

International Supply Chain Developments

November 2020



hunt & hunt
lawyers

Topics



RCEP

- Outcomes
- Rules of origin
- Implementation
- The future for RCEP
- Improving supply chains

Home Affairs Summit

Questions

RCEP



RCEP Overview

- China
- Japan
- South Korea
- Australia
- New Zealand
- ASEAN

30% of 2020 global GDP

50% of 2030 global GDP

58% of AU two-way trade

ASEAN

- Singapore
- Indonesia
- Malaysia
- Cambodia
- Laos
- Myanmar
- Philippines
- Thailand
- Brunei
- Vietnam

Comes at an interesting time

- Trade tensions with China worst than ever:
 - Chinese dumping duties on barley
 - Chinese dumping investigation into Australian wine
 - Chinese restrictions on the importation of:
 - wine
 - beef
 - barley
 - timber
 - lobster
 - coal
 - Australian blocking of Chinese investment
 - High levels of Australian dumping investigations against China

What do you think

Do you think that Australia should have signed RCEP at this point in time:

1. Yes
2. No



A tale of two FTAs

RCEP

- Covers 1/3 of world trade
- Set at a level all ASEAN countries can meet
- Tariff cuts can take 20 years to implement
- Provides China with an opportunity to set the rules for Asia Pacific trade

TPP

- Originally intended as the US's pivot into Asia
- Represents US economic ideologies
- Covers labor, environment and strong IP commitments
- Very flexible documentation requirements
- Deep tariff commitments

Commencement

- At this stage the parties have signed the agreement – but it is not law
- Australian parliamentary committee review
- Legislation enacted

Agreement will commence 60 days after

- 6 ASEAN countries must ratify the agreement
- 3 non-ASEAN countries must ratify the agreement

Most likely late 2021 or 2022

No new markets for Australia

Country	Bilateral	ASEAN FTA	TPP
China	✓		
Japan	✓		✓
New Zealand	✓	✓	✓
Singapore	✓	✓	✓
Vietnam		✓	✓
Malaysia	✓	✓	Not ratified
Korea	✓		
Thailand	✓	✓	
Philippines, Laos, Myanmar, Cambodia		✓	
Brunei		✓	Not ratified

Noodle bowl?

- No doubt it confuses matters
- Need to make sure ROO, certification and benefits are aligned
- Long term – Could improve the situation
- If more countries join, TPP/RCEP these could become the primary FTA
- How much trade would be covered by these 4 FTAs:
 - US
 - TPP
 - RCEP
 - EU

Will this FTA be used

Do you think you or your clients will use RCEP:

- a) Yes
- b) Only if exporters can issue declarations of origin
- c) Only if India joins
- d) No

Importance beyond Australia

First FTA between:

- Japan and China
- Korea and Japan

These are the 2nd, 3rd and 10th largest economies

Important for countries that are left out:

- Hong Kong
- Taiwan
- India
- USA

New countries

- India withdrew from RCEP
- India can join from commencement
- Any other country can join 18 months after the date of entry into force
- All parties must agree to the accession of a new member
- Hong Kong has expressed interest in joining



Tariff outcomes

No significant change for Australia

- Imports already at 0%
- Exports:
 - No major changes
 - Some reductions take place over 20 years
 - Compare to existing agreements
 - Pay attention to timing of tariff reductions
 - Rules of origin
 - RCEP does not remove tariffs on 39% of ASEAN's food exports
 - Japan's high agricultural tariffs remain in place
- Multiple tariff schedules

Example - Japan

HS Code: 0202.20.000

Meat of bovine animals, frozen.

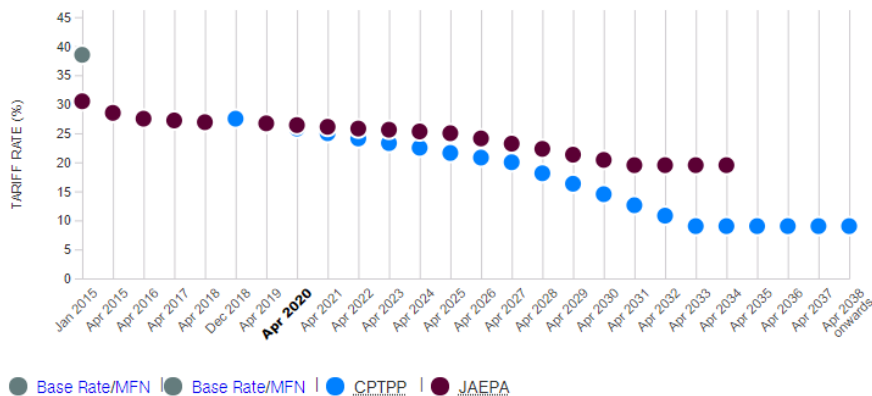
Other cuts with bone in

Tariffs	Import Market	Rules of Origin	Documentation
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Export from **Australia** to **Japan** — there are 2 available agreements for your product / tariff line

Agreement	Current tariff	Next cut	Final outcome
<input checked="" type="radio"/> CPTPP	25.8%	↓ 25% on 1 April 2021	9% on 1 April 2033
<input type="radio"/> JAEPA	26.4%	↓ 26.1% on 1 April 2021	19.5% on 1 April 2031

Tariff chart



The rates for this product remain unchanged under RCEP

Best option will be CPTPP

Source: DFAT FTA Portal

Rules of origin

Harmonises the various rules of origin under the various FTAs

- greater certainty that goods will qualify
- reduced need to consider multiple FTAs
- goods from all RCEP countries included when calculating regional value content

Rules of origin

- Usual wholly obtained/produced – but includes content from all RCEP countries
- Increased use of regional value content – 40% RVC
$$\text{RVC} = (\text{FOB} - \text{VNM}) / \text{FOB} \text{ or}$$
- Textiles require change in tariff classification - no use of “yarn forward” or double transformation rules
- Much less complicated than TPP

Under RCEP satisfying the rule of origin should not be a problem

Certificate of origin

- Certificate of origin – by an authorised authority
- For some countries – A declaration of origin by an approved exporter - approval process not determined
- Scope for declarations of origin by non-registered exporters/producers – but could be 10-20 years
- Valid for 12 months from date of issue
- COO can be issued up to 12 months after shipment
- No date for issuing a DOO
- COO does not seem to permit multiple consignments but DOO may

Consignment – indirect shipment

- No general right to be shipped via any RCEP member
- Indirect shipment rules:
 - remains under customs control
 - no further processing other than:
 - logistics activities such as unloading, reloading, storing; or
 - other operations necessary to preserve it in good condition or to transport it to the importing country
- No labelling or repacking permitting

Back-to-Back proof of origin

- Issuing authority or approved exporter or exporter of an intermediate party may issue a back-to-back proof of origin
- Product cannot undergo further processing other than:
 - packaging
 - logistics activities
 - splitting consignments
 - labelling as required by law
 - operations necessary to preserve the goods or to transport
- Can be partial shipment of the consignment covered by the original proof of origin
- Need guidance on whether goods covered by a back-to-back proof of origin must remain under customs control

Transition

RCEP shall apply to goods that on the date of entry into force for the importer:

- the goods were being transported to that country; or
- had not been **imported** into that party; and
- a claim for preferential treatment is made within 180 days of the entry into force of the agreement

Uses the term “imported” – a good in a bonded warehouse has been imported, although not entered for home consumption – need to review the Australian legislation

RCEP and supply chains

- Multistage supply chains
 - raw materials – semi-finished goods – finishing – DCs
- Role of China as a base
- Impact on Hong Kong
- Will it lead to:
 - merely a modest upgrade to existing agreements
 - a new rules based trading system for Asia
 - a precursor to a single market
 - acceleration of China's influence

Steps to take now



How will it affect your clients

What duty are your clients currently paying on imports from RCEP countries?

- Look at the past:
 - why is duty being paid
 - » Are ROO a factor – non-qualifying content
 - » Are COOs a limiting factor – Approved exporter
 - » discuss the future
- Good time now to review past duty and look for refund opportunities – existing FTAs, TCOs, DCS rates
- Given likely timeframe – consider applying for new TCOs

TCO or FTA



TCOs do not rely on supplier information

ABF are better placed to audit TCO compliance

ABF are currently very strict on TCO compliance

TCOs generally less ongoing administrative cost

Put both options to the client

Obtain rulings

Assessment of FTAs

- Do the goods attract duty
- Does a TCO apply
- Which FTAs do the goods qualify for:
 - ROO
 - Documentation
 - Consignment
- Which FTAs provide the lowest tariff

Home Affairs Industry Summit



AUSTRALIAN
CRIMINAL
INTELLIGENCE
COMMISSION



Australian
BORDER FORCE



AFP
AUSTRALIAN FEDERAL POLICE



Australian Government
Australian Transaction Reports
and Analysis Centre



Australian Government
Australian Security
Intelligence Organisation

General themes

Covid

- COVID put supply chains at the forefront
- Home Affairs' role will be increased – it will move from dealing with threats to enabling prosperity

Collaboration

- How can Home Affairs work together with industry – collaboration
- Want everyone together at the beginning – not at the end
- Department demarcation less important

Need for change

- Can't just scale up existing models
- Existing system merely reflect a digital version of previous paper based systems
- Trust – need a complete paradigm shift

Simplified trade

- Large focus on simplifying trade

Why:

- Australia 14th on ease of doing business – 106 on trading across borders
- Covid has given us a chance to reset
- Covid has shown that a flexible supply chain is a strength
- Covid has demonstrated what can be done
- Covid demonstrated the benefits of Government working with industry

What is simpler trade

Everything is on the table

- desire for short term removal of red tape that does not increase risk
- longer term – reworking of entire system
- Ministerial simplified trade task force

Single window

- one source of information
- entering data once
- data standardisation
- data being used and reused by multiple agencies
- import and export focused

What is simpler trade

Better use of data:

- data from earlier in the supply chain
- export data – tested with NZ
- data from industry
- what data can Government give industry

Agriculture

- \$220 million to digitize services
- Exporters entering data 6 times
- One exporter had to complete 19 forms
- Reform will be both importer and exporter focused
- Looking for interoperability between ABF and Agriculture data
- Standardise data between countries
- Export data for one country is the import data for another
- Different data requests should only be by exception
- Likes Trusted Trader concept – but the risks are different
- 3-5 year work plan

Supply chain security

- Tension – what facilitates trade creates supply chain risk
- ABF strongly believes that there is necessary link between security and prosperity
- Covid pushed more illicit goods into cargo supply chains
- Trusted Trader focus:
 - governance and personal security
 - physical and electronic security is usually not the issue
 - how good is the system at resisting divergence
 - ABF will provide material to assist
- Quick moving freight creates security risks – speed of information sharing will help
- Industry will see threats before Government

Role for industry

- The ABF does not have a firm idea of what change is possible
- Industry knows where the problems are and has solutions
- ABF wants to collaborate with industry:
 - where is industry investing – does this match ABF strategy
- Simplified trade Industry Advisory Council
 - importer/export
 - finance
 - information technology
 - agriculture
 - industry bodies
- Issues paper to be released by the ABF
- Initial focus may be on Trusted Traders

Identify the issues now

- What is the low hanging fruit
- What Trusted Trader benefits should be extended to non-trusted traders
- Where are you providing the same information on multiple occasions
- What data or systems do you have that could replace a regulatory requirement
- What is your key source of frustration



Questions



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