Successful RCEP Conclusion in Sight despite India's Concerns

November 2019

Authors: Christopher Corr, Samuel Scoles

Fifteen of the 16 members of the Regional Comprehensive Economic Partnership (RCEP) announced on November 4 the conclusion of negotiations on the text[1] of the mega-regional trade agreement. Only India withheld agreement during the meetings in Bangkok, saying that it would abandon the RCEP until its outstanding concerns are resolved.

Despite this setback, the RCEP leaders agreed in their Joint Statement to work together to reconcile differences in the coming months, and instructed their respective officials to commence legal review procedures with the aim of signing the RCEP in 2020 when the ASEAN Chairmanship passes to Vietnam.

While RCEP negotiators have previously set, and missed, deadlines for conclusion of the negotiations over the past two years, the 2020 deadline seems more realistic. India had become the biggest stumbling block, and with its tentative withdrawal, the other parties are in a position to move forward.

India's absence from RCEP is a significant disappointment and a step back from the original goals. However, this new consensus among 15 regional countries nonetheless is an important achievement that will have benefits for participating members and will present a competitive challenge for countries outside this preferential agreement.

What is RCEP?

The RCEP is often described, inaccurately, as a China-led agreement competing with the Comprehensive and Progressive Economic Agreement for Trans-Pacific Partnership (CPTPP) – which was called the Trans-Pacific Partnership (TPP) up until President Trump withdrew the United States in 2017 – for influence in Asia. In fact, the RCEP is largely an initiative led by the Association of Southeast Asian Nations (ASEAN) whose 10 members include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The RCEP joins together ASEAN and the six countries with which ASEAN has existing free trade agreements (FTAs): Australia, New Zealand, China, India, Japan, and South Korea.

The 16 countries negotiating the RCEP represent approximately 45% of the world's population and 40% of global trade. It aims to establish a single, harmonized, predictable set of regional trade rules that incentivize businesses to locate their supply chains within the covered Asia-Pacific region. The RCEP is a comprehensive agreement that includes rules governing such topics as market access for goods and services, financial services, intellectual property, e-commerce and digital trade, and investment, albeit with varying degrees of ambition and substance. Without a doubt, RCEP will cover a large and growing part of the global economy.

[1] Including all 20 chapters, plus annexes, side letters and nearly all market access issues. The chapters are: (1): Initial Provisions and General Definitions: (2) Trade in Goods; (3) Rules of Origin, including Annex on Product Specific Rules; (4) Customs Procedures and Trade Facilitation; (5) Sanitary and Phytosanitary Measures; (6) Standards, Technical Regulations and Conformity Assessment Procedures; (7) Trade Remedies; (8) Trade in Services, **including Annexes on Financial Services**, Telecommunication Services, and Professional Services; (9) Movement of Natural Persons; (10) Investment; (11) Intellectual Property; (12) Electronic Commerce; (13) Competition; (14) Small and Medium Enterprises; (15) Economic and Technical Cooperation; (16) Government Procurement; (17) General Provisions and Exceptions; (18) Institutional Provisions; (19) Dispute Settlement; and (20) Final Provisions.

India's unresolved issues

The parties were unable to reach consensus with India on key issues, including market access concessions for goods and services, rules of origin, movement of people, dispute settlement mechanisms, and carve-outs for sensitive industrial and agricultural sectors including steel, rubber, dairy, and food processing. A key area of contention was India's unwillingness to agree to the same level of market access commitments, fearing that vulnerable sectors in India would suffer and find themselves unable to compete with more advanced and efficient producers in other RCEP member countries like China, Australia and New Zealand.

India also reportedly raised particular concern during the ministerial level meeting over the threat of circumvention of rules of origin due to tariff differentials between RCEP parties, asserting that this would lead to a serious influx of agricultural and industrial imports and compound India's already large and growing trade deficit with China.

The RCEP leaders decided to move on with the legal scrubbing process, while instructing their officials to work on the possibility of India re-joining the RCEP at a later date.

What's next?

Efforts are already underway to convince India to come back to the RCEP; however, it remains to be seen if additional negotiations, whether formal or behind-the-scenes, will be sufficient to convince India to reconsider its positions. Moreover, domestic pressure in India from powerful economic sectors and increasingly vocal political opposition parties is likely to grow stronger should they perceive a shift in tone in the Modi government's chosen stance.

Already, there are hints at senior levels in the Indian government of a trade policy shift, where similar to the United States, bilateral engagement may become India's preferred approach with renewed focus on forging deals with key trading partners, including the European Union, the United States, Australia, Indonesia, and Vietnam. Still, an RCEP without India fails to deliver what many of the negotiating parties wanted – an economic and geopolitical counterweight to China – and may raise questions from other member countries, *e.g.*, Japan and Australia, as to the utility of moving forward if India ultimately decides not to join, particularly as most of the other RCEP parties already have FTAs in effect with each other.

Nevertheless, whether viewed as political calculus to confront pressing domestic concerns or as a negotiating tactic to extract better concessions, India's action should not diminish the fact that 15 economically and politically diverse countries, with a combined 29% share of global GDP, finally managed to reach a substantial agreement that, when fully implemented and particularly if later amended or upgraded, could significantly impact the direction of trade and economic integration in the region.

The RCEP and the recently implemented and ambitious CPTPP will likely influence the direction of global value chains in the decade to come and determine the future of the region's economic architecture.

White & Case Pte. Ltd.
8 Marina View #27-01
Asia Square Tower 1
Singapore 018960

T +65 6225 6000

White & Case LLP, Beijing Office
19th Floor,
Tower 1 of China Central Place
81 Jianguo Lu, Chaoyang District
Beijing Shi 100025
China

T +86 10 5912 9600