



Chapter 7

Malaysia's Perspective

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1. Introduction

The world is bracing for a further slowdown in the global economy. Even though projections have improved, the pace of global growth will still fall in 2023 compared with 2022, but by a smaller margin than predicted in October 2022. The International Monetary Fund forecast an annual growth rate of 2.9% for 2023 – up from a 2.7% forecast in October 2022 – versus 3.4% growth in the previous year (IMF, 2023). This revision was made due to several factors, including the resilience in demand in the United States (US) and European markets, easing of energy costs, and the reopening of China's economy after Beijing abandoned its coronavirus disease (COVID-19) restrictions. In developing and emerging Asia, growth rates since 2022 have been higher than in counterparts in other regions. In 2024 and 2025, growth rates are projected to be 5.3% and 5.2% in the region – the highest in the world.

Economic integration has been a pillar of the Association of Southeast Asian Nations (ASEAN). Over the past 3 decades, its Member States have undertaken efforts towards a more comprehensive form of integration through several different agreements and partnerships, all of which seek to promote trade and investment for mutual benefits and regional cooperation. However, it is critical that economic integration and growth are inclusive and deliver sustainable economic growth, especially in times of crisis. With the global economy slowing down as early as the last quarter of 2022 due to the war in Ukraine, soaring energy prices, and inflationary pressures, ASEAN can use existing platforms to combat issues related to supply chain bottlenecks and food security instead of adopting inward-looking measures to combat these externalities.

2. Impacts of the ACFTA on ASEAN Economic Development Since 2003 and the Implications for ASEAN–China Relations

Trade is very important for the growth of ASEAN economies as it leads to employment and hence social stability. As a small open economy, Malaysia is party to many bilateral and multilateral agreements. To date, it has ratified both the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). It is important to note that while China is a member of the RCEP, ASEAN and the ASEAN centrality mechanism drove its negotiation.

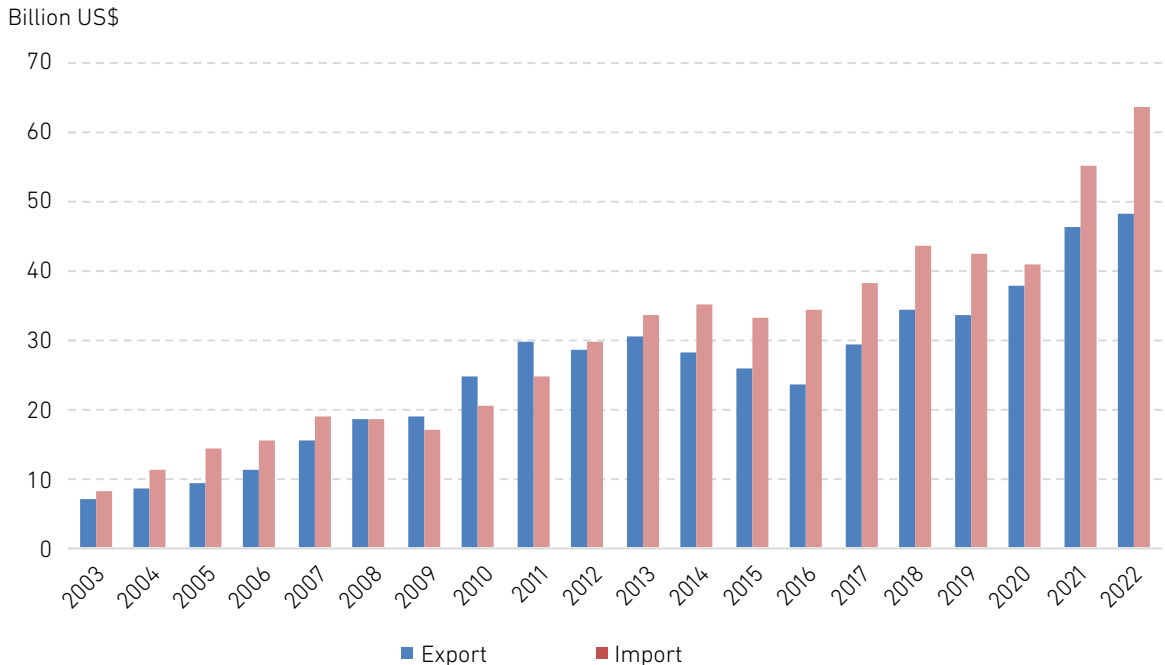
As a small open economy, these free trade agreements (FTAs) are important for Malaysia to attract foreign direct investment (FDI). Additional FDI will in turn help the country transition to the Fourth Industrial Revolution, supported by automation and digitisation solutions. Malaysia would like to transition from producing low value-added products to higher value-added products, and from depending on unskilled workers and trying to attract skilled workers to support its industries in the medium term.

Stability is key to attracting FDI – not just in the country, but also in the region. The trade tensions between China and the US are not new to Malaysia, so it tries to manoeuvre by not choosing sides as both countries are close trading partners of Malaysia. This sentiment is similar to that of most countries in the region. Given that China is the biggest trading partner of most ASEAN Member States (AMS), further cooperation and reforms on both sides could lead to increased trade and investment activities in the medium to long term. This partnership was established more than 2 decades ago.

The ASEAN–China Free Trade Agreement (ACFTA) has been hailed as a significant step towards boosting economic ties between China and the 10 AMS. This mega trade agreement was signed at the Sixth ASEAN–China Summit in 2002 and officially came into effect in 2010 (MITI, n.d.). Since then, it has played a vital role in strengthening trade and investment relations between ASEAN and China, helping to create new opportunities for businesses and bolstering economic growth in the region.

Figures from the China International Import Expo (2022) demonstrated the growing importance of ASEAN as a key economic partner for China. In the first quarter of 2022 alone, China's trade with ASEAN amounted to an impressive \$212 billion. This highlights the significant role that ASEAN plays in China's global trade network, accounting for 14.4% of total foreign trade value. This is a clear indication of the immense potential of the ASEAN–China economic partnership, which has provided numerous benefits for both sides in terms of increased trade flows, greater investment opportunities, and deeper regional integration.

China has been an important trading partner to Malaysia for decades, as portrayed in Figure 7.1. From 2003 to 2022, we can observe that Malaysia's exports and imports to China steadily increased. However, the gap between exports and imports continues to widen due to factors such as domestic income and demand for imports (Chan, 2016).

Figure 7.1 Malaysia trade with China, 2003–2022

Source: www.ASEANstat.org (n.d.)

According to ASEANstat (n.d.), Malaysia, Viet Nam, and Thailand were the top three trading partners of China in ASEAN in 2021. The Department of Statistics Malaysia (DOSM) reported that China remained Malaysia's most significant export destination and origin of imports in the same year. Malaysian exports to China reached a value of US\$41 billion, while imports from China amounted to US\$49 billion (DOSM, 2022).

Despite the challenges posed by the pandemic, bilateral trade between China and ASEAN has continued to grow. In nominal terms, the total trade between China and ASEAN increased by almost 4% from January to August 2020 compared with the same period in the previous year, amounting to US\$416.5 billion and accounting for almost 15% of China's total trade. Furthermore, FDI outflows from China to ASEAN grew by about 53% in the same period, indicating the increasing investment cooperation between the two parties.

As the RCEP has entered into force, the trade relationship between ASEAN and China is expected to intensify in the medium term (Mohamad and Cheng, 2020). The RCEP serves as an upgrade to the existing ACFTA by including areas beyond trade in goods, trade in services, and investments, such as intellectual property, e-commerce, and competition policy. Therefore, it is expected that the RCEP will provide new opportunities for ASEAN and China to deepen their economic cooperation, enhance their competitiveness, and further integrate into the global economy.

Nevertheless, as the RCEP commitments are somewhat diluted due to the inclusion of all 15 countries (the 10 AMS, Australia, China, Japan, the Republic of Korea, and New Zealand), an ASEAN–China FTA upgrade will provide an opportunity for ASEAN to commit to higher standards with China in selected sectors.

2.1. A brief history of the ACFTA and the Upgraded Protocol

The ACFTA has had a positive impact on the trade relations between ASEAN and China. In 2021, despite the challenges posed by the pandemic, the total bilateral trade volume reached US\$878.82 billion, with ASEAN being China's largest trading partner for the second year consecutively. Moreover, the ACFTA has facilitated ASEAN's efforts towards regional integration and economic development. By creating a more liberalised trade environment, the agreement has allowed for increased cross-border trade, investment, and economic cooperation. In addition, the ACFTA has helped improve the competitiveness of ASEAN's economies and enhance their production capacity, particularly in manufacturing and agriculture.

Moving forward, there is potential for the ACFTA to deepen and broaden its scope. For instance, discussions on upgrading the ACFTA are under way, with both sides exploring the possibility of expanding the agreement to cover new areas such as e-commerce, intellectual property rights, and environmental protection (Xinhua, 2021). This could lead to greater economic integration and benefits for both ASEAN and China.

The Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation and Certain Agreements thereunder between ASEAN and China (2015), hereinafter referred to as the 'Upgraded Protocol' of the ACFTA, will affect several areas of economic cooperation between ASEAN and China. These include trade in goods, trade in services, investment, and economic and technical cooperation. In terms of trade in goods, the Upgraded Protocol aims to increase market access by reducing tariffs and non-tariff barriers. The agreement also includes provisions on customs procedures, rules of origin, and trade remedies. With regard to trade in services, the Upgraded Protocol seeks to liberalise the services sector by removing barriers to entry and promoting cooperation between ASEAN and China. In addition, the agreement covers investment, including provisions on investment promotion and protection, as well as dispute settlement mechanisms. Finally, the Upgraded Protocol emphasises the importance of economic and technical cooperation in areas such as agriculture, energy, transportation, and information technology.

Despite the progress made by the Upgraded Protocol, challenges remain to be addressed in the ASEAN–China economic relationship. For instance, the unequal distribution of benefits amongst the parties poses concerns, with some countries benefiting more than others. The impact of the agreement on certain sectors, such as agriculture and small and medium-sized enterprises, is also an area of concern. Furthermore, discussions are ongoing about the inclusion of new areas of cooperation, such as e-commerce and intellectual property. Considering these challenges, it is important for ASEAN and China to continue working towards a more balanced and inclusive economic partnership.

Nevertheless, it is important to note that the Upgraded Protocol will affect the following areas:

- (i) Simplifying rules of origin and certificate of origin procedures
- (ii) Liberalising trade in services to enhance sectors such as engineering, construction, sports, securities, travel agencies, and tour operators
- (iii) Strengthening investment promotion and facilitation
- (iv) Building e-commerce capabilities (focusing on micro, small, and medium-sized enterprises (MSMEs))

With the rapid growth in e-commerce and digital technologies, the Upgraded Protocol emphasises the need to support the digital economy and facilitate the participation of MSMEs in cross-border transactions. Creating a favourable environment for e-commerce is crucial in unlocking the potential of MSMEs and empowering them to compete in the global market.

To achieve this, Article 7(3) of the Upgraded Protocol outlines the sharing of information, best practices, and dialogue on e-commerce related concerns amongst ACFTA members. This provision allows for the exchange of knowledge on laws and regulations to ensure a conducive environment for e-commerce development. In addition, MSMEs can participate in e-commerce workshops and training programmes to enhance their capabilities and overcome hurdles related to cross-border transactions.

The focus on MSMEs in the Upgraded Protocol is particularly significant as they play a vital role in the growth and sustainability of the economy, particularly in developing countries. By enhancing their access to e-commerce opportunities, MSMEs can expand their market reach and increase their contribution to the economy. Therefore, the Upgraded Protocol's emphasis on e-commerce and MSME development is a step towards creating a more inclusive and equitable trading environment.

Despite the significant progress made by the previous ACFTA Upgraded Protocol in promoting trade and investment between ASEAN and China, several challenges and uncertainties remain in the global trade and e-commerce landscape. These challenges include issues such as intellectual property rights protection, data privacy, cybersecurity, and cross-border data flows (World Economic Forum, 2023). In addition, the COVID-19 pandemic and geopolitical tensions have created new challenges and disruptions to supply chains and trade flows, affecting economic activity (Mohamad and Jefri, 2022). To ensure that the ACFTA continues to facilitate economic growth and development for all its members, the next upgrade of the agreement should address these challenges and uncertainties, which will be discussed in the next section.

2.2. Malaysia's imports and exports from China by product

To examine bilateral trade relations between Malaysia and China, it is not only important to examine how trade with China has grown in terms of nominal value but also in terms of its products. In 2021, the top three products exported were electronic integrated circuits (SITC 7764), palm oil and its fractions (SITC 3431), and magnetic tapes for sound recording (SITC 8984), with the first being consistently the top exported product since 2010, albeit on a decreasing trend after 2014. In 2014, it constituted about 30% of total exports, but only 20% in 2011. On the other hand, palm oil and its fractions (SITC 4222) and storage units (SITC 7527) were amongst the top five exported products from 2010 to 2016 and from 2010 to 2018, respectively. However, the contribution of palm oil and its fractions to total exports declined from 11% in 2011 to 4% in 2015 and has stayed below 5% since then.

From 2010 to 2021, electronic integrated circuits and micro-assemblies (SITC 7764) and electrical apparatus for line telephony or line telegraphy (including such apparatus for carrier-current line systems) (SITC 7641) have consistently been amongst the top three imported products in terms of value. Petroleum oils and oils from bituminous minerals (other than crude), and products containing 70% (by weight) or more of these oils, except waste oils, not elsewhere specified (SITC 3346) experienced a significant increase in import volume in 2016, causing it to become the third most imported product from China. This surge represented a 300% rise from the previous 5-year average of US\$1,171 million. Since then, this product has consistently maintained its position amongst the top five imported products. The top exported product from Malaysia between 2010 and 2021 was electronic integrated circuits and micro-assemblies (SITC 7764), which was also the top imported product during the same period. Despite this, Malaysia maintained consistent net exports of electronic integrated circuits and micro-assemblies (SITC 7764) over the years. On the other hand, parts and accessories for use solely or principally with office machines, except photo- or thermo-copy, and automatic data processing machines (SITC 7599) witnessed a decline in import value since 2010. Although it was the most imported product in 2010, it consistently remained in the top five until 2015.

Looking at the manufacturing subsectors, DOSM (2022) highlighted the significant total imports of China by commodity section in Malaysia, which amounted to US\$49 million. The highest import value was recorded for machineries and transport, contributing a substantial US\$26 million to overall imports in 2021. The second-highest import category was manufactured goods (US\$7.1 million). Chemicals also constituted a significant share of imports (US\$5.3 million). Other significant imports from Malaysia to China included miscellaneous manufactured articles (US\$4.6 million) and mineral fuels (US\$2.8 million), both of which have contributed significantly to the bilateral trade between the countries. These statistics demonstrate the positive economic relations between China and Malaysia, with potential for growth and diversification in various sectors.

2.3. Chinese FDI in Malaysia

In terms of Chinese FDI flows to Malaysia, DOSM (2021) showed that the net FDI inflows to Malaysia from China mainly targeted the manufacturing sector, which absorbed more than one-third of Malaysia's FDI inflows from China in 2021. What is interesting to note is that other non-traditional sectors also receive investment from China, such as the agriculture, mining, and construction sectors, in the same year of observation.

Despite renewed commitments from the ACFTA Upgrade to liberalise the services sector, net FDI from China to Malaysia flows have decreased tremendously since 2017. The net FDI flows picked up again from 2018, but the trend was reversed in 2020 due to the pandemic (DOSM, 2021).

Other non-traditional sectors also receive investment from China, such as the agriculture, mining, and construction sectors. Even though the net flow of investments has been volatile since 2021, the value has increased again, showing renewed interest from China.

According to the data presented in Table 7.1, China held 28th position in terms of FDI in Malaysia in 2010. However, it can be argued that due to the implementation of the ACFTA and other factors, China's ranking in terms of FDI has significantly improved over time. In fact, as indicated in Table 7.2, China has climbed the ranks and held ninth position in 2021 with regard to total FDI in Malaysia. This substantial jump in China's FDI position highlights the growing economic ties and business relations between Malaysia and China.

Table 7.1 Top 10 Sources of FDI in Malaysia, 2014

Rank	Country	Total investment (US\$ million)
1	Singapore	11,283
2	Japan	8,012
3	United States	7,352
4	Netherlands	5,862
5	United Kingdom	3,915
6	British Virgin Islands	3,553
7	Germany	2,649
8	Hong Kong	2,497
9	Switzerland	2,386
10	Bahamas	2,365
28	China	214,293,000

FDI = foreign direct investment.

Source: DOSM (2015).

Table 7.2 Top 10 Sources of FDI Positions in Malaysia, 2021

Rank	Country	Total investment (US\$ million)
1	Singapore	36,110
2	Hong Kong	18,316
3	Japan	17,739
4	United States	16,401
5	Netherlands	13,079
6	Switzerland	6,881
7	United Kingdom	6,410
8	British Virgin Islands	6,053
9	China	5,445
10	Republic of Korea	4,216

FDI = foreign direct investment.

Source: DOSM (2022).

3. Good Practices and Lessons in Implementing the ACFTA, Including the Update

Malaysia has always believed that attracting FDI is a key element in boosting the country from an agriculture-based economy to an industrialised economy. From 2017 to 2021, net FDI inflows have remained above 2% of GDP (DOSM, 2022). Even though Malaysia is concerned about attracting and retaining FDI in critical sectors, it is also very open in renewing the ASEAN Trade in Goods Agreement (ATIGA) and the ACFTA, while embarking on newer FTAs such as the RCEP and the CPTPP.

Malaysia looks forward to the upgrade of the ACFTA, especially as the upgrades could lead to further growth in trade and investment and technology transfer in the medium to long term. With the ratification of both the ACFTA and the ACFTA 2.0, trade and investment activities between China and Malaysia and between China and the region have flourished in nominal terms in the past 2 decades. This is emphasised by China's rising ranking of the sources of FDI in Malaysia.. With further cooperation in new areas such as e-commerce and digital trade and the environment between China and ASEAN, regional and global value chains in the region can be repaired and bolstered, and the Asia-Pacific may emerge once again as the engine of growth for the region and the world (Mohamad and Jefri, 2022). This may be vital for the next few years, especially as the slowdown of the global economy started as

early as the last quarter of 2022 amongst countries within the region. The new upgrade, or the ACFTA 3.0, should include commitments in non-traditional trade chapters such as e-commerce, digital free trade zones, and the environment, applying discipline to the activities of trade and investment in the long term.

This is very much in line with the direction of new FTAs and new commitments made through the CPTPP and the higher standards set by the European Union (EU) through its Regulation on Deforestation-free products. With the private sector stepping up to be certified under environmental, social, and governance efforts to cater to trading partners' needs, ASEAN and China should take this opportunity to upgrade the ACFTA to include discipline chapters that would lead to higher standards being adopted in the region.

Another area to improve upon is non-tariff measures (NTMs). According to the Asian Development Bank Institute (Menon and Melendez, 2019), the two upgrades of the ACFTA have not led to the elimination of NTMs. This needs to be remedied through transparent announcements and the introduction of NTMs in a one-stop centre before implementation. A single window platform will be key to progress in this area. As highlighted in the CPTPP agreement, businesses that are impacted by changes in policies related to NTMs can raise the issue to the implementer for justification.

For the ACFTA to remain relevant in uncertain times, there should be cooperation between the two blocs instead of adopting protectionist measures. A case in point is the pandemic, where NTMs were erected in 2020 by RCEP member countries. While such NTMs are easily introduced, 2 years later, those barriers were still used amongst a few of the countries observed (Mohamad and Jefri, 2022).

4. Evolution of ASEAN's Regional Policy Towards China from both the Regional and Country Perspectives

As a small trading nation, Malaysia is party to many FTAs and partnerships within the region and beyond. The two recently ratified FTAs, which have entered into force, are the RCEP and the CPTPP.

Even though the RCEP and the CPTPP are both mega regional FTAs involving the Asia-Pacific region, they are unique in their own ways. There are large overlaps in membership between the two trade agreements, but the RCEP is ASEAN centred while the CPTPP involves mostly upper-middle and high-income economies, including North and South American countries such as Canada, Mexico, Chile, and Peru.

Although China is a ratified member of the RCEP, it is not yet a member of the CPTPP despite applying at about the same time as Taiwan. While Taiwan is ready to be a ratified member of the CPTPP, as its policies and laws are very much in line with the standards outlined by the agreement, some experts have doubted China's intention and its readiness to conform to the very high standards in the labour, government procurement, and environment chapters. It is important to note that to be a member of the CPTPP, all the ratified members need to accept the new members unanimously.

Additionally, while there has been one upgrade to the ACFTA, another platform within the region has not included China or is used by major powers to contain China. This new platform is the Indo-Pacific bloc. To date, there are at least six interpretations of the Indo-Pacific. In 2018, ASEAN published its own take on the framework through the ASEAN Outlook on the Indo-Pacific (AOIP). Despite the lack of attention given to the AOIP and its progress, cooperation and collaboration on the pillars of the AOIP have continued incrementally through different ASEAN platforms such as the ASEAN Economic Community (AEC) targets, the ASEAN Defence Ministers' Meeting, and the ATIGA upgrade talks.

From ASEAN's perspective, the AOIP would not derail targets set out in the AEC blueprint or the ATIGA commitments. It is hopeful that the progress of the AEC and other ASEAN-led reforms can be expedited by achieving the targets set within the AOIP framework, as the AOIP 'involves the further strengthening and optimization of ASEAN-led mechanisms, including the East Asia Summit (EAS), the ASEAN Regional Forum (ARF), the ASEAN Defence Ministers Meeting Plus (ADMM-Plus), the Expanded ASEAN Maritime Forum (EAMF) and others such as the relevant ASEAN Plus One mechanisms' (ASEAN, 2019: 2). Nevertheless, some experts doubt that the AOIP by itself can help expedite the realisation of the AEC 2025 Vision. As it stands, leadership within ASEAN is needed to change the status quo.

While the AOIP is inclusive in terms of cooperation and membership, this is less true for the Indian and US definitions of the Indo-Pacific region. Given China's relationship with ASEAN in terms of investment and trade, it is difficult not to include China in any ASEAN-led platforms, including the AOIP. Even though ASEAN has taken a more diplomatic view of the Indo-Pacific, 'there was a sense that ASEAN should have maintained its emphasis on the Asia-Pacific region rather than respond to the Indo-Pacific nomenclature' (Wau and Tay, 2020: 1).

Nevertheless, ASEAN's publication of the AOIP is a positive sign that showcases the ASEAN centrality and the ASEAN voice mechanism at play not just on trade-related issues but on security and maritime issues, which are important in 'maintaining peace and stability' within the region (ASEAN, 2019).

Other than these platforms, the Belt and Road Initiative (BRI) championed by China has also had impacts on host countries within the region and beyond. However, even though the BRI has led to better access to funding for countries in need of critical infrastructure, BRI projects are linked to non-transparent bilateral dealings and governance gaps such as opaque procurement evaluations, lack of transparency in feasibility studies, and cost overruns and project delays, amongst others. Nevertheless, it is important to note that ASEAN counterparts need to step up in setting their own terms to ensure that such investments are safe and transparent. Accountability needs to be improved upon on both sides.

5. Areas to Be Prioritised in Promoting Free Trade and Closer Cooperation Between China and ASEAN

5.1. Digital economy and e-commerce

The digital economy could be a key growth area for Malaysia and China. According to the DOSM Digital Economy 2018 report, Malaysia's digital economy, which includes the e-commerce and information and communication technology sectors, was estimated to be valued at about US\$57.6 billion, or about 18.5% of GDP. Due to the rapid growth of digital trade activities, some estimates projected that this share of GDP would reach more than 20% by the end of 2020 (DOSM, 2019). In reality, due to the pandemic, its share only reached about 12.15% based on published 2020 data.

In comparison with China, Gong and Yeung (2022) argued that Malaysia shares similar priorities in terms of its digital economy plans. For example, the Chinese government is focusing on three overarching areas of the digital economy: cloud computing, the industrial internet, and data. Meanwhile, the Malaysian government's aspirations set out in the Malaysia Digital Economy Blueprint (MyDigital) also include data, cloud computing, and the Fourth Industrial Revolution.

The next area of collaboration to target is the digital economy through the introduction of an e-commerce chapter that is more comprehensive than the CPTPP and RCEP combined. Though the e-commerce chapter may highlight market access to certain subsectors, it should highlight discipline on how to navigate matters on data transfer, data localisation, data ownership, and equal access to the digital economy.

This is important so that data protection and data governance guidelines can be spelled out clearly. Before collaborating further on the e-commerce sector, such discipline needs to be well thought out as it may or may not be in line with the aspirations highlighted in bigger and more advanced FTAs such as the CPTPP and the Digital Economy Agreements (DEAs) signed by Australia and New Zealand. The development of the e-commerce chapter should ideally lessen NTM issues within digital economy activities, but the new upgrade should aggressively tackle the elimination of NTMs between ASEAN and China in the medium to long term. This goes back to ASEAN's readiness and willingness to reform by eliminating the usage of unjustified NTMs.

Additionally, Malaysia needs to prepare itself beyond the commitments in the MyDigital Blueprint. Malaysia's Personal Data Protection Act (PDPA), 2010 needs to be upgraded for several reasons, including conformance with certain commitments highlighted by the CPTPP and RCEP agreements and other DEAs that it aspires to be part of in the next few years. Other issues on cybersecurity also need to be examined and addressed within the e-commerce chapter.

5.1.1. Taxing the digital economy

Taxing the digital economy is complicated for Malaysia and other AMS. Since 2020, the Malaysian government has introduced and proposed a series of taxes directly or indirectly targeting the digital economy to increase its revenue in an otherwise unregulated new sector. The justifications for introducing or proposing such taxes are to (i) ensure Malaysia's taxation framework remains adequate for the digital economy, and (ii) level the playing field for local businesses. Recently implemented or proposed taxes targeting the digital economy can be broken down into direct and indirect taxation (Said, Shamsunahar, and Mohamad, 2022). These taxes include the Sales Tax (Amendment) Bill, 2022 and the Service Tax on Digital Service and Tourism Tax (Amendment) Act, 2021, amongst others. In an engagement session with selected stakeholders in Malaysia, some raised a variety of concerns about digital taxes either already proposed or introduced in Malaysia over the last few years. These concerns include confusion over double taxation, lack of transparency in implementation plans, and the increasing cost of doing business. Even though such taxation is needed, clarity over its impact on both local and international players and its implementation is key to keep all the stakeholders informed in a timely manner.

Apart from implementation, the taxation regimes of different AMS will also impact how goods and services are to be taxed. To grow the e-commerce industry healthily, provisions on taxation need to be discussed and addressed clearly for the next upgrade to be beneficial.

5.1.2. Personal data protection

Malaysia has two data classification regimes where obligations for cybersecurity are in accordance with the data user. For the private and commercial sector, the PDPA states that data management should be in line with the seven principles of data protection: (i) the general principles, (ii) the principles of notice and choice, (iii) the disclosure principle, (iv) the principles of safety, (v) the retention principle, (vi) the data integrity principles, and (vii) the access principle. Data classification for the government differs from that of the commercial sector, with the central document for the classification being the OSA 1972.

Under the PDPA, data localisation requirements are not imposed (Said, Shamsunahar, and Mohamad, 2022). The PDPA states that transfers to third countries should only be possible if the country is approved or whitelisted. However, potential updates to the PDPA are leaning towards a 'blacklist' approach instead, which could address differences in data management. Data managed by the government takes a data residency approach, where the department opting for cloud computing needs to know the 'source of origin' for the cloud computing services. This includes understanding data flows and data residency processes to ensure that the information and strategic data cannot be accessed by foreign powers.

Furthermore, Malaysian government departments are encouraged to anchor approaches with data sovereignty, whereby departments refer to the legal requirements and jurisdictions where the data will physically reside. Additionally, data sovereignty considerations should include (i) data management and stakeholders in the relevant department; (ii) data security; (iii) the physical geographical location and residency of the data; (iv) rules, procedures, and laws; (v) security risks; (vi) data classification; (vii) ownership of data; and (viii) data flows.

With its complexity and requirements, enforcement will be a challenge. As the laws will be enforced under different agency jurisdictions, this may cause confusion for investors, users, and players. Enforcement of data-related issues in the public sector will be under the purview of the chief government security officer, the Malaysian Administrative Modernisation and Management Planning Unit, and the police, while that of the private sector will be under the purview of the Personal Data Protection Department, the police, and the Malaysia Communications and Multimedia Commission.

Given the complexity and expansion of the cybersecurity and e-commerce environment, ASEAN needs to think hard about setting its own standard when it comes to data transfer and data protection. This could be done before negotiations on the upgrade take place. As uniformity of standards is key, ASEAN needs to agree on whether data localisation policies are needed in this region to enable the digital economy to grow in a safe way.

5.2. Eliminating unjustified NTMs

There is evidence that the introduction of NTMs may lead to higher costs of doing business. As Korwatanasakul and Baek (2021) points out, while both NTMs and tariffs have negative effects on global value chain participation, NTMs have a far greater impact than tariff measures. In certain instances, NTMs can attract FDI to a country because strong intellectual property rights make it easier for foreign investors to protect their interests in the domestic market, particularly when it is challenging for others to imitate their products. On the other hand, the implementation of NTMs can also discourage FDI if the measures introduced will drive up the cost of trade. Additionally, in a survey conducted by the International Trade Centre in Indonesia, about 37% of respondents said they had experienced burdensome regulations imposed by the government of the importing countries. (ITC, 2013)

Another issue related to NTMs is that they are very hard to retract once they are introduced, as was the case during the pandemic (Mohamad and Jefri, 2022). From February to October 2020, RCEP countries introduced 66 new trade measures, of which more than 50% were classified as restrictive. Lockdown measures were put in place to curb the spread of COVID-19, adversely affecting economic activity and disrupting supply chains.

Despite being a global supplier of personal protective equipment (PPE), China restricted its supplies, causing supply shocks in countries around the world. Other governments adopted similar emergency measures by restricting exports of food products, medical goods, and PPE. Liberalising imports while restricting exports of essential goods are key ingredients for supply chain bottlenecks.

In 2022, a few years into the pandemic, certain restrictions that were introduced during the pandemic remained active. Most of these restrictions involve essential goods such as food supplies or medical supply products. RCEP countries, including China, still struggle in their efforts to liberalise because the supply of goods, though rising, still fails to meet the rapid growth in local demand.

Table 7.3 Product Restrictions Introduced During the Pandemic

Enacting country	Type of measure	Products	Details	Status
China	Export restriction	<ul style="list-style-type: none"> • Medical supply products • Test kits 	<ul style="list-style-type: none"> • Certification and inspection requirement • Export prohibition 	Active
	Import liberalisation	<ul style="list-style-type: none"> • Medical supplies • Raw materials • Agricultural products • Meat 	<ul style="list-style-type: none"> • Tariff reduction • Temporary decrease in import tariffs • Facilitate agricultural administrative processes 	Active
Indonesia	Import liberalisation	<ul style="list-style-type: none"> • Onions and garlic 	<ul style="list-style-type: none"> • Temporary elimination of import certification requirements 	Terminated
	Import liberalisation	<ul style="list-style-type: none"> • Masks and PPE 	<ul style="list-style-type: none"> • Temporary elimination of import certification requirements 	Active
	Export restriction	<ul style="list-style-type: none"> • Ethyl alcohol • Raw materials for masks and PPE • Medical supply products • Sanitisers 	<ul style="list-style-type: none"> • Temporary export prohibition 	Active
	Liberalisation	<ul style="list-style-type: none"> • White crystal sugar 	<ul style="list-style-type: none"> • Temporary suspension of mandatory Indonesia national standard for white crystal sugar 	Active
	Liberalisation	<ul style="list-style-type: none"> • Wheat flour 	<ul style="list-style-type: none"> • Temporary exclusion to the addition of fortifying substances to wheat flour 	Active

Enacting country	Type of measure	Products	Details	Status
Malaysia	Import liberalisation	<ul style="list-style-type: none"> • PPE • Medical supplies • Face masks 	<ul style="list-style-type: none"> • Elimination of import duties and sales taxes • Exemption from import duties and sales taxes 	Active
	Export restriction	<ul style="list-style-type: none"> • Masks 	<ul style="list-style-type: none"> • Temporary ban on the export of masks to meet local demand 	Active
Philippines	Export restriction	<ul style="list-style-type: none"> • Rice 	<ul style="list-style-type: none"> • Bukidnon province stops exporting rice to ensure food security during lockdown 	Active
	Import liberalisation	<ul style="list-style-type: none"> • Healthcare equipment and supplies 	<ul style="list-style-type: none"> • Tariff reduction • Imports exempted from import duties, taxes, and other fees 	Terminated (May 2020)
Singapore	Import liberalisation	<ul style="list-style-type: none"> • Hand sanitisers • Masks • Thermometers • Protective gear 	<ul style="list-style-type: none"> • Temporary relaxation of import licensing requirements 	Active
	Import liberalisation	<ul style="list-style-type: none"> • Medical, hygiene, pharmaceutical, and agricultural products 	<ul style="list-style-type: none"> • Elimination of import tariffs and other duties on essential goods 	Active
Thailand	Import liberalisation	<ul style="list-style-type: none"> • Medical supply products 	<ul style="list-style-type: none"> • Exemption of customs duty • Import VAT exemption • Exemption from tariffs 	Active
	Export prohibition	<ul style="list-style-type: none"> • Masks 	<ul style="list-style-type: none"> • Export ban on masks 	Active
	Export prohibition	<ul style="list-style-type: none"> • Eggs 	<ul style="list-style-type: none"> • Export ban on chicken eggs 	Terminated (April 2020)

PPE = personal protective equipment, VAT = value-added tax.

Source: International Trade Centre (n.d.), COVID-19 Temporary Trade Measures. <https://www.macmap.org/covid19>

As mentioned in the previous section, the development of the e-commerce chapter could go hand in hand with eliminating NTM issues within digital economy activities and leveraging and improving on the usage of national single windows and the ASEAN Single Window. The new upgrade should aggressively tackle the issues of eliminating NTMs between ASEAN and China in the medium to long term.

6. Conclusion

Economic integration has been a pillar of ASEAN, and Malaysia has benefited from this membership since its inception. Over the past 3 decades, AMS have undertaken efforts towards a more comprehensive form of integration through several different agreements and partnerships, all of which seek to promote trade and investment for mutual benefit and regional cooperation. However, it is critical that economic integration and growth are inclusive and deliver sustainable economic growth, especially in times of crisis. Malaysia looks forward to the upgrade of the ACFTA, especially as the upgrades could lead to further growth in trade and investment and technology transfer in the medium to long term. With the ratification of both the ACFTA and the ACFTA 2.0, trade and investment activities between China and Malaysia and between China and the region have flourished in nominal terms in the past 2 decades. This is evident in the ranking of investors in Malaysia, with China consistently being one of the top 10 investors in the country.

Nevertheless, for the upgraded ACFTA to remain relevant in uncertain times, there should be cooperation between the two blocs instead of adopting protectionist measures. Additionally, a strategic area of collaboration is the digital economy through the introduction of an e-commerce chapter that is more comprehensive than the existing CPTPP and RCEP agreements. Although the e-commerce chapter may highlight market access to certain subsectors, it should highlight discipline on how to navigate matters on data transfer, data localisation, data ownership, and equal access to the digital economy. These should be the priorities of the ACFTA upgrade discussion.

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