

Corporate Newsletter

DEC 28,
2020

Regional Comprehensive Economic Partnership (RCEP) – what you need to know: A general introduction (Part I)

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* This newsletter was drafted based upon the information available as of December 28, 2020.

A. INTRODUCTION

On 15 November 2020, following eight years of negotiations, fifteen Asia-Pacific countries concluded the Regional Comprehensive Economic Partnership agreement (“RCEP”) in a virtual signing ceremony held during the 37th ASEAN Summit in Hanoi, Vietnam.¹

The RCEP accounts for approximately 30% of the world’s population (2.2 billion people) and 30% of the global GDP (USD 26.2 trillion), making it the world’s largest free-trade deal, exceeding the European Union, the revamped NAFTA (“USMCA”) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”).

In the following, we will provide a short overview of the participation in and the scope of RCEP, focusing on its most salient trade-related innovations. In a Part II to this newsletter, we will address RCEP’s investment protection regime.

B. RCEP PARTICIPATION

The RCEP signatory states comprise the ten ASEAN members (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam) as well as states that have existing free trade agreements with ASEAN

¹ See text of the RCEP, available at: https://www.mofa.go.jp/ecm/ep/page24e_000272.html.

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(“ASEAN+1 FTAs”), namely Australia, China, Japan, New Zealand and South Korea.² The RCEP is celebrated as the first multilateral free trade agreement to be signed by China. Importantly, it also is the first-ever free trade agreement linking Japan, South Korea and China, Asia’s largest economies next to India.

India, which had initially participated in the RCEP negotiations, is not among the signatories after withdrawing from the deal in late 2019.³ Neither is the United States, which, following its withdrawal from the CPTPP predecessor (the Trans-Pacific Partnership Agreement (“TPP”)) in 2017, remains absent from Asia-Pacific’s two major multilateral trade deals.

Many of the RCEP signatories are at the same time signatories or parties to the CPTPP, the second multilateral trade and investment agreement in the Asia-Pacific and which entered into force in 2018, namely: Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, Thailand and Vietnam.⁴

The RCEP is expected to take effect as early as two years from today, once it has been ratified by six ASEAN and three non-ASEAN countries.

C. SCOPE OF THE RCEP

The RCEP is aimed at promoting economic integration in the Asia-Pacific region by facilitating investment and trade liberalization in its 20 chapters and annexes. In this Part I of the newsletter, we focus on RCEP’s most salient trade-related innovations.

I. Trade and market access for goods and services

The RCEP focuses on the progressive elimination of tariffs and non-tariff barriers for goods and services, as well as simplification of customs procedures and rules of origin (“ROO”). Specifically, the RCEP’s goal is to reduce tariffs by approximately 90% over a period of 20 years in accordance with each signatory’s schedule of tariff commitments. Non-tariff measures on imports and exports (including quantitative restrictions such as quotas or licensing restrictions) are generally prohibited and subject to the RCEP and WTO rules.

The RCEP also establishes measures and procedures to further facilitate trade and enhance transparency, such as expedited customs clearance. Harmonized ROO allow business supply chains to operate within the entire RCEP territory using a single certificate of origin, a change that is expected to increase certainty and flexibility.

With regard to trade in services, at least 65% of service sectors will be open to foreign investors and RCEP signatories have committed to raising the foreign shareholding limits in various industries, including professional services, telecommunications and financial services.

II. Enhanced business environment

The RCEP introduces measures involving intellectual property (“IP”) law, competition law, government procurement practices, e-commerce, small and medium enterprises and temporary movement of natural persons; the key ones include:

IP protection and enforcement: As a means to streamline IP protection and enforcement, RCEP parties are required to

² Apart from the five non-ASEAN RCEP states, India and Hong Kong have also concluded ASEAN+1 FTAs.

³ Whether India will accede in the future, remains to be seen. Footnote 2 of Article 20.9(1) of the RCEP provides for an opt-in clause allowing India to rejoin the agreement anytime upon its entry into force. For other countries, the RCEP will be open for accession only 18 months after it enters into force.

⁴ Markert/Ishido, *GAR Investment Treaty Arbitration, Japan*, August 2020, available at: <https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/japan>.

accede to several multilateral IP agreements.⁵ Also, member states must guarantee measures against trademark counterfeiting and copyright piracy. This includes the possibility for their judiciary to order the destruction of counterfeited/pirated goods at the IP right holder's request. Competent authorities may also suspend the release of suspected counterfeited/pirated goods. Besides trademark and copyright protection, the RCEP covers non-traditional trademarks (e.g. sound marks, industrial designs) and digital copyrights.

E-commerce: The RCEP contains a number of commitments to ease e-commerce restrictions, including the recognition of electronic authentication technologies and signatures, the possibility for persons to conduct business without being required to localize data, the implementation of regulation to ensure personal data and consumer protection, as well as cooperation on cybersecurity matters.

Government procurement: For the first time, all ASEAN states have introduced government procurement rules. Specifically, RCEP signatories have committed to publish their respective legal frameworks (to the extent possible, through electronic means and in English) and to cooperate in the facilitation of consultation and exchange of information in government procurement matters.

Temporary movement of natural persons: The RCEP grants natural persons from RCEP member states who are engaged in trade, investment and services the right to temporarily enter other RCEP parties' territory upon compliance with the required immigration procedures. Each RCEP signatory has made specific commitments regarding spouses and dependents. The RCEP further prescribes the expeditious conduct of immigration formalities and transparency regarding the requirements for temporary entry (including forms and explanatory materials).

D. OUTLOOK

While the RCEP's coverage may not be extensive as other free-trade agreements, it marks an important milestone for free trade and multilateralism in the Asia-Pacific region. We will be closely following further developments and report as soon as new noteworthy details are unveiled.

In our upcoming newsletter "*Regional Comprehensive Economic Partnership (RCEP) – what you need to know: Investment protection perspective (Part II)*", we will report on RCEP's mechanism for the protection of foreign investments. Please stay tuned.

⁵ These include the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the WIPO Copyright Treaty.



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*Please note that we are not engaged in a Gaikokuho Kyodo Jigyo (the operation of a foreign law joint enterprise).