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Julien CHAISSE

Pasha L. HSIEH

Singapore Management University, pashahsieh@smu.edu.sg

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Rethinking Asia-Pacific regionalism and new economic agreements

Julien Chaisse ^a and Pasha L. Hsieh ^b

^aSchool of Law, City University of Hong Kong, Kowloon, Hong Kong; ^bYong Pung How School of Law, Singapore Management University, Singapore, Singapore

ABSTRACT

The neoliberal international order is facing a variety of pressing obstacles. One of the most contentious issues is the emergence of new Asian regionalism, which has been driven by the rising economic power of the region and integration based on the Association of Southeast Asian Nations (ASEAN) Plus Six framework. The legalization of the ASEAN way has propelled the New Regional Economic Order (NREO), which reinforces a trade-development nexus alternative to the Washington Consensus and will have far-reaching normative, economic, and geopolitical effects on the world. Given the proliferation of trade and investment initiatives including the ASEAN Economic Community and mega-regional trade agreements, this article investigates the influence of the Third Regionalism on Asian integration and beyond. Additionally, this article envisions the future of new Asian regionalism by uncovering the global and systemic implications of ASEAN and NREO developments.

KEYWORDS

CPTPP; digital trade; IPEF; RCEP; sustainable development

1. Introduction

The current state of global trade and politics is characterized by turbulence and rapid transformation. The postwar trade regime, which is driven by the neoliberal international order, is facing various complex threats.¹ The sluggish pace of World Trade Organization (WTO) negotiations, the impact of the Covid-19 pandemic, the intensifying rivalry between the United States (US) and China, and geopolitical conflicts in Ukraine and the Taiwan Strait have resulted in diverse forms of protectionism and disruptions in global supply chains. In response to these challenges, a new form of Asian regionalism has emerged with the aim of constructing a regional architecture. This development marks

CONTACT Julien Chaisse  julien.chaisse@cityu.edu.hk

¹See e.g. Alexander Kentikelenis and Erik Voeten, 'Legitimacy Challenges to the Liberal World Order: Evidence from United Nations Speeches, 1970–2018' (2021) 16(3) *The Review of International Organizations* 721–54. See also Julien Chaisse and George Dimitropoulos 'Domestic Investment Laws and International Economic Law in the Liberal International Order' 2023 22(1) *World Trade Review* 1–17 (Explaining that the trust in the international institutions that were established after WWII is declining, especially in those related to international economic order such as international investment arbitration. This has led to a trend of domestication of international economic law where domestic rules are developed instead of a sole reliance on international rules).

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a fundamental paradigm shift in international economic law and is expected to have significant implications for the multilateral trading system.

Undoubtedly, the scope of 'Asia' as a region has been subject to debate. Geographic terms, including the Asia-Pacific, East Asia, and the Indo-Pacific, lack a consensus on their definitions. National governments and international institutions, including the United Nations (UN), the Asia-Pacific Economic Cooperation (APEC) and the World Trade Organization (WTO), adopted their own interpretations to delineate the region.² Rather than exhausting definitions or demarcating the boundaries of Asia, we concentrate on countries and initiatives that have energized major normative changes and use the terms such as Asia and the Asia-Pacific interchangeably.

To offer insight into the evolving concept of new Asian regionalism, we look beyond the narrow lens of regional integration under WTO law. Trade law scholars have focused their analyses on Article XXIV of the General Agreement on Tariffs and Trade (GATT), Article V of the General Agreement on Trade in Services (GATS) and the Enabling Clause.³ The extent of WTO-plus and extra provisions and commitments constitute the benchmark for assessing deep or high-level regionalism. Distinctly, international relations scholars have resorted to a different approach to understanding integration, which encompasses regionalization and regionalism. While the former refers to informal, bottom-up efforts, the latter denotes a state-led, top-down process premised on institution-building.⁴ As empirical evidence demonstrates, Asia's regionalization and regionalism have been intertwined, cross-fertilizing soft-law and hard-law developments that have shaped today's trade, investment, tax, and digital agreements.

Understanding the normative development of new Asian regionalism fills the much-needed gap in the existing literature. As regionalism studies have been preoccupied with European Union (EU) integration, the research has been criticized for exacerbating the Euro-centric bias.⁵ While political scientists have dominated the field of Asian regionalism, their approach has been confined to deciphering regionalism theories from economic and political angles.⁶ Legal scholars have nonetheless concentrated on single issues, agreements, or countries such as China or Japan.⁷ Pertinent research mostly predates the entry into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP), and the

²United Nations ESCAP, 'ESCAP Members and Associate Members' <<https://www.unescap.org/about/member-states>> accessed 21 April 2023; Asia-Pacific Economic Cooperation, 'Member Economies' <<https://www.apec.org/about-us/about-apec/member-economies>> accessed 21 April 2023; World Trade Organization (WTO), 'World Trade Statistics Review 2020' <https://www.wto.org/english/res_e/statis_e/wts2020_e/wts20_toc_e.htm> accessed 21 April 2023.

³WTO, 'The WTO's Rules' <https://www.wto.org/english/tratop_e/region_e/regrul_e.htm> accessed 21 April 2023.

⁴Christopher M Dent, *East Asian Regionalism* (2nd edn, Routledge 2016) 8–10; Tanja A Börzel and Thomas Risse, 'Introduction: Framework of the Handbook and Conceptual Clarifications' in Tanja A Börzel and Thomas Risse (eds), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press 2016) 3, 7–8; Andrew Hurrell, 'Regionalism in Theoretical Perspective' in Louise Fawcett and Andrew Hurrell (eds), *Regionalism in World Politics: Regional Organization and International Order* (Oxford University Press 1995) 37, 39–40.

⁵Amitav Acharya, 'Regionalism Beyond EU-Centrism' in Tanja A Börzel and Thomas Risse (eds), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press 2016) 109, 109–19; Fredrik Söderbaum, *Rethinking Regionalism* (Springer 2016) 7–8, 174–5.

⁶Christopher M Dent, *East Asian Regionalism* (2nd edn, Routledge 2016); Ellen L Frost, *Asia's New Regionalism* (Lynne Rienner Publishers 2008); Edward J Lincoln, *East Asian Economic Regionalism* (Brookings Institution Press 2004).

⁷Benedict Kingsbury and others (eds), *Megaregulation Contested: Global Economic Ordering after TPP* (Oxford University Press 2019); Colin B Picker and others (eds), *The China-Australia Free Trade Agreement: A 21st Century Model* (Hart Publishing 2018); Lisa Toohey and others (eds), *China in the International Economic Order: New Directions and Changing Paradigms* (Cambridge University Press 2015). A different approach was employed by the monograph, Pasha L Hsieh, *New Asian Regionalism in International Economic Law* (Cambridge University Press 2022).

Digital Economy Agreements. Therefore, this Asia Pacific Law Review Symposium is timely and necessary to systematically understand the legal regimes that galvanize new Asian regionalism.

In this Symposium, we define new Asian regionalism as a new normative integration process that has evolved with the Association of Southeast Asian Nations (ASEAN) Plus Six framework, which underpins Asia's emerging economic power.⁸ This framework has enhanced the New Regional Economic Order (NREO), which shapes Asia-Pacific trade and investment pacts and empowers Asian countries to shift the world's centre of gravity to the region. As a ten-country bloc, ASEAN is poised to become the fourth largest economy in the world by 2030.⁹ Significantly, the ASEAN-led economic and security architecture in the Asia-Pacific has become a global consensus that China, the EU, and the United States have reiterated.¹⁰ The evolving ASEAN Plus One Free Trade Agreements (FTAs) and the expansion of the CPTPP and the RCEP will continue to energize new Asian regionalism.

To shed light on new Asian regionalism from a global perspective, we do not parochially perceive the new normative process to be purely intra-regional. In reality, exogenous influences from the EU and the United States have impacted interregionalism, which is paramount to Asia. The EU's 2015 'Trade for All' policy articulated 'an ASEAN strategy based on individual agreements' that will form the ASEAN-EU FTA.¹¹ This building-block approach has yielded the EU's trade and investment agreements with Singapore and Vietnam.¹² The EU's Indo-Pacific strategy further elaborated on the objectives to cement more trade agreements, green alliances, and digital and connectivity partnerships with regional countries.¹³

On the US side, President Donald Trump's decision to withdraw the country from the Trans-Pacific Partnership (TPP) frustrated Asian allies. Yet, the Biden administration has expressed no intention to join the TPP-based CPTPP due to domestic politics and the expiration of the White House's Trade Promotion Authority. Pursuant to its new Indo-Pacific strategy, the United States launched the Indo-Pacific Economic Framework for Prosperity (IPEF), which currently includes 14 parties.¹⁴ Absent market access negotiations, the tangible results of the four-pillar IPEF remain to be seen. In sum, ongoing US and EU initiatives exhibit their focus on Asia and enrich the values-based dimensions of new Asian regionalism on human rights and sustainable development. These

⁸Hsieh (n 7) 4.

⁹Australian Government, 'ASEAN's Economic Growth' <<https://www.austrade.gov.au/asean-now/why-asean-matters-to-australia/asean-economic-growth/>> accessed 21 April 2023.

¹⁰Joint Statement on Quad Cooperation in the Indo-Pacific (11 February 2022); Josep Borrell, 'EU and the Asia-Pacific Region: Time to Run Together' (*European Union (EU) External Action*, 8 August 2022) <https://www.eeas.europa.eu/eeas/eu-and-asia-pacific-region-time-run-together_en> accessed 21 April 2023; Ministry of Foreign Affairs of the People's Republic of China, 'Position Paper of the People's Republic of China on Supporting ASEAN Centrality in the Evolving Regional Architecture' (4 August 2022) <https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/202208/t20220804_10734029.html> accessed 21 April 2023.

¹¹European Commission, 'Trade for All: Towards a More Responsible Trade and Investment Policy' (2015) 31–2.

¹²Pasha L Hsieh, 'The Roadmap to the ASEAN-EU FTA in the Post-Pandemic Era' (2022) 49(2) *Legal Issues of Eco. Integration* 125, 136–46.

¹³European Commission, 'Joint Communication to the European Parliament and the Council: The EU Strategy for Cooperation in the Indo-Pacific' (2021) 5–12.

¹⁴White House, 'Indo-Pacific Strategy of the United States' (2022) 11–5; Office of the United States Trade Representative (USTR), 'Senior Officials for the Indo-Pacific Economic Framework Meet in Singapore' (14 July 2022) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/senior-officials-indo-pacific-economic-framework-meet-singapore>> accessed 21 April 2023.

geopolitical and normative developments will, in turn, invigorate developing countries in Asia to collectively transform their dependent relationship with the Global North.

The article is organized into five sections. Section 2 positions new Asian regionalism within the most recent phase of global regionalism, termed the Third Regionalism, and elucidates the unique features of modern economic agreements, as well as their effects on Asian integration and multilateral trade governance. Section 3 underscores the systemic and global ramifications of the NREO development, revealing how the ASEAN Plus Six framework and the evolving ASEAN approach serve as catalysts for new Asian regionalism. Section 4 wraps up by delineating the Symposium's structure and presenting the innovative topics that experts will discuss.

2. New Asian regionalism in motion

This section places the new Asian regionalism¹⁵ in its proper context by situating it within the Third Regionalism, which is the most recent wave of global regionalism.¹⁶ Moreover, it details the particulars of contemporary economic agreements and discusses the ways in which these agreements have impacted the overall landscape of Asian integration and global trade regimes.

It is vital to contextualize new Asian regionalism in the international context. Neither the Washington Consensus nor the Brussels Effect offers holistic answers to regionalism in the Asia-Pacific.¹⁷ We argue that new Asian regionalism has evolved amid the third wave of global regionalism and contributed to the emerging NREO framework premised on the collective power of developing countries. While the Bretton Woods system has governed the postwar economic order on a multilateral basis, three waves of global regionalism have occurred.¹⁸

Amid what Jagdish Bhagwati called the 'First Regionalism', trade initiatives initially proliferated in the 1950s and 1960s.¹⁹ However, these liberalization efforts rarely yielded the trade-creation effect because of political interference. The sole exception may be the European Economic Community (EEC), which arguably energized the idea for founding ASEAN in 1967 and signified the inception of Asian regionalism.²⁰ While the establishment of the EEC was primarily motivated by economic factors, ASEAN leaders aimed to establish a loose political and security alliance to counter communist expansion, with economic integration being a secondary objective.

During the Uruguay Round, the second wave of global regionalism²¹ took place in the 1980s and 1990s. Bhagwati stressed that in the 'Second Regionalism', the EU and the

¹⁵Pasha L Hsieh, 'What is New Asian Regionalism?' (20 January 2022) <<https://usali.org/usali-perspectives-blog/what-is-new-asian-regionalism>> accessed 21 April 2023.

¹⁶Richard Pomfret, 'Regionalism' and the Global Trade System' (2021) 44(9) *The World Economy* 2496, 2496–512.

¹⁷For these two terms, refer to Sonia E Rolland, *Development at the WTO* (Oxford University Press 2012) 51–2; Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020) 26–36.

¹⁸Pasha L Hsieh, 'Introduction: New Asian Regionalism as a Global Paradigm Shift' in Pasha L Hsieh (ed), *New Asian Regionalism in International Economic Law* (Cambridge University Press 2022).

¹⁹Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford University Press 2008) 29–32.

²⁰Amita Acharya, 'Foundations of Collective Action in Asia: Theory and Practice of Regional Cooperation' (2012) ADBI Working Paper Series, No. 344, 5–10.

²¹Pasha L Hsieh and Bryan Mercurio, 'ASEAN Law in the New Regional Economic Order: An Introductory Roadmap to the ASEAN Economic Community' in Pasha L Hsieh and Bryan Mercurio (eds), *ASEAN Law in the New Regional Economic Order: Global Trends and Shifting Paradigms* (Cambridge University Press, 2019).

North American Free Trade Agreement (NAFTA), the precursor to the United States-Mexico-Canada Agreement, can be perceived as a limited success.²² In Asia, Japan's soaring overseas investment, the rapid growth of the Four Little Dragons (including Hong Kong, South Korea, Singapore and Taiwan), and the economic rise of China accelerated business-based regionalization.

In the meantime, APEC and ASEAN became twin engines for state-led regionalism in the region. Founded in 1989, APEC is a soft-law forum, which is neither an international organization nor a free trade zone defined by WTO law. It has operated on rules and decisions that serve as best practices but are technically non-binding. Unlike APEC, ASEAN's hard-law economic integration is more 'conventional'. The success of the EU and NAFTA and competition from China triggered ASEAN to create the ASEAN Free Trade Area.²³ Arguably, ASEAN's 'sovereignty-reinforcing regionalism' has buttressed rather than weakened the regulatory power of states.²⁴ It is thus an oversimplification to understand ASEAN's regionalism through the lens of EU experiences.

We have coined the term, 'Third Regionalism' to refer to the latest wave of global regionalism that has progressed during the WTO Doha Round since the 2020s. The fundamental economic and geopolitical changes in the Third Regionalism have impacted the normative development of new Asian regionalism. We highlight three overarching new features of the Third Regionalism and their profound impact on Asia and beyond.

First, the sluggish WTO progress prompted FTAs to proliferate more than four times in the Third Regionalism, and almost 40 per cent of them were concluded by Asia-Pacific countries.²⁵ It has become a 'new normal' for trade pacts to include the WTO-plus and extra provisions on digital trade, gender issues, state-owned enterprises (SOEs), and sustainable development, including environmental and labour protection.²⁶ Moreover, the expansion of mega-FTAs is expected to change global trade dynamics. Both the CPTPP and the RCEP adopted 'open accession' clauses, which legally pave the way for additional states and separate customs territories to join these agreements.²⁷ Nevertheless, as the clauses require consent from existing parties, any party may block an aspiring economy's application for political reasons.

In the case of the CPTPP accession procedure, the Commission mandated that an aspiring economy inform and discuss with each party before the formation of the accession working group and the start of official negotiations.²⁸ In 2022, the CPTPP parties set up the accession working group for the United Kingdom, which is the first applicant

²²Bhagwati (n 19) 31–5.

²³Rodolfo C Severino, *Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-General* (ISEAS 2006) 22–3.

²⁴Tom Ginsburg, 'Authoritarian International Law' (2020) 114(2) *American Journal of International Law* 221, 243–4; Tom Ginsburg, 'Eastphalia and Asian Regionalism' (2010–11) 44 *UC Davis L. Rev.* 859, 870–71.

²⁵From 2000 to 2022, the number of free trade agreements (FTAs) increased from 81 to 354. WTO, 'Regional Trade Agreements Database' <<https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>> accessed 21 April 2023. As of 2022, there are 138 FTAs in Asia. Asian Development Bank, 'Asia Regional Integration Center: Table 2. FTAs by WTO Notification (cumulative)' <<https://aric.adb.org/fta>> accessed 21 April 2023.

²⁶Katrin Kuhlmann, *Handbook on Provisions and Options for Trade in Times of Crisis and Pandemic* (United Nations 2021) 107–20, 177–80; Lolita Laperle-Forget, *Power Point Slides: Gender Mainstreaming in FTAs: State of Play and Way Forward* (WTO 2022) 3; Shunta Yamaguchi, 'Greening Regional Trade Agreements on Investment' (2020) OECD Trade and Environment Working Papers 2020/03, 14.

²⁷Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018) (CPTPP), Article 5; Regional Comprehensive Economic Partnership (2020) (RCEP), Article 20.9.

²⁸CPTPP Accession Process, Annex to CPTPP/COM/2019/D002 (2019).

country outside of the Pacific region.²⁹ The parties will subsequently consider more politically controversial applications of China and Taiwan, as well as Latin American countries, including Ecuador and Costa Rica.³⁰ With Beijing's support, Hong Kong has also applied to join the RCEP.³¹ Building upon the Bogor Goals,³² the APEC Putrajaya Vision 2040 reinstates the agenda to form the Free Trade Area of the Asia-Pacific (FTAAP), which consists of 21 APEC economies.³³ Both the CPTPP and the RCEP constitute potential pathways to the FTAPP.

Second, interregional economic agreements and frameworks represent a new feature in the Third Regionalism. Political scientists proffered diverse types of interregionalism. A region-to-region agreement such as the EU-Mercosur FTA can be viewed as a doctrinal form of interregionalism.³⁴ As APEC and the Asia-Europe Meeting illustrate, 'transregionalism' means a dialogue process where individual countries discuss wide-ranging matters under a loose interregional scheme.³⁵ Also, Australia's and the EU's agreements with individual ASEAN nations exhibit 'hybrid or quasi-interregionalism', which denotes an institutionalized structure between a region and one or more states of another region.³⁶ In practice, these distinct types of interregionalism have influenced each other.

Indo-Pacific strategies of Brussels and Washington have accelerated interregional frameworks with ASEAN and other Asian allies. A key consideration is the changing stance of China, which has relied on its mercantilist-Leninist policy to pursue global rulemaking through the Belt and Road Initiative and other platforms. The EU now regards Beijing as 'a systemic rival promoting alternative models of governance'.³⁷ Brussels' trade and investment agreements with Singapore and Vietnam represent the building-block approach to achieving the EU-ASEAN FTA. Moreover, the EU is negotiating or exploring trade and investment pacts with Australia, India, Indonesia, New Zealand, and Taiwan.³⁸

In America, a rare bipartisan consensus is the 'China Reckoning', which acknowledges the failure to transform China under the past engagement policy.³⁹ Akin to EU leaders,

²⁹The Accession Working Group of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership for the United Kingdom Issued by Japan as the Accession Working Group Chair (2022).

³⁰Alvaro Murillo, 'Costa Rica Seeks Entry to Trans-Pacific Trade Bloc' *Reuters* (11 August 2022) <<https://www.reuters.com/world/americas/costa-rica-seeks-entry-trans-pacific-trade-bloc-2022-08-11/>> accessed 21 April 2023; Shannon Hayden and Javiera Heine, 'CPTPP: Can We Expect Additional Southeast Asian Members Soon?' *The Diplomat* (10 March 2022) <<https://thediplomat.com/2022/03/cptpp-can-we-expect-additional-southeast-asian-members-soon/>> accessed 21 April 2023.

³¹Nikkei Asia, 'Hong Kong Applies to Join RCEP Trade Agreement' (23 February 2022) <<https://asia.nikkei.com/Economy/Trade/Hong-Kong-applies-to-join-RCEP-trade-agreement>> accessed 21 April 2023.

³²Asia-Pacific Economic Cooperation, 'What are the Bogor Goals?' (September 2021) <<https://www.apec.org/about-us/about-apec/fact-sheets/bogor-goals>> accessed 20 February 2023.

³³2020 Leaders' Declaration (2020).

³⁴Söderbaum (n 5) 176–7; Vinod K Aggarwal and Edward A Fogarty (eds), 'Between Regionalism and Globalism: European Union Interregional Trade Strategies' in Vinod K Aggarwal and Edward A Fogarty (eds), *EU Trade Strategies: Between Regionalism and Globalism* (Palgrave Macmillan 2004) 1, 5.

³⁵Söderbaum (n 5) 177; Jürgen Ruland and others (eds), 'Interregionalism: An Unfinished Agenda' in Jürgen Ruland and others (eds), *Interregionalism and International Relations: A Stepping Stone to Global Governance?* (Routledge 2005) 295, 296.

³⁶Söderbaum (n 5) 177; Heiner Hänggi, 'Interregionalism as a Multifaceted Phenomenon: In Search of a Typology' in Jürgen Ruland and others (eds), *Interregionalism and International Relations: A Stepping Stone to Global Governance?* (Routledge 2005) 31, 40–41.

³⁷European Commission, 'Joint Communication to the European Parliament, the European Council and the Council, EU-China – A Strategic Outlook' (2019) 1.

³⁸European Parliament, 'Report on the Indo-Pacific Strategy in the Area of Trade and Investment' (2022) (2021/2200(INI)) 10–11.

³⁹Kurt M Campbell and Ely Ratner, 'The China Reckoning: How Beijing Defied American Expectations' (2018) 97(2) *Foreign Aff* 60, 60–68.

President Joe Biden deems Beijing to be the ‘most serious competitor’.⁴⁰ So far, the United States has only signed FTAs with three Asia-Pacific partners, including Australia, Singapore and South Korea.⁴¹ Trade and Investment Framework Agreements were concluded with ASEAN and selected countries, but they merely facilitated dialogues without conspicuous results. Jointly led by the United States Trade Representative and the Department of Commerce, the IPEF is the latest interregional structure, which serves as the economic pillar of the US Indo-Pacific strategy.⁴² Comparable to IPEF pillars, the United States also commenced negotiations of the US-Taiwan Initiative on twenty-first-Century Trade in 2022.⁴³ This bilateral initiative, instead of incorporating Taiwan into the IPEF, is presumably designed to minimize Asian allies’ political concerns about joining the IPEF.

Arguably, the IPEF’s exclusion of Cambodia, Laos and Myanmar may reinforce an ‘ASEAN Minus’ approach to cementing trade deals with Dialogue Partners and may endanger the concept of ASEAN centrality, which Washington has consistently recognized. As the former ASEAN Secretary-General indicated, one way to avoid the problem is to enable all ASEAN members and Dialogue Partners to join the IPEF.⁴⁴ Nonetheless, this idea would contravene the US strategic goal to circumvent Chinese influence.

Finally, plurilateral soft-law instruments of a non-binding nature provide a unique impetus for the liberalization and facilitation of trade and investment. Resting upon the Western concept of legalization, lawyers and regionalism theorists usually opine that only hard-law, enforceable treaties would lead to meaningful economic integration.⁴⁵ This understanding contravenes the reality that reducing ‘sovereign costs’ may propel economies to make extra and innovative commitments.⁴⁶ APEC is a key example. In 2012, APEC economies agreed on a tariff reduction list of 54 environmental goods such as gas turbines and purifying machinery.⁴⁷ According to their tariff rates, APEC has met the ‘green growth’ goal to reduce applied tariffs on environmental goods to 5 per cent or less.⁴⁸

Plurilateral soft-law agreements can be transformed into multilateral hard-law obligations. For instance, APEC crystallized the WTO Information Technology Agreement (ITA), which covers 97 per cent of global trade in pertinent products.⁴⁹ The APEC ministerial meeting decided on the main components of this first sectoral, plurilateral agreement

⁴⁰White House, ‘Interim National Security Strategic Guidance’ (2021) 19–20; White House, ‘Remarks by President Biden on America’s Place in the World’ (4 February 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/>> accessed 21 April 2023.

⁴¹USTR, ‘Free Trade Agreements’ <<https://ustr.gov/trade-agreements/free-trade-agreements>> accessed 21 April 2023.

⁴²USTR, ‘Readout of Ambassador Katherine Tai’s Informal Meeting with Indo-Pacific Economic Framework Partners’ (11 June 2022) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/readout-ambassador-katherine-tais-informal-meeting-indo-pacific-economic-framework-partners>> accessed 21 April 2023.

⁴³US-Taiwan Initiative on 21st-Century Trade: Negotiating Mandate (2022).

⁴⁴Center for Strategic & International Studies, ‘U.S.-ASEAN Relations at 45: A Discussion with Lim Jock Hoi, Secretary-General of ASEAN’ (26 September 2022) <<https://www.csis.org/events/us-asean-relations-45-discussion-lim-jock-hoi-secretary-general-asean>> accessed 21 April 2023.

⁴⁵Sungjoon Cho and Jürgen Kurtz, ‘Legalizing the ASEAN Way: Adapting and Reimagining the ASEAN Investment Regime’ (2018) 66(2) *Am J Com L* 233, 238–53.

⁴⁶Chris Brummer, ‘Why Soft Law Dominates International Finance – and Not Trade’ (2010) 13(3) *J Int’l Econ L* 623, 623–24; Hartmut Hillgenberg, ‘A Fresh Look at Soft Law’ (1999) 10(3) *Eur J Int’l L* 500, 509.

⁴⁷APEC, ‘Annex C – APEC List of Environmental Goods’ (8 September 2012) <https://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC.aspx> accessed 21 April 2023.

⁴⁸2011 Leaders’ Declaration (2011); CTI Report to Ministers, ‘Collective Strategic Study on Issues Related to the Realization of the FTAAP’ (2016) 104.

⁴⁹WTO, ‘20 Years of the Information Technology Agreement: Boosting Trade, Innovation and Digital Connectivity’ (2017) 6.

of the WTO, including its product coverage and formulas for reducing tariffs.⁵⁰ Later, the APEC caucus pushed for the binding ITA at the WTO. Following the ITA model, APEC members have been engaged in negotiating the WTO Environmental Goods Agreement (EGA) since 2014.⁵¹ Similar to the ITA, the EGA includes the most-favoured-nation (MFN) design that will result in spillover benefits for other WTO members. Outside the APEC arena, the trilateral Supply Chain Resilience Initiative and the US-led 'Chip 4' alliance will restructure the landscape of international trade.⁵²

3. Systemic and global implications

New Asian regionalism is the most noteworthy development in the Third Regionalism. To rationalize modern Asia-Pacific trade and investment agreements, we propose the NREO as the normative framework that could help substantiate regionalism theories. While sharing the view of developing nations, the NREO departs from the previously failed New International Economic Order (NIEO) movement. The NIEO culminated in the Global South's efforts to advocate for non-reciprocal preferences that are essential for development under the UN and the GATT.⁵³ In comparison, the NREO in the Third Regionalism consolidates the collective power of developing countries to shape the new trade-development roadmap and economic integration. In the Asia-Pacific, the ASEAN Plus Six framework has galvanized the NREO and underlined the legal regimes of new Asian regionalism.

The transformation from the NIEO to the NREO in the Third Regionalism has profoundly influenced Asian and global trade regimes. The idea for Asian regionalism first surfaced at the 1955 Bandung Conference, where anticolonial nationalism of Asian-African nations led to the Non-Aligned Movement.⁵⁴ As Bhagwati depicted, trade initiatives in the First Regionalism largely failed. The South-South economic cooperation aimed at curtailing reliance on the North and was restricted to nationalistic self-help among the South. Their failure was due to developing countries' overemphasis on import substitution and their lack of meaningful trade liberalization.

These Non-Aligned Movement parties subsequently joined the Group of 77 in passing the 1974 UN General Assembly Resolution on the NIEO, which urged absolute sovereignty and affirmative action in trade norms.⁵⁵ Through their efforts at the UN Conference on Trade and Development (UNCTAD), they managed to influence trade-development rules under Part IV of the GATT.⁵⁶ Notably, the UNCTAD pushed for the GATT to

⁵⁰Catherine Mann and Xuepeng Liu, 'The Information Technology Agreement: Sui Generis or Model Stepping Stone?' in Richard Baldwin and Patrick Low (eds), *Multilateralizing Regionalism: Challenges for the Global Trading System* (Cambridge University Press 2009) 182, 189.

⁵¹There are 18 negotiating parties, including the EU. WTO, 'Environmental Goods Agreement (EGA)' <https://www.wto.org/english/tratop_e/envir_e/ega_e.htm> accessed 21 April 2023.

⁵²Joint Statement on the Supply Chain Resilience Initiative by Australian, India and Japanese Ministers (2021); Yonhap, 'S. Korea Expresses Intent to Join Preliminary 'Chip 4' Meeting' *Korea Herald* (8 August 2022) <<https://www.koreaherald.com/view.php?ud=20220808000140>> accessed 21 April 2023.

⁵³Nils Gilman, 'The New International Economic Order: A Reinroduction' (2015) 6:1 *Humanity* 1, 2–3; Rolland (n 17) 45 & 69.

⁵⁴Amita Acharya, 'Foundations of Collective Action in Asia: Theory and Practice of Regional Cooperation' (2012) ADBI Working Paper Series No. 344, 5–16.

⁵⁵3201 (S-VI). Declaration on the Establishment of a New International Economic Order, A/RES/S-6/3201 (1974); Karl P Sauvart, 'The Early Days of the Group of 77' (2014) <<https://www.un.org/en/chronicle/article/early-days-group-77>> accessed 21 April 2023.

⁵⁶Rolland (n 17) 20–21.

incorporate core provisions on special and differential treatment, such as technical assistance and transition periods. These provisions integrated the non-reciprocity exception to the MFN principle and the Enabling Clause, which accorded developing countries preferential market access to developed countries and facilitated integration between developing nations.⁵⁷

At the outset of the Uruguay Round, the NIEO movement substantially deteriorated because debt crises crippled the collective power of the South and the Thatcher-Reagan partnership declined developing countries' further demands.⁵⁸ The neoliberal Washington Consensus ascended to golden rules for economic reforms. The South has been compelled to engage in free trade defined by the North.⁵⁹ Despite increasing special and differential treatment rules, the WTO has been criticized for ignoring development needs. The Doha Development Agenda and the UN Sustainable Development Goals are current multilateral efforts that seek to remedy this long-standing unfairness of the global trade regime.⁶⁰

The NREO manifests a contemporary process through which developing countries search for a trade-development model alternative to the Washington Consensus. In reality, policy changes driven by the Washington Consensus, such as trade deregulation and privatization, exacerbated Latin America's 'underdevelopment' and its dependency on the North.⁶¹ In comparison, newly industrialized Asian countries present a different developmental state model. They realized astonishing economic growth by focusing on state-controlled industrial policy, utilizing export subsidies and gradually liberalizing import regimes.⁶²

This model also differs from the Beijing Consensus, which advances infrastructure-focused investment and policy objectives of authoritarian regimes through large-scale SOEs.⁶³ The essential distinction is the combination of a democratic system and a largely market-oriented regime specialized in high technology sectors. To illustrate, semiconductor chips are indispensable to the automobile and information industries. As of today, all advanced chips are manufactured in Taiwan and South Korea.⁶⁴ This new dynamic makes EU and US enterprises 'dependent' on these Asian Tigers, thus transforming the South's neocolonial dependent relationship with the South.

⁵⁷*Id.*, 72; General Agreement on Tariffs and Trade (GATT) (1994), Article XXXVI:8; Differential and More Favorable Treatment of Reciprocity and Fuller Participation of Developing Countries, GATT Doc. L/4903 (1979); Generalized System of Preferences, Decision of 25 June 1971, L/3545 (1971).

⁵⁸Chantal Thomas and Joel P Trachtman, 'Editors' Introduction' in Chantal Thomas and Joel P Trachtman (eds), *Developing Countries in the WTO Legal System* (Oxford University Press 2009) 1, 9.

⁵⁹John Williamson, 'The Strange History of the Washington Consensus' 27(2) *J Post Keynesian Eco.* 195, 195–97 (2004); *Id.*, 9–10; Rolland (n 17) 51.

⁶⁰Ministerial Declaration, WT/MIN(01)/DEC/1 (2001); Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1 (2015).

⁶¹Richard Peet and Elaine Hartwick, *Theories of Development: Contentions, Arguments, Alternatives* (Guilford Press 2015) 98–9; Dani Rodrik, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press 2018) 36.

⁶²Stephan Haggard, *Developmental States* (Cambridge University Press 2018) 1–30; Rodrik (n 61) 36.

⁶³Michael W Dowdle, 'Dialogus de Beijing Consensus' in Weitseng Chen (ed), *The Beijing Consensus? How China Has Changed Western Ideas of Law and Economic Development* (Cambridge University Press 2017) 15, 15–26; Gregory Shaffer and Henry Gao, 'A New Chinese Economic Order?' (2020) 23(3) *J Int'l Econ L* 607, 610–11.

⁶⁴92% of advanced logic chips are made in Taiwan and 2% in South Korea. Lili Pike, 'Taiwan, China, and the U.S.: Inside the Fight to Control the Microchips That Power Your Car and Computer' *GRID* (12 August 2022) <<https://www.grid.news/story/global/2022/08/11/taiwan-china-and-the-us-inside-the-fight-to-control-the-microchips-that-power-your-car-and-computer/>> accessed 21 April 2023.

The developmental state model has also influenced ASEAN's legalization and economic liberalization. Complementary to the ASEAN Economic Community (AEC), the ASEAN Plus Six framework has bolstered the new 'ASEAN Consensus' in the Asia-Pacific. Both Washington and Beijing Consensuses strived to construct a hegemonic international order. The ASEAN Consensus instead facilitates the regional alliance to reinvigorate the collective power of developing countries in shaping the NREO. We characterize the ASEAN approach to legal and economic reforms as 'pragmatic incrementalism', which has shaped ASEAN's multilayered agreements. Importantly, we do not argue for the ASEAN-centered regime to be the perfect or the sole model for regionalism. What we emphasize is that the regime has proven to be a feasible model for developing countries and new Asian regionalism.

ASEAN's internal and external integration has revolutionized the nature of the so-called ASEAN way, which was conventionally understood as a political or soft-law concept. In the Third Regionalism, the ASEAN way has been converted to hard-law obligations with structured flexibility. The pragmatic incrementalism has propelled this change and made ASEAN law distinguishable from EU law. Grounded on the Indonesian notions of *musyawarah* and *mufakat* (consultations and consensus), the ASEAN way embodies the collective principles of sovereignty, non-interference and consensus decision-making.⁶⁵ Hence, it is both the code of conduct in inter-state interactions and the decision-making process for achieving consensus by consultations.⁶⁶

The ASEAN way was the pivotal foundation for the creation of the bloc. The 2007 ASEAN Charter further legalized the ASEAN way by integrating operating principles. We concede that the ASEAN way may not be seen as a new integration model and has been confronted with ASEAN's non-intervention principle. In particular, we do not dispute the criticism against the ASEAN way's limits in sensitive political arenas. Myanmar's military coup presents the latest challenge. ASEAN leaders have explicitly recognized the 'little process' in implementing the Five-Point Consensus and struggled to maintain Myanmar as 'an integral part of ASEAN' while only permitting the country's 'non-political representation'.⁶⁷ Singapore's prohibition of arms sales and dual-use items to Myanmar pursuant to United Nations General Assembly Resolution 75/287 is probably the rare robust response among ASEAN states.⁶⁸ The Myanmar issue also threatens Asian regionalism, as the Philippines and New Zealand declined to recognize the military junta's representation of Myanmar under the RCEP.⁶⁹

While recognizing these inherent weaknesses, what we emphasize is the unique legalization of the ASEAN way that enables countries at diverse development stages to achieve integration. The 'new' normative aspect of the ASEAN model lies more in

⁶⁵Severino (n 23) 1–11; Ingo Venzke and Li-Ann Thio, *The Internal Effects of ASEAN External Relations* (Cambridge University Press 2016) 9–17; Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (Routledge 2014) 3–5.

⁶⁶Amitav Archarya, 'Ideas, Identity, and Institution-building: From the 'ASEAN Way' to the 'Asia-Pacific Way'?' (1997) 10(3) *Pac Rev* 319, 328–30.

⁶⁷ASEAN Leaders' Review and Decision on the Implementation of the Five-Point Consensus (2022), paras 2–9.

⁶⁸Koh Wan Ting, 'No Sales of Arms to Myanmar for 'a Very Long Time': Vivian Balakrishnan' *CNA* (14 February 2023) <<https://www.channelnewsasia.com/singapore/no-sales-arms-military-myanmar-coup-vivian-balakrishnan-3276851>> accessed 21 April 2023.

⁶⁹Jim Gomez, 'Philippines, Like New Zealand, Rejects Myanmar in Trade Pact' (*AP*, 18 February 2022) <<https://apnews.com/article/business-new-zealand-myanmar-global-trade-asia-7ef52c4952db7d661727dc0a02eea167>> accessed 21 April 2023.

procedures rather than in substantive legal commitments. It is the structured flexibility that balances between soft law and hard law that made the ASEAN-centred architecture including the AEC and the ASEAN Plus Six framework possible. Markedly, the ASEAN Charter requires ‘a formula for flexible participation’ to be applied to implement economic commitments under ASEAN agreements.⁷⁰ In 2015, ASEAN members’ launch of the AEC represented another step to reinforce multilateralization of the ASEAN way. The key objectives of the AEC Blueprint 2025 to accomplish ‘a more unified market’ and the ‘Global ASEAN’ agenda also reinforce the architecture of ‘ASEAN centrality’.⁷¹

Compared with the neoliberal EU and EU FTA approach, the tangible results of the ASEAN process are unclear in the short term. Nevertheless, its trade liberalization becomes significant in the long run, particularly given the diverse development stages of member states. According to the Mid-Term Review of the AEC Blueprint 2025, 54.1% of the proposed initiatives were completed and 34.2% of them were in progress, whereas initiatives that were yet to start and withdrawn were 9.2% and 2.5%, respectively.⁷² In particular, economic integration involving trade in goods, services and investment marked the most significant progress. Markedly, ASEAN’s inbound foreign direct investment has rebounded to the pre-pandemic level and with a growth rate above the global average, the bloc is on track to become the world’s fourth largest economy by 2030.⁷³

It is common for commentators to evaluate and predict ASEAN’s evolution based on EU experiences. In our view, this methodology ignores the fact that ASEAN has never intended to be the Asian version of the EU. Instead of forming a customs union or economic community in the European sense, the AEC has targeted an FTA-plus structure while preserving the regulatory sovereignty of states. In essence, the EU operates as a supranational institution, whereas ASEAN is an inter-governmental organization. The direct effect of EU treaties and regulations pre-empts national legislation. In contrast with this top-down approach, ASEAN follows horizontal integration. The ASEAN Charter merely mandates that members ‘take all necessary measures’ to implement ASEAN agreements.⁷⁴ It is also unlikely for ASEAN states and courts to confer self-executing power on ASEAN agreements. Notwithstanding the lack of a direct effect, regional pacts such as the ASEAN Comprehensive Investment Agreement and the ASEAN Agreement on Electronic Commerce serve as models for domestic reforms or ‘codifying’ consensus.⁷⁵

Furthermore, as the ASEAN Charter incorporated the flexible participation scheme, the ASEAN way has been applied as the ‘ASEAN Minus X’ formula.⁷⁶ To expedite the implementation of ASEAN agreements, two or more members could initiate negotiations and liberalize selected sectors and permit the subsequent accession of other parties. Unlike APEC’s ‘21 Minus X’ formula based on the non-discriminatory, open regionalism

⁷⁰Charter of the Association of Southeast Asian Nations (ASEAN Charter) (2007), Preamble and Article 21(2).

⁷¹ASEAN Economic Community Blueprint 2025 (2015) (AEC Blueprint 2025), paras 7–24 & paras 79–80.

⁷²ASEAN Secretariat, ‘Mid-Term Review: ASEAN Economic Community Blueprint 2025’ (2021) 11–13.

⁷³ASEAN Secretariat, ‘Investing in ASEAN 2023’ (2022) 4–8.

⁷⁴ASEAN Charter, Article 5(2).

⁷⁵Sufian Jusoh, ‘Investment Liberalization in ASEAN: Moving from Myths to Reality’ in Pasha L Hsieh and Bryan Mecurio (eds), *ASEAN Law in the New Regional Economic Order* (Cambridge University Press 2019) 209, 218–25; Julien Chaisse, ‘The ACIA: Much More Than a BIT of Protection for Foreign Investors?’ in Pasha L Hsieh and Bryan Mecurio (eds), *ASEAN Law in the New Regional Economic Order* (Cambridge University Press 2019) 232, 237; Hsieh (n 7) 53–61.

⁷⁶The formula traced back to the 1992 Framework Agreement on Enhancing ASEAN Economic Cooperation. Severino (n 23) 31–2 & 352–3.

principle, the ASEAN formula only accords concessions on a reciprocal basis.⁷⁷ It thus eliminates the free rider problem and ensures that ASEAN integration would not be 'hijacked' by members unwilling to participate. Although the ASEAN Minus X formula has arguably resulted in fragmented commitments at different speeds, the flexibility has eased the sovereignty cost for states to accept new agreements.

As ASEAN's legal framework for trade in services illustrates, pragmatic incrementalism has guided the ASEAN way. ASEAN developed the successive 'packages' structure for services commitments that were negotiated under the Framework Agreement on Services (AFAS).⁷⁸ Under multiple rounds of negotiations, schedules of services commitments cumulatively 'form an integral part of' the AFAS.⁷⁹ This approach that allows for gradual domestic reforms is paramount for less developed county members. Moreover, it led to GATS-plus commitments. The seventh package of AFAS commitments surpassed those of the ASEAN-Australia-New Zealand FTA, which is often considered ASEAN's most 'liberalized' pact.⁸⁰

Due to their specialized and sensitive nature, financial services and air transport services are separately negotiated, and commitments are incorporated as different AFAS packages. The AEC Blueprint 2025 envisions that the new ASEAN Trade in Services Agreement (ATISA) will consolidate AFAS commitments under different tracks.⁸¹ The ATISA will also shift the AFAS's positive list approach to the negative list approach, which is a more progressive and transparent negotiation modality. This evolution corroborates our prior claim that the transforming ASEAN way based on the approach of pragmatic incrementalism is distinct from single-undertaking agreements that the Global North often mandates. Notwithstanding the non-intervention principle, the legalization of the ASEAN way has structured a feasible, procedural model for achieving meaningful economic integration with legal commitments among diverse developing countries.

ASEAN's internal integration had a spillover effect on the bloc's external FTAs and gave rise to the ASEAN Plus Six framework. The pragmatic incrementalism has similarly forged the core structure of new Asian regionalism. From 2002 to 2017, ASEAN sequentially concluded ASEAN Plus One agreements with Asia-Pacific economies, including China, Japan, India, Korea, Australia, New Zealand, and Hong Kong.⁸² These agreements built the normative foundation for the RCEP. Except for the ASEAN-Australia-New Zealand FTA and ASEAN-Hong Kong agreements, other ASEAN Plus One FTAs follow the building-block approach. This ASEAN approach is distinctive from the EU's building-block approach, which aims to achieve an interregional FTA based on trade and investment pacts with individual ASEAN states.

In the case of the ASEAN-China FTA, both sides first signed the framework agreement and then negotiated the concluded sector-based agreements on trade in goods, dispute settlement, trade in services and investment. The framework agreement includes an early

⁷⁷APEC, 'Appendix 1 – Shanghai Accord: APEC Economic Leaders' Declaration' (2001); APEC, 'The Osaka Action Agenda: Implementation of the Bogor Declaration' (1995) <https://www.apec.org/Meeting-Papers/Leaders-Declarations/1995/1995_aelm> accessed 21 April 2023.

⁷⁸ASEAN, 'ASEAN Integration Report 2019' (2019) 33.

⁷⁹ASEAN Framework Agreement on Services (1995) (AFAS), Article VIII.

⁸⁰Yoshifumi Fukunaga and Ikumo Isono, 'Taking ASEAN+1 FTAs towards the RCEP: A Mapping Study', ERIA Discussion Paper Series (2013) 16.

⁸¹ASEAN (n 78) 33.

⁸²Hsieh (n 7) 63.

harvest programme that grants parties ‘immediate’ benefits by liberalizing tariffs on selected goods. From an international law perspective, these pacts are the consolidation of ten sets of agreements and commitments of individual ASEAN states. The EU can negotiate and sign agreements on behalf of 27 member states for matters that fall within the EU’s exclusive competencies that the states conferred. However, the ASEAN Charter limits ASEAN’s treaty-making power by excluding the conclusion of agreements that would create obligations on individual states.⁸³ While these agreements reflect the common positions of ten ASEAN states, they need to be signed by China and the ten ASEAN parties.

Under WTO law, the framework agreement constitutes an ‘interim agreement’ that will ‘include a plan and schedule for’ forming the final FTA ‘within a reasonable length of time’.⁸⁴ Despite the lack of an enforcement mechanism, WTO law specifies that the time-frame ‘should exceed 10 years only in exceptional cases’.⁸⁵ The framework agreement and subsequent pacts became integral parts of the fully-fledged FTA. Similar to AEC agreements, ASEAN Plus One FTAs incorporate special and differential treatment for least developed countries. For example, Cambodia, Laos, Myanmar, and Vietnam are entitled to transitional periods for tariff elimination for up to 18 years.⁸⁶ In 2015, ASEAN and China also concluded the Upgrading Protocol to revise rules of origin by adopting a more flexible and business-friendly coequal rule.⁸⁷ This development-based, pragmatic incrementalism model provides valuable lessons for South-South and politically sensitive trade pacts.

In tandem with the AEC and ASEAN’s external agreements, China, and Japan respectively proposed pan-Asia FTAs in the Third Regionalism. The key difference between the two proposals is their membership. Beijing favoured the ASEAN Plus Three structure that includes China, Korea, and Japan, whereas Tokyo preferred the expansion to the ASEAN Plus Six framework encompassing Australia, India, and New Zealand.⁸⁸ APEC’s FTAAP proposal and the US-led negotiations for the TPP further complicated the roadmap for new Asian regionalism. To fortify ASEAN’s centrality in the regional architecture and construct a pathway to the FTAPP other than the TPP, ASEAN subsequently proposed the RCEP framework.⁸⁹

According to the Guiding Principles and Objectives for the RCEP, ASEAN Plus Six leaders agreed to merge Chinese and Japanese proposals and to improve existing ASEAN Plus One FTAs under this mega-FTA.⁹⁰ From 2013 to 2020, 30 rounds of negotiations and various ministerial and leaders’ meetings finally led to the 20-chapter FTA.⁹¹ India’s withdrawal from negotiations due to trade deficits and border conflicts with Beijing in 2019 made the RCEP a 15-party agreement that came into force in

⁸³ ASEAN Charter, Article 41(7); Rules of Procedure for Conclusion of International Agreements by ASEAN (2011), rule 1.

⁸⁴ General Agreement on Tariffs and Trade (1994) (GATT), Article XXIV:5, XXIV:5(a) & (b), and XXIV:7(a).

⁸⁵ Understanding on the Interpretation of Article XXIV of the GATT, para 3.

⁸⁶ Shujiro Urata, ‘Constructing and Multilateralizing the Regional Comprehensive Economic Partnership: An Asian Perspective’ (2013) ADBI Working Paper Series, No. 449, 15.

⁸⁷ Ministry of Trade and Industry Singapore, ‘A Guide to Understanding the ASEAN-China Free Trade Area Update’ (2016) 2.

⁸⁸ Rodolfo C Severino, ‘Japan’s Relations with ASEAN’ in Takashi Shiraishi and Takaaki Kojima (eds), *ASEAN-Japan Relations* (ISEAS 2014) 17, 26–8.

⁸⁹ ASEAN Framework for Regional Comprehensive Economic Partnership (2011).

⁹⁰ Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership (2012) (RCEP Guiding Principles and Objectives).

⁹¹ Australian Government: Department of Foreign Affairs and Trade, ‘RCEP News’ <<https://www.dfat.gov.au/trade/agreements/in-force/rcep/news>> accessed 21 April 2023.

2022.⁹² As Japan and Australia led the conclusion of the CPTPP after the US opted out of the TPP, the CPTPP and the RCEP are now the most feasible pathways to the FTAAP.

US commentators have frequently perceived the RCEP from the narrow lens of the US–China rivalry and mischaracterized the RCEP as a China-led project.⁹³ As we explained, the RCEP was initiated and led by ASEAN. The comparison between the CPTPP and the RCEP also often results in the conclusion that the latter is a low-level and thus less significant trade pact. We disagree with this view. Concededly, unlike the CPTPP, the RCEP lacks chapters on SOEs, investor-state dispute settlement and sustainable development. Yet, the RCEP can be seen as a more suitable trade-development model for the Global South by inheriting extensive special and differential provisions under ASEAN pacts.

We should not ignore that the RCEP's harmonization of rules of origin under the ASEAN Plus Six agreements alone will bring immediate and substantive benefits to businesses. Along with the APEC and ASEAN Secretariats, the prospective RCEP Secretariat will also galvanize the normative framework for new Asian regionalism.⁹⁴ Markedly, the CPTPP and the RCEP are poised to enhance annual global incomes by \$147 billion and \$186 billion, respectively.⁹⁵ Both mega-FTAs are at the core of the NREO and will profoundly impact the multilateral trading system.

4. Conclusion and outline of the symposium

New Asian regionalism represents a paradigm shift in international economic law and the multilateral trading system. In tandem with the ASEAN Plus Six framework, the NREO has fundamentally shaped trade and investment agreements in the Asia-Pacific region. It is anticipated that the expansion of mega-FTAs will further change global trade dynamics, which will expedite the relocation of the gravitational centre of the world to the region. Given these far-reaching developments, the NREO effect in the Third Regionalism will be of a progressive nature and will result in significant liberalization over the long term. This trajectory will be essential for Asia-Pacific nations to achieve a sustainable future and global prosperity.

The Asia-Pacific region encompasses some of the world's most dynamic and burgeoning economies. Consequently, economic integration and regionalism have emerged as crucial focal points for both policymakers and academics in recent times. The intricate and multifaceted nature of the Asia-Pacific, characterized by distinct legal and political frameworks, cultural heritages, and economic paradigms, presents formidable obstacles in devising efficacious strategies to foster economic integration and regional collaboration. This Asia Pacific Law Review Symposium endeavours to contribute to the ongoing discourse by examining the notion of new Asian regionalism and delving into contemporary trade, investment, and digital agreements. The Symposium's collection of articles comprehensively addresses a plethora of theoretical and practical concerns pertaining to international trade and economic integration within the Asia-Pacific, including international

⁹²*Id.*; Asha Sundaram, 'India's RCEP Exit and its Regional Future' *East Asia Forum* (13 April 2022) <<https://www.eastasiaforum.org/2022/04/13/indias-rcep-exit-and-its-regional-future/>> accessed 21 April 2023.

⁹³Keith Bradsher and Ana Swanson, 'China-Led Trade Pact Is Signed, in Challenge to U.S.' *The New York Times* (24 November 2020) <<https://www.nytimes.com/2020/11/15/business/china-trade-rcep.html>> accessed 21 April 2023.

⁹⁴RCEP, Article 18.3.1(i); Deborah K Elms, 'Getting RCEP Across the Line' (2021) 20 *World Trade Review* 373, 377–8.

⁹⁵Peter A Petri and Michael G Plummer, 'East Asia Decouples from the United States: Trade war, COVID-19, and East Asia's New Trade Blocs' (2020) Peterson Institute for International Economics Working Paper 4–5.

law's influence on economic agreements and the consequences of such agreements on labour rights and environmental conservation. Furthermore, the Symposium aims to illuminate novel facets of the normative development of new Asian regionalism. As a collective, these articles bridge the existing gap in scholarly literature, which has predominantly concentrated on the political and economic dimensions of regionalism, often neglecting the legal, social, and cultural aspects of regional cooperation. By scrutinizing the normative foundations of regionalism, this Symposium offers a more comprehensive understanding of the potential advantages and challenges accompanying regional collaboration in the Asia-Pacific region.

In her article entitled 'Shaping Trade in Goods Relevant to Renewable Energy Generation: The RCEP's Potential and Limitation', Michelle Limenta examines the potential and limitations of tariff liberalization settings in the RCEP Agreement to facilitate trade in environmental goods. She also discusses the non-tariff constraints that could hinder the RCEP's ability to support trade in climate-friendly products. This topic is crucial for the normative development of new Asian regionalism because the environment's ability to sustain economic growth in the region is at risk due to natural resource depletion, ecosystem degradation, pollution, and human-induced climate change.

The article by Neha Mishra and Ana Maria Palacio Valencia examines digital trade integration in the Asia-Pacific region by analysing four significant pacts involving Asia-Pacific countries: the CPTPP, the RCEP, the ASEAN E-Commerce Agreement, and the Digital Economy Partnership Agreement. The authors argue that although the Asian-led initiatives may seem less ambitious compared to others at first glance, they reflect the pragmatism of Asian countries that acknowledges the diversity of digital development and ideological preferences among various countries. The article also highlights that the Asian model of digital trade integration is important in several aspects from a global perspective. First, this model demonstrates the potential for global leadership by Asian countries in enabling cross-border digital trade. Second, it provides a practical approach for digital trade integration among countries with different levels of digital development, which is particularly relevant for regional blocs consisting of developing countries. According to the authors, a pragmatic approach to digital trade integration in the Asia-Pacific region can be equally effective and relevant compared to more ambitious initiatives. This approach recognizes the diverse digital development and ideological preferences of countries and provides a viable model for other countries with varied levels of digital development.

Prabhash Ranjan's article discusses the state of international investment law regionalism in South Asia. While regionalism has been successful in the ASEAN region, it has been a different story in South Asia, which has failed to achieve significant economic integration. The article notes that the ASEAN success model cannot be applied to the whole of Asia, as the various regions have different experiences with regionalism. In particular, South Asia has struggled to pursue regionalism, with the failure of the South Asian Association for Regional Cooperation (SAARC) to facilitate investment integration being a notable setback. Arguably, the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) may prove more successful in this regard, provided that South Asian countries embrace regionalism. The article suggests that South Asia has much to learn from the ASEAN experience, particularly the 'ASEAN Consensus', which emphasizes flexibility and incrementalism as the basis for the 'Third Regionalism'.

By adopting a similar approach, South Asia could achieve greater success in promoting investment integration and economic cooperation.

In his article titled 'Tax, Trade, and Investment Conundrum in Asia Pacific New Regionalism', Julien Chaisse argues that the emergence of a new Asian regionalism has caused significant economic and geopolitical shifts with significant effects on both Asian and global trade patterns. These shifts have raised concerns among states, leading to a reconsideration of their trade development strategies in light of their interdependence. Despite an increasing focus on international tax reform, new Asian regionalism remains primarily founded on trade and investment treaties. As a result, little has been done to explore how the transformation of tax law affects the new Asian regionalism, and conversely, how the new Asian regionalism might be influenced by the emerging tax regime. While tax law is not a primary element of new Asian regionalism, Chaisse's article suggests that we can already observe the beginning of the taxation aspect of the Asia Pacific new regionalism.

James Nedumpara's contribution titled 'International Trade and Investment Dispute Settlement in the Asia-Pacific Region: Coming of Age' offers a comprehensive analysis of the development of dispute settlement in the realm of international trade and investment, particularly in the Asia-Pacific region. The article examines the origin of dispute adjudication in the region and how disputes have been resolved. While the region has adopted ASEAN's non-confrontational approach, the influence of international practices and norms is expected to impact future trade and investment dispute settlement in the region. Moreover, the active participation of Asia-Pacific nations in various dispute settlement mechanisms for trade and investment, along with their efforts to establish new plurilateral and preferential arrangements, illustrates their commitment to upholding a rules-based international economic order following the crisis of the WTO Appellate Body. This indicates that the Asia-Pacific region has the potential not only to follow, but also to lead in the field of international trade and investment dispute settlement.

In the following article titled 'Labour and trade in Asia-Pacific: Origin, Development, and Prospects', Yueming Yan stresses the need to investigate labour provisions and policies in the Asia-Pacific region. With the emergence of new Asian regionalism, it is crucial to understand how Asia-Pacific economies promote and develop labour rights through labour provisions and policies in FTAs and other economic agreements. Yan's article offers a preliminary assessment of labour provisions and policies in the Asia-Pacific region and examines the underlying factors that drive their development. While policies on labour in the area of international trade law have been extensively examined in the existing literature, there is a pressing need to explore how these policies are implemented in the Asia-Pacific region. Overall, Yan's article enables this Symposium to highlight the importance of investigating labour provisions and policies in the Asia-Pacific region, given the region's growing economic significance and the emergence of new Asian regionalism. By shedding light on the underlying factors that shape regional labour policies, this article contributes to a more comprehensive understanding of the complex relationship between labour and trade in the Asia-Pacific region.

According to Xueji Su's article titled 'Asian Regionalism and the Reshaping of State-owned Enterprises Rules', the CPTPP that includes a chapter solely devoted to SOEs marked a new regulatory trend. Although the chapter was not proposed by the Asian parties, the new and strict SOE regulations under the CPTPP should not be viewed as passive submission to Western demands. In reality, ASEAN has called for a level playing

field and alignment of competition law and policy. Adhering to international legal commitments concerning SOEs may serve as an external push for the sluggish SOE reforms in several ASEAN nations. Nonetheless, given the disparities in their SOE sector and reforms, a shared challenge for these countries is to utilize this push in their favour and ensure appropriate policy space and flexibility. This article carefully examines how ASEAN members interact with developed countries in SOE rulemaking in an Asian way that reinforces the concept of new Asian regionalism and the reshaping of new norms.

In his article entitled 'Industrial Policy in Asia Pacific Integration: The Case of the ASEAN Countries', Sherzod Shadikhodjaev examines the process of establishing a single market as part of the Asia Pacific regionalism agenda, with a particular focus on ASEAN. While ASEAN members are responsible for their own industrial policies, they are also guided by the ASEAN legal framework. Despite having previously been a prominent feature of government economic interventions, localization continues to be utilized in the region, particularly in data-reliant industries. This poses a challenge for the advancement of the Fourth Industrial Revolution. Subsidies have also been widely employed by Southeast Asian countries to support domestic industries, but these measures are subject to the WTO discipline due to their potential to distort trade. In light of these issues, Shadikhodjaev discusses the localization and subsidy policies of ASEAN members in relation to international trade rules and highlights the need for the 'ASEANization' of industrial policies in the future. The article presents an overview of the legal framework for industrial policies in ASEAN, and outlines pressing challenges and opportunities associated with the development of an integrated market. Therefore, this article benefits a deeper understanding of the complexities and implications of regional economic integration in the Asia Pacific.

In conclusion, this Asia Pacific Law Review Symposium on 'Rethinking Asia-Pacific Regionalism and New Economic Agreements' explores a vital topic of relevance to policymakers, scholars, and practitioners alike. The Symposium provides a comprehensive and critical examination of the theoretical, normative, and practical aspects of new Asian regionalism with up-to-date case studies. The articles included in this Symposium offer an insightful analysis and innovative thinking on topics ranging from the role of international law in shaping economic agreements to the implications of trade agreements for labour rights and environmental protection. The primary goal of this Symposium is to provide valuable insights and recommendations to policymakers and scholars working in the field. We hope that this publication will be helpful to readers in the Asia-Pacific region and beyond, thus fostering critical dialogues and exchanges of ideas on this complex and dynamic issue.

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ORCID

Julien Chaisse  <http://orcid.org/0000-0001-8793-0590>

Pasha L. Hsieh  <http://orcid.org/0000-0002-3439-8120>