

WORLD'S LARGEST “FREE-TRADE” AGREEMENT SIGNED

16 November 2020 | Global

Legal Briefings - By **Leon Chung and Guillermo Garcia-Perrote**

The world's largest “free-trade” agreement, the Regional Comprehensive Economic Partnership (RCEP) was signed on Sunday 15 November 2020, after eight years of deliberations, constituting a landmark statement in favour of free-trade and multilateralism by the new Indo-Pacific trading bloc and potentially paving the way for greater free trade in the region and between countries.

Representing almost 30 per cent of global GDP and 30 per cent of the world's population, the initial 15 signatory states include China, Japan, South Korea, Australia, New Zealand and the 10 countries of the Association of Southeast Asian Nations (ASEAN), i.e. Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam (together, the RCEP Signatory States).

THE IMPACT

While in some respects less ambitious and narrower in scope than the TPP,¹ the RCEP has the potential to be simultaneously both more and less than typical “free-trade” agreements as referred to in conventional usage:

- “more” in the sense that the RCEP is wide in its scale, complexity and scope, bringing together a large number of sovereign states and formalising arrangements to reduce the non-tariff barriers to trade and provide other benefits (as listed below) – in this regard, it

is notable that China, South Korea, Japan, Australia and New Zealand had never before joined together in one free-trade agreement until now.

- but “less” in the sense that it does not appear to entail the comprehensive eradication of trade barriers (which commonly characterise “free-trade” agreements).²

The signing of the RCEP may also pave the way for further or expanded free-trade deals of a similar scale. For example, although it is unlikely to be the top priority given the current health crisis, there is a prospect the new Biden administration would reconsider the United States’ (US) position in respect of the Trans-Pacific Partnership (**TPP**). The TPP was signed in 2018 and 2019 and has as its member states Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam. The US was mooted as a member but withdrew after Donald Trump’s arrival to the White House in 2016.

THE BENEFITS

The RCEP is tipped to boost economic growth in the region by delivering improved export and foreign investment opportunities, including the following benefits:

- new scope for trade in services throughout the region including across telecommunications, professional and financial services;
- improved mechanisms for tackling non-tariff barriers including in areas such as customs procedures, quarantine and technical standards;
- greater investment certainty for businesses;
- rules on e-commerce to make it easier for businesses to trade online;
- a common set of rules on intellectual property;
- agreed rules of origin that will increase the competitiveness of regional production chains; and
- access deals with all RCEP parties which build on existing free trade agreements, as well as the prospect of an agreement on market access with India.

The RCEP includes chapters covering areas that are new between some of the RCEP signatories, including modernising commitments in electronic commerce, competition/antitrust regulation, government procurement and economic and technical cooperation.

The RCEP does not presently contain investor state dispute settlement procedures which are in other free trade agreements and bilateral investment treaties but which have come under increasing scrutiny.

THE BACKGROUND

Representatives from the RCEP Signatory States first gathered to negotiate the RCEP in November 2012. Initially, India was also part of those negotiations, but it indicated in late 2019 that it had a number of issues preventing it from joining the agreement. The Ministers' Declaration on India's Participation in the RCEP, however, affirms that the RCEP is open for India to accede to,³ and expresses the strong will to re-engage India in the RCEP.

The text of the Agreement itself had been finalised just over a year ago, on 4 November 2019, the culmination of 29 rounds of secretive negotiations. Following that, an extended period of technical legal review ensued. The RCEP will take effect once it has been ratified domestically by the signatory states.

The signing of the RCEP on Sunday constitutes a landmark statement in favour of free-trade and multilateralism by the new Indo-Pacific trading bloc. It is particularly noteworthy given recent uncertainty over global trade terms and agreements, and the economic strain imposed by Covid-19-related restrictions.

We will provide further analysis on specific issues arising from the RCEP. Please feel free to reach out to any of our specialists if you would like to know more or have any queries about how these developments may affect your business.

-
1. For example, the RCEP does not include the stringent labour and environmental standards seen in the original TPP.
 2. For example, USMCA (or 'new NAFTA'), the EU-South Korea free trade agreement or the CETA between the UE and Canada.
 3. Available from the date of entry into force of the Agreement, which the Ministers' Declaration states to be covered by Article 20.9 (Accession).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



LEON CHUNG
PARTNER, SYDNEY

+61 2 9225 5716
Leon.Chung@hsf.com



WEINA YE
INTERNATIONAL
PARTNER, KEWEI,
MAINLAND CHINA

+86 21 2322 2132
Weina.Ye@hsfkewe.com



VIK TANG
PARTNER, JAKARTA

+62 21 3973 6118
Vik.Tang@hsf.com



ADELAIDE LUKE
PARTNER, HEAD OF
COMPETITION, ASIA,
HONG KONG

+852 21014135
Adelaide.Luke@hsf.com



SIMON CHAPMAN
QC
PARTNER, HONG
KONG

+852 21014217
Simon.Chapman@hsf.com



ANTONY CROCKETT
SENIOR
CONSULTANT, HONG
KONG

+852 21014111
Antony.Crockett@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2020

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2020