THE FUTURE OF E-COMMERCE DISPUTES: AN ANALYSIS OF MULTILATERAL DISPUTE RESOLUTION MECHANISMS

HAIJING HUANG*
TZE CHIN ONG**

Abstract

The globalisation movement and the rapid growth of e-commerce necessitate effective dispute settlement mechanisms in multilateral trade agreements. The qualitative analysis conducted on the dispute settlement mechanisms in the World Trade Organization (WTO), the Association of Southeast Asian Nations (ASEAN), and the Regional Comprehensive Economic Partnership (RCEP) reveals the regulation of electronic commerce (e-commerce) and demonstrates the efforts and limits of these three trade agreements. This article compares the dispute settlement mechanisms and their legal arrangements for e-commerce within the WTO, ASEAN and RCEP frameworks to determine the most efficient for resolving e-commerce disputes in the Asian region. The results show that existing trade agreements offer a basic framework for future digital trade or e-commerce regulation, but they only provide a limited scope. The resolution of e-commerce disputes remains an ongoing issue for Member States, challenging traditional dispute settlement mechanisms and thereby requiring a new mechanism. The Online Dispute Resolution (ODR) mechanism stands out as a promising solution for the sustainable growth of e-commerce and the resolution of the surge in trade disputes.

Keywords: Multilateral Dispute Settlement Mechanism; E-commerce; RCEP; WTO; ASEAN

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* Phd Candidate, Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia. The author can be contacted at < s2134973@siswa.um.edu.my>.

** Senior Lecturer, Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia. The author can be contacted at < tzechinong@um.edu.my>.

I INTRODUCTION

The globalisation movement plays an essential role in international economic relations, enabling the "free flow of capital and the removal of trade barriers between states, as well as to the accompanying cultural transformation and exchanges."[1] Globalisation, to some extent, enhances economy growth by opening or broadening the internal market of a state for the free trade of goods, the liberalised flow of services, and foreign direct investments.[2] In recent years, the rapid growth of electronic commerce (e-commerce) or digital trade, fuelled by digitisation,[3] has transformed the ways goods and services are delivered globally, encompassing both digital and physical forms. Notably, contemporary digital trade relies on data flows,[4] and data itself acts as both an invisible asset and a method for global value chains and service delivery. This rise of e-commerce fuelled by data, to some extent, has broadened the scope of trade-related issues.[5]

Meanwhile, multilateral trade agreements (MTAs)[6] have rapidly increased to enhance competitiveness in the global market through "integrated regional production."[7] Additionally, trade agreements have played a vital role in shaping e-commerce governance, such as the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP), all of which contain comprehensive chapters defining and regulating e-commerce or digital trade. The influence of these trade agreements extends to the World Trade Organization (WTO) Joint Statement Initiative (JSI) negotiations, with the Asia-

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1 Barbara Stark, 'Women and globalization: the failure and postmodern possibilities of international law' (2000) 33(3) *Vanderbilt Journal of Transnational Law* 509.

2 B.C. Nirmal and Rajnish Kumar Singh (eds), *Contemporary Issues in International Law: Environment, International Trade, Information Technology and Legal Education* (Springer, 2018) 200.

3 Mira Burri and Anupam Chande, 'What Are Digital Trade and Digital Trade Law?' (2023) 117 *American Journal of International Law Unbound* 99, 99-103.

4 Susan Ariel Aaronson, 'Data is different, and that's why the world needs a new approach to governing cross-border data flows' (2019) 21(5) *Digital Policy, Regulation and Governance* 441, 460.

5 Mira Burri, 'Digital Trade Law and Human Rights' (2023) 117 *American Journal of International Law Unbound* 110, 110-115.

6 In this article, the words "Multilateral trade agreements (MTAs)" are used as a collective term, which mainly includes regional trade agreements (RTAs), and free trade agreements (FTAs). This article focuses on WTO, ASEAN and RCEP trade agreements.

7 David A Lynch, *Trade and globalization: An introduction to regional trade agreements* (Rowman & Littlefield Publishers, 2010) 23.

Pacific region taking a central role in shaping e-commerce governance.[8] Disputes inevitably arise in the process of multilateral trade in the era of globalisation and digitalisation. Global trade tensions may depress investments in developing countries, reduce global exports, and disrupt global supply chains.[9] Therefore, it is not uncommon for the design of a dispute settlement mechanism to become an integral part of many MTAs to resolve existing or potential disputes.

The traditional context and practice of the dispute resolution mechanism within MTAs differ from formalised legal arrangements. Domestic political regime types, emulation incentives, and the development of multilateral trade regimes can be regarded as variable factors when Member States determine the structure of the dispute settlement mechanism within MTAs.[10] While RCEP is likely to reshape regional economics and politics in the years ahead, its dispute settlement mechanism appears to provide an alternative means to the existing rule-based dispute settlement systems. It seems that RCEP offers more opportunities for Member States to resolve their disputes within the MTAs framework compared to the dispute settlement mechanisms of the WTO and the Association of Southeast Asian Nations (ASEAN) Protocol.

This article employs qualitative content analysis based on a literature review, utilising primary and secondary legal sources such as journal articles, working papers, books, and reports to examine dispute settle mechanisms in e-commerce within the framework of the WTO, ASEAN, and RCEP. The article is structured into six sections, including an Introduction and Conclusion. Section II provides a general discussion of the WTO's dispute settlement mechanism and the efforts of its Member States in defining the scope and reaching agreements on e-commerce. Section III outlines the dispute settlement mechanism within ASEAN and its agreement on e-commerce. Section IV compares the dispute settlement mechanisms of the existing multilateral frameworks (WTO, ASEAN, RCEP) and summarises RCEP's arrangements for e-commerce. Section V explores the potential of integrating Online Dispute Resolution (ODR) platforms to address e-commerce disputes.

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8 Yasmin Ismail, 'Joint Statement Initiative on E-commerce at Crossroads for a "Substantial" Conclusion by MC13' (Web Page, International Institute for Sustainable Development, 17 July 2023) <https://www.iisd.org/articles/policy-analysis/joint-statement-initiative-electronic-commerce>.

9 Caroline Freund et al, *Impacts on Global Trade and Income of Current Trade Disputes,* World Bank Doc MTI Practice Notes 2 (July 2018).

10 Hyeran Jo and Hyun Namgung, 'Dispute settlement mechanisms in preferential trade agreements: Democracy, boilerplates, and the multilateral trade regime' (2012) 56(6) *Journal of Conflict Resolution* 1041, 1041-1068.

II THE WTO DISPUTE SETTLEMENT MECHANISM AND E-COMMERCE EFFORTS

The multilateral trading system has triggered the rapid growth of the international economy, and the establishment of the WTO has become an international effort over the past few decades.[11] The WTO mechanism aims at disciplining the choice of protectionist policy instruments for trade or non-trade objectives, thereby maintaining a balance between Member States' autonomy and trade liberalisation.[12] The WTO, by its nature, has two main functions: setting the universal norms of trade regulation and adjudication.[13] The former function serves as a forum where the WTO plays a vital role for member countries to make bilateral or multilateral trade arrangements, while the latter refers to the role in dispute settlement mechanism.

A *The WTO Dispute Settlement Mechanism Framework*

According to Article 3.2 of *Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU)* of WTO, the objective is to provide security and predictability to the multilateral trading system. For market participants, predictability in commercial activities contributes to the long-term maintenance of transactional relationships and sustainable business growth.[14] Most importantly, in some trade dispute cases, disputing parties can rely on the WTO dispute settlement mechanism, with reference to its unbiased provisions. This mechanism has performed well by providing efficient and dependable rules and procedures to resolve disputes in the first several years. Since 1998, however, the performance of the WTO dispute settlement mechanism has declined, and pending cases have increased.[15] The effectiveness of the WTO dispute settlement mechanism has led to heated debates. The factors determining its effectiveness are related to the time that it takes to resolve a trade dispute, which, among other factors, determines its efficiency.[16] This rule-based mechanism aims at

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11 Autar Krishan Koul, *Guide to WTO and GATT: Economics, Law and Politics* (Springer, 2018) 39.

12 Weihuan Zhou, 'In defence of the WTO: why do we need a multilateral trading system?' (2020) 47(1) *Legal Issues of Economic Integration* 1, 1-25.

13 Keisuke Iida, 'Is WTO dispute settlement effective' (2004) 10(2) *Global Governance* 207, 207.

14 World Trade Organization Secretariat, *A Handbook on the WTO Dispute Settlement System* (Cambridge University Press, 2nd ed, 2017).

15 Keisuke (n 13) 210.

16 Arie Reich, 'The Effectiveness of the WTO Dispute Settlement System: A Statistical Analysis' in Toshiyuki Kono, Mary Hiscock and Arie Reich (eds), *Transnational Commercial and Consumer Law: Current Trends in International Business Law* (Springer, 2018) 1-40.

facilitating amicable and timely resolution of disputes arising from MTAs. Nevertheless, the WTO suffers from a surfeit of irrelevant cases,[17] which may delay the process of addressing relevant cases or substantive matters among disputing parties.

The WTO multilateral dispute settlement mechanism is now facing daunting challenges. These challenges can be roughly divided into three aspects: the procedure of complaints, the paralysis of the Appellate Body, and the lack of updates on the common guiding principles accommodating the constantly evolving MTAs in the different aspects of countries, stakeholders, investors, and private entities' interests. Specifically, the first challenge is the procedural utilisation of complaints among member countries with varying developing statuses. Developed countries benefit more from the WTO procedure than developing countries, mainly due to their capacity to utilise these new dispute settlement procedures compared to the era of the General Agreement on Tariffs and Trade (GATT).[18] The lack of legal capacity, market power, financial resources,[19] and information hamper developing countries from defending their interests as both complainants and respondents. Since 2000, however, developing countries have played an important role in the global trade and multilateral dispute resolution system.[20] To some degree, the power imbalances have been levelled when utilising the WTO system.

The second challenge is the blockage of appointing the members of the Appellate Body (AB). Countries with stronger political and economic power, such as the United States and other incumbent European countries, argued that the AB of the WTO is stepping out of bounds, overstepping its adjudication function, and even making new rules without the consensus of all Members, particularly without considering the protection of the significant interest of developing countries.[21] The incumbent countries with strong political and economic strength remain dominant in the appointment of AB members, which hinders other Member States' representation in the dispute settlement mechanism. The suspension has resulted in Member States and disputing parties searching for alternative dispute settlement options, such as arbitration and other forums. Furthermore, the WTO dispute settlement mechanism is required to

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17 John Ragosta et al, 'WTO Dispute Settlement: The System Is Flawed and Must Be Fixed' (2003) 37(3) *International Lawyer* 697, 697-752.

18 Moonhawk Kim, 'Costly procedures: divergent effects of legalization in the GATT/WTO dispute settlement procedures' (2008) 52(3) *International Studies Quarterly* 657, 657-686.

19 Gregory C Shaffer and Ricardo Meléndez-Ortiz (eds), *Dispute Settlement at the WTO: The Developing Country Experience* (Cambridge University Press, 2010) 1-372.

20 Anabel González and Euijin Jung, 'Developing Countries Can Help Restore the WTO's Dispute Settlement System' (2020) *Peterson Institute for International Economics* 1, 1-14.

21 Office of the United States Trade Representative, *2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program* (Report, March 2018).

align with the latest economic developments, especially the rapid growth of e-commerce, big data, and the global value chain.[22] In this context, the WTO dispute settlement mechanism lacks updates on its rules, regulations, and guiding principles, and may not be able to preserve the development of the evolving digital economy.

B *The WTO E-commerce Efforts and the Limits of Its Dispute Settlement Mechanism*

The burgeoning data-driven economy has unavoidably exposed multiple new and pressing regulatory issues, particularly regarding personal data protection,[23] national security, and the rights of others. Despite its continuous challenges, such as the stalled Doha negotiation round,[24] and the AB appointment troubles within its dispute settlement mechanism,[25] the WTO has also shown renewed activity on the issue of e-commerce and digital economy. Notably, during the nascent stages of the internet, the WTO launched a Work Programme on Electronic Commerce (WPEC) in 1998,[26] recognising the potential implications of digitalisation on global trade and initiating discussions on digital trade. In May 1998, the Second Ministerial Conference was held in Geneva, whereby the ministers adopted the Declaration on Global Electronic Commerce, establishing a comprehensive work program to examine all trade-related aspects of global e-commerce.[27] Additionally, the Declaration highlighted the importance of considering the economic, financial, and development needs of developing countries, as well as acknowledging the ongoing work in other international forums.[28] This ambitious initiative was far-reaching in examining and revising WTO rules across trade in goods, services, intellectual property, and economic

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22 Zhang Yuejiao, 'The WTO Dispute Settlement Mechanism and Its Reform' (2022) 12(3) *Journal of WTO and China* 15, 15-32.

23 Mira Burri, 'Interfacing Privacy and Trade' (2021) 53 *Case Western Reserve Journal of International Law* 35, 35-87.

24 Robert Wolfe, 'First diagnose, then treat: what ails the Doha Round?' (Working Paper RSCAS 2013/85, European University Institute, November 2013) 7 <https://ssrn.com/abstract=2360112>.

25 Robert McDougall, 'The Crisis in WTO Dispute Settlement: Fixing Birth Defects to Restore Balance' (2018)52 (6) *Journal of World Trade* 867, 867.

26 World Trade Organization, 'Work Programme on E-Commerce' (Web Page) <https://www.wto.org/english/tratop_e/ecom_e/ecom_work_programme_e.htm>.

27 *The Geneva Ministerial Declaration on global electronic commerce*, WTO Doc WT/MIN (98)/DEC/2 (25 May 1998, adopted 20 May 1998) (Ministerial Declaration).

28 Yasmin Ismail, 'E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint Statement' (Web Page, International Institute for Sustainable Development, January 2020) <https://www.iisd.org/system/files/publications/e-commerce-world-trade-organization-.pdf>.

development, but remained unfulfilled due to various reasons.[29] Furthermore, several important issues remain unresolved, exposing the growing disconnect between the WTO rules and the practice realities of digital trade.[30] A typical example lies in the classification of previously non-existing digital offerings. Whether they should be categorised as goods, regulated by the GATT,[31] or as services falling under the General Agreement on Trade in Services (GATS),[32] remains unclear.

In fact, even though there were some adjustments and its updates to the Information Technology Agreement (ITA) in 2015, along with the Fourth Protocol on Telecommunications Services, WTO law still falls behind the development of the digital age.[33] The indecisive nature of the Work Programme, the complexity of the issues that need to be tackled, and the stalled Doha Round negotiations have all contributed to the slow progress.[34] Discussions on e-commerce were sluggish and scattered across the four designated bodies.[35] In December 2017, the WTO's Eleventh Ministerial Conference (MC11) was held in Buenos Aires, where the first Joint Statement Initiative (JSI) on Electronic Commerce was issued by seventy-one (71) WTO member countries, constituting a massive 77% of global trade.[36] This JSI aims at achieving a high-standard outcome that builds upon existing WTO rules and encourages broad participation by as many WTO members as possible in the future.[37] In 2018, JSI members continued to convene regularly, holding roughly nine meetings in total. These meetings focused on member proposals and submissions, with the aim of establishing an agreed-upon agenda for the negotiation phase.[38] Consequently, on 5 January 2019, seventy-six (76) WTO member countries gathered in Davos

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29 Ibid.

30 Mira Burri, 'A WTO Agreement on Electronic Commerce: An Inquiry into Its Legal Substance and Viability' (2021) 53 *Georgetown Journal of International Law* 565, 565-625.

31 *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) Annex 1A ('General Agreement on Tariffs and Trade 1994') art I (1) ('GATT 1994').

32 Ines Willemyns, 'GATS Classification of Digital Services – Does "the Cloud" Have a Silver Lining?' (2019) 53(1) *Journal of World Trade* 59, 59.

33 Mira Burri, 'The international economic law framework for digital trade' (2015) 135 *Zeitschrift für Schweizerisches Recht* 10, 10.

34 Ismail (n 28).

35 The four designated bodies include Council on Trade in Services, Council on Trade in Goods, Committee on Trade and Development, Council on TRIPS.

36 Andrew D. Mitchell and Vandana Gyanchandani, 'Convergence & Divergence in Digital Trade Regulation: A Comparative Analysis of CPTPP, RCEP, and EJSI' (2023) 19(2) *South Carolina Journal of International Law and Business* 98, 98-150.

37 Ismail (n 28).

38 'The WTO Joint Initiative on e-commerce', *Bigwatch* (Web Page) <https://dig.watch/processes/wto-ecommerce>.

to issue a joint statement (the Second JSI), announcing their intent to launch exploratory negotiations regarding digital trade.[39] Held on 12-15 June 2022 in Geneva, the WTO's Ministerial Conference Twelfth Decision (MC 12) reinvigorate the work under the WPEC with specific emphasis on its development. This Decision requested members to intensify discussions on the scope, definition, and influence of the moratorium on customs duties on electronic transmissions.[40] Currently, there are ninety (90) WTO members are formally engaged in negotiations on e-commerce through JSI. These negotiations, however, are being undertaken outside the existing legal framework of the WTO.[41] As a result, despite efforts made by WTO members in discussing global e-commerce development, the WTO's dispute settlement mechanism lacks the capacity to resolve e-commerce disputes. In other words, e-commerce disputes arising from WTO agreements cannot be resolved through the WTO Dispute Settlement Mechanism (DSM).

III ASEAN DISPUTE SETTLEMENT MECHANISM AND AGREEMENT ON E-COMMERCE

In the Asian region, ASEAN members have established a parallel dispute settlement mechanism for resolving investment and trade disputes. With the purpose of strengthening the dispute settlement mechanisms to be consistent with a rules-based ASEAN Community,[42] ASEAN Member States have made great efforts in the past several decades and keep up to date with the discussion and agreement on the development of E-commerce in the Asian region.

A *ASEAN Dispute Settlement Mechanism Development*

Dating back to 28 January 1992, Member States signed the *Framework Agreement on Enhancing ASEAN Economic Cooperation* in Singapore, desiring to enhance intra-ASEAN economic cooperation and settle differences between the Member States in an amicable manner.[43] Further, the *Protocol on Dispute Settlement Mechanism* signed in Manila on 20 November 1996 ("1996 Protocol on DSM") was designed to expand the context of Article 9 of the dispute

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39 Michael Kende and Nivedita Sen, 'Cross-border e-commerce: WTO discussions and multi-stakeholder roles-stocktaking and practical ways forward' (Working Paper CTEI-2019-01, 2019) <https://repository.graduateinstitute.ch/record/297080?ln=en%3B&v=pdf>.

40 *Work Programme on Electronic Commerce*, WTO Doc WT/MIN (22)/32 WT/L/1143 (22 June 2022, adopted 17 June 2022) (Ministerial Declaration).

41 Kende and Sen (n 39).

42 *ASEAN Protocol on Enhanced Dispute Settlement Mechanism*, (signed and entered into force 29 November 2004) preface para 3 ('*2004 Protocol on EDSM*').

43 *Framework Agreement on Enhancing ASEAN Economic Cooperation*, (signed and entered into force 28 January 1992) preface art 9.

settlement provision, allowing Member States to seek recourse to other forums for disputes settlement,[44] and first contained a basic panel and appellate process. In 2004, the *ASEAN Protocol on Enhanced Dispute Settlement Mechanism* ("2004 Protocol on EDSM") was signed by leaders in Vientiane, Laos, superseding the 1996 Protocol on DSM. The 2004 Vientiane Protocol is a means for ASEAN region countries to make and enforce their legally binding decisions in terms of dispute resolution.[45] Moreover, the *ASEAN Charter* was adopted in 2007 at the 13th ASEAN Summit in Singapore, which can be considered a supplemental legal agreement aiming at providing a comprehensive dispute settlement approach for Member States. Adopted in Ha Noi, Viet Nam on 8 April 2010, the *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms* provides specified dispute resolution methods rather than a general commitment to the establishment and maintenance of institutional dispute settlement mechanisms, thereby transforming ASEAN into a rules-based organisation.[46]

The latest development within the ASEAN framework is the signature of the *ASEAN Protocol on Enhanced Dispute Settlement Mechanism* ("2019 Protocol on EDSM") in Manila, Philippines on 20 December 2019.[47] This Protocol is consistent with a rules-based ASEAN Community. Meanwhile, the 2019 ASEAN Protocol on DSM has several similarities with the WTO's dispute settlement mechanism. For example, the dispute settlement mechanisms of these two legal frameworks only permit Member States to participate in the adjudicatory process, without the permission of private entities or investors.[48] In addition, the DSM of the WTO and ASEAN contains a wide range of dispute resolution methods, varying from consultations, good offices, conciliation and mediation to arbitration. The 2019 ASEAN Protocol on DSM, however, also includes differences compared to the content of the WTO DSU.[49]

The principle of the 2019 ASEAN Protocol dispute settlement mechanism is to settle disputes amicably between Member States, coordinating with the ASEAN Charter of Non-Interference into the internal affairs of Member States.[50]

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44 *Protocol on Dispute Settlement Mechanism*, signed 20 November 1996, (entered into force 26 May 1998) ('*1996 Protocol on DSM*').

45 Delfiyanti, 'Dispute Settlement Mechanism between ASEAN States following the ASEAN Charter' (2019) 10(5) *International Journal of Innovation, Creativity and Change* 272, 272-282.

46 *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms*, signed 8 April 2010, (entered into force 27 July 2017) preface ('*Charter DSM Protocol*').

47 *ASEAN Protocol on Enhanced Dispute Settlement Mechanism*, signed 20 December 2019, (entered into force 20 June 2022) preface ('*2019 Protocol on EDSM*').

48 Sanchita Basu Das et al (eds), *The ASEAN Economic Community: A Work in Progress* (ISEAS Publishing, 2013).

49 Ibid 384.

50 Naureen Nazar Soomro et al, 'ASEAN (' s) WAY of Conflict Management: Active and Effective Role' (2019) 58 *Journal of Social Sciences and Humanities* 139, 139-151.

Furthermore, the DSM of the 2019 ASEAN Protocol is an option that Member States can resort to for their disputes in other forums at any stage before making a request to the Senior Economic Officials Meeting (SEOM). This DSM can be regarded as an ideal legal arrangement for primary developing and least developed Asian countries to address trade disputes arising from bilateral or multilateral economic treaties. Yet, this mechanism has not functioned well, and some ASEAN member countries hesitate to make full use of it, preferring to refer their dispute to the WTO mechanism. For instance, in 2011, the Philippines and Thailand referred their dispute to the WTO DSM over the fiscal and customs measures of Thailand affecting cigarettes from the Philippines.[51] Although political considerations may influence member countries when deciding how to resolve their disputes, this also serves as an alarm that the DSM of the Protocol has its shortcomings.

The drawbacks of the ASEAN Protocol dispute settlement mechanism can be divided into two types: financial and physical facilities, and human resources. The technological infrastructure needed to be established to meet the needs of hearing a dispute for disputing parties. Although the ASEAN Protocol has its own DSM Fund, this Fund is not used to construct a physical hearing body or other facilities. Also, Member States involved in a dispute under the ASEAN DSM must bear the full legal costs.[52] On the other hand, due to insufficient financial support, legal expertise and highly qualified lawyers within the ASEAN dispute settlement mechanism are relatively rare, and ASEAN is still at a capacity-building stage. One instance is that the 2019 ASEAN Protocol on EDSM establishes an AB composed of seven persons. At the time of writing, however, the seven persons of the AB have not been appointed. The lack of these human resources would not support the proper operation of the ASEAN DSM.

B *ASEAN Agreement on Electronic Commerce*

Since the outbreak of the Covid-19 pandemic, e-commerce has grown rapidly, transforming it into a major driver of digital transaction across ASEAN. With a surge in both digital consumers and businesses, coupled with acceleration in e-commerce and food delivery, the ASEAN region is expected to become a US$1 trillion Internet economy by 2030.[53] Indeed, ASEAN has developed its own legal

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51 Panel Report, *Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines - Final Report of the Panel*, WTO Doc WT/DS371/R (15 November 2010) [3.1] - [4.90]; Appellate Panel Report, *Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines - Report of the Appellate Body*, WTO Doc WT/DS371/AB/R (17 June 2011) [12]-[65].

52 Sanchita (n 48) 460.

53 'ASEAN Agreement on Electronic Commerce officially enters into force', *ASEAN* (Web Page, 3 December 2021) <https://asean.org/asean-agreement-on-electronic-commerce-officially-enters-into-force/>.

framework, which recognises the importance of Information and Communication Technology (ICT) and e-commerce for regional integration.[54] This legal framework, with *2019 ASEAN Agreement on Electronic Commerce* signed in Hanoi, Vietnam on 22 January 2019, serves multiple objectives. This agreement aims at facilitating cross-border e-commerce transactions in the ASEAN region, seeking to establish a secure and trustworthy environment in the use of e-commerce, and building trust and confidence among online users.[55] It also emphasises deeper cooperation among Member States,[56] promoting inclusive growth and narrowing the development gap in the ASEAN region. The *2019 ASEAN Agreement on Electronic Commerce* officially entered effect on 2 December 2021.

The agreement sets out common principles and rules to maintain the e-commerce growth and strengthen implementation. The legal and regulatory frameworks within Member States are required to be harmonised with international model law, conventions, principles, and guidelines.[57] Each member country should support the use of alternative dispute resolution to address disputes or disagreements arising from the e-commerce transactions.[58] In addition, to facilitate cross-border e-commerce, Member States should recognise the importance of technology neutrality and align with their policy and regulatory approaches.[59] The agreement also focuses on the importance and regulation of the cybersecurity, [60] e-payment systems, [61] and cross-border logistics.[62] When encountering e-commerce-related disputes, the parties to the disputes have the right to refer their disputes to be settled within the ASEAN dispute settlement mechanism. [63] For effective implementation of the agreement, the SEOM needs to collaborate with the relevant ASEAN agencies and gain the support from the ASEAN Secretariat. All in all, the agreement will be a pathfinder for modern rules and regulations in the ASEAN region, ultimately paving the way for a regionally integrated digital economy.

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54 Phet Sengpunya, 'ASEAN E-Commerce Legal Framework-Towards the Development and Prospects' (2019) 10 *ปีที่ 10 ฉบับที่* 95, 95-108.

55 *2019 ASEAN Agreement on Electronic Commerce*, signed 22 January 2019, (entered into force 2 December 2021) art 2.

56 Ibid.

57 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 5(2).

58 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 5(3).

59 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 5(4).

60 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 8.

61 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 9.

62 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 10.

63 *2019 ASEAN Agreement on Electronic Commerce* (n 55) art 15.

IV THE DISPUTE SETTLEMENT MECHANISM OF RCEP AND E-COMMERCE ARRANGEMENT

Apart from the WTO DSM, other regional dispute settlement mechanisms are of significance, such as RCEP and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).[64] In the Asian region, RCEP seems to provide a combination of the existing instruments of the WTO and ASEAN in search of an alternative dispute resolution mechanism. This part will provide an overview of the legal arrangement in Chapter 19 within the framework of RCEP, and examine its functions and differences in the guiding principles. This part will also compare the DSMs of WTO, ASEAN and RCEP to clarify the salient features of the RCEP DSM. It will show how Chapter 19 adapts and/or changes the legal content of the existing multilateral dispute mechanisms. Additionally, it briefly introduces Chapter 12 within the RCEP framework, thereby analysing RCEP's regulation on e-commerce arrangements and offering potential approaches regarding online disputes resolution.

A *The Objective and Procedure of Dispute Settlement Mechanism in RCEP*

The objective of the RCEP DSM is to provide effective, efficient and transparent rules and procedures for dispute settlement.[65] To address trade disputes between Member States, Chapter 19 contains its own legal structure. The complaining party can select a forum to settle their disputes.[66] Any party can use soft measures such as consultation to solve disputes by providing sufficient information in an amicable manner,[67] which is aligned with the Asian region's tradition of settling disputes peacefully. In addition, disputing parties can voluntarily undertake alternative dispute resolution options such as good offices, conciliation or mediation at any time.[68] Chapter 19 also contains the rules of procedures for panel proceedings, that is, the establishment and reconvening of a panel.[69] The specific panel procedures can be clearly shown as follows: (1) submit a request for establishment of a panel,[70] (2) compose a panel,[71] (3) third-party submission,

64 Sang Chul Park, 'The Regional Comprehensive Economic Partnership (RCEP) Without Indian Participation: Can It Work as a Mega FTA?' (2021) 16 *International Organisations Research Journal* 1, 2.

65 *Regional Comprehensive Economic Partnership*, signed 15 November 2020, (entered into force 1 January 2022) art 19.2 ('*RCEP*').

66 *RCEP* (n 65) art 19.5.

67 *RCEP* (n 65) art 19.6.

68 *RCEP* (n 65) art 19.7.

69 *RCEP* (n 65) art 19.11.

70 *RCEP* (n 65) art 19.8.

71 *RCEP* (n 69).

if any,[72] (4) agree on the terms of reference of the panel,[73] (5) fix the timetable for the panel process,[74] (6) submissions and hearings,[75] and (7) implement the final report.[76] Admittedly, several provisions of this Chapter adopt some context of the WTO arrangement. However, Chapter 19 has its different functions to harmonise dispute resolution in Asian region, promoting regional economic integration and protecting the free trade mechanism based on globalisation.

B *The Dispute Resolutions Mechanism within the RCEP Framework*

Chapter 19 of RCEP provides an overview of multi-tier alternative dispute resolution for trade disputes resolution between Member States in Asia. This includes consultation/conciliation and mediation, which offers a flexible approach. Notably, the arbitration clause is excluded in Chapter 19 since the international arbitration legal arrangement has its own rules and procedures.

1 *Consultation/Conciliation*

Consultation or conciliation is a less formal form of dispute resolution where a decision is made by the disputing parties and does not have a final legal binding effect. Consultation is usually treated as 'the first step' in every dispute. Some potential complainant countries in RCEP still maintain their preference for this informal system. Chapter 19 offers any parties an opportunity to address their trade matters through direct consultation at any time.[77] The complaining parties are free to decide whether to refer their dispute to consultation or conciliation. Consultation has its own advantage in that it provides a convenient and relatively low-cost way for the disputing parties to negotiate with each other sooner rather than later. Furthermore, engaging in consultation has specified timeframes. Once the consultation request is received, the responding party shall reply within 7 days and start consultation no later than 30 days, and when faced with urgent cases related to perishable goods, it is required to reply within 15 days.[78] Failure to meet the timeline may lead to the complaining parties turning to another alternative method of dispute resolution. These timeline settings ensure the procedure is efficient and prompt, and not unnecessarily prolonged.

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72 *RCEP* (n 65) art 19.10.
73 *RCEP* (n 65) art 19.12.
74 *RCEP* (n 65) art 19.13.
75 Ibid.
76 *RCEP* (n 65) art 19.15.
77 *RCEP* (n 67).
78 Ibid.

2 *Mediation*

Chapter 19 provides for the third-party involvement to settle disputes through mediation.[79] The disputants could submit their dispute to mediation, which may begin or terminate at any time by any party to the dispute. It is not a conditional alternative method upon the failure of consultations or conciliations, and the parties have the freedom to choose mediation without being made to feel that they will be penalised. Mediation is not always good for settling disputes due to its internal shortcomings: the absence of an organ to make a mediator list and lack of a legally binding effect. Specifically, Chapter 19 only makes general provisions for mediation without offering detailed arrangements. There is a shortage of a diverse pool of high-quality mediators for the parties to choose from. Mediation is more like an art than a professional service by the mediators.[80] Mediators may indirectly adjudicate the dispute, which could raise complaints among the parties to the dispute. Further, mediation, in essence, is a DSM design without the imposition of binding decisions but is advisory for the parties, who would not have to shoulder the same legal obligations as an arbitral award or litigation award.

C *The Salient Features of Dispute Settlement Mechanism in RCEP*

To identify the salient feature of the DSM of RCEP, it is imperative to compare the obvious differences, including the objectives and principles, scope, timeframes, choice of forum, and reconvening of panels/ standing AB among the three legal systems (*see* table1).

79 *RCEP* (n 68).

80 Steve Ngo, 'ASEAN and China Commercial Disputes Settlement: Reflections on Regional Commerce, Belt & Road Initiative and Beyond' (2020) 3(02) *China and the World: Ancient and Modern Silk Road* 1, 1-38.

Table 1: WTO, ASEAN Protocol and RECP Dispute Settlement Mechanism

	Comparisons	WTO	2019 ASEAN Protocol	RCEP
1.	**Objective and principles**	provide security and predictability to the multilateral trading system	strengthen the dispute settlement mechanisms to be consistent with ASEAN Community	provide effective, efficient and transparent rules and procedures for dispute settlement
2.	**Scope (non-violation complaints)**	cover non-violation complaints	exclude non-violation complaints	exclude non-violation complaints
3.	**Time Frames**			
	(1) from panel establishment to final report issuance	not exceed nine (9) months	not exceed 70 days, or roughly 2.3 months	not exceed seven (7) months
	(2) panel convening to issue its interim report	six (6) months	not involve interim reports	roughly five (5) months
4.	**Choice of Forum**	not covered	covered	covered
5.	**Reconvening of Panels/ Standing Appellate Body (AB)**	contain AB, cannot reconvene a panel	contain AB, cannot reconvene a panel	can reconvene a panel, without AB

Sources: Author

The salient features of the RCEP DSM can be analysed from the above comparative table. First, the objective and principle of the RCEP settlement mechanism are aimed at providing an efficient and effective procedure. Therefore, this mechanism excludes some irrelevant cases such as the omission of ambiguous non-violation complaints, to focus more on relevant cases.[81] In terms of time frames, Chapter 19 is in the middle stage as compared to the WTO mechanism and the 2019 ASEAN Protocol. The timeline of the RCEP intends to keep a balance between these two ends.[82] Furthermore, Chapter 19 provides a forum for the disputing parties to settle their dispute in other international or regional agreements, while the WTO instrument does not include this clause. Additionally, it seems to be an alternative means for the RCEP to avoid the AB stagnation in the WTO mechanism since RCEP has done away with the Appellate review. Lastly, RCEP Member States have the chance to reconvene a panel after the suspension of concessions when they disagree on the implementation of the final report.[83] By its nature, RCEP Article 19.17(13) is an outcome-driven clause, which reminds any party to the dispute to comply with the agreement of any measure, as the responding party is permitted to request the reconvening of a panel.

D *The Arrangement of E-commerce within the RCEP Framework*

The RCEP Chapter 12 offers valuable insights into the regulation of digital trade or e-commerce and serves as a potential indicator of the dynamic governance environment of digital trade issues, particularly its inclusion of China with dedicated e-commerce trade provisions.[84] Beyond China, digital trade rules within the RCEP Chapter are vital as a practical case study for other RCEP members, such as Vietnam, which are currently not taking part in the JSI on e-commerce under the umbrella of the WTO.[85] With the objectives of promoting e-commerce within its member countries and globally, while contributing to the establishment of a trust environment and collaboration in its development,[86]

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81 Sungjoon Cho, 'GATT Non-Violation Issues in the WTO Framework: Are They the Achilles' Heel of the Dispute Settlement Process' (1998) 39(2) *Harvard International Law Journal* 311, 311-314.

82 Yvette Foo, 'Dispute Settlement under the Regional Comprehensive Economic Partnership: Part 1: An Overview of Chapter 19', *CIL NUS*, (Blog Post, April 2022) <https://cil.nus.edu.sg/blogs/dispute-settlement-under-the-regional-comprehensive-economic-partnership-part-1-an-overview-of-chapter-19-by-yvette-foo/>.

83 *RCEP* (n 65) art 19.17(13).

84 Patrick Leblond, 'Digital Trade: Is RCEP the WTO's Future?', *Centre for International Governance Innovation*, (Web Page, 23 November 2020) <https://www.cigionline.org/articles/digital-trade-rcep-wtos-future/>.

85 Ibid.

86 *RCEP* (n 65) art 12.2.

RCEP's Chapter 12 contains several articles and provisions with regard to e-commerce. This Chapter clarifies the application scope related to measures affecting e-commerce implemented by member countries but excludes government procurement and information held or processed by or on behalf of member countries, including measures related to its collection.[87] This Chapter can generally be categorised into four (4) sections, including trade facilitation,[88] fostering a conducive e-commerce environment,[89] promoting cross-border e-commerce,[90] and other additional provisions.[91]

Specifically, RCEP promotes trade facilitation through recognition of paperless trading, electronic authentication, and electronic signatures, [92] but the degree of commitment is not the same. For paperless trading, member countries tend to commit to less binding terms since they only agree to work together or cooperate with each other. Electronic signature acceptance is more binding and concrete, but it allows domestic laws to be involved in case of conflicts. In terms of creating a conducive environment for e-commerce, RCEP has similar rules and regulations as CPTPP, both including similar language on online consumer protection, online personal information protection, unsolicited commercial electronic messages, domestic regulatory framework, customs duties, and cybersecurity.[93] The RCEP Members are also committed to transparency, which requests members to publish relevant regulations that may affect the operation of this Chapter in a publicly available way and respond to information requested by another member countries promptly.[94] With regard to promoting cross-border e-commerce, it involves cross-border data flows. Article 12.14 encourages conditional data flows since it also preserves the room for member countries to implement their domestic data protection policies. Article 12.14.3(a) and 3(b) separately make exceptions for legitimate public policies and essential security interests but lack clear language on how to distinguish between legitimate and trade-distorting data flow regulations and lack the specific definition of security interests.[95] These exceptions for clarification would lead to self-judging mechanisms, and some member governments may even restrict data flow transactions with various kinds of reasons.[96] Meanwhile, Article 12.15 on cross-

87 *RCEP* (n 65) art 12.3.
88 *RCEP* (n 65) ch12 s B.
89 *RCEP* (n 65) ch12 s C.
90 *RCEP* (n 65) ch12 s D.
91 *RCEP* (n 65) ch12 s E.
92 *RCEP* (n 88).
93 Leblond (n 84).
94 *RCEP* (n 65) art 12.12.
95 *RCEP* (n 65) art 12.14.
96 Susan Ariel Aaronson, 'Data is different, and that's why the world needs a new approach to governing cross-border data flows' (2019) 21 *Digital Policy, Regulation and Governance* 441, 441-460.

border information transformation is similar to the regulation of Article 12.14, thus securing some member countries to maintain some control over data flows.[97] In the end, this Chapter contains other provisions for establishing a dialogue on e-commerce and settlement of disputes. The former encourages cooperation on anti-competitive practices, online dispute resolution relevant to e-commerce development,[98] while the latter is separate from the general regulation in RCEP's Chapter 19. When members fail to reach agreement on e-commerce issues through consultation, the next stage is to seek support from the RCEP Joint Committee, but without enforcement powers to make any decision. As a last resort, e-commerce disputes can be referred to in Chapter 19, but only with the consent of its application from disputing parties.[99]

V ANALYSIS AND RECOMMENDATIONS FOR E-COMMERCE DISPUTE SETTLEMENT

This part analyses the multilateral dispute settlement mechanism regulation for regulating e-commerce, which briefly summarises the legal arrangement in WTO, ASEAN and RCEP. Subsequently, it explores the feasibility of integrating an ODR mechanism into the existing legal framework.

A *Multilateral Dispute Settlement Mechanism in Regulating E-commerce*

MTAs offer practical advantages, which foster economic growth as well as regional cooperation, especially among Member States. These agreements promote common interests by abiding common principles without interference from national legal conflicts. The proliferation of MTAs necessitates the development of dispute settlement mechanisms. These agreements create a formal legal dispute settlement mechanism, essentially institutionalizing the process of resolving disputes. These legal agreements reduce uncertainty and enhance predictability by providing a clear framework for resolving trade disputes, thereby reducing the cost of institutional procedures.[100] When it comes to settling trade disputes, the relationship between the WTO and other trade agreements such as RCEP could be complex. It may lead to parallel jurisdiction issues due to the overlap of rights and obligations in each system.[101] Although the WTO and other multilateral agreements have their own dispute resolution

97 *RCEP* (n 65) art 12.15.
98 *RCEP* (n 65) art 12.16.
99 *RCEP* (n 65) art 12.17.
100 Hyeran and Hyun (n 10) 1045.
101 Gabrielle Marceau and Julian Wyatt, 'Dispute settlement regimes intermingled: regional trade agreements and the WTO' (2010) 1(1) *Journal of International Dispute Settlement* 67, 67-95.

mechanisms, these mechanisms may not be the most suitable option to support integration and liberalization efforts in the Asian region.[102] For Asian region members, the dispute settlement mechanism established under RCEP seems to offer a potential avenue to settle multilateral trade disputes amicably.

The rapid expansion of digital trade or e-commerce has generated explosive amounts of related disputes. This has led to discussions about the relationship between e-commerce chapter regulation and dispute settlement mechanisms within multilateral trade agreements or regional trade agreements. Based on the previous analysis, the WTO's WPEC has made great efforts towards the regulation of e-commerce and has seen incremental progress,[103] with member countries agreeing to discuss the scope and definition of e-commerce. The WTO has not concluded substantive outcomes from negotiations on e-commerce to date. Meanwhile, some Member States have not yet agreed on updating the language on this subject within the WTO framework.[104] Since the inauguration of the WPEC negotiation, the past twenty years have witnessed a significant rise in e-commerce provisions or rules within MTAs and regional trade agreements, starting from the paperless trading clause in the New Zealand-Singapore FTA. Since then, these provisions have seen remarkable growth, especially driven by the Southeast Asian and Pacific-Rim countries.[105] The ASEAN countries signed the *2019 ASEAN Agreement on Electronic Commerce*, which serves as pathfinder in developing and overseeing the e-commerce trade. The latest process is the individual Chapter 12 on e-commerce within the RCEP legal framework, with a comprehensive arrangement for the growth of e-commerce and the independent dispute settlement mechanism. The current e-commerce chapter in trade agreements offers a basic framework for future multilateral digital trade regulations, but they only provide a limited scope.[106] If the negotiations at the WTO's JSI ever reach a successful agreement, it would more likely resemble Chapter 12 in RCEP. Although Chapter 12 is aspirational in nature, it offers limited practical approaches to effectively promote cross-border digital and data flows. Simultaneously, Member States will still face with many ongoing issues regarding the resolution of e-commerce disputes.

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102 Gino J Naldi, 'The ASEAN protocol on dispute settlement mechanisms: an appraisal' (2014) 5(1) *Journal of International Dispute Settlement* 105, 105-138.

103 Marc D Froese, 'Digital trade and dispute settlement in RTAs: An evolving standard?' (2019) 53(5) *Journal of World Trade* 783, 783.

104 Leblond (n 84).

105 Rolf H Weber, 'Digital Trade and E-Commerce: Challenges and Opportunities of Asia-Pacific Regionalism' (2015) 10(2) *Asian Journal of WTO and International Health Law and Policy* 321, 321-48.

106 Froese (n 103).

B *Integrating ODR for E-Commerce into Existing Dispute Settlement Framework*

To make progress on regulating e-commerce trade and facilitating effective resolution of its related trade disputes, it is imperative to explore practical approaches in maintaining e-commerce or digital trade development. Effective e-commerce dispute resolution plays a key role in the sustainable and stable development of e-commerce. It is not uncommon that a surge of e-commerce disputes challenges traditional dispute settlement mechanism and calls for new ones. Noteworthily, the ODR mechanism stands out as a promising solution for its effectiveness and efficiency in resolving these disputes.

The ODR industry emerged after 1998 and was initially focused on resolving trade disputes with online entities rather than physical businesses.[107] Despite its fairly short lifespan,[108] ODR has developed remarkably. The evolution of the ODR coincides with the emergence of online Alternative Dispute Resolution (e-ADR),[109] which introduces the concept of using technology as a neutral fourth party to facilitate dispute settlement. That is to say, the transformation of the traditional dispute resolution model from a triangle with two disputing parties and one neutral party to a rectangular model.[110] In this new model, technology acts as a fourth party coincident with two disputants, one third party, and one computer. In general, fuelled by the rise of electronic technologies and the internet advancement, ODR can be treated as an extrajudicial system that leverages ICT with ADR methods, offering a more efficient, cost-effective, and user-friendly way to settle disputes.[111] Currently, ODR is rapidly rising as a trend globally and has become a preferred method for resolving disputes, particularly in e-commerce transactions cases.[112] By utilizing ICT, the ODR mechanism significantly reduces costs for online users since it eliminates the need to travel associated with traditional court proceedings,[113] thereby making dispute settlement cheaper and more available. It should be

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107 David A Larson, 'Online dispute resolution: Technology takes a place at the table' (2004) 20(1) *Negotiation Journal* 129, 129-135.

108 Ethan Katsh and Colin Rule, 'What We Know and Need to Know About Online Dispute Resolution' (2016) 67(2) *South Carolina Law Review* 329, 329.

109 Nadja Alexander, 'Mobile Mediation: How Technology Is Driving the Globalization of ADR' (2006) 27(2) *Hamline Journal of Public Law & Policy* 243, 244.

110 Alan Gaitenby, 'The Fourth Party Rises: Evolving Environments of Online Dispute Resolution' (2006) 38(1) *University of Toledo Law Review* 371, 371-388.

111 Osinachi Nwandem, 'Online Dispute Resolution: Scope and Matters Arising' (2014) *SSRN* 1, 1-21.

112 Jean-Francois Roberge and Veronique Fraser, 'Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Businesses (SMEs) Disputes' (2019) 35 *Ohio State Journal on Dispute Resolution* 1.

113 Pablo Cortés, *Online dispute resolution for consumers in the European Union* (Taylor & Francis, 2010).

emphasized that ODR mechanisms are typically designed to work together, not to replace or substitute the existing dispute settlement mechanisms. This mechanism offers a valuable alternative for specific situations such as e-commerce, but it is not intended to be a complete substitute for traditional courts or other established dispute settlement mechanisms.[114] Therefore, this article proposes the integration of an ODR platform into the existing e-commerce dispute settlement mechanism, especially within the RCEP legal framework.

C *Leveraging the RCEP Framework for Effective E-Commerce Online Dispute Resolution*

E-commerce growth and cross-border data flow play a significant role in international trade, but the transition from paper-based to digital tends to be a double-edged sword with both benefits and concerns of national and regional regulatory restrictions on data privacy and national security.[115] From the global perspective, the WTO mechanism should be a forum where a consensus between cross-border data flows among nations and the benefits of global digital economy openness are reached. The negotiation process with the WTO JSI has been slow and has led to questions about providing a timely and effective framework for data flows globally.[116] Realising the limits of the WTO and JSI process, nations turn to other avenues such as international or regional trade agreements to address some existing digitalisation issues, and it becomes a feature for trade agreements with provisions on cross-border data flow. These agreements present national commitments to reduce data flow barriers and prevent digital fragmentation landscape, but a key weakness lies in the enforcement mechanisms within these arrangements. These provisions within the trade agreements, however, still pave the way for the multilateral trading system's progress.[117]

In the Asian region, the ASEAN member states not only signed an e-commerce agreement but also published the ASEAN Guidelines on ODR outlining practical guidance for related stakeholders and providing actionable

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114 'Feasibility Study: ASEAN Online Dispute Resolution (ODR) Network', *ASEAN Secretariat*, (Web Page, November 2020) <https://aseanconsumer.org/file/post_image/Feasibility%20Study%20ASEAN%20ODR.pdf>.

115 Felicity Deane et al, 'Trade in the Digital Age: Agreements to Mitigate Fragmentation' (2024) 14(1) *Asian Journal of International Law* 154, 168.

116 Ibid.

117 Petros C Mavroidis and Andre Sapir, *China and the WTO: Why Multilateralism Still Matters* (Princeton University Press, 2021).

steps to design and implement national ODR systems.[118] Noteworthily, there are no uniform standards for ODR systems at both international and regional levels. ASEAN member states can benefit from broader cooperation with other jurisdictions, particularly those with similar political and socioeconomic contexts, by learning from their practical experiences in ODR implementations.[119] Given the explosive growth of e-commerce or the digital economy in the Asian region, the implications of RCEP Chapter 12 are of interest to policymakers and stakeholders. As mentioned, Chapter 12 excludes its signatories from the usage of the RCEP dispute settlement mechanism, which indicates reluctance for mutual accountability even though the member countries reach agreements on data flow, privacy, and localisation standards. The exclusion of dispute settlement mechanism within RCEP stands in contrast to the general trade deepening of e-commerce chapters.[120] Optimists, however, emphasise that Chapter 12 promotes significant growth and recovery potential in Asia-Pacific region by fostering an institutional environment for e-commerce or the digital economy.[121] Meanwhile, one of the main objectives of RCEP is to preserve and enhance ASEAN centrality in both political and economic coordination in the Asia-Pacific region. The commitment of the five RCEP dialogue partners outside the ASEAN members to abide by the existing ASEAN mechanisms and principles will further enhance the potential of the RCEP mechanism.[122] Due to the relative openness to new ideas, although the hinderance of adapting the Chapter 19 to resolve the e-commerce trade disputes, it could be possible for RCEP members to maintain and even put forward the existing effort of the ASEAN ODR practices in the near future.

To achieve effective e-commerce dispute resolution, the ODR platform could be incorporated as a supplementary appendix document in the RCEP arrangement. This additional document should not violate the existing legal arrangements for settlement of disputes outlined in Chapters 12 and 19 within the RCEP framework, fostering a more robust mechanism in addressing e-commerce disputes and enhancing the stable development of e-commerce in the

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118 ASEAN Secretariat, 'ASEAN Guidelines on Online Dispute Resolution (ODR)', *ASEAN Main Portal*, (Web Page, February 2022) <https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf>.

119 Ibid.

120 Froese (n 103) 785.

121 Jean-Marc F Blanchard and Wei Liang, 'Reassessing RCEP's Implications for Digital Trade and E-Commerce' *The Diplomat*, (online, 4 May 2022) <https://thediplomat.com/2022/05/reassessing-rceps-implications-for-digital-trade-and-e-commerce/>.

122 Ulfah Aulia, 'Giving a Chance to the RCEPs Dispute Settlement Mechanism' *Economic Research Institute for ASEAN and East Asia (ERIA)*, (online, 21 March 2023) <https://www.eria.org/news-and-views/giving-a-chance-to-the-rceps-dispute-settlement-mechanism/>.

Asian region. Obviously, integrating the ODR mechanism into the existing dispute resolution process would be a complex task, and many issues need to be considered. These issues include how the ODR mechanism is expected to connect to the RCEP dispute settlement mechanism, or whether the ODR system should focus on a specific industry and/or transaction type, and so on.[123] In order to address these issues, policymakers and stakeholders of member countries should work jointly to improve e-commerce dispute resolution by publishing relevant policies and advancing technology to develop a secure and user-friendly ODR mechanism, fostering a healthy e-commerce ecosystem.

VI CONCLUSION

This article has considered two main challenges: the proliferation of dispute settlement mechanism arrangements and the booming growth of e-commerce. It primarily analyses dispute settlement mechanisms of the WTO, the ASEAN, and the RCEP, examining how these three agreements resolve disputes related to e-commerce regulations. It has compared these trade agreements, including the WTO, the 2019 ASEAN Protocol on EDSM, and RCEP Chapter 19, to explore which is most effective and efficient for the Asian countries in settling current and potential e-commerce disputes.

The WTO dispute settlement mechanism plays an important role in settling international trade rules, offering a forum for member countries to resolve multilateral trade disputes and reach consensus on relevant trade arrangements. However, the WTO mechanism cannot be used as an effective tool to resolve e-commerce disputes, despite the joint efforts made by many WTO members. Furthermore, while the ASEAN dispute settlement mechanism aims to offer amicable resolution arrangements for member countries, it suffers from a lack of sufficient funding, facilities, and human resources. These resource deficiencies hinder the confidence and trust of the members, ultimately impeding its development and effectiveness. Despite the 2019 ASEAN Agreement on Electronic Commerce encouraging e-commerce growth and allowing e-commerce disputes to be submitted for resolution, the underlying limitations of its dispute settlement mechanism prevent it from effectively resolving such disputes. The RCEP dispute settlement mechanism appears to offer a method to overcome the shortcomings of the WTO and ASEAN mechanisms. This article analyses Chapter 19 of RCEP, focusing on its objectives, structure, and salient features in dispute settlement process. It further introduces the arrangement of e-commerce within the RCEP framework. Finally, the article explores the potential of integrating ODR into existing multilateral trade agreements, particularly into the RCEP legal framework. It advocates for incorporating ODR

123 Ibid.

as an appendix document, which would enhance the efficiency of resolving e-commerce disputes and promote a more sustainable e-commerce growth environment in the Asian region.