



Regional Comprehensive Economic Partnership Agreement

Submission to the Joint Standing Committee on Treaties
April 27, 2021

Introduction

We welcome the opportunity to make a submission to the inquiry into the Regional Comprehensive Economic Partnership (RCEP) Agreement. The Australian Chamber of Commerce and Industry (henceforth referred to as the Australian Chamber) is a champion of free trade and investment and recognises the importance of getting more Australian businesses internationally engaged. We support the Government's efforts to assist the development of Australian international trade by securing improvements through the multiple fora of unilateral reform, regional and bilateral trade, investment treaties and multilateral agreements.

This inquiry focusses on supporting Australia's trade by examining the RCEP agreement. The agreement was signed on 15 November 2020 and has already been ratified by China and Thailand. RCEP is Australia's most important regional trade agreement, which unlike our previous regional agreement (Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)) enables exporters to use the traditional Certificate of Origin system or take the riskier self-declaration approach. Provided precedent agreements are removed, RCEP addresses the 'noodle bowl' issue of Australia's trade agreements whilst maintaining coverage of key markets and supply chains. Though RCEP has the capability to deliver these benefits, the Australian Chamber recommend an independent economic analysis of the RCEP agreement and its impact on Australia's trade activities.

The Role of RCEP in Australia's Trade Agreements

RCEP is the world's largest trade agreement and is arguably of greater significance than the CPTPP to a range of countries party to both agreements.¹ Almost a third of the world's population and 30% of global GDP is covered by the agreement, not to mention it is the only agreement which brings together China, Japan and South Korea. With all our major markets and supply chains included in one regional trade agreement, RCEP is positioned to be significant for Australia as well as the Asia-Pacific region. While RCEP does not provide new market access for Australian exporters, it is poised to redirect trade and economic ties away from global linkages and toward regionally focused relationships in Asia-Pacific. Australia's relationship with the Asia-Pacific is also positioned to benefit with RCEP believed to be an important modern regional trade instrument to boost Australia's trade in services and balance of

¹ The Peterson Institute for International Economics (PIIE) argue RCEP will be of greater significance than the CPTPP with or without India, however India is estimated to have an income increase of \$60 billion annually by joining the agreement compared with -\$6 billion if it doesn't. <https://www.piie.com/system/files/documents/wp20-9.pdf>

trade in copyright returns. In the context of the COVID pandemic, growth in cross border digital services in Asia is leading the world and we are well placed to take advantage of that trend. RCEP is therefore an important vehicle to underpin our activities in the region, improve our position for trade in services and copyright, and provide the ability to address any barriers to entry or market access failures in the participating economies. With reorientation to the Asia-Pacific and sector benefits like those to the copyright industry, RCEP is estimated to increase global income by US\$209 billion globally by 2030 compared to CPTPP estimates of US \$121 billion.²

While the Australian Chamber acknowledges the benefits that can flow from bilateral and regional trade agreements to certain sectors, we regularly point out the build-up of 'red tape' resulting from the compounding development of bilateral and regional preferential trade agreements and their compliance regimes. As the number of Preferential Trade Agreements (PTAs) available to Australian exporters grows, so does the confusion and inconsistency within the overlapping agreements. The 'noodle bowl' continues to grow, and this can be seen as a significant barrier to trade for Australian SMEs. While there are benefits to having both bilateral and multilateral PTAs in place, ensuring that there is a consistent approach across all agreements is important. The Australian Chamber has previously expressed concerns about the lack of harmonisation of the disparate agreements;³ however, as the noodle bowl deepens, so too does the complexity of harmonisation.

Now is the time to review and reconsider the value of the superseded bilateral agreements. The Government can significantly reduce the 'noodle bowl' issues by commencing a programme of withdrawal from historic bilateral trade agreements that have been superseded by newer regional agreements. The Government has already begun this task in terms of investment treaties, and we encourage an extension of these efforts to trade agreements.⁴ It will benefit Australian exporters and our wider economy by providing clearer rules for trade, reducing costs in our economy and removing or reducing red tape.

Recommendation: The Australian Government should reduce regulatory barriers to trade and review the value of maintaining bilateral preferential trade agreements where the same nations are party to wider regional agreements.

Proof of Origin for Compliance Protection

For centuries, states and nations have required the identification of the origin of goods to apply border controls and generate revenue through taxation of goods moving across borders. It has also allowed a mechanism for the application of differential and preferential treatment of goods from allies and trade and investment partners. Certificates of Origin are important international trade documents that provide this identification of the origin of goods. In modern trade however, the function of the certificate goes beyond just identifying origin and provides importing customs with a government-backed exporter statement for a range of determinations when the goods cross the border into the importing party. Determinations can include the implementation of anti-dumping procedures, tariff concessions, trade finance outcomes and assessing the value of the goods.

Certificates of Origin represent a verified traceable set of data, which is scrutinised by the exporting government before being provided to the officials of the importing government. The ability of the exporting government to check, verify and adjudicate claims by its exporters on behalf of importing customs is the trade facilitating aspect of the system, now in use for several centuries, made possible

² https://www.oecd-ilibrary.org/development/economic-outlook-for-southeast-asia-china-and-india-2021_7b62bdcb-en

³ The Australian Chamber Submission to Joint Select Committee on Trade and Investment Growth 'Inquiry into the Business Experience in Utilising Australia's Free Trade Agreements', p 8.

⁴ See previous submission by the Australian Chamber, 'JSCOT inquiry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11)', submitted 08 March 2018

only on the basis of the exporting government's personality under international law. For many years, governments around the world have outsourced this task to appropriate "competent authorities" - usually, but not exclusively, national chambers of commerce (the International Chamber of Commerce (ICC) network, which brings together national chambers of commerce, is the largest network of business representative organisations across the globe. The Australian Chamber, Australia's national chamber of commerce, represents the ICC in Australia). In Australia, as a signatory to the *1923 Geneva Convention Relating to the Simplification of Customs Formalities*, the Australian Government's authority to scrutinise exporter's claims and issue Certificates of Origin has been delegated to the Australian Chamber of Commerce and Industry and several other industry groups. These groups are in turn required to maintain accreditation currency scrutinised by the Joint Accreditation System for Australia and New Zealand.

The Australian Government has also mandated the use of ISO 17020:2012 standards in relation to issuance of Certificates of Origin. This is an extremely costly but worthwhile standard of documentary issuance, which is mandatorily audited by the Joint Accreditation System of Australia and New Zealand. This accreditation provides the necessary confidence in the third-party issuing system so that parties to agreements with Australia can accept the certification process related to conferring concessions under Preferential Trade Agreements. Both the Australian Chamber and other authorised bodies have maintained this standard and continue to meet the audits, and as a result Australia has a world-class system of issuance of these trade documents. We also note that the Australian Wine and Brandy Corporation also has some limited issuance rights but is not covered under this scheme.

The Australian Chamber and its member chambers of commerce provide frequent support to Australian exporters and the corresponding importers that are being investigated by foreign government authorities about their claims of satisfying the preference conferring criteria under the terms of Australian trade agreements. With customs investigation for allegations of false claims potentially costing importers millions of dollars, the stakes are high.⁵ The globally established Certificate of Origin system is an accepted and trusted system that reduces costs to exporters as well as providing them with legal defences when things go wrong.

The system of allowing companies to self-declare their preferential claim exposes importers and exporters to risk and undermines international systems of trade. It is however, negotiated in the RCEP agreement as an option alongside Certificates of Origin. Self-declared origin is increasingly seen in trade agreements globally, however it is of greatest risk when not accompanied by the Certificate of Origin option. While perceived to be convenient in the short-term, self-declarations lack standardisation, compliance and support should the claim be questioned. Even without the requirement for a certificate, many overseas importers do insist on them when dealing with Australian exporters.⁶ The United States for example don't require them for Australian goods to clear customs however standardised certificates can be requested and obtained from authorised bodies in Australia and are accepted by US Customs.⁷

In many economies the granting of preference comes at an economic cost and so customs administrations are charged with seeking to disallow the claims for preference. Exporters self-declaring their claims for tariff concessions have no legal standing in foreign countries, unless they have the backing of the government. Certificates of Origin, however, are already a document backed by the exporter's own government, and so do not suffer the same risk. Exporters also suffer reputational risk as local product claims on packaging may potentially be supplied from noncomplying sources. Importers face similar risks domestically if they rely on a non-accredited declaration from an

⁵ For example, the case of *Toyo Inks (see U.S., ex rel. Dickson v. Toyo Ink Manufacturing Co., 09-cv-00438, U.S. District Court, Western District of North Carolina (Charlotte))* which in 2012 agreed to a \$45 million settlement over allegations of submitting false claims to the U.S. government to avoid import duties.

⁶ <https://www.austrade.gov.au/contact/faqs/what-is-a-certificate-of-origin>

⁷ <https://www.trade.gov/PTA-certificates-origin>

international supplier. It is the importer who is the first line of inquiry if a claim for preference is questioned, but the exporter is also likely to be drawn in.

We have examples of companies incurring significant costs under the Australia-US Free Trade Agreement (AUSFTA) relating to their declared claim for preference. They were able to finally satisfy the inquiry by providing a Certificate of Origin as a government-backed claim. Most recently, we have been made aware of an Australian exporter being investigated by Mexican Customs for self-declarations over a 12-month period. We do experience perfectly valid claims for preference on Certificates of Origin by Australian exporters being rejected by foreign customs, but there is an inbuilt support mechanism through the Certificate of Origin system. These exporters are assisted by the issuing bodies and by the Australian Department of Foreign Affairs and Trade, who by virtue of the record of Certification can make representations to foreign customs regarding the export. Self-declaration, however, has no such record of Certification. While RCEP does allow exporters to absorb this risk and self-declare their preferential claim, it also gives exporters the opportunity to de-risk with a Government-authorized Certificate of Origin.

Recommendation: The Australian Government should retain the Certificate of Origin system for future trade agreement negotiations to ensure exporters are insured by a globally standardised system. Government is encouraged to provide exporters with the option to take on more risk through self-declaration whilst ensuring there is a Government-supported system for those seeking to mitigate risk.

Need for Objective, Independent Economic Analysis of Trade Agreements

Australia's trade with the world is not always impacted by the presence or absence of trade agreements. In fact, trade agreements can foster trade diversion as well as trade creation. It is therefore important to understand the various components of trade and what drive them. With the global proliferation of trade agreements in recent decades, the need to truly understand trade and the impact of these agreements is increasingly urgent. Economic analysis of Australia's bilateral and regional trade agreements is needed to assess the impact of these agreements – good or bad, and the consequence of this impact on various components, stakeholders and economies. This analysis however, must be independent. A customs official will be concerned with the impact of an agreement on tariff revenue, and a consumer will look at the import cost of goods, meanwhile researchers and policy makers are likely to analyse impacts to trade volume. With viewpoints on the impact of a trade agreement often anchored to the analyst's background, it is imperative this economic analysis be conducted by an independent and impartial party.⁸

The rationale for trade agreements is to generate net economic benefits and an increase in aggregate trade flows between countries, however the *Bilateral and Regional Trade Agreements* report by the Productivity Commission in 2010 identified that Australia could expect approximately a 0.5% increase in GDP from unilateral actions without pursuing trade agreements.⁹ Objective economic analysis, independent of the negotiating parties, would provide confidence to both the Parliament and the public that agreements in place and being pursued benefit the Australian economy.

The Australian Chamber is a staunch advocate for free trade and open markets, and a strong supporter of the efforts of successive Coalition and Labor governments to liberalise trade and investment and open our economy. We have consistently raised concerns about aspects of Australia's treaty making

⁸ Asia Development Bank assert it is not only the bias of the analyst that is likely to alter the perceived benefit of trade agreements, but also the model used to conduct an FTA impact assessment. ADB therefore provide a range of methodologies for economic analyses of free trade agreements. https://aric.adb.org/pdf/FTA_Impact_Assessment.pdf

⁹ <https://www.pc.gov.au/inquiries/completed/trade-agreements/report>

processes and have monitored the response of Government to recommendations from recent treaty inquiries. Business continues to encourage Government to provide greater access at an earlier stage to the negotiating process, to help Australia's negotiating teams secure agreements that will optimise the benefit to Australian businesses and, through them, all Australians. We need to better understand what the costs are to the Australian economy from the maintenance of trade barriers when negotiating bilateral and regional trade agreements.

Recommendation: The Government should pursue an independent economic assessment of our existing and proposed trade agreements to ensure they are delivering (or likely to deliver) economic benefits to Australia. Government is encouraged to provide greater access at an earlier stage to the negotiating process, to help Australia's negotiating teams secure agreements that will optimise the benefit to Australians and Australian businesses.

Summary

Australia has been in pursuit of trade agreements since 1983. In the last decade 10 agreements have entered into force to bring our total to 15, with another 7 under negotiation. Ratification of the world's largest trade agreement will bring the tally of Australia's active agreements to 16. While some may view this as an indication of Australia's extensive global trade, those exporters actually engaging in trade see extensive barriers. RCEP has the capability to facilitate the removal of these barriers by addressing the 'noodle bowl' issue of our overlapping agreements – but only if we use it as an opportunity to remove precedent bilateral agreements. RCEP covers our major markets and supply chains, but with the volatility of supply chains highlighted by the recent pandemic, the Australian Chamber is calling for an independent economic analysis of RCEP and our existing trade agreements to determine the impact of these agreements on trade as well as our economy. The Regional Comprehensive Economic Partnership agreement will provide many opportunities and benefits to Australia if we use it the right way. We look forward to working with the Government on ratifying the agreement and welcoming its use by Australian exporters and importers.

About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad. The Australian Chamber represents hundreds and thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people. The Australian Chamber membership list can be viewed at www.australianchamber.com.au/membership/current-members/

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