

**National Interest Analysis [2021] ATNIA 1
with attachments**

Regional Comprehensive Economic Partnership Agreement
Canberra and 14 other locations (virtual signing ceremony), 15 November 2020

Attachments:

Attachment I Consultation

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Regional Comprehensive Economic Partnership Agreement

Canberra and 14 other locations (virtual signing ceremony), 15 November 2020

2021 ATNIA 1

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Nature and timing of the proposed treaty action

1. The proposed treaty action is the ratification of the Regional Comprehensive Economic Partnership Agreement (“RCEP”, “the Agreement”).
2. RCEP was signed at a virtual signing ceremony on 15 November 2020. Australia signed in Canberra, and the other 14 states signed in their respective territories (China, Japan, New Zealand, the Republic of Korea, and the ten members of the Association of Southeast Asian Nations (ASEAN): Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam).
3. Article 20.6.2 (Entry into Force) provides that RCEP will enter into force for those signatory states that have deposited their instruments of ratification, acceptance, or approval, 60 days after the date on which at least six signatory states which are member states of ASEAN and three signatory states other than member states of ASEAN have deposited their instruments of ratification, acceptance, or approval with the Depository. Once RCEP has entered into force generally, it shall enter into force for any other signatory state 60 days after the date on which it has deposited its instrument of ratification, acceptance, or approval with the Depository (Article 20.6.3).
4. It is proposed that Australia deposit its instrument of ratification as soon as practicable following the completion of domestic treaty-making requirements.

Overview and national interest summary

5. RCEP has the potential to deliver significant benefits for Australia. RCEP signatories include nine of Australia’s top 15 trading partners brought together under a single economic framework, giving Australian exporters guaranteed levels of access and treatment in a market covering almost a third of the world’s population and GDP.
6. As these economies seek to recover from COVID-19, it is in Australia’s interests to ensure that opportunities for Australian investors and demand for Australian exports will rise, helping to create Australian jobs in the wake of the COVID-19 pandemic.
7. As a modern, regional free trade agreement (FTA), RCEP will help stimulate growth and investment across the region, providing increased opportunities for Australian business. It will enhance Australia’s economic engagement in the Indo-Pacific through strengthened trade rules that build on the ASEAN-Australia-New Zealand Free Trade

Area (AANZFTA) and complement Australia's bilateral FTAs with RCEP parties and also the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This will further strengthen Australia's trade relationship with ASEAN at a crucial point in ASEAN's economic development.

8. RCEP will increase opportunities for Australian business to access regional value chains by enabling goods produced in the RCEP region from Australian inputs to benefit from tariff preferences when exported to another RCEP party. RCEP will also provide avenues for tackling non-tariff barriers, including biosecurity and technical standards, by promoting compliance with World Trade Organization (WTO) rules. Rules on intellectual property and e-commerce will help create an enabling environment for business to trade digitally in the region, and support consumer confidence in the online environment.
9. RCEP will deliver increased market access and certainty in specific markets. It will provide much greater certainty than existing FTAs offer for service providers and investors in China and ASEAN markets such as Malaysia, the Philippines and Thailand. It will provide an additional avenue for exporters to access some markets where Australia already enjoys high quality FTA commitments for goods, including China, Indonesia, Japan, New Zealand and the Republic of Korea.
10. RCEP will also deliver important strategic outcomes, furthering the Foreign Policy White Paper objective of contributing to a stable and prosperous Indo-Pacific and strengthen Australia's trade relationship with ASEAN. The Agreement will enhance regional cooperation and coordination to facilitate a strong and resilient economic recovery from COVID-19, while reducing the vulnerability of regional trade and investment to future crises.
11. Through membership of RCEP, Australia will be better positioned to influence development of the future economic architecture of the Indo-Pacific and reduce the risk of discriminatory trade blocs emerging that would potentially damage Australia's economic and security interests. Once RCEP is in force, Australia will promote it as the platform for dialogue and cooperation on trade and investment between ASEAN and key regional partners. This will enhance Australia's capacity to influence the direction ASEAN takes in developing future trade and investment rules.

Reasons for Australia to take the proposed treaty action

12. A modern, region-wide FTA will enhance Australia's economic engagement in the Indo-Pacific through strengthened trade rules that build on AANZFTA and complement Australia's bilateral FTAs with RCEP parties, as well as the CPTPP, further strengthening Australia's trade relationship with ASEAN at a crucial stage of ASEAN's economic development. RCEP will increase opportunities for Australian business to access regional value chains by allowing goods made in another RCEP party from Australian inputs to benefit from tariff preferences under RCEP when exported to a third RCEP party. RCEP will provide avenues for tackling non-tariff barriers, including in areas such as quarantine and technical standards, by promoting compliance with WTO rules and further improving cooperation and transparency. Businesses will benefit from

RCEP's intellectual property rules, and from e-commerce outcomes that support cross-border digital trade in the region while ensuring consumer confidence in the online environment.

13. In addition to enhancing opportunities for Australian business at the regional level, RCEP will deliver increased market access and certainty in specific markets. It will deliver new market access commitments for service suppliers and investors in China and ASEAN markets such as Malaysia, the Philippines and Thailand. RCEP will also provide an additional avenue through which exporters can access those markets in which Australia already enjoys high quality FTA commitments for goods, including China, Indonesia, Japan, New Zealand and the Republic of Korea.
14. Should RCEP enter into force without Australia, Australian exporters (and consumers) would be unable to benefit from regional economic integration outcomes the Agreement will deliver. Such benefits include the efficiencies to be gained from the harmonisation of rules across multiple regional FTAs. While Australia's existing FTAs have been important vehicles for improving market access for Australian companies, these FTAs (and those negotiated by other trading partners in the region) have also created a degree of complexity for business seeking to take advantage of available trade and investment opportunities.
15. Varying administrative requirements across different FTAs, and varying approaches to the scheduling and quality of market access commitments, can make it difficult for companies – especially small and medium sized enterprises – to understand and fully utilise commitments made by Australia's treaty partners. This has become an increasingly important issue in the contemporary economic context of increased specialisation, as exporting firms outside the resources sector generally export to multiple countries rather than relying on just one or two overseas markets. RCEP will help address this issue by providing a single set of rules and procedures for Australian exporters to utilise RCEP's preferential tariff outcomes across the region.
16. RCEP is consistent with Australia's obligations under other international agreements, including the WTO. Chapter 20 (Final Provisions) provides that RCEP will coexist with RCEP parties' existing international agreements with each other (which include, for example, the WTO Agreement and Australia's bilateral FTAs with other RCEP signatory states).
17. The key outcomes and impacts of RCEP are set out in detail in Attachment II (Regulation Impact Statement) and Attachment III (Key Outcomes) to this National Interest Analysis (NIA). Sectoral outcomes are summarised below.

Goods

18. RCEP will provide a single set of rules and procedures for accessing preferential tariffs across the region. Currently, Australian traders can choose from 10 different FTAs to do business between the 15 countries of the region, each with its own rules and procedures.
19. Under RCEP, 89 per cent of current Australian exports to the region will benefit from immediate duty free access, rising to 94 per cent when fully implemented. Importers will

similarly benefit, with 76 per cent of Australian imports from the region immediately duty free under RCEP, rising to 93 per cent. At the same time, traders will continue to have access to Australia's high standard existing FTAs, including where they are more favourable.

20. RCEP's rules of origin will be modern and liberal, reflecting contemporary production processes and trade logistics arrangements. Movement of goods in the region through ASEAN to China, Japan and the Republic of Korea (and vice versa to Australia) will be easier, as will using regional distribution hubs.
21. RCEP's regional rules of origin will support Australian access to regional value chains. Regional cumulation rules will facilitate inputs from the most efficient and cost-effective regional source, while supporting access to preferential tariff treatment.
22. RCEP will reduce FTA rules of origin compliance burdens. Australian businesses trading with multiple RCEP countries will only need to comply with one set of rules and procedures. RCEP will also provide businesses with greater choice in how they meet origin documentation requirements. Certificate of Origin arrangements familiar to Australian business will be maintained and options for use of self-declaration expanded, with scope for proof of origin to be accepted in electronic format. RCEP will also introduce greater flexibility by providing for post-importation claims for preferential tariff treatment in accordance with RCEP parties' laws and regulations.

Services and Investment

23. RCEP will provide a strong platform to expand trade in services and to promote investment throughout the region. RCEP will establish high quality rules for investment and the supply of services between RCEP parties, including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers and investors equally (national treatment) and to treat foreign suppliers and investors at least as well as suppliers and investors of any other non-RCEP country (most-favoured-nation or MFN).
 - a. RCEP will include the first forward-looking MFN provision in services and investment that ASEAN as a whole has agreed to in an external FTA.
 - b. Several RCEP parties will make use of the inherently more liberalising approach of negative listing for the first time for services market access. All RCEP parties have scheduled investment commitments in a 'negative list', and RCEP parties that have used a 'positive list' for services commitments are required to transition to a negative list.
 - c. RCEP will include a 'ratchet-mechanism' which locks in future unilateral liberalisation for selected sectors and will allow significant reduction of barriers to services and investment trade over time. RCEP will also provide core protections for investors, which will provide Australian investors with greater assurance in the RCEP region.

- d. Service suppliers from the RCEP countries will benefit from disciplines that include enhanced domestic regulation and transparency provisions.
 - e. RCEP will include rules to protect investments. Those rules are subject to RCEP's state-to-state dispute settlement procedures (Chapter 19), with the exception of decisions taken by investment screening authorities (such as those under Australia's Foreign Investment Framework on approving investment proposals and enforcing investment conditions). However, RCEP does not include an Investor-State Dispute Settlement (ISDS) mechanism. This will be reviewed under a built-in agenda, allowing RCEP parties to introduce such a mechanism, but only if all agree.
24. The commitments provided by the other RCEP parties will provide greater certainty for Australian service suppliers and investors that will benefit Australian businesses across a range of sectors, including in: professional services; education services; financial services; communications services; healthcare services; industries; construction and related engineering services; tourism, recreational, cultural and sporting services; transport services; and whole trade and retailing services.

Improving the Business Environment

25. By including obligations to support the flow of data, promote privacy and consumer protection and enable electronic authentication and electronic signature, RCEP will help to facilitate digital trade in the region and support consumer confidence in the online environment.
26. The data flows and localisation articles in the Agreement are the first obligations of this kind for a number of large and emerging RCEP countries, improving on obligations in AANZFTA, many of Australia's bilateral FTAs with RCEP parties, and the ASEAN Agreement on Electronic Commerce.
27. RCEP also contains rules that capture recent advances in international trade rule-making (including relating to intellectual property, competition, government procurement, and small and medium enterprises) and future-proof the ways in which Australian exporters can conduct business activities across all RCEP countries.
28. RCEP will provide increased certainty to rights holders and users by establishing a strong platform for the development of consistent intellectual property rules throughout the region, including rules that will help create an enabling environment for business to trade digitally. RCEP will establish balanced rules for the effective creation, utilisation, protection, and enforcement of intellectual property rights, including copyright and related rights, trademarks, geographical indications, industrial designs, patents, and protection of plant varieties.

Economic cooperation

29. Membership in RCEP will improve Australia's ability to shape the development of the economic architecture of the Indo-Pacific. RCEP has the potential to act as a platform for

ongoing dialogue and cooperation on trade and investment between ASEAN and key regional partners.

30. RCEP provides for trade and investment related cooperation that supports the effective implementation and utilisation of the RCEP agreement. This includes economic and technical cooperation activities, including capacity building and technical assistance, that will be specified through a work programme.

Obligations

31. RCEP consists of 20 Chapters with associated Annexes, Appendices and footnotes.

Goods

32. The provisions contained in RCEP's good related chapters (Chapter 2-7) reaffirm existing rights and obligations under the relevant WTO Agreements.
33. The Chapter on Trade in Goods (Chapter 2) establishes the basic rules governing trade in goods among RCEP parties. The Chapter contains provisions covering RCEP parties' tariff commitments and on non-tariff measures, pursuant to the Agreement's objective to liberalise and facilitate trade in goods. This Chapter is a common element of FTAs. This Chapter is consistent with Australia's obligations under the *General Agreement on Tariffs and Trade 1994* and other Multilateral Agreements on Trade in Goods in Annex 1A of the WTO Agreement.
34. Tariff commitments reduce or eliminate preferential tariffs on originating goods, without affecting excise equivalent duties. Goods continue to have access to duty-free preferential tariff treatment under existing FTAs with RCEP parties, or to Australia's general tariffs which are already low.
35. The Chapter on Rules of Origin (Chapter 3) provides the criteria for determining whether goods traded between RCEP parties would be eligible for preferential treatment. This covers goods imported into Australia from RCEP parties, goods exported from Australia to RCEP parties, and also covers Australian goods used in regional value chains among other RCEP parties. The Chapter also includes the procedures for claiming preferential tariff treatment under the Agreement and the processes available to customs authorities to verify these claims. This Chapter is a common element of Australia's FTAs, with additional provisions reflecting the regional nature of the Agreement.
36. The Chapter on Customs Procedures and Trade Facilitation (Chapter 4) contains rules enhancing predictability of customs procedures to promote trade amongst RCEP parties. The Chapter builds on the commitments under the WTO Agreement on Trade Facilitation, and ensures transparency of rules and procedures. This Chapter is a common element of FTAs.
37. The Chapter requires RCEP parties to limit the administrative burdens of customs processes by encouraging cooperation between customs authorities, promoting efficient customs procedures and providing greater transparency and fairness to traders. The ability for respective customs authorities to enforce domestic laws and regulations has been preserved.

38. The Chapter on Sanitary and Phytosanitary Measures (Chapter 5) affirms RCEP parties' rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), in regard to relevant measures to protect human, animal or plant life or health in RCEP parties. It enhances RCEP parties' implementation of the SPS Agreement, including by enhancing transparency and strengthening cooperation between RCEP parties . This Chapter is a common element of FTAs.
39. The Chapter on Standards, Technical Regulations, and Conformity Assessment Procedures (Chapter 6) affirms RCEP parties' rights and obligations under the WTO Agreement on Technical Barriers to Trade, and enhances their implementation through strengthened information exchange and cooperation among RCEP parties. This Chapter is a common element of FTAs.
40. The Chapter on Trade Remedies (Chapter 7) establishes transitional safeguard provisions equivalent to the WTO Agreement on Safeguards that would support RCEP parties' tariff liberalisation commitments. It also contains limited provisions, which are in compliance with Australia's domestic legislation, on RCEP parties' use of trade remedy measures under the WTO Agreement, including the recognition of RCEP parties' WTO rights and obligations.

Services

41. The Trade in Services Chapter (including the Annexes on Financial Services, Telecommunications Services and Professional Services) builds on existing WTO and AANZFTA services commitments, giving Australian service suppliers better access to RCEP markets and greater certainty about the rules that will apply to them.
42. The Chapter on Trade in Services (Chapter 8) establishes rules for the supply of services between RCEP parties, including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers equally (national treatment) and to treat foreign suppliers at least as well as suppliers of any other non-RCEP country (most-favoured-nation). This Chapter also includes domestic regulation, denial of benefits, payments and transfers and safeguard provisions in line with Australia's previous FTAs.
43. The Annex on Financial Services (Annex 8A) contains a number of standard provisions that are similar to those in Australia's previous FTAs. This Annex applies to government measures affecting financial services, including banking and insurance. The Annex includes rules on new financial services, transfers of information and the processing of information, and payment and clearing systems. It does not apply to government actions in relation to public retirement plans or statutory systems of social security or non-commercial financial services performed by, or on behalf of, the government. The Annex also provides for specific exceptions including the 'prudential exception', under which RCEP parties retain the ability to adopt measures for prudential reasons, including for the protection of investors or depositors, or to ensure the integrity and stability of the financial system. RCEP parties also retain the ability to adopt non-discriminatory measures in pursuit of monetary or exchange rate policies.

44. The Annex on Telecommunications Services (Annex 8B) contains a number of standard provisions that are similar to those in Australia's previous FTAs. This Annex applies to government measures affecting trade in public telecommunications services. It builds on the AANZFTA Telecommunications Annex with stronger obligations that complement the market access outcomes on telecommunications. The Chapter includes modern disciplines in a number of key areas that are consistent with previous Australian FTAs, including number portability, submarine telecommunications cables, international mobile roaming, unbundling and access and use. The Annex recognises a party's right to regulate the telecommunications sector. It includes rules to ensure telecommunication companies with a dominant market position provide telecommunications suppliers from the other country with access to services and key infrastructure on reasonable terms and conditions. The Annex also seeks to ensure that all RCEP service suppliers operating in other RCEP parties have access to public telecommunication services on a reasonable and non-discriminatory basis.
45. The Annex on Professional Services (Annex 8C) facilitates cooperation on recognition of professional qualifications, licensing and registration requirements. It provides a framework for professional bodies to expand their links with RCEP counterparts, encouraging dialogue on recognition of qualifications, licences and registration, as well as encouraging development of mutual recognition arrangements in professions of mutual interest and alignment with international frameworks on standards and criteria for professions.

Movement of Natural Persons

46. The Temporary Movement of Natural Persons Chapter (Chapter 9) facilitates the temporary entry and stay of skilled persons to facilitate the pursuit of business or investment opportunities. It includes commitments on expeditious processing of visa applications, ensuring visa fees are reasonable, and that visa application processes are transparent.
47. Each RCEP party is required to grant temporary entry or an extension of temporary stay to natural persons of another RCEP party to the extent provided for in its specific commitments, provided all relevant application process and other eligibility requirements have been met.
48. This Chapter does not apply to measures affecting access to the employment market and does not create any obligations in relation to citizenship, nationality, residence or employment on a permanent basis. It recognises the right of a Party to regulate the entry of natural persons from another RCEP party into, and temporary stay in, its territory. This Chapter is a common element of FTAs and contains provisions consistent with Australia's previous FTAs.

Investment

49. The Investment Chapter (Chapter 10) provides market access and protections for investors from RCEP parties. This brings new commitments from partners such as China, Laos, Cambodia, Myanmar, Thailand, the Philippines and Malaysia. The Agreement will not deliver immediate or significant new access to those markets where Australia already

has higher ambition agreements (CPTPP, JAEPA, KAFTA, SAFTA, IA-CEPA¹). Australia has not offered preferential Foreign Investment Review Board (FIRB) thresholds under the Agreement to any RCEP party. RCEP's provisions on investment are subject to RCEP's state-to-state dispute settlement procedures (Chapter 19) – with the exception of decisions taken by investment screening authorities (such as those under Australia's Foreign Investment Framework on approving investment proposals and enforcing investment conditions). RCEP does not include an ISDS mechanism. This will be reviewed under a built-in agenda, allowing RCEP parties to introduce such a mechanism, but only if all agree.

50. The key obligations in this Chapter include:
- a. non-discrimination through national treatment and most-favoured-nation (MFN) provisions: national treatment obliges an RCEP party to afford treatment to investors and covered investments of any RCEP party that is no less favourable than the treatment it affords its own investors and covered investments in like circumstances. MFN obliges an RCEP party to afford no less favourable treatment to investors and covered investments of another RCEP party than it affords to investors and covered investments from non-parties, or from any other RCEP party, in like circumstances;
 - b. performance requirements: prohibits an RCEP party from imposing certain types of requirements on investors, for example around technology transfer or licensing;
 - c. senior management and board of directors: prohibition on requiring the appointment of particular nationalities to senior management positions in businesses that are covered investments;
 - d. fair and equitable treatment and full protection and security: the foreign investor/investment to be accorded fair and equitable treatment and full protection and security in accordance with the customary international law minimum standard of treatment of aliens;
 - e. expropriation and compensation: obligation not to expropriate or nationalise a covered investment unless it is undertaken in accordance with due process of law, in a non-discriminatory manner, for a public purpose and upon payment of prompt, adequate, and effective compensation; and
 - f. transfers: obligation to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory.

Intellectual Property

51. The Chapter on Intellectual Property (Chapter 11) affirms and complements the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) provisions on

¹ Japan-Australia Economic Partnership Agreement (JAEPA); Korea-Australia Free Trade Agreement (KAFTA); Singapore-Australia Free Trade Agreement (SAFTA); and Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

copyright, trademarks, plant breeders' rights, geographical indications and patents, including transparency, safeguards for and enforcement of intellectual property rights, cooperation and genetic resources and traditional knowledge.

52. The provisions of this Chapter are consistent with Australia's concluded FTAs, and create new obligations on some issues including experimental use of patents, bad faith trademarks, and certain procedural requirements that would not require changes to Australian law or practice. The Chapter is consistent with the *Patents Act 1990*, *Trade Marks Act 1995*, *Designs Act 2003*, *Plant Breeder's Rights Act 1994*, the *Copyright Act 1968* and associated regulations.

Electronic Commerce

53. The Chapter on Electronic Commerce (Chapter 12) is aimed at facilitating digital trade. It contains provisions to ensure domestic regulations on e-commerce are consistent with the UNCITRAL Model Law on Electronic Commerce 1996. It contains obligations on the acceptance of e-signatures and e-authentication and to work towards the use of paperless trading. This Chapter contains rules to ensure the free flow of data across borders and constrains governments from imposing data localisation requirements on businesses. This obligation does not apply to the financial services sector and also includes exceptions for measures necessary for the protection of essential security interests or to achieve a legitimate public policy objective. Australia's open and robust regulatory framework that exists under measures such as the *Privacy Act 1988* and *My Health Records Act 2012* will not be affected by these provisions.
54. There are also obligations on online consumer protection and personal information protection to foster a conducive environment for e-commerce. Consumer confidence and safety in the online environment are essential for a well-functioning online market.
55. This E-Commerce Chapter is a common element of FTAs, however, the data provisions are less ambitious than CPTPP as they require the non-application of dispute settlement. The data rules are subject to exceptions which allow RCEP parties to take measures for essential security and public policy reasons. The Chapter contains standard provisions that are similar to those in Australia's previous FTAs.

Competition

56. The Competition Chapter (Chapter 12) contains obligations requiring RCEP parties to maintain competition laws and regulations that proscribe anti-competitive activities and ensure independent enforcement of such activities. The Chapter obliges RCEP parties to adopt or maintain domestic laws or regulations to proscribe the use in trade of misleading practices or false or misleading descriptions. It also provides for cooperation between the RCEP parties on consumer protection and on competition law enforcement. The Competition Chapter contains standard provisions that are similar to Australia's previous FTAs and are consistent with the *Competition and Consumer Act 2010*.

Small and Medium Enterprises (SMEs)

57. The Chapter on Small and Medium Enterprises (Chapter 14) seeks to promote information sharing and cooperation among RCEP parties to enhance the capability of SMEs, including micro enterprises, to participate and benefit from the opportunities created by the RCEP Agreement.

Cooperation

58. The Chapter on Economic and Technical Cooperation (Chapter 15) provides for the effective implementation and utilisation of the Agreement through economic and technical cooperation activities, including capacity building and technical assistance, to be specified through a work programme.

Government Procurement

59. The Chapter on Government Procurement (Chapter 16) provides for the promotion of transparency of laws, regulations and procedures, and development of cooperation among RCEP parties on government procurement.

General Provisions and Exceptions

60. The Chapter on General Provisions and Exceptions (Chapter 17) contains provisions promoting greater transparency in the making and implementation of laws, regulations and government decisions of each RCEP party. This Chapter also establishes exceptions relating to matters such as essential security, taxation measures and balance of payments. In particular, Australia is not prevented from taking action to address its essential security interests.

Institutional Provisions

61. The Chapter on Institutional Provisions (Chapter 18) establishes an RCEP joint committee to oversee and ensure effective implementation of the Agreement. The joint committee will be made up of representatives from all RCEP parties and is the peak body responsible for overseeing the operation of the RCEP agreement after its entry into force. This is standard practice in Australia's FTAs. The joint committee will establish four subsidiary bodies after RCEP's entry into force to oversee the implementation and operation of various specific Chapters – namely, a Committee on Goods, a Committee on Services and Investment, a Committee on Sustainable Growth, and a Committee on the Business Environment. The Chapter also specifies that Ministers of RCEP parties will meet annually to consider the Agreement.

Dispute Settlement

62. The Chapter on Dispute Settlement (Chapter 19) contains rules and procedures to resolve disputes which may arise between RCEP parties in relation to their obligations under the Agreement. This Chapter is a common element of Australia's FTAs and is based on the rules and procedures for dispute resolution under the WTO. In keeping with Australia's FTA practice, some provisions are excluded from the scope of the dispute settlement mechanism, such as provisions in the Sanitary and Phytosanitary Chapter.

Final Provisions

63. The Final Provisions Chapter (Chapter 20) contains provisions governing the administration of the Agreement. This includes the conditions for RCEP to enter into force as well as the process for general review of the Agreement by the RCEP parties. This Chapter also establishes the process for potential accession to the Agreement by a state or separate customs territory as well as withdrawal by any RCEP party.

Implementation

64. Australia would need to make the following legislative changes in order to implement the obligations in RCEP:
 - a. The *Customs Tariff Act 1995* will need to be amended to incorporate the preferential tariff rates that will apply to goods imported from RCEP countries under RCEP. The *Customs Tariff Regulations 2004* will need to be amended to prescribe certain subsets of goods within certain tariff subheadings that have different preferential tariff treatment to the rest of the goods classified to that tariff subheading; and the *Customs (International Obligations) Regulation 2015* will be amended to allow for refunds of excess customs duty paid.
 - b. The *Customs Act 1901* will need to be amended and a Customs (RCEP Rules of Origin) Regulation will need to be created establishing rules for determining the originating status of goods imported from RCEP parties for the purpose of determining eligibility for preferential tariff treatment.
 - c. A legislative instrument under section 140 GBA of the *Migration Act 1958* will need to be created to give effect to Australia's labour market testing (LMT) waiver commitments in RCEP. A new instrument is required even though RCEP is consistent with Australia's existing LMT waiver commitments under the WTO and FTAs already in force.
65. Since Australia has not given RCEP parties the higher Foreign Investment Review Board threshold on land and non-land investments, there is no need to amend the *Foreign Acquisitions and Takeover Regulations 2015*.

Costs

66. There are no costs in losses of tariff revenue for Australia associated with the entry into force of RCEP as – under existing FTAs – Australia will have already eliminated tariffs on imports from all RCEP parties by 1 April 2021. There will be an RCEP Secretariat, to which Australia will be expected to contribute.
67. Under the Regional Trade for Development Initiative, Australia will assist ODA-eligible ASEAN member states implement their RCEP commitments to help ensure that the full benefits of the Agreement are realised. Funding will be reallocated from existing administered appropriation.
68. RCEP is expected to enable Australian exporters to increase the value of their sales to RCEP parties and contribute to economic growth across the region.

69. A Regulation Impact Statement, which has been assessed by the Office of Best Practice Regulation as compliant with the Government's requirements and consistent with best practice, is attached to this NIA (Attachment II).

Future treaty Action

70. Article 20.4 (Amendments) allows for amendment of the Agreement by the written agreement of RCEP parties. An amendment would enter into force 60 days after the date on which all RCEP parties have notified the Depositary (the Secretary-General of ASEAN) in writing of the completion of their respective applicable legal procedures, or on such other date as the RCEP parties may agree. Any future amendments would be subject to Australia's domestic treaty-making requirements.

Withdrawal

71. Article 20.7 (Withdrawal) allows any RCEP party to withdraw from the Agreement by providing written notice of its withdrawal to the Depositary, the withdrawal taking effect six months afterwards unless the RCEP parties agree on a different period. If an RCEP party were to withdraw, the Agreement would remain in force for the remaining parties. Any withdrawal by Australia would be subject to Australia's domestic treaty making requirements.

Contact details

Free Trade Agreement Implementation and Policy Branch
Regional Trade Agreement Division
DFAT

Attachments

Attachment I – Consultation

Attachment II – RIS

Attachment III – Key Outcomes

Attachment I

Consultation

Regional Comprehensive Economic Partnership Agreement

Canberra and 14 other locations (virtual signing ceremony), 15 November 2020

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Consultation

72. The public consultation and stakeholder engagement process on the Regional Comprehensive Economic Partnership (RCEP) agreement commenced in 2012. DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders in formulating positions. In addition to a call for public submissions, negotiators regularly engaged with representatives of the business sector, academia and civil society organisations to provide them with an opportunity to share their views and expectations of the RCEP negotiations. At each of the negotiating rounds hosted by Australia, dedicated stakeholder consultation events were held in the margins of the meeting on the following dates:
 - a. RCEP Melbourne – 30 June 2019
 - b. RCEP Perth – 27 April 2017
 - c. RCEP Brisbane – 24 September 2013
73. Australian stakeholders also travelled to stakeholder events to engage with negotiators at negotiating rounds hosted by other countries participating in RCEP negotiations.
74. Since the commencement of RCEP negotiations, DFAT has biannually held an International Trade Negotiations Update Meeting which provides an avenue to update peak organisations (including civil society) on the status of the DFAT-led international trade negotiations and for peak organisations to ask questions about, and comment on, the government's trade agenda.
75. Stakeholders participating in the public consultation process have broadly appreciated the potential benefits that RCEP may bring, building on the foundation provided by AANZFTA. Stakeholders noted the importance of modernised rules of origin and e-commerce provisions. Most business sector stakeholders supported the government's efforts in the pursuit of this comprehensive and expansive agreement.
76. DFAT has also consulted with State and Territory Governments throughout the course of negotiations.

77. Particular interest has been shown in reducing barriers for agriculture and in enhancing opportunities for Australian service providers and investors in areas such as professional services, education, energy, tourism, health and transport. Many were especially keen to see market access gains achieved under AANZFTA and Australia's bilateral FTAs expanded, with agricultural stakeholders strong advocates for improved market access outcomes. Representatives from a range of peak agricultural bodies, including Meat & Livestock Australia, Dairy Australia, and the National Farmers' Federation, were consulted throughout the RCEP negotiations.
78. Civil society groups raised some targeted concerns in consultations and through public submissions, primarily on labour rights, environmental standards, ISDS, intellectual property and temporary entry. The confidential nature of negotiations did not permit a text-based discussion of the safeguards and carve-outs that will preserve the government's ability to regulate in sensitive sectors and provide public services.
79. A list of businesses and organisations that were consulted on RCEP is set out below, together with a list of public submissions received.

DFAT-consulted stakeholder list

Accord
ActionAid Australia
ActionAid Vietnam
AiGroup
APPEA
Asia Trade Centre
Australian Business Council Standards Australia
Australian Chamber of Commerce & Industry
Australian Council of Professions / Engineers Australia
Australian Council of Trade Unions (ACTU)
Australian Council of Wool Exporters and Processors
Australian Dairy Farmers
Australian Digital Alliance
Australian Fair Trade and Investment Network (AFTINET)
Australian Federation of Automotive Industries
Australian Federation of Travel Agents
Australian Fodder Industry Association Limited
Australian Food and Grocery Council
Australian Forest Products Association
Australian Grape and Wine
Australian Home Entertainment Distributors Association
Australian Horticultural Exporters' and Importers' Association
Australia India Business Organisation
Australian Industry Greenhouse Network
The Australian Industry Group
Australian Institute of Company Directors
Australian National University
Australian Nursing and Midwifery Accreditation Council
Australian Nut Industry Council
Australian Pork
Australian Services Roundtable
Australian Sugar Industry Alliance
Australian Sugar Milling Council
Australian Wool Producers
BlueScope
Board of Trade of Thailand
Business Council of Australia

Canegrowers
Centre for Alcohol Policy Research (CAPR)
CFMEU Manufacturing Division – Pulp and Paper Branch Maryvale Sub-Branch
Chemistry Australia
Commons Foundation / Knowledge Commune
Community and Public Sector Union (State Public Services Federation)
Construction Forestry Maritime Mining & Energy Union
Consult Australia
Customs Brokers and Forwarders Council of Australia Ltd
Dairy Australia
East Asia Business Council
E-Commerce/ICT Working Group European
Electrical Trades Union of Australia
European Australian Business Council
Export Council of Australia
Federal Chamber of Automotive Industries
Fisheries Research and Development Corporation
Food and Beverage Importers Association
Freight & Trade Alliance
Friends of the Earth
Generic and Biosimilar Medicines Association (GBMA)
GFG Alliance
Grains Industry Market Access Forum
The Group of Eight
Horticulture Innovation
Infant Nutrition Council
Institute of Patent and Trade Mark and Attorneys of Australia
ITS Global
Liberty Steel (on behalf of Manufacturer’s Trade Association)
Manufacturers Trade Alliance
Meat & Livestock Australia
Medicines Australia
Medecins Sans Frontieres | Access Campaign
Minerals Council of Australia
Mylan Australia
National Farmers’ Federation
New Zealand International Business Forum
Nossal Institute for Global Health – University of Melbourne
Perth USAsia Centre

Ports Australia
Private Treaty Wool Merchants of Australia
Public Citizen
Public Health Association of Australia
Public Services International
Rigby Cooke Lawyers
RMIT University, Melbourne
Screen Producers Australia
Spirits and Cocktails Australia
Standards Australia
Steel Association
TAFE Directors Australia
Thai Chamber of Commerce
Third World Network
Universities Australia
University of Auckland
University of Melbourne
The University of Sydney Law School
Victoria University
Wine Australia
WoolProducers Australia

List of public submissions received

Accord

ANZ Bank

Australian Chamber of Commerce and Industry - Documentary options for tariff reduction available to Australian Exporters per FTA

Australian Chamber of Commerce and Industry - Harmonising Administrative Procedures in PTA to Support Trade Facilitation

Australian Chamber of Commerce and Industry - Industry views on documentation in FTAs

Australian Council of Trade Unions

Australian Dairy Industry Council

Australian Fair Trade and Investment Network Ltd (2015)

Australian Fair Trade and Investment Network Ltd (2013)

Australian Red Meat & Livestock Industry

Australian Services Roundtable

Australian Dairy Industry (represented by the Australian Dairy Industry Council Inc. and Dairy Australia)

Hatch

International Trademark Association (INTA)

O'Donnell, Carol (2012)

O'Donnell, Carol (2013)

Public Health Association of Australia

PwC

Sarihusada Generasi Mahardika

Wine Australia

World Society for the Protection of Animals

Yum! Restaurants International