Signing of the Regional Comprehensive Economic Partnership Agreement by 15 Asia-Pacific Countries

Introduction

On 15 November 2020, the ten member states of the Association of Southeast Asian Nations ("**ASEAN**") – Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, the Philippines, Thailand, and Vietnam – in conjunction with Australia, China, Japan, South Korea, and New Zealand, signed the world's largest free trade agreement ("**FTA**") to date, known as the Regional Comprehensive Economic Partnership ("**RCEP**") Agreement. A summary of the RCEP Agreement may be found on the ASEAN website here.

Representing the culmination of eight years of negotiations, the RCEP builds on existing bilateral FTAs among the 15 RCEP Participating Countries ("**RPCs**"). Together, the RPCs account for about 30% of global gross domestic product ("**GDP**") and close to a third of the world's population. It signals the RPCs' strong commitment to maintaining open and connected supply chains; broadens individual RPCs' economic linkages and connectivity with the region; and gives them preferential access to the region's growing markets.

We provide an overview of the features of the RCEP below, which improves on the existing ASEAN Plus One agreement in four key areas:

1. comprehensive trade facilitation measures;
2. improved market access for Trade in Services;
3. enhanced investment rules and disciplines; and
4. expanded scope and commitments.

Comprehensive Trade Facilitation Measures

1. *Simplified customs procedures and enhanced trade facilitation provisions:* expeditious clearance of goods, including the release of express consignments and perishable goods within six hours of arrival. This is a particularly welcome development as the speed will mean an increase in consumable goods being exported and imported regionally, potentially opening up new markets in the food, agriculture and medical fields.

2. *Trade in goods*: tariff elimination of at least 92% of goods traded amongst RPCs within 20 years of coming into effect. This leads to cost-savings for businesses and generally bodes well for end consumers. Businesses may also be encouraged to source for products amongst RPCs and not

just locally. On the other hand, there is a concern that this may cause the market to be flooded with cheaper imports, one of the key reasons India withdrew from the RCEP.

3. *Streamlining of rules of origin*: giving businesses greater flexibility to tap on preferential market access benefits, as well as regional cumulation provisions which will allow businesses to include the use of raw materials and parts sourced from any of the RPCs as originating content, making it easier for businesses to meet the required rules of origin for their exports, and thus benefit from preferential treatment. This is a key advantage given the enlarged geography over which trade takes place under the RCEP.

   The RCEP also introduces declarations of origin by approved exporters and, eventually, for declarations of origin by any exporter or producer to be an alternative to the certificate of origin as proof of origin of a product. Whilst this may streamline the process within RPCs, it remains to be seen whether non-RPCs might accept such products if these products were to be exported applying these rules, especially to European and Scandinavian countries where product origin and environmental sustainability goals have become not just a key consideration for trade but a preference amongst discerning consumers in those markets.

4. *Stronger provisions to address non-tariff measures ("**NTMs**")*: includes establishing a platform for RPCs to conduct technical consultations and entering into stronger binding commitments to improve transparency on import regulations. This initiative is long overdue, and in fact has been discussed at different levels, yet with only slow developments given that on the ground the RPCs are all at different stages of readiness. Nevertheless, it is an important development, and confidence remains that NTMs will be fully removed across all RPCs in good time.

Enhanced Commitments for Trade in Services

The Trade in Services Chapter indicates the RPCs' commitment to remove restrictive and discriminatory measures that affect Trade in Services. The RCEP includes rules on market access, national treatment, most-favoured-nation treatment, and local presence. RPCs have further listed out their limitations to specific commitments in a 'negative-list' which seeks to provide greater certainty for service suppliers of other RPCs to navigate the legal framework and to understand the existing measures and regulations of each RPC.

Specifically, on market access, foreign shareholding limits will be increased for at least 65% of services sectors, including Professional Services, Telecommunications, Financial Services, Computer and Related Services, and Distribution and Logistics Services. More sectors may be added in future. In some RPCs, restrictions on foreign equity are implemented through guidelines or ministerial orders which do not require Parliamentary or legislative change. The relaxation of these limits could therefore occur faster than the other measures proposed under the RCEP. Businesses with existing presence in RPCs may therefore wish to consider restructuring their shareholdings in anticipation of these changes.

The markets of all RPCs will be fully open to foreign service suppliers unless exceptions have been made. Similar to the commitment to address NTMs, it may be practically difficult for foreign service suppliers to take full advantage of this liberalisation even if work permits or the conditions attached to work permits are removed. The RPCs are comprised of a diverse and significant number of cultures and languages, spanning over 2 billion people. And while opportunities may abound, understanding and catering to the specific needs of the locals in each RPC would perhaps be one of the challenges businesses must first overcome. Finding the right local partners and advisers should greatly facilitate this process.

Enhanced Investment Rules and Disciplines

RPCs have committed to a prohibition of performance requirements on investors as conditions for entering, expanding, or operating in RPCs. This is aimed at improving transparency and providing investors with guarantees against performance requirements throughout the lifecycle of their investment. The RCEP also introduces a built-in work programme on investor-state dispute settlement provisions.

Expanded scope and commitments

1. *Electronic commerce:* enhancement of online consumer protection and personal information protection, allowing for paperless trading and electronic signatures, and commitments to cross border data flows. Whilst e-commerce is becoming more and more ubiquitous, there remain other legal and regulatory considerations arising from local cyber security laws, as well as data privacy and digital tax. Businesses should therefore be mindful of these nuances when entering a new RPC market.

2. *Intellectual property ("**IP**"):* raising standards of IP protection and enforcement, and acceding to IP treaties that will enable companies to file a single patent or trade mark application for multiple countries, rather than individual applications for each country. This is in line with the Madrid Protocol that many RPCs have already signed up to.

3. *Competition:* committing to maintaining competition law regimes based on international best practices and agreed principles, including cross-border enforcement cooperation. However, despite the broad principles enshrined in the RCEP Agreement, businesses must continue to be alive to local regulations, particularly where changes are implemented in light of the ongoing COVID-19 pandemic.

4. *Government procurement:* committing to publishing laws, regulations, and procedures, and may include where tender opportunities for government procurement are published, allowing for greater transparency. Each RPC will endeavour to publish such information in English. It goes without saying that this is an agreement that is crucial given that the RPCs range from common law to civil law countries and have multiple languages.

5. *Temporary Movement of Natural Persons*: committing to establishing rules for RPCs granting temporary entry and temporary stay, expeditious application processing and reasonable fees for the movement of natural persons comprising of business visitors, intra-corporate transferees and other categories of persons.

6. *Small and Medium Enterprises ("**SMEs**"):* committing to providing a platform and framework with a focus on providing clear information that will be useful for SMEs to understand how they can benefit from the RCEP Agreement. The RCEP will also promote cooperation and growth of SMEs by, among others, improving access to information, encouraging the use of electronic commerce, and facilitating partnerships across businesses.

Concluding Remarks

The RCEP provides major benefits for businesses in the region in helping to attract investors, transforming regional markets into an "integrated market", and enabling exports to the rest of the world to become much more competitive. Key sectors expected to benefit range from Thailand's construction sector, to Singapore and Malaysia's processed food industries, to Laos' manufacturing sector, as well as many more.

While the signing of the RCEP Agreement represents a significant milestone in the improvement of free and open trade and investment in the region, it will only come into force once it has been ratified by six ASEAN RPCs and three non-ASEAN RPCs. In a joint statement, the heads of State/Government of all RPCs stated that they would "expedite [their] respective domestic ratification procedures for the early entry into force of the Agreement".

The RCEP membership may be further expanded in future, with hopes that India will rejoin the RCEP down the line despite its withdrawal from talks in 2019.

Rajah & Tann Asia is one of the largest legal networks in Asia with ten offices across Southeast Asia and China, as well as regional desks focusing on Brunei, Japan and South Asia, making us well-placed to advise on the implications of the RCEP Agreement. Importantly, we have an integrated Trade practice with experts on the ground to assist on this front. We would welcome any queries you might have on the RCEP, how your business might benefit from it, and/or the steps you may wish to consider taking now in anticipation of RPCs ratifying the RCEP Agreement. Please feel free to contact any of our regional trade team members below.

Contacts

Cambodia

Heng Chhay
R&T Sok & Heng Law Office
Managing Partner

T +855 23 963 112 /113

heng.chhay@rajahtann.com

China

Linda Qiao
Rajah & Tann Shanghai Representative Office
Senior International Counsel, Cross-border Direct Investment

T + 86 21 6120 8818

linda.qiao@rajahtann.com

Indonesia

Wibowo Mukti
Assegaf Hamzah & Partners
Partner, Tax, Trade and Customs

T +62-21 2555 7861

wibowo.mukti@ahp.co.id

Japan

Shuhei Otsuka
Rajah & Tann Singapore LLP
Head, Japan Desk

T +65 6232 0463

shuhei.otsuka@rajahtann.com

Lao PDR

Lee Hock Chye
Rajah & Tann (Laos) Sole Co., Ltd
Managing Partner

T +603 2273 8310

hock.chye.lee@christopherleeong.com

Malaysia

Kuok Yew Chen
Christopher & Lee Ong
Partner, Regulatory & Trade

T +601 2273 1919

yew.chen.kuok@christopherleeong.com

Malaysia

Tracy Wong Tyng Wueh
Christopher & Lee Ong
Partner, Competition & Antitrust and Trade

T +603 2273 8310

tracy.wong@christopherleeong.com

Myanmar

Dr Min Thein
Rajah & Tann Myanmar Company Limited
Managing Partner

T + 959 7304 0763

min.thein@rajahtann.com

Philippines

Norma Margarita B. Patacsil
C&G Law
Senior Partner, Competition & Antitrust and Trade

T +632 8894-0377 to 79

nmbpatacsil@cagatlaw.com

Singapore

Kala Anandarajah
Rajah & Tann Singapore LLP
Head, Competition & Antitrust and Trade

T +65 6232 0111

kala.anandarajah@rajahtann.com

Singapore

Tanya Tang
Rajah & Tann Singapore LLP
Partner (Chief Economic and Policy Advisor), Competition & Antitrust and Trade

T +65 6232 0298

tanya.tang@rajahtann.com

South Asia

Kelvin Poon
Rajah & Tann Singapore LLP
Partner, Construction and Projects

T +65 6232 0403

kelvin.poon@rajahtann.com

Thailand

Melisa Uremovic
R&T Asia (Thailand) Limited
Deputy Managing Partner

T +66 2656 1991

melisa.u@rajahtann.com

Vietnam

Vu Thi Que
Rajah & Tann LCT Lawyers
Co-founder

T +84 28 3821 2382

que.vu@rajahtannlct.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com.

RAJAH & TANN ASIA
LAWYERS WHO KNOW ASIA

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence

Rajah & Tann Asia is a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.