



## The Regional Comprehensive Economic Partnership – The issues for importers, exporters and trade professionals

Australia, China, Korea, Japan, New Zealand and the ASEAN nations have signed the long negotiated Regional Comprehensive Economic Partnership (**RCEP**). RCEP is a massive FTA which covers 58% of Australia's two way trade in goods and services. However, while the scope of the agreement is massive, the impact for importers may be limited as Australia already has FTAs with the RCEP members.

### Benefits of RCEP

The key benefits of RCEP for importers and exporters will be:

1. greater likelihood of goods satisfying rules of origin. This is because content from all RCEP members will be counted when assessing whether an exported good qualifies under RCEP. This should be compared to bilateral trade agreements where only content from the two parties to that agreement counts as qualifying content;
2. as content from 15 Asian Pacific countries will constitute originating content, it will allow Australian companies to more easily and efficiently integrate in global supply chains;
3. there is a mechanism for exporters to provide a declaration of origin as opposed to obtaining a certificate of origin issued by an authorised body;
4. declarations of origin and certificates of origin can be in electronic form; and
5. there will be better access into RCEP countries for Australian investors and exporters of services.

### Will this agreement make trade easier

There are some limitations with this agreement which may inhibit its use. One limitation is the direct consignment rules. Despite there being 15 parties, there are still strict requirements about what can occur to a good if it is not directly shipped from the exporting party to the importing party. Often in multi-party agreements, there are no restrictions on indirect shipment via a third country, provided that third country is also a party to the agreement. However, with RCEP, transshipments via other RCEP members, such as Singapore and Malaysia, will be subject to strict requirements, such as that the goods must remain under customs control.

If there is to be repackaging or labelling in other RCEP country, a back-to-back certificate of origin must be issued.

This will prevent the FTA making it easier for RCEP members to ship their goods via traditional international distribution hubs.

### When will it commence

At this stage, the parties have signed an agreement, but it is a long path before it becomes Australian law. The agreement needs to go through a parliamentary approval process in Australia. If

approved, legislation will be introduced which ratifies the agreement. The agreement will only come into force once at least 6 ASEAN countries have ratified the agreement and 3 other non-ASEAN countries also ratify the agreement (including Australia). On commencement, the agreement only comes into force for those countries that have ratified it.

Realistically, this is unlikely to happen until late 2021 or early 2022.

### **Can other parties join?**

India was an original party to the RCEP negotiations but has refused to join at this stage. This was largely due to a shift towards more protectionist trade policies. If India has a change in this position, it can join at any time. This would be a big boost for Australia as there is not an existing FTA with India.

Other countries are also welcome to request RCEP membership. All RCEP members will need to approve that request. A request can only be made 18 months after the agreement commences.

### **Does this improve the noodle bowl?**

The last 15 years has seen Australia enter into a large number of FTAs with our major Asian trading partners. The result is that once RCEP is implemented, importers and exporters will be able to choose from 3-4 FTAs for some of our trading partners. For example, with Indonesia there will be a choice between the ASEAN FTA, RCEP or the bilateral FTA between Australia and Indonesia.

However, while adding to the noodle bowl, RCEP does have the potential to ease the number of FTA's considered. RCEP could effectively replace the 8 bilateral FTAs Australia has with RCEP members, plus the ASEAN FTA. Whether it will in fact do so, will depend on how the RCEP outcomes compare with the outcomes under the 9 FTAs it seeks to replace. For imports into Australia, in most cases the result will be the same, duty free entry. However, it is likely that the export outcomes could differ. For instance, exporters are likely to find the best access to the Japanese market under the Trans-Pacific Partnership.

### **The assessment to be undertaken**

Where there are multiple FTAs available, the task for importers and exporters is to consider the following:

1. for which FTAs do the goods qualify – rules of origin are not identical. The great benefit of RCEP is that goods may qualify under RCEP which wouldn't have qualified under a bi-lateral FTA;
2. if the goods qualify under multiple FTAs, which FTA provides the lowest rate; and
3. if multiple FTAs apply and the both provide the same rate, which has the easiest documentation requirements.

Once a choice is made, it is important that the exporter and importer are on the same page. This means that the exporter is both assessing origin under the correct FTA and providing a proof of origin document that meets the requirements of that specific FTA.

### **The elephant in the room**

It seems a little odd for Australia to be entering into a trade liberalising agreement with China at a time where China has elected to effectively ban the import of a number of Australian products, such as red wine. Under the China Australia FTA China promised to grant Australian goods the same rights and market access as goods originating in China. China has repeated this promise in RCEP.

The question can be asked, should Australian companies invest in Chinese oriented global supply chains based on the promises in FTAs? What will Australia do to hold China to its promises of improved market access? Breaches of commitments under ChAFTA have only resulted in Australia rewarding China with a new FTA.

The Morrison Government is hoping that the symbolic gesture of signing RCEP will reset China Australia trade relationships. However, if the Chinese government maintains, or increases, restrictions on the import of Australian goods, RCEP may face difficulties in obtaining parliamentary approval.

Hunt & Hunt has extensive experience with implementing FTAs and ensuring FTA compliance. Please contact us if you would like to discuss how the RCEP will affect you and your clients.

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