The Regional Comprehensive Economic Partnership – A North American perspective

DENTONS

November 30, 2020

Background on the Regional Comprehensive Economic Partnership

After eight years of negotiations, on November 15, 2020, 15 countries signed the Regional Comprehensive Economic Partnership (RCEP), the latest mega-regional trade agreement. The RCEP further integrates members of the Association of Southeast Asian Nations (ASEAN consisting of Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam), and five regional states (China, Japan, South Korea, Australia, and New Zealand), notably creating the first trade agreement (other than the WTO) between China, Japan, and Korea.

At a high level, the RCEP is divided into 20 Chapters, which include trade in goods and services, investment, temporary movement of natural persons, rules of origin, customs procedures and trade facilitation, trade remedies, intellectual property, competition, e-commerce, government procurement and institutional provisions, among others. The RCEP will cut tariffs and will remove duties on 61% of imports from ASEAN member states, Australia and New Zealand, along with 56% from China and 49% from South Korea. This integration of supply chains, notably through harmonized rules of origin (ROO) and certificate of origin procedures for all parties, will boost investment, reduce transaction costs, and promote freer movement of goods between RCEP's members. It is estimated that the agreement will raise global GDP by $186 billion annually.

Other than its significant economic scope, the agreement is notable for a number of firsts. The RCEP marks the first time China has agreed to global standards on e-commerce and data flows. This chapter covers areas such as online consumer protection, online personal information protection, transparency, paperless trading, and acceptance of electronic signatures. It also includes commitments on cross-border data flows. Furthermore, it marks the first trade agreement between China, South Korea and Japan. Thus, linking three major Asian economies.

RCEP's relationship with other trade agreements

The preamble of the agreement highlights that the parties to the agreement will build upon their respective rights and obligations under the existing free trade agreements (FTA) between the member states of ASEAN and their free trade partners, such as the Comprehensive and Progressive Agreement for Trans-Pacific (CPTPP). Article 20 of the RCEP states that if a party considers that a provision of this agreement is inconsistent with a provision of another agreement to which that party is party to, the relevant parties shall consult with a view to reaching a mutually satisfactory solution. To the extent that the RCEP does not supersede specific obligations under other trade agreements, the RCEP will co-exist with other trade agreements.

In this regard, businesses will have to look towards the different available agreements and review which trade agreement they can benefit from. For example, many of the RCEP member states have already established FTAs with one another. Prior to the RCEP, existing trade agreements covered 83% of the merchandise trade between the signatory countries. That said, the existing FTA's differ in scope and depth; hence, depending on the issue at hand, one agreement and its requirements may be more favourable than another. The RCEP provides certain competitive advantages in bringing together 15 economies under one set of rules, even if other agreements provide more depth in coverage.

The Canadian perspective

The Government of Canada has not made any official statements on the recent signing of the RCEP. Given Canada's current trade linkages, the RCEP is unlikely to have a significant impact on Canadian trade with the region.

Existing Trade Linkages with RCEP Countries	No Trade Agreement Linkages
• Japan (CPTPP) • Korea (CKFTA) • Australia (CPTPP) • New Zealand (CPTPP) • Brunei (CPTPP) • Vietnam (CPTPP) • Malaysia (CPTPP) • Singapore (CPTPP)	• China (currently has an investment protection and promotion agreement in place) • Indonesia • Philippines (currently has an investment protection and promotion agreement in place) • Thailand (currently has an investment protection and promotion agreement in place) • Cambodia • Myanmar

Canada is currently engaged in exploratory talks towards entering into an agreement with ASEAN, as well as individually with Thailand and the Philippines. Canada has recently abandoned its trade discussions with China.

The signing of the RCEP should act as a reminder to Canada that it needs to be more present in the fastest-growing region in the world and act upon its international policy priorities of trade diversification through free trade agreements. While Canada's competitiveness in the pacific region will not be significantly affected by the signing and entry into force of the RCEP, this may change over time if the RCEP is utilized as a platform to further deepen trade ties between RCEP members.

Should Canada be interested in joining the RCEP, and particularly re-engaging with China, the RCEP's open accession clause leaves this opportunity available.

The US perspective

The agreement comes at the crossroads of President Trump's "America First" trade policy and President-elect Biden's "Build Back Better" agenda. While the last four years of US trade policy has generally sought to minimize the importance of mega-regional trade agreements, the RCEP is a blockbuster deal that demonstrates that multi-party arrangements hold appeal. There is no doubt that the RCEP will complicate the incoming Biden administration's ability to re-balance America's trade objectives and assert leadership in future trade negotiations.

One of the most obvious questions coming out of the RCEP is what the agreement might mean for US trade policy toward China. The Trump administration imposed tariffs on hundreds of billions of dollars' worth of Chinese exports in order to counter what it held to be anticompetitive acts, policies, and practices that unfairly benefitted China's industry. The tariffs were designed to extract concessions from China that resulted in a "Phase 1 deal", wherein China committed to purchase more US agriculture and energy exports, and liberalize financial services market access, while making modest reforms to benefit foreign investment and intellectual property.

A "Phase 2" deal was never reached. Whatever the new US Trade Representative decides to do with its mandate, the RCEP will benefit from the "Made in China 2025" policy that the tariffs were meant to hinder. China's RECP concessions still provide plenty of protection for its strategic growth industries, such as electric vehicles. The agreement also increases China's leverage in shaping global trade rules. As then Democratic candidate Biden said in a debate back in September of 2019, "either China's going to write the rules of the road for the 21st century on trade, or we are." While the RCEP does not set rules for all "21st Century" trade issues (concessions around artificial intelligence, cross-border data flows, and 3D printing, for example, were not addressed), it undeniably strengthens China's momentum in negotiating future trade agreements.

The US will also be disadvantaged by the simple fact that more countries will enjoy better terms of market access as a result of the RCEP, not to mention the CPTPP. The US has free trade agreements with just four of the 15 RCEP parties (Australia, Bruneim, Singapore and South Korea). US exports to the other 12 RCEP countries will generally be less competitive relative to the time before the RCEP. As the Asia Pacific region continues to grow, it will do so to the further exclusion of US goods and services unless—and until—the US can negotiate its own preferentia agreement(s) (perhaps through accession to the CPTPP or some renegotiated version of it).

However, the RCEP may provide advantages to the US based on who it leaves out. India, who was involved in early negotiations of the RCEP but chose to back away, will likely be courted by the US to the extent both countries seek to counter China's growing influence. Taiwan has voiced hopes that the new administration will be more open to a trade agreement, but it is too soon to say whether such a deal will be reached. In addition, while the RCEP demonstrates that large-scale trade agreements are still viable, the fact it covers 30% of the global economy may spur the other 70% to move more quickly in resolving trade disputes or forming agreements of their own through more nimble bilateral or trilateral FTAs. The US, in particular, may focus on the things it can control by resolving ongoing issues with the European Union (such as the Large Civil Aircraft Dispute), and increasing cooperative efforts toward a true transatlantic agreement.

As it stands, focusing on trade relations across the Atlantic certainly seems easier than negotiating across the Pacific. It will be even more critical for the US to ensure it is facilitating even stronger cooperative efforts with its neighbors to the North and South under the USMCA. The RCEP signals that multilateralism is still alive and well in free trade negotiations. The US will have to ensure it is still contributing to that framework.

The Mexican perspective

From the Mexican perspective, any effort to further integrate trade in the Asian market is a positive step that eventually may impact its trade diversification policy. Mexico is already a part of the CPTPP, which in addition to the

USMCA and the European Free Trade Agreement (EFTA) are the most important FTAs, covering most of Mexico's global trade.

In the case of the Asian market, Mexico has increased its trade significantly as part of its trade diversification policy. However, most of this trade is concentrated in imports of intermediate inputs from the major Asian economies like China and Japan. In the particular case of China, the lack of FTA rules has resulted in disadvantages that have prevented parties to have access to the necessary inputs needed in key manufacturing sectors, such as automotive and electronics. In particular, the new ROOs under the USMCA have attracted the attention of Asian companies. These Asian companies can now compete amongst themselves to establish manufacturing plants in Mexico to further export to the USMCA, bringing the necessary components needed to meet the ROOs (i.e. the automotive sector).

It is within this context, that the RCEP can complement the CPTPP and force parties like China to compete with other RCEP members in supplying Mexico with parts and components under similar circumstances and rules. Mexican parties may look at both the CPTPP and the RCEP to determine the most favorable conditions and to that extent; the RCEP is a good step. As the trade flows with Asia increases, the harmonization of ROOs will become increasingly important and will support the continued productivity and competitiveness of Asian supply chains for Mexican manufacturers.

Concluding thoughts

From a North American perspective, the RCEP represents a new development that three North American countries will each need to be grapple with. There is currently significant trade linkages between RCEP countries and North America, and North American businesses will continue to benefit from those agreements. The new agreement may challenge certain existing supply chains to reorient themselves within the RCEP region. Existing North American trade agreements and the RCEP are certainly not two ships passing in the night. However, the RCEP does not greatly add to the existing web of trade agreements. Rather, it effectively consolidates and creates a new trade market. North American based businesses operating within that area should look at how they may take advantage of the RCEP alongside existing trade agreements.

Dentons' Global Trade team is available to advise on all RCEP developments. Please get in touch with any inquiries.

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