

# Analysis: Regional Comprehensive Economic Partnership (RCEP)

*Despite the humble level of ambition, the new Asia-Pacific free trade agreement RCEP stands as an important step towards economic integration in the region.*

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- Representing a population of 2.3 billion and a gross domestic product of \$26 trillion, the *Regional Comprehensive Economic Partnership* (RCEP) represents the largest plurilateral free trade agreement (FTA) in the world.
- The level of liberalization of RCEP is significantly lower than that of the European Union's FTAs. Nonetheless, the agreement will foster economic integration in the Asia-Pacific region. Subsequently, trade between RCEP members will rise while trade with non-members will fall. European exporters must expect a relative deterioration in market access as well as trade-diversion effects. The international competitiveness of European sites will tend to decline.
- The agreement covers many so-called WTO-plus areas including digital trade (e-commerce), public procurement, fair competition and intellectual property. It also designates rules for dispute settlement. The most important relief for companies comes from the new rules of origin.
- In comparison to modern EU trade agreements, the agreement has significant gaps. It does not contain a sustainability chapter, with neither provisions on labor standards nor environmental protection. Industrial subsidies and treatment of state-owned enterprises (SOEs) are not regulated. The level of ambition in liberalizing services trade goes scarcely beyond the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO). Finally, many important chapters, such as on e-commerce, are not subject to dispute settlement.
- Nevertheless, the RCEP should serve as a wake-up call for both the EU and the United States. China asserts with the agreement not only its claim to political leadership in the region but also its role as a global standard-bearer. The EU must vigorously press ahead with its negotiations towards FTAs in the region in order to not lose out.

## Consolidated BDI Analysis

The *Regional Comprehensive Economic Partnership* (RCEP), a free trade agreement signed in November 2020 by 15 Asia-Pacific countries (Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, Vietnam), is a political win for China. However, the agreement should not be viewed solely from the perspective of systemic or geopolitical global competition with China. It will advance regional economic integration and entails comparative competitive disadvantages for sites in third countries such as Europe. This increases the pressure on the EU to conclude its FTA negotiations with the United States, India, and the RCEP region.

While RCEP does not provide for drastic liberalization steps, it will nonetheless further integration in the Asia-Pacific region. The authors of a study of the Peterson Institute for International Economics, cited below, found that trade between RCEP members will markedly rise, while trade with non-members will fall. European exporters must expect a relative deterioration in market access as well as trade diversion effects. This can be seen in the heavily export-oriented mechanical engineering or in electrical engineering sectors. Through closer confluence of the three major markets China, Japan and South Korea will come a changing competitive landscape, since Japanese and South Korean competitors will enjoy better market access to China's market. On the South Korean market, for example, competitive advantages stemming from the free trade agreement between the EU and South Korea could fade gradually vis-à-vis competitors from Japan and China.

### Strengths of the Agreement

Representing a population of 2.3 billion, around 30 percent of the global population,<sup>1</sup> and a gross domestic product (GDP) of just under 26 trillion U.S. dollars (31 percent of global GDP) in the year 2019,<sup>2</sup> RCEP represents the largest plurilateral free trade agreement in the world. Moreover, it is the first plurilateral FTA to which China is a party. The agreement has the potential to generate strong economic advantages.

According to a computer simulation by the Peterson Institute for International Economics (general equilibrium model), in a scenario in which the U.S.-China trade dispute was resolved, global income in 2030 could be \$186 billion higher with RCEP than without the agreement, with \$174 billion accruing to the signatories of the agreement. These benefits are largely distributed among China, Japan, and South Korea, with gains of \$85 billion, \$48 billion, and \$23 billion, respectively. This is because these countries account for 80 percent of RCEP's GDP and have not been joint members of a free trade agreement. Increased trade relations between Japan and China and Japan and South Korea as a result of the agreement could be considered as the most important new elements in terms of bilateral trade relations among the member countries. In addition, the authors expect the income gains from RCEP to be higher than those from the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), a free trade agreement in the trans-Pacific region (members: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam).

Assuming that the trade conflict between the United States and China continues, the authors of the study project a global income loss of \$301 billion in 2030. According to the study, the additional income gains from the two regional agreements (CPTPP and RCEP) would offset these global losses (CPTPP: \$121 billion; RCEP: \$209 billion), but not the individual losses of China and the U.S. The fact that the

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<sup>1</sup> World Bank, *Population: total*, <<https://data.worldbank.org/indicator/SP.POP.TOTL>> (accessed on 7.12.2020).

<sup>2</sup> International Monetary Fund, *World Economic Outlook Database: October 2020*, <<https://www.imf.org/en/Publications/WEO/weo-database/2020/October/download-entire-database>> (accessed on 7.12.2020).

income gains from RCEP are even higher in this scenario can be explained primarily by trade-diversion effects.<sup>3</sup> German industry finds it positive that the agreement covers multiple so-called WTO-plus areas including digital trade, public procurement, fair competition and intellectual property. It also designates rules for dispute settlement.

### **Non- or Inadequately Regulated Areas**

In contrast to CPTPP or modern EU FTAs, RCEP contains no sustainability chapter, i.e. no detailed provisions on labor standards. Sustainability chapters strengthen protection of both the environment and workers in partner countries; from the perspective of German industry, they belong in every modern trade agreement. Only the RCEP preamble contains a general, non-committal reference to the fact that economic partnership can play an important role in promoting sustainable development. However, the lack of unity and common ambitions among the RCEP countries in the area of sustainability holds the potential to provoke trade conflicts among them in the future.

It is also particularly disappointing that India left the negotiations in November 2019, citing a lack of unity between the agreement texts and its guiding principles. India's resistance was reportedly tied to the fear that the Indian market would become flooded by imports, particularly from China. Having India as party to the agreement, with its \$2.9 trillion<sup>4</sup> GDP, would have further increased the scope of the FTA.

The agreement also contains gaps in its handling of industrial subsidies and competition issues, for example in dealing with state-owned enterprises. The ambitions of liberalization for services trade goes scarcely beyond the General Agreement on Trade in Services (GATS) of the WTO. Finally, important chapters such as on electronic trade (e-commerce) are not subject to the dispute settlement provisions.

## **Evaluation of the Agreement: By Section**

### **Liberalization of Merchandise Trade**

RCEP provides for around 92 percent elimination of tariffs on merchandise trade, although these will only be gradually implemented over the next 20 years.<sup>5</sup> The 42 tariff schedules will surely reveal many loopholes. Tariff elimination applies mainly for goods that are already duty-free under existing free trade agreements and allows the agreement parties to maintain tariffs on imports in sectors that they deem politically sensitive, e.g. agricultural goods. No comprehensive new market access is envisioned. In individual sectors, however, tariff reduction could mean significant competitive disadvantages for suppliers from the EU.

It is welcomed that the RCEP reaffirms the commitment of participating countries to eliminate export subsidies for agricultural goods and clarifies that the agreement parties should not impose any non-tariff barriers or restrictions such as quotas or export and import licenses for partners' imports.

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<sup>3</sup> Peter Petri and Michael Plummer, *Working Paper: East Asia Decouples from the United States: Trade War, COVID-19, and East Asia's New Trade Blocs*, < <https://www.piie.com/system/files/documents/wp20-9.pdf>> (accessed on 25.11.2020).

<sup>4</sup> International Monetary Fund, *World Economic Outlook Database: October 2020*, <<https://www.imf.org/en/Publications/WEO/weo-database/2020/October/download-entire-database>> (accessed on 7.12.2020). The GDP figures here are based on current prices.

<sup>5</sup> Ministry of Trade and Industry Singapore *Regional Comprehensive Economic Partnership Agreement Signed*, <<https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2020/11/Press-Release-on-the-Regional-Comprehensive-Economic-Partnership-Signing.pdf>> (accessed on 1.12.2020).

Furthermore, the chapter provides for more transparency in import licensing procedures for merchandise trade, in MFN-applied tariff changes, and in non-tariff measures. It sets the terms as well for a future work program for sectoral initiatives.

## **Rules of Origin**

The agreement contains uniform rules of origin for trade between the 15 signatory states and thus fundamentally represents significant trade facilitation for regional trade. This will make it easier for companies to organize value chains and networks across national borders. Non-tariff barriers to trade will be reduced through harmonization of information requirements and standards for local production shares. According to an estimate from Euler Hermes, the common rules of origin could reduce export costs and thereby increase the signatory states' merchandise exports by an average of \$90 billion annually.<sup>6</sup> The bureaucratic burden remains high for companies using preferences of the myriad of trade agreements in place with and within the region, each with different rules of origin. This also affects companies from the EU that do not produce in the RCEP countries.

### *Defining Originating Goods*

Per the agreement, goods will be designated originating goods when they:

- Are “wholly obtained or produced in a Party;”
- Are “produced in a Party exclusively from originating materials from one or more of the Parties;” or
- Are “produced in a Party using non-originating materials, provided the good satisfies the...Product-Specific Rules.”<sup>7</sup>

RCEP does not provide for a fundamental (cross-industry) horizontal value-added rule. Most goods categories, however, receive preferential treatment under RCEP if a product-specific value-added of 40 percent or a tariff alternation can be demonstrated. Thus, for many goods, regional value-added is more generous than under other trade agreements. In comparison, the vast majority of EU FTAs have such a horizontal value-added rule of around 55 percent.

### *Cumulation Rules*

RCEP provides regional cumulation rules under which goods and materials that meet origin requirements and are used as materials in the production of another good or material in another partner country are considered as originating in the partner country where the working or processing of the finished good or material took place.

This is less ambitious than full cumulation, which takes account of the intellectual labor involved in the last steps of the value chain in complex manufacturing processes. It is nonetheless a positive development that as part of the review process, the signatory states are to consider extending the application of cumulation to the entire production and value creation of a good within the partners.

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<sup>6</sup> Euler Hermes, *RCEP: Common Rules of Origin Could Boost Regional Trade by Around USD90bn Annually*, November 2011, <[https://www.eulerhermes.com/en\\_global/news-insights/economic-insights/RCEP-common-rule-of-origin-could-boost-regional-trade-by-around-USD90bn-annually.html](https://www.eulerhermes.com/en_global/news-insights/economic-insights/RCEP-common-rule-of-origin-could-boost-regional-trade-by-around-USD90bn-annually.html)> (accessed on 25.11.2020).

<sup>7</sup> The product-specific rules of origin are based on selected items of the Harmonized System (HS) of the World Customs Organization. The HS system is an internationally standardized system for classifying products in global trade.

### *The Direct Transport Principle*

In the BDI study on FTA utilization<sup>8</sup>, more than one-third of surveyed German enterprises and associations indicated that they saw the direct transport principle as problematic. The principle indicates that goods must, in order to receive preferential tariffs, be directly delivered from one partner country to another. The RCEP formulates an alternative in addition to the principle. Goods thus retain their originating status under RCEP if they:

- a. are transported directly from the exporting party to the importing party (direct transport); or
- b. are transported through one or more other parties besides the exporter/importer, as long as the goods do not undergo any further processing, remain under the control of customs authorities, and are accompanied with appropriate documents, such as non-manipulation certificates.

German industry also recommends an alternative to the direct transport principle, so that enterprises can continue to use so-called hubs, i.e. central transshipment and storage locations.

### *Separate Storage*

German industry advocates against the principle of separate storage, in which materials with preferential origin must be separated from materials without preferential origin. It is therefore to be welcomed that RCEP allows goods to be retain their originating status through this physical separation or also through the application of an inventory management system.

### *Proof of Origin*

RCEP provides economic operators with multiple options for the types of proof of origin documents that they may use:

- Certificates of Origin issued by third parties;
- Self-declaration by approved exporters;
- Self-declaration by exporters or producers.

German industry welcomes the fact that proof of origin can be provided in electronic form. It is also positive that declarations of origin can be issued by approved exporters or producers and not exclusively by customs authorities, and that certificates of origin can be issued retroactively.

BDI advocates for the simplification of origin documents to the greatest extent possible. Free trade agreements should provide legally secure incentives for self-certification, which contribute to cost reduction and simplification in the origin verification process.

### *Electronic System for Exchange of Origin Documents*

BDI advocates for a uniform European IT interface for the automatic exchange of supplier declarations. Similarly, RCEP proposes that signatory states develop an electronic system for the exchange of origin information. It is thus important that the EU helps to shape international standards that avoid

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<sup>8</sup> BDI, *Aiming for Better Utilization of EU Free Trade Agreements*, January 2020, <<https://english.bdi.eu/publication/news/aiming-for-better-utilization-of-eu-free-trade-agreements/>> (accessed on 25.11.2020).

disadvantages for EU enterprises and compatibility problems between different systems from the outset.

### **Customs Procedures and Trade Facilitation**

The chapter on customs procedures aims for a consistent, uniform and transparent application of customs formalities between all signatory states, which can thus accomplish legal certainty. Transparency is additionally created through the commitment to publicly publish information on customs procedures and formalities. In addition, customs procedures are to be simplified and trade promoted. German industry welcomes the official cooperation between customs authorities of the signatory states. Due to differing standards, signatory states will be accorded a transition period of up to five years until full implementation.

### **Investment**

RCEP offers in the investment chapter a substantial solution to promote investment activity. However, at present, agreement on arbitration is still lacking, to follow in the further course. The investment chapter is thus a challenge for EU investment policy, which has treated the issue of investor protection rather cautiously since the TTIP debate.

As investment destinations, the RCEP countries account for 16 percent of global cross-border investment stocks. In 2019, 24 percent of global investment flows went to these countries and as a source of investment their importance was even more notable, with a global share of 26 percent.<sup>9</sup> RCEP contains a chapter regulating reciprocal protection of cross-border investments. In terms of content, the standards of protection granted there are in line with the established standard for investment promotion and protection agreements, similar to Germany's 129 agreements. The chapter provides for the usual standards of protection (against expropriation, unfair treatment, discrimination against investors). The chapter also contains modern elements of a reformed protection standard (e.g. sections on investment facilitation and investment promotion) that go beyond the established standard.

However, the chapter does not contain separate exceptions to protect national environmental, health or human rights policies, as is common in current EU agreements. Exceptions to investment protection are nonetheless provided for policies that serve to protect national security. It is also notable that investment protection is not included in the scope of dispute settlement. In the case of the claims procedure (ISDS), the contracting parties were likely unable to agree on a mutually accepted standard at the time of signing. It has however been agreed to agree on an ISDS procedure within two years.

### **Intellectual Property**

RCEP contains a relatively extensive chapter with regulations on copyright, trademarks, geographical indications and designations of origin, utility models and design, patent layout designs (topographies) of integrated circuits, plant variety protection, and protection of trade secrets. The WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS) serves to anchor RCEP as a minimum standard. However, in some areas, RCEP does go beyond TRIPS, e.g. in the area of digital copyright. The overall level of protection is considerable, although the enforcement

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<sup>9</sup> UNCTAD, *RCEP Agreement a Potential Boost for Investment in Sustainable Post-Covid Recovery*, <[https://unctad.org/system/files/official-document/diaeiainf2020d5\\_en\\_0.pdf](https://unctad.org/system/files/official-document/diaeiainf2020d5_en_0.pdf)> (accessed on 1.12.2020).

requirements leave much room for maneuver in national implementation of the rules. Some countries have set significant implementation periods for individual requirements. An opening clause in Chapter 11 gives room for the signatory states to view so-called “grace periods” positively, recognizing the benefits of patent grace periods to support innovation. This goes further than consensus reached thus far in multilateral negotiations to internationally harmonize patent law.

## **Competition**

The RCEP chapter on competition contains essentially general statements of intent and commandments intended to encourage the parties’ governments to adopt and enforce competition laws to minimize trade barriers resulting from anticompetitive conduct and to facilitate cooperation on anticompetitive conduct. The bids, addressed to the governments of signatory states, contain a kind of “minimum standard” (“lowest common denominator”) and are intended to create or maintain competitive structures in the signatory countries and to protect one another’s companies from anti-competitive conditions. Currently, only about half of the WTO Member States have national competition laws. Efforts to create an international competition agreement at WTO level last failed in 2003. China, for example, has only had an antitrust law (anti-monopoly law) since 2008.

The fact that the competition chapter provisions do not claim to be binding is demonstrated, among others, in Article 13.9, which states that the dispute settlement provisions do not apply to the competition provisions. Conflict resolution can and should only take place by ways of the international law principles of “positive comity” through mutual consultation and “full and sympathetic” consideration of the concerns of the other party (Article 13.8).

The agreement does not contain provisions on how to deal with subsidies or state aid. In more recent FTAs, state interventions such as subsidies are often restricted. In view of the pronounced subsidy practices in some signatory states (e.g. China and South Korea), there is likely no minimum consensus on preventing generous subsidy practices or even on transparency requirements.

At least the commitment of the signatory states to strengthening competition expressed in Article 13 serves as a positive signal. However, possible subjects of regulation of national competition laws, such as agreements in violation of antitrust law, abuse of a dominant position, and merger control are only listed by way of example (in a footnote). In no way does this list constitute mandatory minimum requirements for competition law regulations of the signatory states. RCEP does not even seek to harmonize the essential competition rules. In view of the political heterogeneity of the signatory parties, this is at present not conceivable.

A positive element of the RCEP competition chapter is also the anchoring of essential procedural principles based on the rule of law (Article 13.3). These include the requirement to state reasons for decisions, the right to be heard by the parties concerned before a decision is issued, and the possibility to appeal to independent review bodies. The requirement to establish independent competition authorities for the application and enforcement of competition laws (Article 13.3) as well as the non-discriminatory application and indiscriminate validity of respective national competition laws provided for all RCEP economic operators are further positive elements. Effective and fair competition requires a level playing field for all. However, it is doubtful whether competition authorities in state capitalist systems will achieve the same political independence as in market economies.

The requirement to provide for sanctions and remedies for competition law infringements (Article 13.3) is also helpful to support effective competition law enforcement. In this context, the possibilities for cooperation provided for in Article 13.4 could also serve as an opportunity for an approximation of national competition law systems and their application.

From the point of view of possible promotion of harmonization, the opportunities for cooperation between the RCEP countries in the implementation and enforcement of their competition law are in this respect also considered useful. The exchange of confidential information according to Article 13.5 is, in principle, suitable to promote effective enforcement of the respective competition law. The requirements for exchange request in Article 13.5 as well as for the use of information obtained through such exchange appear in principle to be suitable to adequately take stock of the different interests of states involved in this exchange.

Another positive aspect is the possibility provided for in Article 13.6 to exchange best practices in the implementation and application of competition law, in particular by exchange between experts and staff of national competition authorities (“technical cooperation and capacity-building”). This can significantly promote cross-border cooperation between authorities in the application and enforcement of the law and thus also work towards harmonization of the respective national competition regimes.

### **Digital Trade (e-commerce)**

It is positive that RCEP takes into account the growing importance of e-commerce in a separate chapter. However, the chapter is short and focuses mainly on best practices as well as encouraging contracting parties to behave fairly. It is intended to encourage sharing of best practices in addressing digital trade challenges, as well as helping small and medium-sized enterprises overcome obstacles in this area. The chapter provides that parties continue to refrain from imposing tariffs on electronic transmissions, in line with the moratorium adopted at the 11<sup>th</sup> WTO Ministerial Conference. Such tariffs have a significant negative impact on cross-border data flows and business. Provided the moratorium expires or WTO agreements permit tariffs on electronic transmissions in the future, such measures will also be permitted among RCEP partners. In this respect, the agreement creates no real value for business here. The BDI is in favor of a permanent ban on tariffs on digital transactions within the WTO.

A focus of the chapter is on paperless trade and trade administration documents. The chapter encourages the use of interoperable electronic authentication. Another focus is, for example, on the protection of personal data; signatory states are to conclude or maintain laws to protect consumers from fraudulent and deceptive practices. Greater transparency and cooperation are to be encouraged in all e-commerce-related measures. However, the agreements are always quite general and not very binding or allow for generous exceptions. For example, while the agreement fundamentally relies on the free movement of data, it also gives the contracting parties the freedom to prevent cross-border data transfers or to require local storage and processing of digital information. The restrictions need only be justified by a legitimate public policy objective or the protection of essential security interests. However, the measures may not be arbitrary, unjustifiably discriminatory, or covertly trade-restrictive.

### **Public Procurement**

The RCEP agreement dedicates a full chapter to public procurement. However, this contains no market access pledges but rather only very general explanations, particularly regarding transparency in public procurement. The explicit indication that the dispute settlement provisions do not apply to the public procurement provisions delineates that this chapter holds very little weight. In other respects, too, there is no provision for legal protection under procurement law in the sense of reviewability of award decisions.

The background to this rather rudimentary regulation is likely to be the fact that China, as a central player among the signatory states, continues to seal off its own public procurement markets very strongly against foreign bidders. Japan, too, was known in the past for various market closures of its markets to foreign bidders and only decided to open up its markets to the EU to a greater extent during

the negotiations on the EU-Japan EPA. At the very least the mere existence of a separate chapter on public procurement shows a certain degree of attention to related issues.

Two objectives are identified as key principles: first, the signatory states recognize the role of public procurement in intensifying economic integration of the region in the interest of growth and employment. Secondly, it is formulated – albeit very vaguely – that in the case of procurements explicitly opened to international competition, each party to the agreement will conduct these awards "as far as possible and appropriate" in accordance with the generally applicable procurement principles as it applies them itself.

The chapter specifies, among other things, what is meant by the transparency referred to in the agreement – it relates to publishing the respective national laws and regulations, on the one hand, and ensuring that national procedures relating to public procurement are made publicly available on the other. Each contracting party is to endeavor to make the publications electronically if possible and in English for the purpose of transparency.

In perspective, the agreements on cooperation between the signatory states appear to be important, for example on the exchange of experience and electronic awarding as well as on a future review of the agreement and the establishment of contact points for the exchange of information between the RCEP parties.

A further development of the agreement at a later date does not appear to be ruled out, particularly in view of the aforementioned provisions on cooperation and a subsequent review of the agreement. Against this background, further development of the agreement, which was reached without the participation of the United States and the EU, should be kept under review.

### **Dispute Settlement**

RCEP provides a framework for both dispute settlement and the application of trade defense instruments (particularly anti-dumping and countervailing measures).

The dispute settlement mechanism is fundamentally very similar to WTO procedures (without an Appellate Body) and to those provided in the EU's FTAs. When a dispute arises on the basis of obligations or commitments under the RCEP that involves agreements adopted from WTO law, the panel is encouraged to take relevant WTO dispute settlement reports into consideration. When a dispute arises on the basis of both relevant rights and obligations of the RCEP and of another agreement (e.g. a WTO agreement), then the complainant may decide which dispute settlement forum they wish to use. They may not, however, raise the same complaint in multiple fora. These elements contribute to an effort not to undermine the multilateral dispute settlement system.

The dispute settlement mechanism applies only to the interpretation and application of the agreement. In every stage, parties are encouraged to find a mutual solution through cooperation and consultation and may always voluntarily pursue another dispute settlement method, such as arbitration. Dispute settlement panels should be composed of three individuals with significant experience on WTO panels or in the WTO Appellate Body. Panel members should be chosen on the basis of "objectivity, reliability and sound judgment." The final panel report and its conclusions has final and binding effect for the dispute parties and may be made public as long as the confidential information therein is protected. If it is determined that a respondent is not complying with its obligations, it must cease such violations within a reasonable timeframe. If this is not the case, temporary measures such as compensation or suspension of concessions are possible. If the panel (or compliance panel) finds a persistent breach

of the rules and the parties cannot agree on the amount of compensatory measures, the panel will decide on this.

This chapter provides for special and differential treatment for least-developed countries (LDCs). However, this chapter is not strictly worded, but rather encourages the parties to “particularly consider” the “special situation” of these countries.

German industry sees positively that the dispute settlement chapter promotes mutual solutions and allows the parties to consider and apply alternative dispute settlement methods such as mediation. It is also positive that the chapter models concrete timelines. The period between the establishment of a panel and the final panel report should not exceed seven months. However, parties can also agree on longer deadlines if necessary.

### **Trade Defense Instruments**

RCEP allows signatory states to introduce safeguards on a transitional basis if the agreement’s tariff reduction leads to an unexpected increase of imports into one of the partner countries that threatens or causes serious damage to domestic industry. The safeguard measure can take the form of a suspension of a tariff reduction provided for in the agreement or an increased tariff rate for the originating good. Tariff-rate quotas and quantitative restrictions are not allowed.

With regards to anti-dumping and countervailing measures, the agreement reinforces and builds on the commitments made under WTO agreements like the GATT, the WTO Agreement on Safeguards, the Agreement on Subsidies and Countervailing Measures (SCM) and the WTO Antidumping Agreement. German industry welcomes that the agreement forbids the use of zeroing in anti-dumping investigations.<sup>10</sup> In the calculation of dumping margins, all individual positive or negative margins must be included in calculating the weighted average.

### **Further Elements**

#### *Small- and Medium-Sized Enterprises (SMEs)*

This chapter requires the RCEP parties to provide the full text of the agreement as well as the pertinent trade and investment laws and regulations that are relevant for SMEs over a publicly accessible platform. The agreement promotes closer information exchange and cooperation between the signatory states and SMEs, the latter of which can be accomplished through better market access and participation of SMEs in global value chains. The signatory states should moreover promote the use of e-commerce by SMEs.

#### *Economic and Technical Cooperation*

This chapter recommends that the parties establish economic and technical cooperation in the form of capacity-building and technical assistance focused on the following areas:

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<sup>10</sup> Zeroing is a method of calculating anti-dumping duties that has been regularly ruled unfair by the WTO Appellate Body. The use of zeroing often results in an increased dumping margin and thus an increased calculation of the anti-dumping duty that is levied. In using zeroing, a country A compares the price of the product in country B’s market to the price of the product in country A’s market, but disregards all transactions in which the price of the product in country B’s market is lower than the price in country A’s market by setting it to zero. The authorities would therefore ignore any negative price differences, resulting in a higher dumping margin. The U.S., for example, has used this method of calculation in its anti-dumping cases in the past.

- Trade in goods
- Trade in services
- Investment
- Intellectual property
- E-commerce
- Competition
- SMEs.

This cooperation is intended to complement existing cooperation in areas where the parties have a mutual interest. The aim is to reduce development disparities and maximize mutual benefits from the implementation and use of the agreement.

The chapter also provides for the parties to develop a work program on economic and technical cooperation provisions, in order to focus on activities that provide capacity-building and technical assistance to developing and least developed countries among RCEP members, raise public awareness, and improve access to information for businesses. Parties may cooperate with non-parties to the agreement and with sub-regional, regional or international organizations in the implementation of the work program.

#### *Institutional Provisions*

It is noteworthy that this chapter established a “Joint Committee” composed of senior officials from each signatory states. States are expected to establish a RCEP secretariat to provide technical assistance to the Committee. This is a permanent new element that German industry will follow with interest.

The Joint Committee should meet within one year of the entry into force of the agreement, and then every year thereafter. The following subcommittees are provided for:

- *A Committee on Goods* to cover work on trade in goods, rules of origin, customs procedures, trade facilitation, sanitary and phytosanitary measures, standards and technical regulations, and trade remedies;
- *a Committee on Services and Investment*, which deals with trade in services, including financial services, telecommunications services, and professional services, as well as the temporary movement of persons and investments;
- *a Committee on Sustainable Growth* to work on SMEs, economic and technical cooperation, and "emerging issues"; and
- *a Committee on the Business Environment* that deals with intellectual property, e-commerce, competition, and government procurement.

These committees are to make decisions by consensus.

In addition, RCEP ministers should meet within one year of the agreement's entry into force and every year thereafter to discuss issues that have arisen in connection with the agreement. In doing so, decisions should also be made by consensus.

#### *General Review of the Agreement*

The final chapter of the agreement provides for a general review with the aim of "updating and improving" the agreement to ensure that it remains relevant to the trade and investment challenges facing the signatory states. The review would take place five years after entry into force and every five years thereafter. In the review, the parties should consider whether the dispute settlement process should also apply to issues related to e-commerce, sanitary and phytosanitary measures, or even standards, technical regulations, and conformity assessment.

In the rules of origin chapter, the signatory states are required to consider, at the time of the agreement's entry into force, both an extension of the cumulation rules and the introduction of a declaration of origin by an importer as proof of origin. These reviews are to be completed within five years. In addition, a review of the article on tariff differentials in merchandise trade is to take place within two years of entry into force and every three years thereafter.

## **Context**

### **Free Trade Agreements in the Region**

On 15 November 2020, after nine years of negotiations, the RCEP between the ASEAN countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and Australia, China, Japan, New Zealand and South Korea was signed. The conclusion of the world's largest free trade agreement is a clear sign of political support for free trade from the Asia-Pacific region. Despite the humble level of ambition compared to the comprehensive FTAs of the EU, the RCEP represents an importance step towards economic integration of the Asia-Pacific region and a wake-up call for Europe. The agreement highlights the need for a differentiated EU trade strategy oriented towards the growth potential of the entire Asian economic area.

The meaning of the region is not new to the EU, which has concluded FTAs with several Asian countries. The FTAs with South Korea, Singapore, Japan and Vietnam are already fully in force (the EU also negotiated investment agreements with Singapore and Vietnam but has not ratified them yet). The EU concluded an economic partnership agreement (EPA) with Fiji, Papua New Guinea, Samoa and the Solomon Islands. The EPA was ratified by the European Parliament and Papua New Guinea in 2011. Fiji has applied the agreement since July 2014, Samoa since December 2018 and the Solomon Islands since May 2020. In July 2018, Tonga expressed its interest in joining the agreement to the EU. EPAs are agreements on merchandise trade designed to promote the economic development of the partner countries. The EU opens its market with the entry into force of the agreement so that imports from the partner region/countries are not subject to any tariffs. The partner countries, on the other hand, are granted long transition periods and must not reduce all tariffs for imports from the EU.<sup>11</sup> Furthermore, the EU is currently negotiating free trade agreements with Australia, Indonesia,

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<sup>11</sup> European Commission, *Countries and Regions: Pacific*, <<https://ec.europa.eu/trade/policy/countries-and-regions/regions/pacific/>> (accessed on 1.12.2020); European Commission, *Economic Partnerships*, <<https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>> (accessed on 1.12.2020).

New Zealand, and the Philippines, and agreed on its investment agreement in principle with China in December 2020.

Moreover, the European Union entered in December 2020 with the ASEAN member-states a “strategic partnership” which is to be accompanied by a clear revitalization of mutual relations, including through regular summits at the level of heads of state and government. The strategic partnership will focus primarily on economic and security cooperation, as well as sustainable connectivity and sustainable development.<sup>12</sup>

The United States has already concluded free trade agreements with Singapore, Australia and South Korea. In 2020, it signed two smaller agreements (the trade agreement and the so-called Digital Trade Agreement) with Japan, which should serve as the basis for a more comprehensive agreement in the future. In addition, the U.S. concluded *trade and investment framework agreements* (TIFAs) with several partners in the region – ASEAN, Brunei, Burma, Cambodia, Fiji, Indonesia, Laos, Malaysia, New Zealand, the Philippines, Thailand, and Vietnam. TIFAs are agreements that offer a framework for regular dialogue on cooperation in trade and investment. They can serve as the first step towards concluding an FTA.<sup>13</sup>

The Transpacific Partnership (TPP) would have given the U.S. a chance to markedly expand its influence in the region, especially vis-à-vis China. Under President Obama, the U.S. participated in the TPP negotiations, which at the time also included Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. These twelve countries signed the agreement in February 2016, but at the time, due to sustained negotiations with the Congress, Obama was not able to ratify. Shortly after U.S. President Trump took office, he withdrew the U.S. from the agreement. The remaining states subsequently continued to negotiate the agreement and signed it in March 2018 under the name *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP). In December 2018, it entered into force for the first six countries that ratified: Australia, Canada, Japan, Mexico, New Zealand, and Singapore. Vietnam followed in January 2019.<sup>14</sup>

China is already markedly better-connected in the region. The People’s Republic already concluded free trade agreements with the ASEAN countries, as well as the other RCEP signatory states South Korea, Singapore, New Zealand and Australia, and the Maldives. Currently, Beijing is negotiating with Japan and South Korea, as well as with Cambodia and Sri Lanka.

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<sup>12</sup> European External Action Service, *EU ASEAN Strategic Partnership*, <<https://eeas.europa.eu/sites/eeas/files/fact-sheet-eu-asean-strategic-partnership.pdf>> (accessed on 8.12.2020).

<sup>13</sup> United States Trade Representative, *Trade & Investment Framework Agreements*, <<https://ustr.gov/trade-agreements/trade-investment-framework-agreements>> (accessed on 1.12.2020).

<sup>14</sup> Government of Canada, *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpp/in-dex.aspx?lang=eng>> (accessed on 1.12.2020).

### FTAs in Asia (USA)

Type of Agreement	Partner Country	Year of Entry into Force
Free Trade Agreement	Singapore	2004
Free Trade Agreement	Australia	2005
Free Trade Agreement	South Korea	2012
Trade Agreement / Digital Trade Agreement	Japan	2020

Source: USTR, *Trade Agreements*, <<https://ustr.gov/trade-agreements/free-trade-agreements>> (accessed on 1.12.2020).



### FTAs in Asia (EU)

Type of Agreement	Partner Countries	Year of Entry into Force
Economic Partnership Agreement	Fiji, Papua New Guinea, Salomon Islands, Samoa	2014 (provisionally)
Free Trade Agreement	South Korea	2015
Free Trade Agreement	Singapore	2019
Economic Partnership Agreement	Japan	2019
Free Trade Agreement	Vietnam	2020
Free Trade Agreement (negotiations)	Australia	
Investment Agreement (agreed in principle)	China	
Free Trade Agreement (negotiations)	Indonesia	
Free Trade Agreement (negotiations)	New Zealand	
Free Trade Agreement (negotiations)	Philippines	

Source: European Commission, *Negotiations and Agreements*, <<https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>> (accessed on 1.12.2020).



## FTAs in Asia (China)

Type of Agreement	Partner Countries	Year of Entry into Force
Free Trade Agreement	ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam)	2005 (goods) 2007 (services)
Free Trade Agreement	South Korea	2006
Free Trade Agreement	Singapore	2008
Free Trade Agreement	New Zealand	2008
Free Trade Agreement	Australia	2016
Free Trade Agreement	Maldives	2017
Free Trade Agreement (signed)	RCEP: Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, Vietnam	
Free Trade Agreement (negotiated)	Cambodia	
Free Trade Agreement (negotiations)	Sri Lanka	
Free Trade Agreement (negotiations)	Japan, South Korea	

Source: Chinese Trade Ministry, *China FTA Network*, <[http://fta.mofcom.gov.cn/english/fta\\_qianshu.shtml](http://fta.mofcom.gov.cn/english/fta_qianshu.shtml)> (accessed on 1.12.2020).



According to the WTO, there are 305 free trade agreements in force worldwide.<sup>15</sup> A BDI regional analysis found that the majority of these agreements were concluded countries from Europe or East Asia (101 and 90, respectively).<sup>16</sup> Moreover, around two-thirds of these agreements were ratified in the past two decades, which delineates the growing importance of both regions in trading power and relevance.

<sup>15</sup> For the counting methodology – here, we analyzed the regional origin of partners in every FTA in place (for example, the FTA between the EU and Chile indicates 1 point for Europe and 1 point for South America). When an agreement was concluded only between countries in the same region, the region is counted only once. When an agreement was concluded with multiple countries in the same region, the region is again counted only once. Source: World Trade Organization, *RTAs in Force*, <<http://rtais.wto.org/UI/PublicAllRTAList.aspx>> (accessed on 20.11.2020)

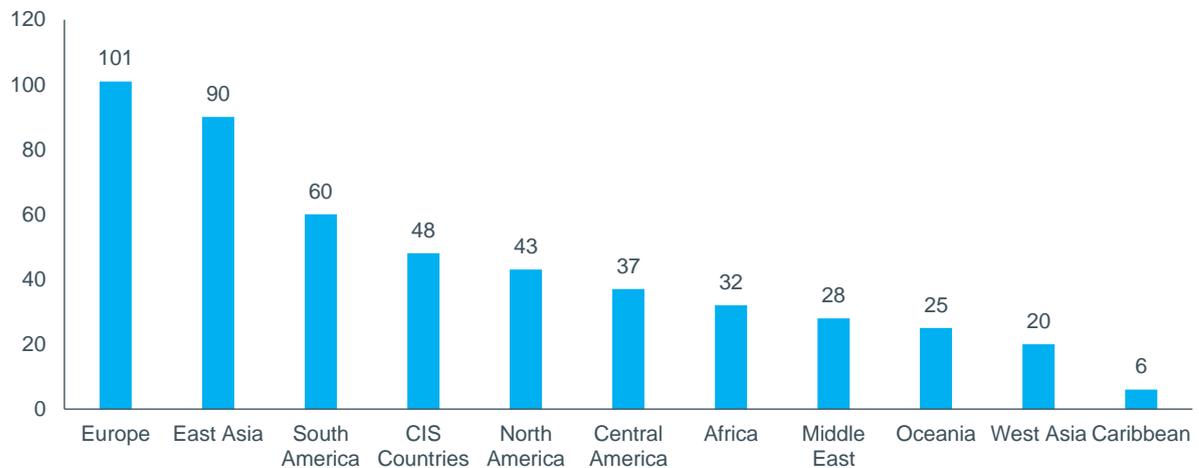
<sup>16</sup> Here, we applied the regional classification of the WTO database of regional trade agreements in which *Europe* includes Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, Norway, North Macedonia, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, the Czech Republic, Turkey, and the United Kingdom. East Asia includes Brunei Darussalam, Cambodia, China, the Christmas Islands, the Coco (Keeling) Islands, Hong Kong, Indonesia, Japan, North Korea, South Korea, Laos, Macao, Malaysia, Mongolia, Myanmar, the Philippines, Singapore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Thailand, Timor-Leste and Vietnam. For the comprehensive classification, reference <[rtais.wto.org/UserGuide/User%20Guide\\_Eng.pdf](http://rtais.wto.org/UserGuide/User%20Guide_Eng.pdf)>.

## Economic Relations between the EU and the RCEP Countries

In 2019, the RCEP countries exported \$5.5 trillion worth of merchandise and imported just under \$5 trillion of merchandise. This corresponds to around 29 percent of global merchandise exports<sup>17</sup> and around 26 percent of global merchandise imports.<sup>18</sup> Also in 2019, the RCEP countries exported \$1.1 trillion worth of services and imported services worth \$1.3 trillion. This corresponds to around 18 percent of global services exports<sup>19</sup> and around 22.5 percent of global services imports.<sup>20</sup>

In 2019, the EU exported goods worth €2 trillion and imported goods worth €2.1 billion.<sup>21</sup> Approximately 24 percent of these exports (€479.7 billion) was directed to the RCEP countries. From the RCEP countries, the EU imported goods worth €711.5 billion or almost 35 percent of their total merchandise imports.<sup>22</sup>

### Free Trade Agreements in Force, by Region



#### Methodology:

-Also when multiple countries from one region concluded the same agreement, the region is counted only once.

-The region is also counted only once when the agreement was concluded only between countries in that one region.

Source: WTO, *RTAs in Force*, <<http://rtais.wto.org/UI/PublicAllIRTAList.aspx>> (accessed on 20.11.2020)



## Ratification Process

According to the chapter on final provisions, the agreement will come into force once at least six signatory states that are members of ASEAN and three non-member signatory states have ratified. At that time, the agreement will only come into force for those countries. For all successive ratifying countries, the agreement will come into force sixty days after their own ratification. In countries with

<sup>17</sup> WTO, *Merchandise Exports by Product Group – Annual (Million US dollar)*, <[www.data.wto.org](http://www.data.wto.org)> (accessed on 1.12.2020).

<sup>18</sup> WTO, *Merchandise Imports by Product Group – Annual (Million US dollar)*, <[www.data.wto.org](http://www.data.wto.org)> (accessed on 1.12.2020).

<sup>19</sup> WTO, *Commercial Services Exports by Sector and Partner – Annual (2005-2019) (Million US dollar)*, <[www.data.wto.org](http://www.data.wto.org)> (accessed on 1.12.2020).

<sup>20</sup> WTO, *Commercial Services Imports by Sector and Partner – Annual (2005-2019) (Million US dollar)*, <[www.data.wto.org](http://www.data.wto.org)> (accessed on 1.12.2020).

<sup>21</sup> Eurostat, *Share of EU in the World Trade*, <<https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>> (accessed on 1.12.2020). Here, EU indicates the EU28, as the United Kingdom was still a member of the Union in 2019.

<sup>22</sup> Eurostat, *Extra-EU Trade by Partner*, <<https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>> (accessed on 1.12.2020). Here, EU indicates the EU28, as the United Kingdom was still a member of the Union in 2019.

significant political opposition against more Chinese influence or against free trade, the ratification process could be paved with difficulty. However, a swift coming into force of the agreement is expected.

## Impressum

Bundesverband der Deutschen Industrie e.V. (BDI)  
Breite Straße 29, 10178 Berlin  
www.bdi.eu  
T: +49 30 2028-0

### Editors

Katherine Tepper  
T: +49 30 2028-1499  
k.tepper@bdi.eu

Sebastian Freimuth  
T: +32 2 792 1005  
s.freimuth@bdi.eu

Julia Howald  
T: +49 30 2028-1483  
j.howald@bdi.eu

Anna Kantrup  
T: +49 30 2028-1526  
a.kantrup@bdi.eu

Matthias Krämer  
T: +49 30 2028-1562  
m.kraemer@bdi.eu

Dr. Peter Schäfer  
T: +49 30 2028-1412  
p.schaefer@bdi.eu

Ferdinand Schaff  
T: +49 30 2028-1409  
f.schaff@bdi.eu

Patricia Schetelig  
T: +49 30 2028-1532  
p.schetelig@bdi.eu

Friedolin Strack  
T: +49 30 2028-1423  
f.strack@bdi.eu

Dr. Christoph Sprich  
T: +49 30 2028-1525  
c.sprich@bdi.eu

Dr. Ulrike Suchsland  
T: +49 30 2028-1408  
u.suchsland@bdi.eu

Eckart von Unger  
T: +32 2 792 1020  
e.vonunger@bdi.eu