Attachment II

[to *RCEP National Interest Analysis*]

Regional Comprehensive Economic Partnership Agreement (RCEP)
Regulation Impact Statement

Background and policy options

With Government endorsement of Australia's initial negotiating mandate, negotiations on the Regional Comprehensive Economic Partnership (RCEP) have been underway since 2012.

This Regulation Impact Statement (RIS) considers options for concluding negotiations.

RCEP is an ASEAN-centred proposal for a regional free trade agreement (FTA), which was initially to include the ten ASEAN member states and those countries which have existing FTAs with ASEAN – Australia, China, India, Japan, Republic of Korea and New Zealand. However, in November 2019, India indicated it had several issues preventing it from joining RCEP and has since indicated it is not in a position to join the Agreement.

While Indian participation in RCEP would increase RCEP´s value, RCEP is still of genuine significance and will be the world's largest Free Trade Agreement even without India.

RCEP will build on and expand Australia's existing FTA with ASEAN and New Zealand – the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). It will also complement Australia's bilateral FTAs with individual RCEP parties. RCEP provides an opportunity to strengthen the regional trade and investment environment, boost regional economic confidence and benefit consumers.

Delivering new trade and investment opportunities for Australian business and strengthening regional economic architecture will be even more crucial as Australia seeks to recover from the global COVID-19 pandemic. International trade and investment are critical to the Australian economy, providing jobs and prosperity and opening up opportunities for Australians to expand their businesses. FTAs can improve market access across all areas of trade — goods, services and investment — and help to maintain and stimulate the competitiveness of Australian firms. This benefits Australian consumers through access to an increased range of better-value goods and services.

FTAs form part of the Government's strategy for lowering trade barriers and securing improved market access for Australian exporters of goods and services, and for Australian investors. The objective of the RCEP negotiations is to achieve a modern, comprehensive, high-quality and mutually beneficial FTA that covers trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, electronic commerce, dispute settlement and other issues.

Australia has a strategic interest in being part of a regional FTA that is centred on ASEAN and includes China, Japan, Korea and New Zealand. RCEP would be an important step towards a region-wide FTA, an objective of the 2017 Foreign Policy White Paper, identified as a means to guard against the risk of discriminatory trade blocs that would potentially damage our economic and security interests. A successfully concluded RCEP will also send a signal of the region's commitment to trade liberalisation, helping to counter protectionist sentiment during a period of significant trade tensions.

Option 1: Take no action, RCEP goes ahead without Australia

A decision by Government not to agree a mandate to conclude negotiations for RCEP would likely result in RCEP going ahead without Australia.

Not being a part of RCEP would signal a decline in Australia's support for trade liberalisation in a time of significant trade tensions. This would be contrary to Australia's interests in an open global economy supported by enforceable rules, and would send a troubling message, which could be seen as confirming a retreat from economic openness.

If RCEP were to conclude without Australia, we would be locked-out of an important new element of regional economic architecture. This would deny Australia producers, service suppliers and investors access to liberal trade and investment settings, and would lead to the gradual erosion of conditions faced by Australian exporters.

Trade diversion, where trade is diverted from a more efficient exporter towards a less efficient one by the formation of a new FTA with lower tariffs between the participating countries, could result. Australian exporters' ability to compete with exports traded between the countries in RCEP would be undermined.

A framework for the future demands active and determined diplomacy and strong partnerships. With these we are able to open overseas markets and increase opportunities for Australian companies. RCEP going ahead without Australia will deny us a plurilateral forum from which we would otherwise promote and protect our interests, and contribute to economic growth. Australia will not be able to use RCEP as the platform for dialogue and cooperation on trade and investment between ASEAN and key regional partners. This would greatly diminish our ability to influence the direction ASEAN takes in developing future rules.

Alternative pathways to trade liberalisation

Australia already has high quality FTAs with ASEAN and New Zealand – AANZFTA, and bilaterally with Japan, Korea, China, Malaysia, Thailand, Indonesia and Singapore. While Australia could in-principle pursue the negotiation (and renegotiation) of bilateral FTAs as an alternative to concluding RCEP, this hinges on the appetite of both parties to agree to modern disciplines and commercially meaningful outcomes for their respective business communities. It is not certain whether Australia would be able to persuade these countries to lower remaining trade barriers in sensitive sectors outside of the RCEP context. Even if it could, such an approach would be far less efficient than negotiating among 15 parties.

Regional economic integration and harmonisation of rules across existing FTAs

The conclusion of RCEP without Australia would mean that Australian exporters (and consumers) would be unable to benefit from regional economic integration outcomes the Agreement will deliver. This includes 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 many other FTAs negotiated by other trading partners in the region) have also created complexity for business seeking to take advantage of the trade and investment opportunities that may be available to them. The different administrative requirements in many FTAs, and the different approaches to the scheduling and quality of market access commitments, can make it difficult for companies to understand and fully utilise the commitments made by counterparties, especially small and medium sized enterprises. This has become an increasingly important issue in the contemporary economic context of increased specialisation as exporting firms that are outside the resources sector generally export to multiple countries rather than relying on just one or two markets.

In addition, the increased growth of global supply chains, involving the sharing of production across multiple countries, may not be adequately catered for by a series of bilateral FTAs. Global supply chains have deepened with advances in technology, declining logistics costs and lowering of trade barriers. This trend has been particularly marked in East Asia where production networks have been decentralised with the most cost effective units spread across national boundaries. Intraregional trade in Asia has increased significantly, particularly in parts and components, and this specialisation trend is expected to continue if it is supported by further regional economic integration.

The objective of supporting the further development of global supply chains – through both freer trade in goods and services and improved investment flows – has been a key factor in the initiation of ASEAN's Economic Community and ASEAN'S subsequent negotiations of FTAs with each of China, Japan, Korea and Australia-New Zealand. However, there has been wide recognition of the limitations of having a series of mini-regional FTAs each involving ASEAN – principally a supplier of labour-intensive, low value parts and components – with only one of the major countries involved in the supply chain (Japan or Korea as producers of high-end components, China as assembler of final goods and Australia-New Zealand as suppliers of raw materials or enabling services. None of these mini-regional FTAs adequately covers the whole supply chain (i.e. raw material suppliers, initial producers of high-end components, mid-stage labour intensive processing of these components, suppliers of services that are central to the functioning of the supply chain, and assembler of the final good).

For example, ASEAN cannot count inputs from Australia towards claiming origin under its FTAs with China, Japan and Korea. In particular, this could disadvantage Australian manufacturers supplying parts and components for further processing in ASEAN, as ASEAN will generally be exporting the processes parts and components to China, Korea or Japan – rather than within ASEAN or to Australia/New Zealand, for final assembly or further high-end processing. Instead, ASEAN producers will favour parts and components sourced from China, Korea or Japan.

No action would mean that these problems would remain, and possibly continue to increase as more bilateral FTAs are negotiated in the region. Additional bilateral FTAs would create additional complexity for business. Accordingly, pursuing further trade liberalisation with our existing FTA partners through bilateral FTAs offers only limited foreseeable gains for Australian exporters.

The following table provides an indication of the range of different rules of origin requirements that Australian exporters face under Australia's existing FTA partners as well as the number of Australian exporting firms and transactions for financial year 2017-18.

RCEP Participating Country	Certificate of Origin (issued by a competent authority or issuing body)	Self-Certification by importer, exporter or producer	Number of Australian exporters (2017-18)	Number of transactions (2017-18)
China	Yes (ChAFTA)	Yes (ChaFTA, but only if the goods are subject to an Advance Ruling by the Importing Party)	7,779	294,475
Japan	Yes (JAEPA)	Yes (JAEPA and CPTPP)	3,512	198,275
Korea	Yes (KAFTA)	Yes (KAFTA)	2,543	76,148
New Zealand	Yes (AANZFTA)	Yes (AANZCERTA and AANZFTA)	18,774	1,972,321
Brunei	Yes (AANZFTA)	Yes (CPTPP, but for declaration by importer implemented no later than 5 years after EIF)	261	10,550
Cambodia	Yes (AANZFTA)	N/A	240	2,588
Indonesia	Yes (IA-CEPA and AANZFTA)	Yes (IA-CEPA, for an exporter registered or certified by the exporting Party)	2,550	82,585
Lao	Yes (AANZFTA)	N/A	306	5,129
Malaysia	Yes (MAFTA and AANZFTA)	Yes (MAFTA, Australian exports to Malaysia only, CPTPP, but for declaration by importer implemented no later than 5 years after EIF)	3,880	80,743
Myanmar	Yes (AANZFTA)	N/A	249	2,924
The Philippines	Yes (AANZFTA)	N/A	1,868	32,048
Singapore	Yes (SAFTA and AANZFTA)	Yes (SAFTA and CPTPP)	6,450	263,674
Thailand	Yes (TAFTA and AANZFTA)	N/A	2,974	60,174
Vietnam	Yes (CPTPP and AANZFTA)	Yes (CPTPP, declarations by importer, exporter, producer implemented no later than 5 years after EIF)	2,128	32,221

There would not be any benefits for Australia in not being a part of RCEP. Due to tariff elimination under Australia´s existing FTAs, RCEP will not alter the proportion of domestic markets in Australia that are ‘trade exposed’. Not joining RCEP would therefore not result in additional protection for any inefficient Australian businesses. Furthermore, as RCEP would not create additional, or substantively modify, existing obligations that affect businesses, there would be no benefits for Australian firms if Australia decided not to join RCEP.

Option 2: RCEP negotiations conclude successfully with Australian participation

RCEP has the potential to deliver significant opportunities for Australia. The 15 participating countries (the ten ASEAN member states as well as Australia, China, Japan, Korea and New Zealand) make up 29 per cent of world GDP and 30 per cent of the world´s population. The other 14 RCEP countries include nine of Australia´s top 15 trading partners and account for 58 per cent of Australia’s total two-way trade, and 66 per cent of our exports.

As these economies seek to recover from COVID-19, we want to ensure that opportunities for our investors and demand for our exports will rise, helping to create Australian jobs in the wake of the COVID-19. RCEP will help stimulate growth and investment across our region, providing increased opportunities for Australian business.

In its research report on Bilateral and Regional Trade Agreements, the Productivity Commission[1] found that a regional trade agreement could be used to further regional integration (as inferred by changes in trade flows). The empirical evidence suggested that larger regional and non-preferential agreements have had a greater trade creating impact (both for members and non-members) versus bilateral FTAs, and thus have a greater potential to contribute to broader regional integration.

A modern, region-wide FTA will enhance our 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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), further strengthening Australia's trade relationship with ASEAN at a crucial point in 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. 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.

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, and provide an additional avenue through which exporters can access those markets in which we already enjoy high quality FTA commitments, including Japan, New Zealand, Republic of Korea and Singapore.

RCEP is an important step towards the Government's commitment that around 90 per cent of trade will be covered by FTAs by 2022.

RCEP will support regional economic integration

RCEP will play an important role in delivering against the Foreign Policy White Paper objective of contributing to a stable and prosperous Indo-Pacific. Australia has a strategic interest in being part of a regional FTA that is centred on ASEAN and includes China, Japan, Korea and New Zealand.

Through our membership of RCEP, we will be better positioned to influence development of the economic architecture of the Indo-Pacific and reduce the risk of discriminatory trade blocs emerging that would potentially damage our economic and security interests. Once concluded, we would promote RCEP as the platform for dialogue and cooperation on trade and investment between ASEAN and key regional partners. This would enhance our capacity to influence the direction ASEAN takes in developing future rules.

RCEP will complement the CPTPP in shaping the economic architecture in our region. CPTPP is more likely to promote economic integration among its parties, because it provides for greater market opening and more trade and investment facilitating rules. However, CPTPP is less likely to attract the membership of major ASEANs and China. This leaves RCEP as the only vehicle for Australia to secure a regional trade agreement which includes all of ASEAN and China. At the same time, RCEP will bind those economies into rules that go well beyond the current benchmark that applies to them – WTO rules that were largely negotiated last century.

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[1] Productivity Commission 2010, Bilateral and Regional Trade Agreements, Research Report, Canberra.

Trade Impact Assessment

The primary purpose of RCEP is to reduce border — and behind-the-border — barriers to trade between Australia and its regional trading partners. The following section outlines RCEP's key economic outcomes.

Goods

Effect of rules

The regional nature of RCEP will significantly reduce the burden of complying with FTA rules of origin. Australian businesses trading with multiple RCEP countries will only need to comply with one set of rules and origin documentation.

Previously, this was only available for trade within the ASEAN-Australia-New Zealand Free Trade Area. A common set of rules of origin will also support regional value chains, facilitating inputs from the most efficient and cost-effective regional source, without losing access to preferential tariff treatment. Movement of goods through ASEAN to North Asia (and vice versa to Australia) will be easier, as will using regional distribution hubs, because it will be within the RCEP region and so subject to less restrictive consignment rules.

Effect on the import of goods

Given the relative quality of Australia's existing FTAs with RCEP parties, including the CPTPP, we do not expect RCEP goods market access commitments to provide additional goods market access to ASEAN, China, New Zealand, Japan or Korea. Under our existing FTAs, Australia will already have eliminated tariffs on imports from all RCEP parties by 1 April 2021.

Accordingly, RCEP will not alter the proportion of domestic markets in Australia that are 'trade exposed'. We expect a similar effect on Australia as on the United States following entry into force of the Korea – U.S. Free Trade Agreement (KORUS). Russ and Swenson's analysis[2] of product-level trade found that KORUS did not expand the overall U.S. trade deficit but instead diverted U.S. import demand away from other trading partners (primarily China and Mexico).

Effect on the export of goods

Given the relative quality of Australia's existing FTAs with RCEP parties, including the CPTPP, we do not expect RCEP goods market access commitments to provide Australia with additional market access with our current FTA partners.

The Philippines will progressively remove tariffs on some industrials products not covered by AANZFTA, covering almost AUD 20 million in Australian exports.

Services

Effect of rules

RCEP will not create additional, or substantively modify, existing obligations for businesses, community organisations or individuals that relate to the import or export of services. RCEP will instead impose obligations on the Australian Government (and the governments of the other RCEP participating countries), including to 'lock-in' and not adversely modify existing regulation in particular services sectors.

[2] Russ and Swenson, Trade Diversion and Trade Deficits: The case of the Korea-U.S. Free Trade Agreement, NBER Working Paper No. 25613, February 2019

RCEP will establish key disciplines on governments relating to the supply of services between the 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 – MFN). RCEP will also include specific rules on financial services, including banking and insurance, as well as telecommunications and professional services.

Professional services

RCEP will facilitate cooperation between parties on professional services, a special subset of services usually regulated by professional bodies. It provides a framework for professional bodies to expand their links with RCEP counterparts, encouraging dialogue on recognition of qualifications, licenses 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. This will be the first ever professional services annex entered into by almost 50 per cent of RCEP parties (China, Thailand, the Philippines, Cambodia, Lao PDR and Myanmar).

Effect on the import of services

Australia will make high-quality, negative list services commitments in RCEP which exceed the commitments we made in AANZFTA but is broadly consistent with Australia's commitments in other bilateral FTAs. Our RCEP state and territory market access commitments are listed in a separate Appendix to our central (Commonwealth-level) commitments. These are largely equivalent to the best we have offered in our other FTAs, including CPTPP, although there are additional sectoral commitments which have been agreed to by state and territory governments. For financial services, Australia has reserved the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's Revised Services Offer of 31 May 2005 in the WTO Doha Development Agenda negotiations.

Effect on the export of services

The other countries' current RCEP services market access commitments represent improvements in sectors of commercial interest to Australian business over existing commitments provided by non-CPTPP ASEANs and China.

Cambodia is making new commitments (AANZFTA-plus) in research and development services on agricultural sciences and economics.

China is making new commitments (ChAFTA-plus) in several business services subsectors including: professional services (architectural, engineering, integrated engineering and urban planning services); placement and supply of personnel; specialty design; advertising services; as well as educational services (for non-academic training), health services (for the aged) and transport services (maritime, auxiliary, and road transport). China's commitments also reflect recent unilateral liberalisation in financial services (insurance, banking and securities) which is ChAFTA-plus. China is also making ratchet and/or MFN commitments, not made in ChAFTA, on sectors of commercial interest to Australia such as legal services, management consulting services, and construction services. These commitments will capture any future liberalisation in these sectors.

Indonesia is making new commitments (AANZFTA and IA-CEPA-plus) in several sub-sectors including acupuncture, veterinary services, maintenance and repair, telephone answering services; telecommunication services; as well as higher foreign equity caps for specialist nursing, and management consulting services. Indonesia is also making new ratchet commitments in construction and related engineering services. It is also making improvements over GATS, AANZFTA and IA-CEPA on services supplied by a natural person, including on some computer and related services (maintenance of office equipment including computers).

Korea is making a significant additional commitment (KAFTA-plus) on residency requirements for legal services relating to international arbitration.

Laos is making new commitments (AANZFTA-plus) in several business sectors, including: professional services (legal, accounting, auditing and bookkeeping, taxation, architectural services, engineering, urban planning and landscape architecture and management consulting); research and development services; rental/leasing services; other business services (including advertising, market research, services incidental to mining, scientific and technical consulting, maintenance and repair of equipment; and specialty design services). Laos is also making commitments on communications services (courier and telecommunications); distributions services (including wholesale trade, retailing and franchising services); educational services (higher, adult and other education services); health services (private hospitals); and transport services (including maritime, internal waterways, air, rail and road transport).

Malaysia is making a significant new commitment in legal services – both for foreign law firms and lawyers practicing in Malaysia and on a 'fly in, fly out' basis. It is also making new commitments (AANZFTA and MAFTA-plus) in several services sectors, including: veterinary services; rental/leasing services on goods transport; and other business services (including executive search, and project management services other than for construction). Malaysia is also making new commitments in communication services (courier and telecommunications); construction and related engineering services; distribution services (substantially liberalising wholesale trade); environmental services (refuse disposal); tourism services (tourist guide services); recreational cultural and sporting services (substantially liberalising news agency services; libraries and other cultural services); and transport services (maintenance and repair of vessels).

Myanmar is making new commitments (AANZFTA-plus) in several business sectors, including: professional services (architecture, engineering, integrated engineering, urban planning and landscape architecture, medical and dental, veterinary, para-medical and management consulting); research and development services; rental/leasing services; and other business services (services incidental to mining, photographic services and packaging services). Myanmar is also making commitments in communication services (including courier and telecommunications); educational services (primary, secondary, higher, adult and other); environmental services (including sewage, refuse, sanitation and environmental consultancy); financial services (insurance and banking); health services (private hospital, ambulance, laboratory, residential healthcare and early childhood care); tourism services (hotels and restaurants); and transport services (including maritime and air transport).

The Philippines is making new commitments (AANZFTA-plus) in several business sectors, including: professionals services (accounting services, bookkeeping services, architecture, veterinary medicine, integrated engineering on sanitary work, medical and dental services, forestry and optometry); computer and related services; research and development services; real estate services; other business services (including advertising, translation, market research and management consulting). The Philippines is also making new commitments in education services (adult education); environmental services (refuse disposal); insurance and banking services (in the form of increased foreign equity caps); health services (on ambulance services) and transport services (baggage handling and shipbuilding).

Thailand is making new commitments (AANZFTA and TAFTA-plus) in several business, sectors including: professional services (legal advisory, taxation, integrated engineering, urban planning, veterinary, nursing, meteorological, accounting and industrial design); computer and related services; research and development services; real estate services; rental/leasing services; other business services (advertising; management consulting; technical testing and analysis services; project management; translation and scientific consulting). Thailand is also making new commitments in telecommunications; audiovisual services; construction and related engineering (across several subsectors); distribution services (including wholesale trade, retailing and franchising services); education (general, higher secondary, post-secondary technical and vocational, and other higher education); banking services (in the form of increased foreign equity caps); health services (on hospital, residential health services, day-care services and diagnostic imaging); tourism services; recreational, cultural and sporting services; and transport services (including maritime, rail and road transport).

Investment

Effect of rules

As with services, RCEP will create obligations for the Australian Government (and the governments of the other RCEP participating countries), including to 'lock-in' and not adversely modify existing regulation in relation to investment, subject to reservations for sensitive sectors and policy priorities.

RCEP contains investment protections including: the obligation to treat local investors and RCEP party investors equally; the obligation to treat RCEP party investors no less favourably than investors from non-parties; the obligation not to impose certain performance requirements, including technology transfer, on investors from RCEP parties; and obligations relating to nationality requirements for senior managers and boards of directors. The Chapter also contains protections including: a requirement to accord investors of another party a minimum standard of treatment; an obligation not to expropriate investments except in accordance with the Chapter; and an obligation to allow investors to make transfers relating to their investments, such as payments out of the territory of a party.

RCEP will not include an investor-state dispute settlement mechanism, but parties have agreed to a work plan to discuss inclusion of such a mechanism (subject to consensus) to be completed within five years of EIF.

Recourse by Australia and other Parties to the dispute settlement mechanism on decisions about whether to admit investment will be limited by the replication and extension by other Parties of a carve out we required to cover the Foreign Investment Framework, including its decisions on admission and the imposition or enforcement of conditions.

Effect on investment inflows

Australia's investment commitments in RCEP reflects our open market and desire to attract higher levels of foreign investment in Australia. It is comparable with Australia's commitments in our bilateral North Asia FTAs – although we have not offered comparable preferential Foreign Investment Review Board (FIRB) screening thresholds – rather than the high water mark of the CPTPP. As AANZFTA does not currently provide for market access commitments with respect to investment, this will be the first time we are making market access commitments to the Philippines, Cambodia, Laos and Myanmar.

Effect on investment outflows

The other countries' current RCEP investments market access commitments represent improvements in sectors of commercial interest to Australian business over existing commitments provided by non-CPTPP ASEANs and China. RCEP will be the first time that Australia agrees certain core investment protections with China and some ASEAN members, which will provide greater protection for Australian investors. Given portfolio investment falls within the scope of the investment chapter, such benefits will extend to a range of Australian investors, including superannuation funds. RCEP will provide these protections in a balanced way, compared to earlier agreements, and without ISDS.

RCEP will be the first time that Australia receives 'negative list' investment commitments from China, the Philippines, Thailand and the least developed ASEAN member states, as well as Brunei and Malaysia if RCEP is ratified ahead of CPTPP. Commitments cover manufacturing, mining, forestry and agriculture, to varying degrees, as well as portfolio investment, also to varying degrees.

Importantly, market access will be covered by ratchet – locking in any autonomous improvement in access conditions after entry into force - except for the Philippines and Indonesia.

China's investment commitments in RCEP is its first negative list for investment in non-services sectors like manufacturing or mining; it has tabled negative list offers with the US and EU but those negotiations have not concluded. China is making commitments in RCEP that essentially mirror domestic reforms, removing restrictions on grains processing (soybean, rice, flour, corn and sugar), exploitation of gold, silver, platinum and lithium, and manufacture of rail transit equipment, among others.

Australia does not have market access commitments on investment from the Philippines in any other agreement (our existing FTA with ASEAN does not yet include reservation lists). The Philippines has significant constitutional restraints, which affect what it can offer in investment. With the exception of MFN, the Philippines' commitments are close to what it gave ASEAN in the ASEAN Comprehensive Investment Agreement. Manufacturing commitments are reasonable, and will be of some commercial value to Australia. Austal Philippines is already a major investor in the shipbuilding industry and Philippines' RCEP commitments will cover that sector. The Philippines consistently cited its Constitution as the reason it could not offer commitments on mining – where we have interests – but it did commit to bind some access on mineral processing.

Thailand's negative list investment commitments in RCEP will also be a first for Australia in a key outward investment destination for our businesses. Thailand has made some commitments in agriculture (cattle farming) and manufacturing (including food processing) which are commercially meaningful to Australia. Although Thailand's mining commitments are still very limited, it has now committed MFN on mining investment.

The Agreement will not deliver immediate or significant new access to markets where we already have higher ambition agreements (CPTPP, JAEPA, KAFTA, SAFTA). Brunei and Malaysia's negative list commitments in RCEP will be more important if Brunei or Malaysia do not ratify the CPTPP before RCEP enters into force.

Brunei is making committing to provide investors access to its manufacturing, agriculture and fisheries sectors.

Malaysia's commitments are below what it offered under the CPTPP, but has made reasonable commitments in mining, manufacturing, agriculture and forestry, while reserving space for various cross cutting policies, including for approvals and conditions by State governments.

Indonesia is making commitments that are at least IA-CEPA equivalent. Its commitments in RCEP will cover investments in Indonesia by BHP Billiton, Newcrest, Orica, Rio Tinto, Woodside and others. That said, existing rules requiring divestment of certain mining assets will continue to apply, as in IA-CEPA.

RCEP will be the first time Australia receives investment market access commitments from Laos, Cambodia and Myanmar. Australian investment into these countries is growing from a low base in the mining and manufacturing sectors. Given that they are among the fastest growing ASEAN economies, opportunities for investors will increase in all three. Allowing for their least-developed country status, these three countries have tabled reasonable offers in RCEP that will improve the transparency and predictability of regulation in mining and manufacturing, particularly in the case of Myanmar. Nevertheless, market access commitments from the least-developed countries are limited, particularly from Cambodia.

Movement of Natural Persons

Australia's movement of natural persons market access commitments are based on Australia's AANZFTA commitments, and makes commitments for intra-corporate transferees in the following two subcategories: senior managers (four years with possible extension) and specialists (two year stay with two year extension, subject to two years' prior employment), subject to sponsorship and only for occupations in the skilled occupations lists; contractual service suppliers (12 months, with possible extension) subject to sponsorship and only for occupations in the skilled occupations lists; Independent executives (i.e. individuals establishing branches or subsidiaries for internationally headquartered businesses) or investors, for stays of up to two years, only for occupations in the skilled occupations lists; Service sellers for stays of six months with the possibility of extension to one year; business visitors for stays of up to three months. The commitments provide for entry, stay and work rights for spouses of persons (including de facto and same sex partners) staying for 12 or more months.

Australia is not making commitments that provide for entry and stay for managers, installers or servicers, and is not making any new commitments on labour market testing exemptions for categories of temporary entry covered in our FTAs. Consistent with Australia's existing commitments in AANZFTA and GATS, Australia will waive labour market testing for intra-corporate transferees and independent executives. Australia's commitments do not waive labour market testing for contractual service suppliers.

Australia's MNP commitments are consistent with current policy settings and do not go beyond anything we have committed in AANZFTA. While this will further lock in current regulatory settings on temporary entry (that are already bound under existing FTAs, including AANZFTA), the risks in this approach are inherently low, as we do not anticipate a noticeable effect on labour market composition. While Australia commits to waive labour market testing consistent with AANZFTA, Australia still reserves the right to maintain a range of integrity measures, including skilled occupation lists which respond to labour market needs, Australian wage requirements, sponsorship requirements, and licensing and skills assessment processes.

Data on visa grants of the former 457, now Temporary Skills Shortage (TSS) visa, demonstrates that FTAs do not result in a spike in foreign workers. For example, between 2013 and 2018, the number of visas granted to FTA partner countries with MNP Commitments in force for all or part of this period (China, Chile, Japan, Korea and ASEAN member states) declined by 30 per cent, from 20,223 to 14,160. Similarly, it is not expected that RCEP will lead to an influx of workers from RCEP countries. Statistics show that RCEP countries already successfully make use of Australia's skilled migration system, comprising 46.8 per cent of visa holders as at 30 June 2019, with the total number having remained largely stable for the past six years[3].

Australian firms seek to facilitate movement of their staff in the region to support goods and services exports, and investment, while independent professionals seek to gain Asia literacy. MNP commitments of the 14 other RCEP countries provide important opportunities for suitably qualified Australians to work temporarily in other countries, and give Australian business people greater access and certainty.

Other key business enabling rules under RCEP

The rules agreed under RCEP will help facilitate digital trade through provisions to ensure domestic regulations on e-commerce are consistent with model international laws on electronic signatures, authentication and electronic contracts. RCEP also contains rules to ensure the free flow of data across borders and constrain governments from imposing data localisation requirements on businesses.

RCEP will affirm and build on the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) provisions on copyright, trademarks, plant breeders' rights, geographical indications and patents, including transparency and enforcement of IP rights, cooperation and genetic resources and traditional knowledge.

RCEP includes obligations on governments to maintain competition laws and regulations that proscribe anti-competitive activities and ensure independent enforcement of such activities. It also includes obligations 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 parties on consumer protection and on competition law enforcement.

[3] Sourced from Department of Home Affairs temporary resident skilled visa grant data available on https://data.gov.au/dataset/ds-dga-2515b21d-0dba-4810-afd4-ac8dd92e873e/details

Consultation

Stakeholder Engagement

DFAT has undertaken regular stakeholder engagement on RCEP since negotiations commenced in 2012. DFAT, in conjunction with other government agencies, has consulted widely with industry and other stakeholders in formulating our positions. In addition to a call for public submissions, negotiators regularly engage with representatives of the business sector, academia and civil society organisations to provide an opportunity to share their views and expectations of the RCEP negotiations. At each of the negotiating rounds Australia has hosted, we have held dedicated stakeholder consultation events in the margins of the meeting on the following dates:

- RCEP Melbourne – 30 June 2019
- RCEP Perth – 27 April 2017
- RCEP Brisbane – 24 September 2013

Australian stakeholders have also travelled to stakeholder events at negotiating rounds hosted in other RCEP parties to engage with negotiators.

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 the government's trade agenda.

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 they see in 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.

Particular interest has been shown in reducing barriers for agriculture, as well as enhancing opportunities for Australian service providers and investors in areas such as professional services, education, energy, tourism, health and transport. Many were especially keen that market access gains achieved under AANZFTA and our bilateral FTAs could be 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, have been consulted throughout the RCEP negotiations.

Civil society groups raised some targeted concerns in consultations and through public submissions, primarily on labour rights, environmental standards, investor-state dispute settlement, intellectual property and temporary entry. The confidential nature of negotiations did not permit a detailed discussion of the safeguards and carve-outs that will preserve the government's ability to regulate in sensitive sectors and provide public services.

A list of businesses and organisations that have been consulted on RCEP is set out below.

List of stakeholders consulted

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 (generics and specialty pharmaceutical company)

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
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

Public submissions are available at:

https://dfat.gov.au/trade/agreements/negotiations/rcep/submissions/Pages/rcep-submissions.aspx

Implementation

Negotiations

Australia will continue to progress the legal scrub of the RCEP text and finalise remaining bilateral market access negotiations on services and investment. It is not anticipated that resolution of these final issues will impact the overall RCEP package.

Implementation

In line with Australia's treaty-making processes, the text of RCEP will be tabled in Parliament. The Joint Standing Committee on Treaties (JSCOT) will then conduct an inquiry into the FTA and report back to the Parliament. Following consideration by the JSCOT, Parliament will consider any legislation or amendments to existing legislation that may be necessary to implement the Agreement prior to treaty action being taken.

Communications Plan

Engagement with stakeholders will continue after the conclusion of RCEP negotiations to raise awareness of the FTA and its provisions, and ensure that businesses and consumers are well placed to access the benefits of the Agreement. In particular, DFAT and Austrade will undertake proactive advocacy to lift awareness and uptake of RCEP by Australian business. Public communications will include the following:

DFAT's Regional Comprehensive Economic Partnership web pages

Following signature of the Agreement, DFAT will publish updated RCEP webpages offering a range of practical resources that will help Australian importers and exporters to take advantage of the Agreement, which will include:

- the full text of the RCEP agreement, plus side letters and tariff schedules;
- outcomes documents, background documents and chapter summaries that provide plain-English descriptions relating to elements of RCEP;
- a guide for businesses and individuals wanting to use the RCEP to export and import goods;
- information on for businesses and individuals about RCEP Certificates of Origin;
- a news section that provides updates developments relating to RCEP; and
- a document addressing exporter and importer frequently asked questions.

FTA Portal

DFAT will include RCEP on the FTA Portal upon entry into force of the Agreement. The FTA Portal is a user-friendly Australian Government website that provides easy access to information for exporters, importers, and other stakeholders seeking to access the benefits of Australia's free trade agreements. Users of the FTA Portal can, for instance, search for the goods they want to export or import using keywords, find reduced free trade agreement tariff rates, and learn about origin certification requirements associated with each FTA. The Portal also includes guidance on selling services to customers in FTA partner countries, travelling overseas to supply services, and establishing an overseas presence. Where more than one FTA is available to an exporter or importer, the FTA Portal helps identify which agreement offers greater benefits.

FTA Information seminars

Austrade and DFAT will continue to deliver FTA information seminars across Australia, including in regional centres. These seminars are opportunities for exporters, producers and interested members of the public to learn about Australia's FTAs, including RCEP, and how to use them.

Social media

DFAT's social media accounts (such as Twitter, Facebook and the DFAT blog) are platforms for promoting increased understanding and utilisation of the RCEP. Once the Agreement has entered into force, DFAT will use social media posts draw tariff outcomes and other benefits of RCEP to the attention of the wider public.

Regulatory Burden and Cost Offset estimate

Assessment

1. The entry into force of the Regional Comprehensive Economic Partnership (RCEP) may result in a modest increase in ongoing business compliance costs for Australian exporters to the 14 other RCEP participating countries (RPCs).
2. The increase arises from:
    a. The costs to businesses of familiarising themselves with and transitioning to RCEP; less
    b. Savings realised from some businesses that previously required third party issued certificates of origin (COOs) becoming RCEP Approved Exporters and being able to self-certify the origin of their goods for export.
3. There is a level of uncertainty regarding the number and composition of COOs issued in respect of Australian exports into RPCs. Accordingly, the estimates of the compliance costs under the status quo – as well as the likely incremental changes – are largely assumption driven and should be interpreted as such. However, based on the available data, it is possible to gain an appreciation of the order of magnitude of these changes.

Certificates of Origin

4. Industry groups such as the Australian Chamber of Commerce and Industry and the Australian Industry Group issue COOs under FTAs that require them and for some non-preferential trade.
5. Preferential certificates are generally issued for export of goods to countries with which Australia has an FTA that does not make provision for self-certification of the origin of goods.
6. Non-preferential certificates are generally issued to meet specific requirements such as letters of credit or, in the case of antidumping concerns, to confirm origin.

Self-declaration of Origin under RCEP

7. RCEP Rules of Origin (ROO) will create an alternative option for those exporters that currently require a COO. RCEP Approved Exporters will be able to make a self-declaration of origin, rather than use COOs for every consignment.
8. There will be a process for businesses to become accredited as an RCEP Approved Exporter, which is expected to involve a substantive compliance cost in the form of an application fee, and the cost of preparing and submitting an application.

Substantive Compliance Costs

9. Under RCEP, a COO is required for every consignment not eligible for self-certification. Where businesses require third-party certification from industry groups, the cost of each certificate varies from between $20-70 at an average of $33. The cost of a certificate depends on a range of factors, such as whether an applicant is a member of the issuing body and the level of complexity.
10. Depending on the arrangements Australia establishes for granting Approved Exporter status under the RCEP agreement, businesses that decide to become an RCEP Approved Exporter may incur an application fee estimated to range between $0-1000. Given the uncertainty, we will use the higher estimate of $1000. While this is technically a one-off cost in order to account for firms that change their products as well as new market entrants, accreditation may need to be renewed and we will instead argue that this one-off cost is incurred every three years rather than once in 10 years.

Administrative Costs

11. While new businesses may expend considerable time applying for certification for their initial consignment, as a matter of practice this information is re-submitted for subsequent certifications.
12. In addition, much of the information required would be collected for other purposes. Once the origin of the product has been determined, businesses only need to undertake this process again if their production process or the inputs/input prices change. This one-off administrative cost is likely to be moderate and take approximately four hours per business. As above, we argue that this cost is incurred every three years rather than once in 10 years. This estimate is based on two factors:
    a. Some businesses may already be exporting under existing FTAs with RPCs and will not require much additional information to make use of RCEP.
    b. For businesses that are new to exporting under an FTA, it may take longer to learn about how to make use of RCEP.
13. The ongoing administrative costs incurred by a business in preparing each subsequent COO are likely to be trivial and are excluded.
14. Businesses that decide to become an RCEP Approved Exporter will incur the administrative costs of an application. This process is still to be determined, but the estimated time range for this activity is one to eight hours per business. Given the uncertainty, we will use the higher estimate of eight hours. As above, we argue that this cost is incurred every three years rather than once in 10 years. This estimate is based on the process being new for business that already export under an FTA, as well as exporters who exported under General Agreement on Tariffs and Trade (GATT) tariffs.
15. The ongoing administrative costs incurred by a business in self-certifying each subsequent shipment are likely to be trivial and are excluded.

Incremental reduction in number of certificates under RCEP

16. It is assumed that self-certification under RCEP will see a reduction in the number of third-party issued preferential and non-preferential COOs in respect of Australian exports to RPCs. To the extent that this reduction occurs, those businesses will save the direct costs of certification by an industry body; offset by minor adjustment costs as a result of the additional work to understand and make use of this FTA.
17. To the extent COOs may still be required for businesses eligible to self-certify under RCEP, this would be based on a commercial decision rather than being a requirement of the RCEP agreement itself. For example, foreign banks may require COOs in order to provide letters of credit and businesses may assess for themselves that, in their particular circumstances, the benefits of obtaining a COO are outweighed by the costs (administrative or otherwise).
18. Because of the uncertainties noted above in relation to the precise details of RCEP Approved Exporter arrangements, costs and administrative overheads, we have conservatively estimated that only **5 per cent** of businesses that do not already have access to self-certification will take advantage of this under RCEP.

Effect of Other Free Trade Agreements on reduction of certificates under RCEP

19. By the time RCEP enters into force, Australian businesses will have been trading for some time under FTAs with all RPCs. The ASEAN-Australia-New Zealand Free Trade Area, for example, entered into force in January 2010 for Australia and most other signatories.

20. This familiarity is expected to significantly reduce average learning times for exporters to make use of RCEP.

21. For some exporters, there will also be a reduced need to deal with ROOs under multiple FTAs.

Estimate of Regulatory Burden and Costs Offsets

22. The number of exporters to RCEP countries in 2017-18 was **53,514** (representing 3,113,855 transactions annually). Of these, **13,416 exporters** (representing **397,338** transactions annually) do not benefit from self-certification arrangements that are currently in place or pending and must instead rely on COO under an existing plurilateral or bilateral FTA.

23. Of these **13,416** exporters, we can estimate that **5 per cent** would take advantage of the alternative approved exporter option outlined in paragraphs 7-8.

Under the status quo

24. We use an estimate of substantive compliance and administrative costs under the **status quo** as a reference point.

25. Given the average cost of a COO noted in paragraph 9, the **substantive compliance costs under pre-RCEP arrangements** can be estimated as **$33** for each of the **397,338** transactions per annum, **totalling a $13.11 million per annum**.

26. In addition, we can expect that most firms will bear **costs in maintaining and updating their paperwork associated with their COO**. This administrative cost can be estimated at 4 hours per entity for each of the 13,416 entities. While this may be considered a one-off cost in order to account for firms that change their products as well as new market entrants, we will argue that this cost is incurred every three years rather than once in 10 years. At a scaled up labour cost of **$68.79** per hour, this works out as **$1.23m per annum**.

27. **The cost of the status quo is therefore estimated at $14.3 million per annum**.

Under RCEP

28. **Administrative costs** under RCEP will arise due to firms accessing the FTA Portal **to determine the tariffs and quotas** for their HS code. We estimate that all **53,514** exporters to RCEP participating countries will do this once every three years, taking **0.1 hours** per business at a scaled up labour cost of **$68.79** per hour, resulting in costs of **$122,585 per annum**.

29. **Administrative costs** under RCEP may also arise where firms seek to **understand the new tariff differential requirement and ROO requirements**, so as to make an informed choice about whether to export under RCEP arrangements. We estimate that only exporters to countries with which we do not have self-certification arrangements currently in place would go down this pathway, totalling **13,416** exporters, at a more substantial cost of **1.9 hours** per business every three years at a scaled up labour cost of **$68.79** per hour, resulting in costs of **$583,910 per annum**.

30. As noted above, we estimate that **5 per cent** of these firms would take advantage of the RCEP Approved Exporter scheme, while **95 per cent** would continue to use COOs.

31. This means that **12,745** firms would apply for a COO for **377,471** transactions annually. Based on the same logic as paragraph 25, where we quantify substantive compliance cost, we estimate an impost of **$12.46m per annum**. Based on the same logic as paragraph 26 where we quantify administrative cost, we estimate an impost of **$1.17m per annum**.

32. The cost of the **95 per cent** of firms who continue to use COO is therefore **$13.62m per annum.**
33. The **5 per cent** of firms who take advantage of the RCEP approved exporter scheme represent **671** exporters.
34. These exporters will face **substantive compliance costs** as outlined in paragraph 10; a once-off cost of **$1000** that we estimate may be incurred once every three years, totalling **$223,376 per annum**.
35. These exporters will also face an **administrative cost** in putting together an application as well as maintaining and updating their paperwork **for their RCEP Approved Exporter status**. As outlined in paragraph 14, this may take **8 hours** per business on average every three years, at a wage rate of **$68.79**, totalling **$122,929 per annum**.
36. The cost to the **5 per cent** of firms that apply for RCEP Approved Exporter status and self-certify their shipments is therefore **$346,305 per annum**.
37. **Total post-RCEP costs are therefore estimated at $14.7 million per annum.**

Net effect

38. The **net effect of this regulatory change would be an increase of $0.4m per annum** (post RCEP costs of $14.7m less status quo costs of $14.3m) based on estimated costs across a **10 year** timeframe.
39. Given the assumptions, the estimate is likely to have a low reliability.
40. The greatest risk to the estimate is the estimate of administrative cost time taken, the uptake rates amongst exporters, and the cost structure for the RCEP Approved Exporter accreditation.

Regulatory Burden Estimate (RBE) table

Average Annual Compliance Costs (from business as usual)				
Costs ($m)	**Business**	**Community Organisations**	**Individuals**	**Total Cost**
Total by Sector	+0.40m	N/A	N/A	+0.40m

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