

Understanding the Regional Comprehensive Economic Partnership Agreement (RCEP)

What does the RCEP mean to businesses?

In brief

After almost a decade of negotiations, the RCEP was finally signed on 15 November 2020 by 10 ASEAN countries, along with Australia, China, Japan, New Zealand and South Korea. India was originally party to the RCEP negotiations, but it left the deal in 2019 due to concerns over the protection of its national interests and local industries.

The RCEP is the largest regional free trade agreement (FTA) outside the WTO. Its member states account for approximately 30% of the world's gross domestic product (USD 26.3 trillion) and 30% of the world's population (2.3 billion). Key developments that are expected from the implementation of the RCEP include further liberalization of trade, removal of non-tariff trade barriers and increased trade facilitation, removal of barrier to services sectors, as well as overall enhanced business environment through regulations relating to intellectual property protection, government procurement practices, e-commerce and more.

Understanding the RCEP

The RCEP legal text consists of 20 chapters covering the following topics:

Category	Chapter	Topic
Initial Provisions	1	Initial provisions and general definitions
Trade in Goods	2	Trade in goods
	3	Rules of origin
	4	Customs procedure and trade facilitation
	5	Sanitary and phytosanitary measures
	6	Standards, technical regulations and conformity assessment procedures
	7	Trade remedies
Trade in Services	8	Trade in services
Movement of Persons	9	Temporary movement of natural persons
Investment	10	Investment
Business Environment	11	Intellectual property
	12	Electronic commerce
	13	Competition
	14	Small and medium enterprises
	15	Economic and technical cooperation
	16	Government procurement
General Provisions & Dispute Settlement	17	General provisions and exceptions
	18	Institutional provisions
	19	Dispute settlement
	20	Final provisions

At first glance

General observations

The RCEP consolidates and joins existing members of ASEAN +1 agreements¹

While ASEAN member states have existing ASEAN + 1 agreements with the five non-ASEAN member states (namely, Australia, China, Japan, New Zealand and South Korea), all of which predate the RCEP, not all the non-ASEAN member states have existing FTA with one another.

The RCEP marks the establishment of free trade for the first time between China, Japan and South Korea. The successful signing of the RCEP lays a foundation for and is hoped to further accelerate the ongoing trilateral FTA

Contact Information

Anne Petterd
Partner
Australia

Jon Cowley
Foreign Registered
Lawyer
China

Riza Buditomo
Partner
Indonesia

Junko Suetomi
Partner
Japan

Adeline Wong
Partner
Malaysia

Ronald Bernas
Partner
Philippines

Ken Chia
Principal
Singapore

Panya Sittisakonsin
Partner
Thailand

Thanh Vinh Nguyen
Partner
Vietnam

¹ These refer to FTAs entered into by ASEAN and other countries, including the ASEAN-Australia-New Zealand FTA, ASEAN-China FTA, ASEAN-Japan FTA and ASEAN-Korea FTA.

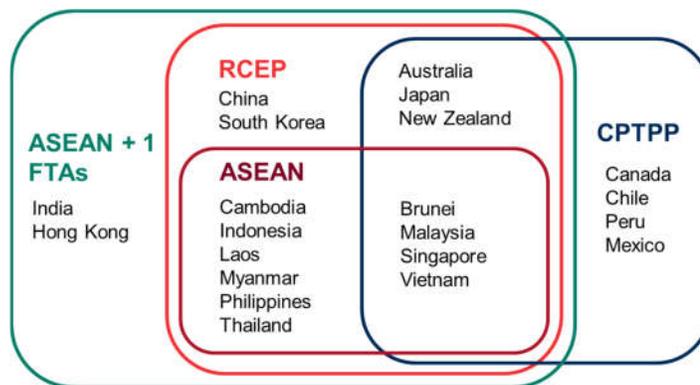


between these three nations, which is pending completion despite years of negotiation due to historical and diplomatic reasons. More on what to expect from this new trade relation is discussed below.

The RCEP is an upgrade of the existing ASEAN +1 agreements

At first glance, one would note that the RCEP is generally aligned with and contains features of a traditional FTA, focusing on issues such as trade in goods, trade in services, investments and more. In recent years, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (previously the Trans-Pacific Partnership Agreement (TPP)) has set a high standard for a 21st century FTA where business-environment-related issues such as intellectual property protection, regulation of state-owned enterprises, government procurement, environmental rules and labour concerns, are addressed in great detail.

In balancing the differing economic positions and market conditions in the developed nations (especially those who have ratified the CPTPP) and the comparatively less developed nations (especially some of the ASEAN countries), the RCEP offers an upgrade from the existing ASEAN +1 agreements by addressing new emerging topics such as intellectual property and government procurement, even though the requirements set out under these topics generally fall short of reaching the gold standards set by the CPTPP. The RCEP signals the member states' willingness to further improve their competitiveness by opening up trade and deepen their trade partnership despite all differences, in the spirit of free and open trade in the midst of rising trade protectionism. We set out below the member composition of the major multilateral FTAs in Asia, for your reference.



The RCEP provides a consolidated rule book for trade in all 15 member states

While the ASEAN +1 agreements are largely aligned and reflects similar principles in dealing with trade and business in general, there still exist notable differences in the rules and requirements in each FTA since they were all negotiated separately. For many years, businesses have had to navigate through the challenges of differing interpretation of the requirements under each of the ASEAN + 1 agreements, depending on where the importer and exporter are located. The RCEP offers a solution to this and promises a single consolidated rulebook that applies to businesses in all 15 member states. Over time, we believe that increased consistency in trade and customs practices as well as interpretation of the RCEP requirements will lead to greater efficiency and ease of doing business in the region.

Key chapters relating to trade in goods

The RCEP aims to further liberalize trade in goods between the member states through, amongst others, the following measures:



The RCEP aims to **reduce or eliminate customs duties** imposed by each member state on originating goods by approximately 92% over a period of 20 years. Each member state sets out specific duty reduction commitments in respect of other exporting member states. Notably, the duty schedule for existing trade partners may start at lower rates given that they are already reduced pursuant to existing trade agreements.

The RCEP **prohibits non-tariff measures on the importation or exportation** between member states, except in accordance with the rights and obligations under the WTO Agreement or the RCEP. The importing and exporting parties are also encouraged to be transparent about the permitted non-tariff measures to prevent unnecessary obstacles to trade. Quantitative restrictions made effective through quotas or licensing restrictions are generally to be eliminated.

The RCEP **stipulates trade facilitation and transparency measures**, including procedures for approved exporters to make declaration of origin; transparency around import, export and licensing procedures; issuance of advance ruling; prompt customs clearance and expedited clearance of express consignment; use of IT infrastructure to support customs operations; and trade facilitation measures for authorized operators.

The RCEP sets out a **detailed set of rules of origin (ROO)** that would apply to businesses seeking to qualify their goods as originating for RCEP purposes. One major advantage for claiming preferential treatment under the RCEP is that the cumulation rule, which allows originating goods from one member state used as material in the production of a new product in another member state to be considered as originating in the second member state, allows for increased ability to cross-share resources amongst the 15 member states. For example, materials originating in China may not count toward originating materials in the ASEAN-Japan FTA but it can be considered as originating material under the RCEP. This allows for increased flexibility and greater integration of supply chain across the region.

How does the RCEP compare to the ASEAN + 1 agreements from an ROO perspective?

As mentioned above, one of the key benefits of the RCEP is that it consolidates the existing ASEAN + 1 agreements into one single easy-to-navigate rulebook. Companies that currently qualify for preferential tariff treatment under existing ASEAN + 1 agreement seeking to utilize RCEP moving forward are well advised to study the RCEP ROO to ensure that their goods can qualify as originating goods under the RCEP. To demonstrate the differences in the ROO between the RCEP and the other key ASEAN and ASEAN + 1 agreements, we carried out a simple comparison of a few key origin rules and note the following differences:

Comparison	Calculation of regional value content	Minimal operations and processes	Indirect materials / neutral elements
RCEP / ASEAN Trade in Goods Agreement (ATIGA)	N/A	In addition to the minimal operations and processes listed under the ATIGA, the RCEP includes eight more categories of minimal operations that do not confer origin.	The ATIGA rules disregard neutral elements, while the RCEP treats an indirect material ² as an originating material without regard to where it is produced.
RCEP / ASEAN-China FTA (ACFTA)	In addition to the Indirect/Build-Down formula provided for under the ACFTA, the RCEP also provides for a Direct/Build-Up formula for RVC calculation.	In addition to the minimal operations and processes listed under the ACFTA, the RCEP includes eight more categories of minimal operations and processes that do not confer origin.	The ACFTA rules disregard neutral elements, while the RCEP treats an indirect material as an originating material without regard to where it is produced.
RCEP / ASEAN-Japan FTA (AJCEP)	In addition to the Indirect/Build-Down formula provided for under the	The RCEP rules contain more categories of minimal operations and processes	N/A

² "Indirect material" means a good used in the production, testing or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including fuel, energy, lubricant, tools, dies, mould, etc.



	AJCEP, the RCEP also provides for a Direct/Build-Up formula for RVC calculation.	than those set out under the AJCEP.	
RCEP / ASEAN-Korea FTA (AKFTA)	N/A	The AKFTA rules contain more categories of minimal operations and processes than those included by the RCEP rules.	The AKFTA rules disregard neutral elements, while the RCEP treats an indirect material as an originating material without regard to where it is produced.
RCEP / ASEAN-Australia-New Zealand ZFTA (AANZFTA)	N/A	The RCEP rules contain more categories of minimal operations and processes than those included by the AANZFTA rules.	N/A

Trade in services

RCEP also provides for the liberalization of trade in services amongst the member states. The member states set out their respective detailed commitments (positive list) and/or non-conforming measures (negative list) in opening up their service sectors to their strategic trade partners in the following manner:

- **"Negative list" approach** - Australia, Brunei, Indonesia, Japan, Malaysia, Singapore and South Korea
- **"Positive list" approach** - Cambodia, China, Laos, Myanmar, New Zealand, Philippines, Thailand and Vietnam

As the commitment lists total more than a thousand pages, to fully understand the implications of the liberalization of trade in services under the RCEP in a member state, businesses should consider carrying out an analysis to compare the existing measures implemented by the member state to the new commitments under the RCEP for their respective industries.

The trade in services chapter also provides for specific measures relating to three sectors that are traditionally considered to be key and of particular sensitivity to national security and sovereignty – financial services, telecommunication services and professional services. For example, the RCEP seeks to expand the commitments of the member states in relation to telecommunications services by requiring the member states to refrain from preventing suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services. The new commitment appears to be a considered response to measures taken by some countries in restricting their telecommunication sector to address concerns regarding China's lead in the 5G race.

Enhancement of business environment

The RCEP seeks to enhance business environment by providing specific requirements around the protection of intellectual property, e-commerce, regulation of competition, support for small and medium enterprises (SME), and government procurement. A few chapters of interest include the following:

Intellectual property

- The RCEP devotes a relatively substantial chapter in relation to the protection of intellectual property rights compared to the ASEAN+1 FTAs. Under the RCEP, members are required to ratify or accede to key multilateral agreements relating to the protection of intellectual property rights, including the Paris Convention, the Berne Convention and the WIPO Copyright Treaty, among others.
- Notably, the RCEP aims to step up efforts on enforcement against pirated and counterfeit products. For example, the member states are required to ensure that the courts have authority in civil judicial procedures to order the destruction of pirated copyright goods and counterfeit trademark goods at the request of the right holders.
- With regard to border measures, member states are required to adopt import shipment procedures that allow a right holder to lodge an application to the competent authorities to suspend the release of suspected pirated or counterfeit goods if there are valid grounds. Additionally, member states are also required to put in place import shipment procedures under which its competent authorities may act upon their own initiative to suspend the release of suspected pirated or counterfeit goods.



E-commerce

- The RCEP dedicates a chapter to addressing e-commerce concerns, focusing on the enhancement of the digitalization of trade by increasing the level of trust and confidence of e-commerce users.
- The key provisions on e-commerce cover the following, amongst others:
 - Acknowledgement of the validity of electronic signatures, unless otherwise regulated
 - Enactment of regulations on the protection of personal data and protection of e-commerce users from fraud and misleading practices
 - Maintaining current practice of not imposing customs duties for electronic transmissions between member states
 - Prohibiting the requirement to use or locate a computing facility in a certain territory to conduct business in that territory
 - Prohibiting the prevention of cross-border transfer of information, unless otherwise provided to achieve public policy objectives and protect security interests

Government procurement

- The RCEP also contains a chapter that addresses government procurement, a step up from many ASEAN+1 FTAs where this topic is typically excluded.
- Under the RCEP, the member states commit to making their laws and regulations regarding government procurement publicly available, which may include information on where tender opportunities are published. The requirements pertaining to government procurement under the RCEP are notably less stringent compared to those under the CPTPP.

New trade relations forged between China, Japan and South Korea

As mentioned above, the RCEP represents the first FTA signed between China, Japan and South Korea. Together, the three Asian countries account for about 24% of the world's economy, with a combined yearly trading volume of over USD 720 billion. With the RCEP, the trade volume between the three countries could increase considerably as a result of tariff concessions and trade facilitation. Companies with operations in these member states are encouraged to consider whether the RCEP offers new trade lane and opportunities to enhance their competitiveness in the new preferential markets.

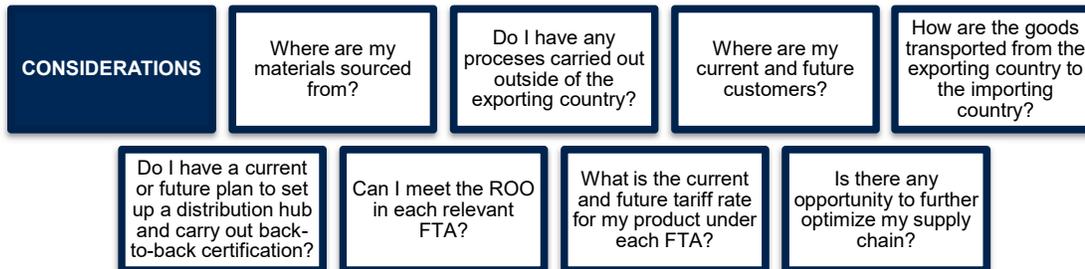
For example, China exporters are expected to benefit from increased exports of certain textile, chemical and plastic products to Japan due to immediate or gradual elimination or reduction of applicable tariffs. For China's exports to South Korea, current remaining tariffs on electrical machinery and equipment as well as certain metal products will also be gradually lifted.

In return, Japan could also significantly benefit from China's tariff concession on auto products, which covers nearly 90% of auto parts exported from Japan to China. Japan will also eliminate tariffs on 56% of farm products imported from China and 49% of those from South Korea, with the exception of rice, wheat, beef, port, dairy products and sugar products, which are excluded from the scope of its tariff concession.

Korean companies, especially those exporting automobile parts, steel and electronic products, are also expected to benefit through tariff elimination under the RCEP. Japan's reduced tariff on imported steel is expected to create new opportunities for Korean steel companies.

Untangling the FTA noodle bowl

As noted above, the RCEP shares a number of common signatories with the CPTPP and existing ASEAN agreements. For businesses that are considering which FTA provides for maximum trade optimization, the following considerations may be helpful in your analysis:



Unlocking the full potential of the RCEP

Similar to the CPTPP, the RCEP has an open architecture design that allows for future accession to the agreement by interested countries 18 months after the agreement becomes effective. At present, Hong Kong has already signaled its interest in joining the RCEP and announced that it stands ready to start dialogues on accession with its member economies when the time is right for the RCEP to take on new members. As HK already has an FTA with ASEAN that came into force in 2019, HK's segue into the RCEP may seem like a natural turn of event. The participation of one of Asia's largest financial hubs and trading ports in the RCEP will further solidify and cement the RCEP's role and influence as the largest regional FTA in the Asia Pacific region.

As an original negotiating party to the RCEP, India is given a special accession opportunity where the 18-month timeframe for accession is waived. As India is the only remaining ASEAN +1 member state besides Hong Kong that has not joined the RCEP, a number of the other member states have indicated their keenness for India to return and join the club. However, India's return in the immediate horizon is not likely, given its recent slew of nationalistic measures driven by the need to close up and revitalize its domestic economy, especially as a response to the economic slowdown caused by the COVID-19 pandemic.

While the expansion of the RCEP's economic club may not be immediately realized, its open architecture design likely means that the RCEP has not reached its full potential as regards its geographical reach. The openness of RCEP member states to accept new members by way of accession also symbolizes a step toward the right path in upholding the fast-dwindling spirit of free trade.

What is next?

The RCEP will officially enter into force 60 days after at least six ASEAN member states and three non-ASEAN member states have ratified the agreement. At this stage, observers estimate that the RCEP would likely become effective in early 2022.

In the meantime, businesses are encouraged to strategically consider and analyze whether the RCEP offers any opportunities in terms of new preferential market, cost saving or optimization of supply chain, and adopt steps to take advantage of such opportunities.

The authors:

Ivy Tan (Associate, Kuala Lumpur); Kelvin Hong (Associate, Kuala Lumpur); Choon Yit Chiang (Associate, Kuala Lumpur); Wu Di (Associate, Beijing); Jenny Pan (Associate, Shanghai); and Weng Keong Kok (Associate, Hong Kong)