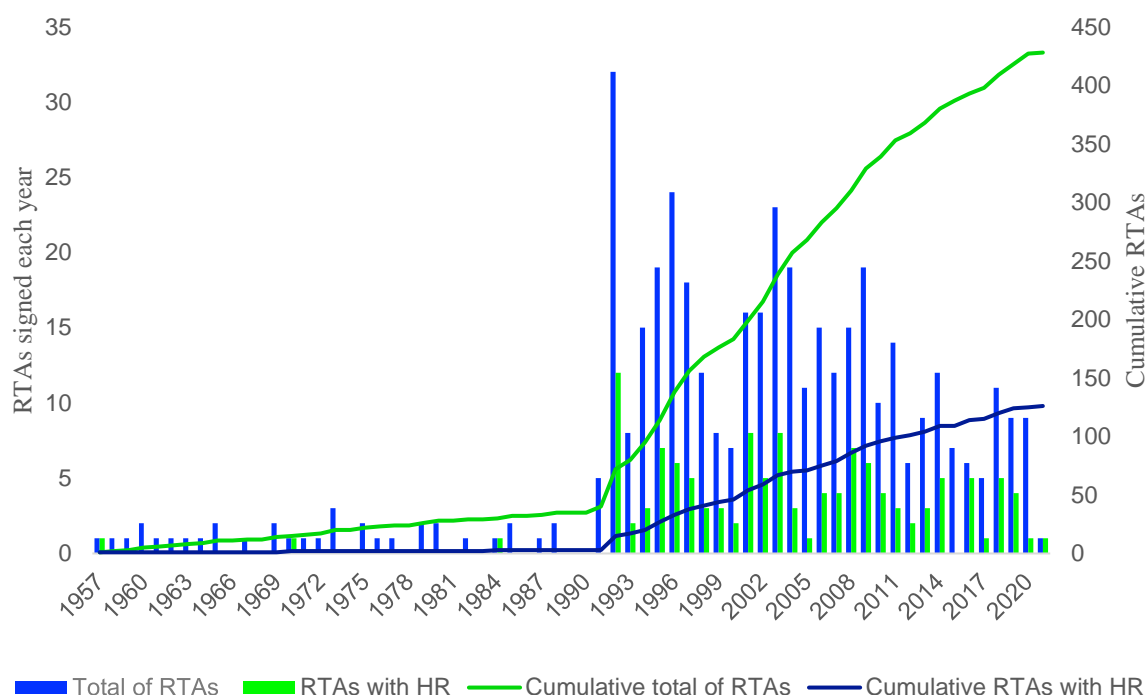
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 14: Labour-related provisions in RTAs



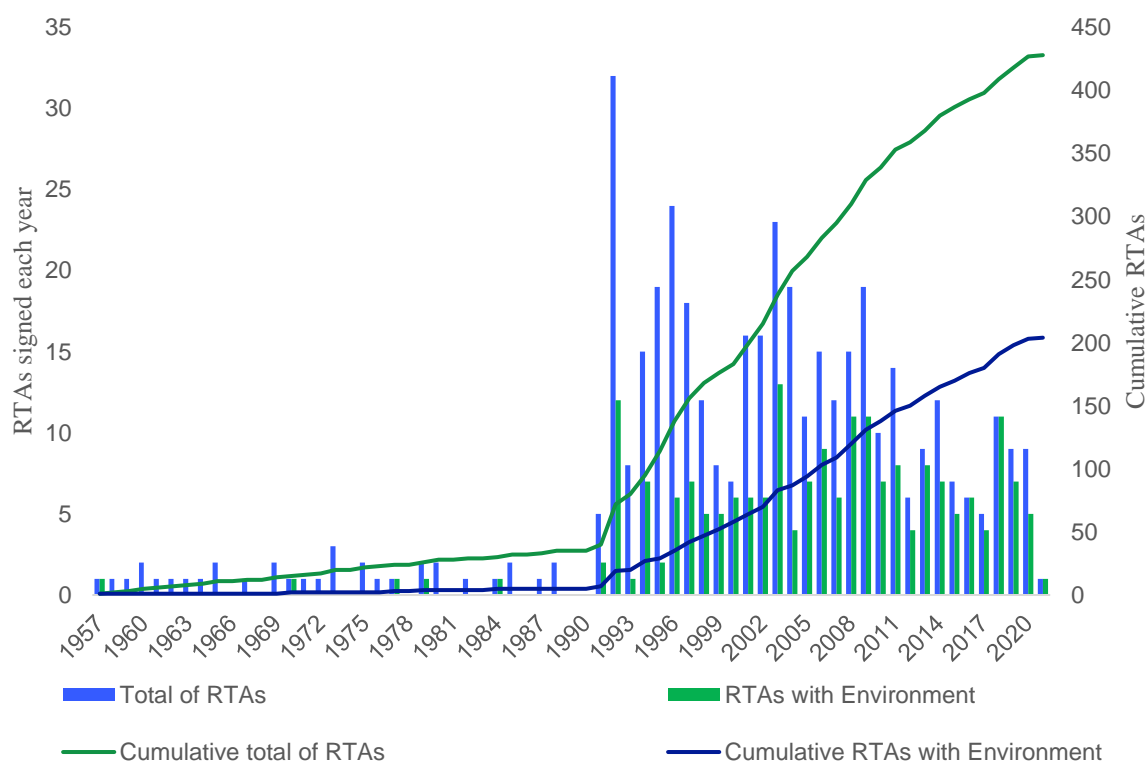
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 15: Human rights-related provisions in RTAs



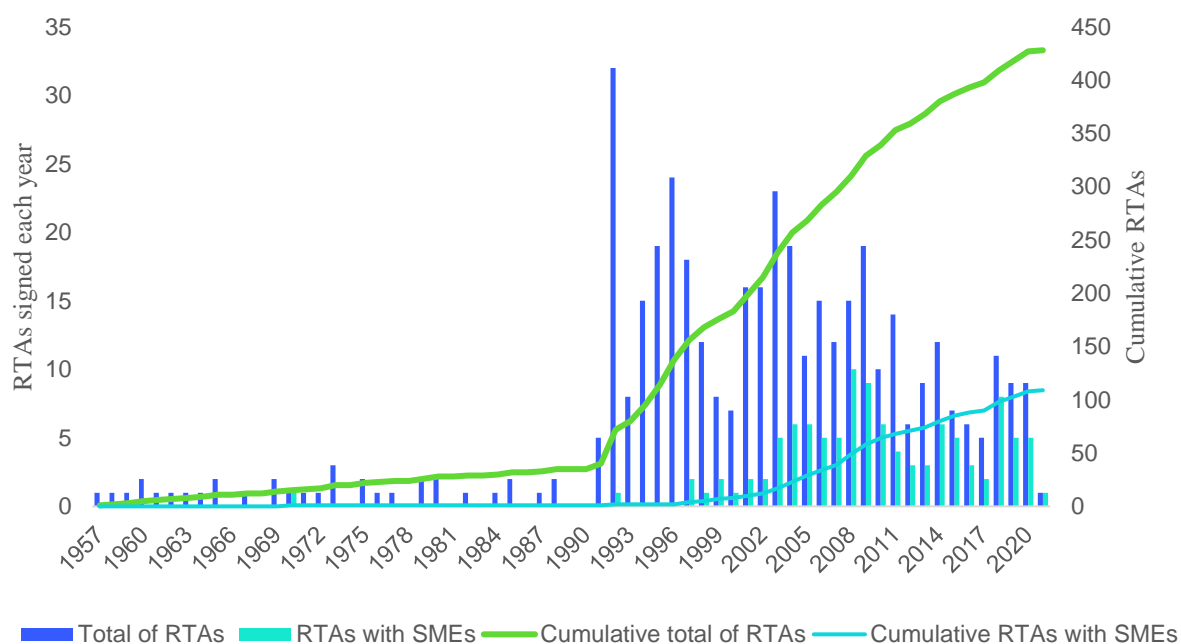
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 16: Environment-related provisions in RTAs



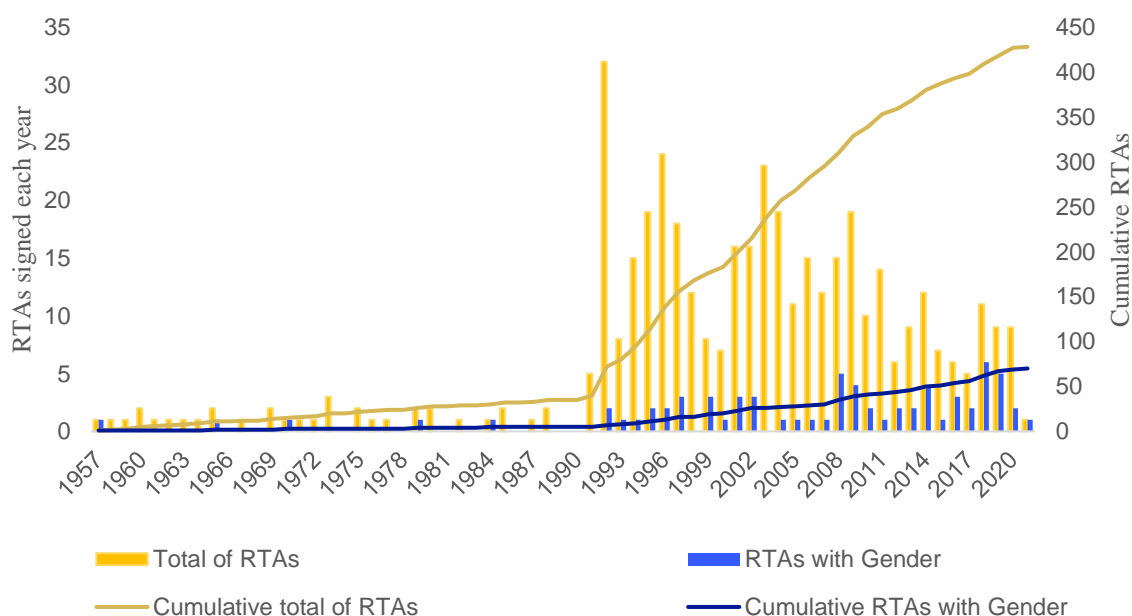
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 17: SMEs related provisions in RTAs



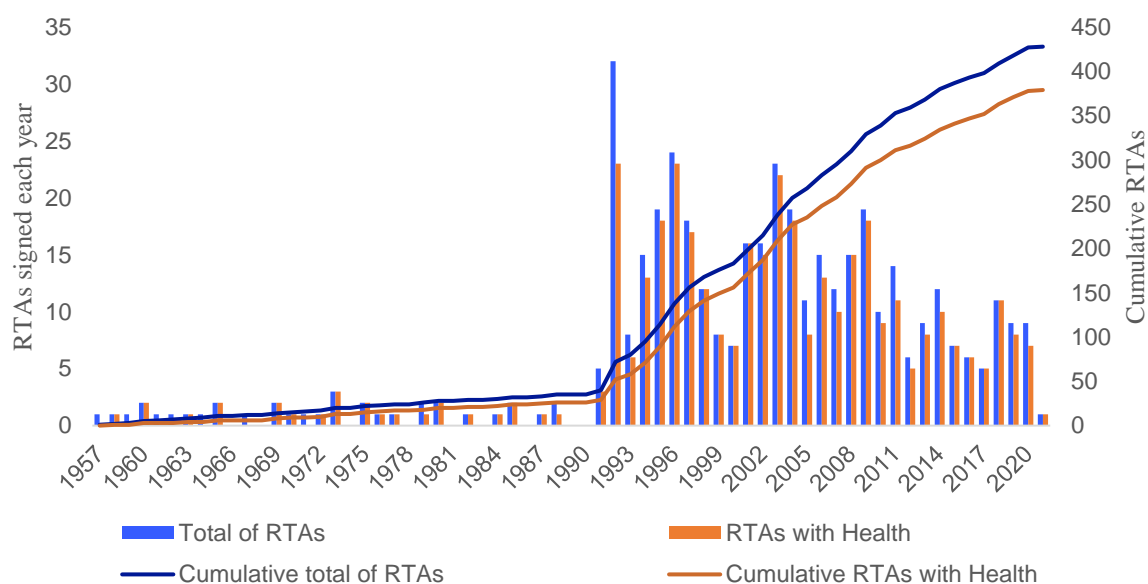
Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 18: Gender-related provisions in RTAs



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Figure 19: Health-related provisions in RTAs



Source: Authors, based on data from ESCAP Trade Agreement Text Analysis Tool, consulted 8 June 2022

Box 1: On the benefits of RCEP

Alessandro Nicita (2021) analyses tariff concessions in the RCEP and finds that the RCEP may lower average tariffs among parties by about 9 percent, concluding that it would increase trade in the region. Benefits are expected to be higher for the largest economies, with Japan potentially the biggest beneficiary (UNCTAD, 2021).¹⁴ In contrast, Hui Tee, J. (2022) argues that the reductions of tariffs are not significant due to pre-existing agreements. Flach, L. Hildernbrand, H., and Teti, F, (2021) also expect that RCEP tariff liberalization should have a real impact mostly only for China, Japan, and South Korea (2021). However, all seem to agree on other RCEP advantages, in particular the harmonization of rules of origins that allows the use of a single preferential certificate of origin in the region - keeping in mind that different rules may apply for export to countries with tariff differentials. The Ministry of Trade and Industry of Singapore and the Asian Trade Centre (2021) also explain that apart from the general advantages that these harmonized rules of origin may give to businesses, RCEP will be particularly beneficial to some specific sectors, namely the processed food sector and mineral fuel, petrochemical, chemical, and plastics sectors.

¹⁴ According to UNCTAD (2021), exports are to increase for Australia, China, the Republic of Korea, and New Zealand but could decrease for Cambodia, Indonesia, Philippines, and Viet Nam due to negative trade diversion effects, although staying out of the partnership would likely have resulted in worth export losses.

An important element is the provisions for service liberalization to the extent that it will open 65% of services in participating countries. The Least Developed Countries participating in the RCEP will also benefit from the agreement but should implement structural reforms to really gain from the provisions, they will in any event receive development assistance for capacity building and trade reforms thanks to the differential treatment framework. (Thangavelu, S., Urata, S. and Narjoko, D. A., 2021).

Pitakdumrongkit (2021) discussed the effects of the RCEP in the lower Mekong subregion (i.e., Cambodia, Laos, Myanmar, Thailand, and Vietnam). The global impact is positive due to the rule of origin framework that will allow the countries to take part in global value chains. The agreement is rather well-received in the region.

In Cambodia, the benefits of the RCEP will depend on the understanding of the Rules of origins by the different companies. (ERIA, 2022a). The country should however benefit from e-commerce provisions that will attract new opportunities and investments. (ERIA, 2021). On the other hand, the enforcement of e-commerce rules in Lao P.D.R. constitute a challenge to effectively implement the agreement because the country has a limited level of technical capacity in technology and human resources (ERIA, 2022b).

The RCEP may also have impacts on Indonesia, but the country had not ratified it yet. Yan Ing (2021) assures that the Agreement would promote imports, exports, and investment in Indonesia, contributing to encouraging the Indonesian GDP by 0.07% by 2040. The advantages of the Agreement for the country stem from a better access to inputs, a more transparent business environment, and lower tariff rates, but to ensure these benefits, Indonesia should first incorporate RCEP provisions in its domestic law and reform its trade procedures. (Yan Ing, L., 2021).

Box 2: On the content of RCEP

In addition to traditional benefits associated with tariff liberalization, the RCEP offers benefits by streamlining customs procedures and by liberalizing certain services sectors (Hui Tee, J., 2022). In trade in services, each state can choose between using a negative list, meaning that all sectors are open to competition unless specified, or a positive list and indicating sectors subject to liberalization. It is worth noting that countries having chosen the positive list are encouraged to later transition to the negative list. It goes along with the Chapter 9 that allows the temporary movement of persons for the delivery of services.

When it comes to investment, the agreement dedicates a chapter to the topic and provides for the establishment of negative lists of sectors. There is nevertheless no dispute settlement mechanism for investors. Investment provisions promote transparency and market access. They also provide, among others, for national and most-favored-nation treatment, the fair and equitable treatment of investors, and

licensing and qualification recognition (Singapore Ministry of Trade and Industry and Asian Trade Centre, 2021a). The Singapore International Chamber of Commerce in cooperation with the Asian Trade Centre (2021) highlights the impacts of services and investment in RCEP for business and the advantages of harmonization of trade rules for manufacturing companies.

The RCEP also contains provisions on e-commerce providing for the recognition of electronic authentications and signatures, strengthening consumer trust in e-commerce, and prohibiting customs duties on electronic transmissions. The chapter grants extra time for Cambodia, Lao PDR, Myanmar, and Vietnam to enforce these measures. (Singapore Ministry of Trade and Industry and Asian Trade Centre, 2021c).

A major progress in the RCEP is the insertion of Intellectual Property (IP) rules as not all trade agreements contain such provisions; it demonstrates the significance of IP rights in the region. IP protection is important because it promotes business and encourages innovation. The Singapore Ministry of Trade and Industry and the Asian Trade Centre present the IP laws in the different RCEP member states and compare the RCEP with other RTAs. They explain the benefits of the RCEP IP Chapter that provides for the mandatory ratification of several international IP Agreements, the establishment of online databases containing applications and registrations of IP; as well as the set-up of digital platforms to register IP rights. It also requires the states to implement dispute procedures and prosecutions for violations of IP rights. (Singapore Ministry of Trade and Industry and Asian Trade Centre, 2021b)

Stephen Olson (2020) however moderates the benefits of the agreement that he qualifies as not being a 'game changer'. Indeed, he points out that many free trade agreements already exist between ASEAN members and Asian countries, opening markets resulting from the conclusion of the RCEP is deemed negligible, all the more that tariffs reductions are not high. Besides, the special and differential treatment framework means that some provisions will not be enforced by some members. He yet notices that the simplification of procedures may allow more small and medium enterprises to participate in trade. He finally stresses that new FTAs should deal with areas not already covered such as subsidies or state-owned enterprises, which the RCEP fails to do, in contrast to the CPTPP.



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