
Mizuho Economic Outlook & Analysis

November 30, 2020

RCEP as a starting point for evolution *A mega EPA less than TPP but more than WTO*

< Summary >

- ◆ The “Regional Comprehensive Economic Partnership (RCEP)” agreement was signed on November 15. The 15 East Asian nations participating in the RCEP account for about one-third of global GDP, population, and trade value, giving birth to a huge free trade area.
- ◆ RCEP is a comprehensive trade agreement encompassing trade in goods, trade in services, investment, government procurement, intellectual property, and electronic commerce, among other areas, and although the degree of liberalizations and the level of rules are lower than the TPP, they are substantially higher than the WTO.
- ◆ The immediate challenges going forward are the early effectuation of RCEP, and return of India to the agreement. In addition, it is necessary to continue improving the standards of liberalizations and various rules. RCEP is a “living agreement” and not the final form. The current level of liberalizations and rules are starting points for evolution of the pact.

Mizuho Research Institute Ltd.

Junichi Sugawara, Senior Research Officer

Research Department – Public Policy

Mizuho Research Institute Ltd.

junichi.sugawara@mizuho-ri.co.jp

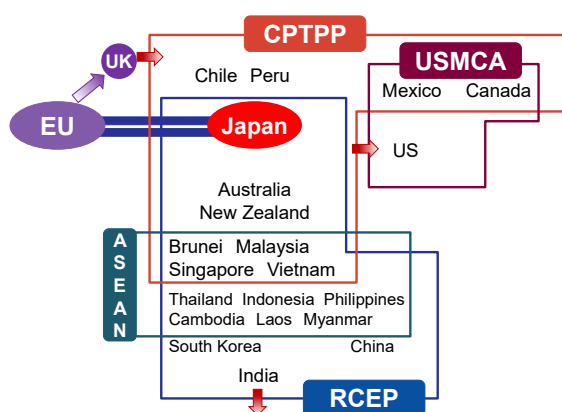
This publication is compiled solely for the purpose of providing readers with information on a free-of-charge basis and is in no way meant to solicit transactions. Although this publication is compiled on the basis of sources which we believe to be reliable and correct, Mizuho Research Institute does not warrant its accuracy and certainty. Readers are requested to exercise their own judgment in the use of this publication. Please also note that the contents of this publication may be subject to change without prior notice. In the event readers do not wish to receive information free of charge from Mizuho Research Institute, readers are requested to notify their wish to suspend subscription.

1. The signing of RCEP and its significance

(1) Economic and strategic significance of RCEP

On November 15, 2020, the “Regional Comprehensive Economic Partnership (RCEP)” agreement was signed. Following the decision to launch negotiations in November 2012, the RCEP talks officially began in May 2013 and an agreement was finally reached after seven and a half years of negotiations. RCEP consists of 15 countries comprising the 10 member states of the Association of Southeast Asian Nations (ASEAN) and nations positioned as their partner countries of free trade agreements (FTA), including Japan, China, South Korea, Australia, and New Zealand (NZ). It has become an economic partnership agreement (EPA) constituting a large free trade area covering nearly a third of global GDP, population and trade value (Chart 1 and 2).

Chart 1: Mega EPAs surrounding RCEP and Japan



Source: Made by MHRI.

Chart 2: Economic scale of mega EPAs

| | GDP | | Population | |
|----------------------|----------------|--------------|---------------|--------------|
| | (USD trillion) | (% of World) | (100 million) | (% of World) |
| RCEP (15) | 26.0 | 29.8% | 22.6 | 29.9% |
| RCEP16 (incl. India) | 28.8 | 33.0% | 36.3 | 47.9% |
| CPTPP (TPP11) | 11.3 | 12.9% | 5.1 | 6.7% |
| TPP12 (incl. US) | 26.0 | 29.8% | 8.4 | 11.1% |
| USMCA (NAFTA) | 24.4 | 28.0% | 4.9 | 6.5% |
| Japan and US | 26.5 | 30.4% | 4.5 | 6.0% |
| APEC (FTAAP) | 53.5 | 61.3% | 29.2 | 38.5% |
| Japan and EU (27) | 21.1 | 24.2% | 8.2 | 10.8% |
| Japan and UK | 7.9 | 9.1% | 1.9 | 2.5% |
| World | 87.2 | 100.0% | 75.8 | 100.0% |

Note: The figures are 2019 actual and estimates.
 Source: Made by MHRI based upon the IMF, *World Economic Outlook Database, October 2020*.

RCEP comes into force 60 days after the date on which at least six signatory States from the ten Member States of ASEAN and three signatory States from five non-ASEAN Member States have completed their respective applicable legal procedures and deposited their instruments of ratification, acceptance, or approval with the Depository, and for countries that have not completed the domestic approval process by the date of entry into force of RCEP, “this Agreement shall enter into force for any other signatory State 60 days after the date on which it has deposited its instrument of ratification, acceptance, or approval with the Depository” (Article 20.6). The signing of the RCEP agreement amid rising protectionism during the coronavirus crisis demonstrates the participating nations’ commitment to securing a free trade regime, and the agreement also contributes to the economic reconstruction of each participating nation.

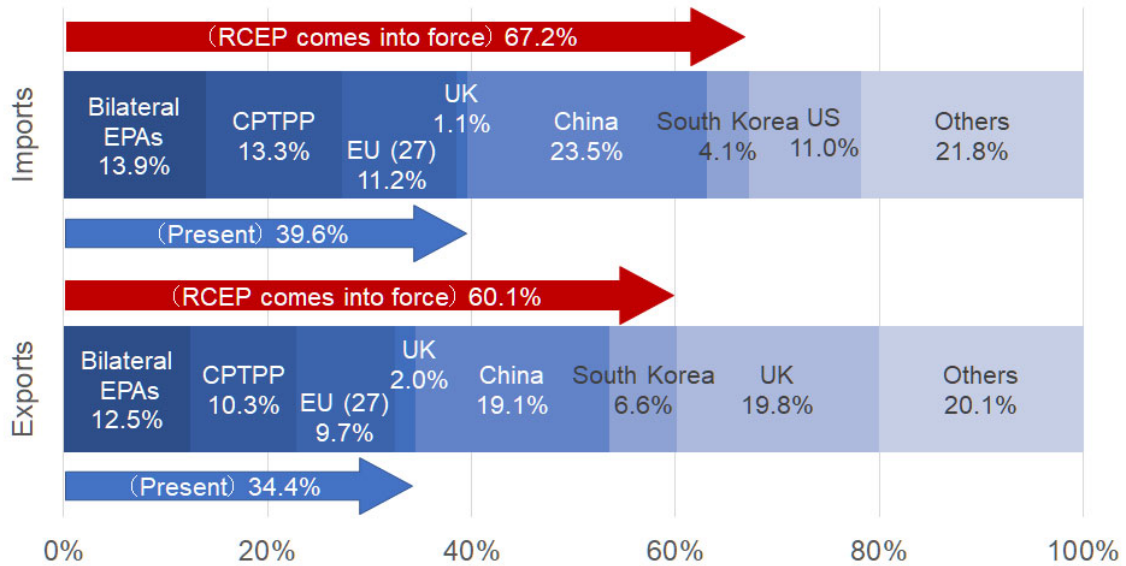
For Japan, the RCEP agreement is the first EPA with China and South Korea. Among the 15 RCEP signatory countries, the only countries never to have entered into an EPA with each other were Japan-China and Japan-South Korea, and this was the great “missing link” in the supply chains of the Asia-Pacific region. As RCEP rectifies this shortfall, and the 15 countries have agreed to promote the liberalization of trade and investment within their region and to set common rules, we believe that RCEP will facilitate the building and enhancement of regional supply chains. Furthermore, with US-China trade friction becoming the “new normal,” RCEP is expected to stabilize the economic relationship between Japan and China and make the business outlook between the two countries more predictable.

Thanks to the signing of RCEP, Japan’s EPA strategy has reached an important milestone. Japan started promoting the conclusion of bilateral EPAs when it first signed an EPA with Singapore in January 2002 (which came into effect in November 2002). This was followed by mega EPA negotiations. Japan launched EPA negotiations with the EU in April 2013, RCEP negotiations in May of the same year, and joined TPP (Trans-Pacific Partnership) talks in July in the same year. With the United States exiting the TPP, the pact eventually came into being as the “Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP11),” and the conclusion of the RCEP talks put an end to the series of mega FTA negotiations first initiated in 2013.

Should RCEP become effective involving such nations as China and South Korea, the FTA coverage ratio of Japanese trade will expand to about 60% for exports and a little less than 70% for imports. If we add the United States, which has just completed the first stage of trade negotiations with Japan and effectuated the Japan-US trade agreement, the coverage ratio rises to around 80% for both imports and exports (**Chart 3**).

RCEP is also expected to serve as a foundation to realize the “Free and Open Indo-Pacific (FOIP)”, which Japan is now pushing forward, and hence carries not only economic but also strategic significance.

Chart 3: FTA coverage ratio of Japanese trade



Note: Data are 2019 actual. The CPTPP only includes the six countries that have effectuated the agreement. The EPA with the UK became effective as the Japan-EU EPA.
 Source: Made by MHRI based upon the Ministry of Finance, *Trade Statistics*.

(2) Opting out of India

The withdrawal of India at the final stage of the negotiations was a huge loss for RCEP. India accounts for about 10% of GDP and a little less than 40% of the population of the 16 RCEP participants of the negotiations, and its exit represents a great economic loss. It was a particularly heavy blow for Japan, which has sought to realize its “Free and Open Indo-Pacific (FOIP)” by strengthening its relationship with India through the Quadrilateral Security Dialogue (QUAD) with the United States and Australia, among other efforts. Nonetheless, an early return of India to RCEP is not on the table for various reasons, such as India’s significant trade deficit with the RCEP countries centering on China, dissatisfaction with the existing FTAs and strong objections to RCEP within the country, the impact of the coronavirus crisis on the domestic economy, and the Sino-Indian border conflict. But RCEP’s coming into force as early as possible among the remaining 15 countries and revealing the merits of joining the RCEP and the demerits of exiting the pact may serve as a shortcut to bringing India back to the agreement. Japan needs to continue encouraging India to return to RCEP as quickly as possible by cooperating with and providing support to India through various initiatives, including an initiative to achieve supply chain resilience in the Indo-Pacific region led by Japan, Australia and India.

RCEP actually provides a special provision (Article 20.9) to enable India’s early accession to the trading bloc, and the “Ministers’ Declaration on India’s Participation in the Regional Comprehensive Economic Partnership (RCEP)” was publicized before

RCEP's signing. The Ministers' Declaration states expressly that the RCEP signatory states may "commence negotiations with India any time after the signing of RCEP" (even before RCEP comes into force) if India wishes to do so. Also, concerning the accession to RCEP, although it is provided that RCEP is open for admission by new states 18 months after the date of entry into force of the agreement, India can accede to RCEP from the date of entry into force of the agreement. The Ministers' Declaration also permits India to participate in RCEP meetings as an observer and in economic cooperation activities undertaken by the RCEP signatory states, giving India a privileged position as an "original negotiating state."

We should be careful not to conclude that India's exit from the agreement will see RCEP become a China-led trade pact. The presence of China (occupying more than half of total GDP) in RCEP remains important irrespective of India's withdrawal, and just like the companies of other signatory countries, we expect Chinese firms to also expand their businesses across the region through RCEP. But this does not necessarily mean that China will dominate the rule-making process within the region. Furthermore, the FTA partners nations of ASEAN, including both Japan and China, are giving consideration to an "ASEAN centrality" concept and are endeavoring to ensure that RCEP is led by ASEAN. This consideration is intended to lessen ASEAN's concerns that RCEP will be dominated by a certain great power, while at the same time not allowing the agreement to become a field of contention between Japan and China. And this situation will not change even with India opting out from the agreement. It should be noted that during trade talks under the World Trade Organization (WTO) or other fora, China and India have tended to hold positions different from the developed countries and have collaborated with each other. Hence it is likely that India's exit from the agreement will not give China any undue advantage in RCEP.

2. Outline of RCEP

(1) Structure of RCEP

RCEP is a comprehensive EPA and consists of 20 chapters that include Trade in Goods, Trade in Services, Investment, Government Procurement, Intellectual Property, and Electronic Commerce, among others. In sum, the degree of liberalizations and the level of rules of RCEP stand lower than the TPP, but substantially higher than those under the WTO.

RCEP contains WTO-plus provisions that refer to deepening or extending the commitments that the member states have already made in the WTO and the WTO-extra provisions that refer to those new trade-related issues not yet covered or regulated by the WTO. For example, RCEP provides that in cases where the application to register a

trademark is made in bad faith in accordance with its laws and regulations, each authority has the authority to refuse the application or cancel its registration (Article 11.27). This represents a WTO-plus provision that does not even exist in the TPP. Also, RCEP has established an independent chapter that covers the provisions of Electronic Commerce, for which the WTO has not set adequate rules.

On the other hand, chapters dealing with such items as state-owned enterprises, the environment, and labor and regulatory coherence are not found in RCEP. In addition, although there is an independent chapter on Government Procurement in RCEP, unlike the TPP and other agreements it only covers central governments, and not municipal governments, and while it imposes the obligation of transparency, among other items, it does not stipulate liberalization of the government procurement market (**Chart 4**).

In the following section we will select and examine the contents of several chapters.

Chart 4: Structure of RCEP (Chapters)

| | | | |
|---|---|--|------------------------------|
| 1. Initial Provisions and General Definitions | 7. Trade Remedies | 12. Electronic Commerce | 18. Institutional Provisions |
| 2. Trade in Goods | 8. Trade in Services -Financial Services -Telecommunications Services -Professional Services | 13. Competition | 19. Dispute Settlement |
| 3. Rules of Origin | 9. Temporary Movement of Natural Persons | 14. Small and Medium Enterprises | 20. Final Provisions |
| 4. Customs Procedures and Trade Facilitation | 10. Investment | 15. Economic and Technical Cooperation | |
| 5. Sanitary and Phytosanitary Measures (SPS) | 11. Intellectual Property | 16. Government Procurement | |
| 6. Standards, Technical Regulations, and Conformity Assessment Procedures (STRACAP) | | 17. General Provisions and Exceptions | |

Source: Made by MHRI based upon *Regional Comprehensive Economic Partnership Agreement*.

(2) Trade in Goods

a. Elimination of customs duties by 15 nations

The tariff elimination rate in RCEP for all 15 Parties stands at 91% (tariff line basis, 89% on a trade value basis), and the agreement states that RCEP has established a free trade area based on Article 24 of the General Agreement on Tariffs and Trade (GATT) (and Article 5 of the General Agreement on Trade in Services [GATS]) (Article 1.1).

According to documents compiled by the Japanese government, the tariff elimination rate of Japan is 88% for ASEAN/Australia/New Zealand, 86% for China, and 81% for South Korea (tariff line basis, hereafter the same). Furthermore, the tariff elimination rate of the other 14 nations for Japan is 86% to 100% committed by ASEAN/Australia/New Zealand, 86% by China, and 83% by South Korea. If we focus on industrial goods, the tariff elimination rate rises to 98.6% by Japan and 91.5% by the other 14 countries (**Chart 5**). Many countries have not removed tariffs on iron and steel and articles of iron or steel

as well as automobiles and automobile parts (excluded, tariff maintained, tariff reduced) for Japan. It should be noted that the reduction of tariffs after the agreement comes into force is scheduled for April 1 of each year for Japan, Indonesia, and the Philippines, and January 1 for other Parties.

Chart 5: Tariff elimination rates on Japanese industrial goods by country

| | | | |
|--------------------|--------------|--------------------|--------------|
| China | 86.3% | Philippines | 92.7% |
| South Korea | 91.6% | Singapore | 100% |
| Australia | 98.0% | Thailand | 90.5% |
| NZ | 90.6% | Vietnam | 87.9% |
| Brunei | 98.2% | Cambodia | 86.0% |
| Indonesia | 88.4% | Laos | 91.9% |
| Malaysia | 87.3% | Myanmar | 91.6% |

Source: Made by MHRI based upon the Ministry of Economy, Trade and Industry of Japan, *Overview of tariffs on industrial goods in the Regional Comprehensive Economic Partnership (RCEP) agreement relating to METI* (November 2020), p. 6.

b. Japan’s tariff elimination

As described in the previous section, Japan’s tariff elimination rate is 88% for goods imported from ASEAN/Australia/New Zealand, 86% from China, and 81% from South Korea. These rates are substantially lower compared with 95% of the TPP.

The tariff elimination rate for agricultural, forestry and fishery products is 82% for the TPP, while for RCEP such rates decline to 61% for ASEAN/Australia/New Zealand, 56% for China, and 49% for

South Korea. Japan excluded its five “sensitive” products (rice, wheat and barley, beef and pork, dairy products, and sugar) and chicken from tariff elimination for the other 14 nations. According to materials compiled by the Ministry of Agriculture, Forestry and Fisheries of Japan, Japan excluded “many articles that domestic producers wish to increase domestic shipments for processing and business purposes” such as onion, carrot, frozen broccoli, and eel preparation for China, and for South Korea it “basically” excluded vegetables, meaning that Japan has “excluded more articles than those for China.”

On the industrial products front, Japan’s tariff elimination rates are 99.1% for items imported from ASEAN/Australia/New Zealand, 98% from China, and 93% from South Korea, a level slightly lower than 100% committed in the TPP. Items subject to exclusion include articles of leather and footwear, and industrial alcohol (for China and South Korea), and many chemical products for both China and South Korea (South Korea in particular). Winding wire (HS8544) and carbon electrode (HS8545) are two of the few taxable commodities out of electric machine (HS85), and they are subject to gradual tariff elimination for Chinese and South Korean products (to be eliminated in the 11th year, and immediately for other Parties).

c. China’s tariff elimination on Japanese goods

Next, we want to look at the situation with China and South Korea, the two countries

with which Japan entered into an EPA for the first time when signing RCEP. First we look at China.

Tariffs will be eliminated on 86.0% of goods exported from Japan to China. This rate is a huge leap from the current tariff-free (base rate 0%) rate of 8.4%. The immediate tariff elimination rate has been set at 25.0%, including the currently tariff-free items. By the 11th year of the agreement coming into force, more than 70% of commodities will be tariff-free (**Chart 6**).

Many items are excluded from any commitment of tariff reduction or elimination in such categories for industrial products as organic chemicals (HS29), plastics and articles thereof (HS39), paper and paperboards (HS48), man-made filaments (HS54), iron and steel (HS72), articles of iron or steel (HS73), machines and apparatus (HS 84), electrical machinery (HS 85), and vehicles (HS87).

With regards to motor cars for the transport of persons (HS8703), China reduced the Most Favored Nation (MFN) tariff for some articles (including station wagons over 1500 cc) from the base rate of 25% to 15%, and in RCEP China has committed to maintain the currently effective tariff rate of 15%. Other types of cars are excluded from the commitment. Although the tariff elimination rate for automobile parts will reach 87%, many articles are subject for gradual elimination over the long term.

Chart 6: Schedule of China’s tariff elimination on Japanese goods

| | Tariff-free | | Immediate | | | - Year 11 | | - Year 16 | | | - Year 21 | | Reduction | Exclusion | | |
|---|-------------|-------|-----------|-------|---------|-----------|-------|-----------|-----|-------|-----------|-----|-----------|-----------|----|------|
| Total | 699 | 8.4% | 1371 | 16.6% | (25.0%) | 3848 | 46.5% | (71.5%) | 952 | 11.5% | (83.0%) | 248 | 3.0% | (86.0%) | 30 | 1129 |
| Agricultural, forestry and fishery products | 191 | 12.4% | 111 | 7.2% | (19.6%) | 731 | 47.6% | (67.2%) | 184 | 12.0% | (79.2%) | 72 | 4.7% | (83.9%) | 0 | 248 |
| Industrial products | 508 | 7.5% | 1260 | 18.7% | (26.2%) | 3117 | 46.2% | (72.5%) | 768 | 11.4% | (83.9%) | 176 | 2.6% | (86.5%) | 30 | 881 |

Notes: 1. HS 8-digit level. “Agricultural, forestry and fishery products” are HS01-24/44, “Industrial products” are HS25-97 (excluding 44). Percentages in parentheses are on a cumulative basis.

2. “Tariff-free” means articles whose base rate is 0%.

3. “Reduction” includes the nine vehicle articles for which the MFN tariff rate has been maintained (base rate reduced).

Source: Made by MHRI based upon *China’s Schedule of Tariff Commitments for Japan, RCEP Agreement*.

d. South Korea’s tariff elimination on Japanese goods

Tariffs will be eliminated on 83.0% of goods exported from Japan to South Korea. This is a substantial increase from the current tariff-free rate of 16.0%. The immediate elimination rate stands at 41.4%, including articles that are tariff-free at present. By the 10th year after the agreement coming into force, 73.8% of commodities will be tariff-free (**Chart 7**).

Articles exempted from any commitment of tariff reduction or elimination for industrial products are found in the categories of organic chemicals (HS29), cotton and yarns woven

fabrics thereof (HS52), machines and apparatus (HS84), and vehicles (HS87). Although the tariff elimination rate for automobile parts will reach 78%, such products as motor cars and other motor cars for the transport of persons (HS8703), motor vehicles for the transport of goods (HS8704), and gear boxes (HS870840) are excluded.

Chart 7: Schedule of South Korea's tariff elimination on Japanese goods

| | Tariff-free | | Immediate | | | - Year 10 | | | - Year 15 | | | - Year 20 | | | Exclusion |
|---|-------------|-------|-----------|-------|---------|-----------|-------|---------|-----------|------|---------|-----------|------|---------|-----------|
| Total | 1956 | 16.0% | 3113 | 25.4% | (41.4%) | 3965 | 32.4% | (73.8%) | 669 | 5.5% | (79.3%) | 455 | 3.7% | (83.0%) | 2085 |
| Agricultural, forestry and fishery products | 91 | 3.8% | 264 | 11.0% | (14.8%) | 649 | 27.1% | (42.0%) | 141 | 5.9% | (47.9%) | 2 | 0.1% | (48.0%) | 1245 |
| Industrial products | 1865 | 18.9% | 2849 | 28.9% | (47.9%) | 3316 | 33.7% | (81.5%) | 528 | 5.4% | (86.9%) | 453 | 4.6% | (91.5%) | 840 |

Notes: 1. HS 10-digit level. "Agricultural, forestry and fishery products" are HS01-24/44, "Industrial products" are HS25-97 (excluding 44). Percentages in the parentheses are on a cumulative basis.
2. "Tariff-free" means articles whose base rate is 0%.

Source: Made by MHRI based upon *South Korea's Schedule of Tariff Commitments for Japan, RCEP Agreement*.

e. Rules of Origin

The product-specific rules of origin in RCEP are relatively loose and close to the standards of EPAs signed by Japan and ASEAN. For machines and apparatus (HS84) and electrical machinery (HS85), the Change in Tariff Classification standard or the Value-Added standard can be selected for many articles, and the Change in Tariff Classification can be conducted at the four-digit level (Change of Tariff Heading, or CTH) and the six-digit level (Change of Tariff Sub-Heading, or CTSH), and the Value-Added criterion is a Regional Value Content of 40% (RVC40). For automobile-related products, motor cars for the transport of persons (HS8703), and motor vehicles for the transport of goods (HS8704) adopt RVC40, while parts for motor vehicles (HS8708) can select from CTH or RVC40. In the area of iron and steel (HS72), many commodities can choose from CTH/CTSH or RVC40, and articles of iron or steel (HS73) can select CTH or RVC40.

The RCEP agreement makes it possible to cumulate the originating goods of other Parties, and after the agreement enters into force in all signatory nations, the Parties will consider the extension of the application of cumulation to "all production undertaken and value added to a good within the Parties." This review shall commence on the date of entry into force of the agreement for all signatory states, and the "Parties shall conclude the review within five years of the date of its commencement" (Article 3.4).

Attention should be paid to the provision that in cases where an importing party promises a different tariff rate for the same originating good depending on the exporting party, "tariff differentials" shall apply (Article 2.6).

Concerning Proof of Origin, Certificate of Origin issued by an issuing body and

Declaration of Origin by an approved exporter have been adopted. Cambodia, Laos, and Myanmar (CLM) are required to implement a Declaration of Origin by an exporter or producer no later than 20 years, and other Parties no later than 10 years after their respective dates of entry into force of the agreement. Furthermore, the article provides that all Parties “will consider the introduction of the Declaration of Origin by an importer as a Proof of Origin” after the date of entry into force of the agreement, provided, however, that Japan may consider a Declaration of Origin by an importer as a Proof of Origin from the date of entry into force of this agreement. (Article 3.16)

For verification, the competent authority of the importing Party may request additional information from the importer, exporter or producer, and the issuing body or competent authority of the exporting Party. In addition, the competent authority of the importing Party may conduct “a verification visit to the premises of the exporter or producer in the exporting Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting files”. But the verification visit can only be undertaken after the competent authority of the importing Party has gone through the verification process by requesting additional information from the issuing body or competent authority of the exporting Party (Article 3.24).

(3) Trade in Services

In Trade in Services (Chapter 8), RCEP imposes mostly the same obligations as defined by the GATS for National Treatment, Market Access, and so forth. Also, the agreement provides annexes for financial services, telecommunication services, and professional services.

In addition to CLM, the Philippines, Thailand, Vietnam, China, and New Zealand made their commitments in “Schedules of Specific Commitments” - a positive list. The Parties adopting a positive list must specify the “sectors or subsectors for future liberalization” in their respective commitments schedules, and ratchet obligations are imposed with regard to these sectors or subsectors (Article 8.7). In an EPA, a negative list imposes obligations on all sectors and specifies certain sectors (or measures) exempt from such obligations, and is said to be desirable in principle. The RCEP agreement provides that Parties adopting a positive list are required to submit a proposed schedule for adopting the negative list (“Schedules of Reservations and Non-Conforming Measures”) no later than three years (for CLM no later than 12 years) after the date of entry into force of the agreement, and the process of transition must be completed no later than six years (for CLM no later than 15 years) after the agreement comes into force (Article 8.12).

The Parties that have adopted the negative list include Japan, Brunei, Indonesia, Malaysia, Singapore, Australia, and South Korea. For the Parties adapting a negative list,

two lists (List A and B) have been created, and List A defines the ratchet obligations (Article 8.8).

According to documents prepared by the Japanese government, China has promised not to impose restrictions related to foreign investment ratio on life insurance and securities services, and Indonesia has committed to setting the maximum foreign investment ratio at 51% for engineering services targeted at projects that take advantage of advanced technology, both exceeding the levels committed in GATS and the EPA with Japan.

(4) Investment

The Investment chapter (Chapter 10) stipulates National Treatment, Most-Favoured-Nation Treatment, fair and equitable Treatment of Investment, and Prohibition of Performance Requirements, among others, and their obligations are partially stricter than the WTO rules. This chapter covered investments “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments”, implying that the chapter is a “liberalization type.” It should be mentioned that the obligations of Most-Favoured-Nation Treatment will not be applied to CLM and Vietnam (“CLMV”), and other Parties are not liable to fulfill the obligations to CLMV (Article 10.4).

Prohibition of Performance Requirements includes prohibitions on the transfer of a particular technology and the adoption of a given rate or amount of royalty under a license contract, surpassing the level required by many of the EPAs signed between Japan and various ASEAN countries. However, both prohibitions are not applied to CLM (Article 10.6).

Unlike in Trade in Services, all Parties made their commitments in a negative list in Investment. Concerning the measures in List A, a standstill obligation is imposed on CLM, Indonesia, and the Philippines, while other Parties are imposed a ratchet obligation five years after the date of entry into force of the agreement (the standstill obligation applies until then) (Article 10.8).

“The settlement of investment disputes between a Party and an investor of another Party” (ISDS) provision has not been incorporated at present, but discussions on this topic will commence no later than two years after the date of entry into force of the agreement (Article 10.18).

“Security Exceptions” has been established in Chapter 10 separate from the one that covers the entire RCEP agreement (Article 17.13), and it provides that the provisions in Chapter 10 cannot “preclude a Party from applying measures that it considers necessary for (i) the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security; or (ii) the protection of its own essential security interests”

(Article 10.15). Also in Chapter 17 that stipulates exceptions, “a decision by a competent authority, including a foreign investment authority, of a Party on whether or not to approve or admit a foreign investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions under Chapter 19 (Dispute Settlement)” (Article 17.11).

(5) Electronic Commerce

Although Electronic Commerce (Chapter 12) is in conformity with the TPP, the level of its requirements is lower than the TPP, since parts of the provisions have not been incorporated, and there are exceptions even if such provisions had been integrated. Moreover, for many provisions, CLM has been given a grace period of five years after entry into force of the agreement.

Concerning “non-imposition of custom duties on electronic transmission between the Parties,” although it has been provided that the Parties shall maintain their current practice of not imposing customs duties on electronic transmissions, such a provision has not been made permanent as was made in the TPP. In the WTO, agreement was reached on a “moratorium on customs duties on electronic transmissions” in the second ministerial conference held in May 1998, and such a moratorium has been basically renewed every two years based on the decision made at ministerial meetings held thereafter. In RCEP, Parties may adjust their practice of a moratorium “with respect to any further outcomes in the WTO Ministerial Decisions” on customs duties on electronic transmissions (Article 12.11). In the WTO discussions, India and South Africa have objected to the renewal of the moratorium given the decline in custom duties revenue driven by the moratorium, which exerts a negative impact on their financial position. Indonesia also has shown a tough stance on making the moratorium a permanent commitment. Hence, there is a possibility that the moratorium will not be renewed in the next WTO Ministerial Conference scheduled in 2021, and if this case arises, the imposition of custom duties on electronic transmissions may not be in violation of the RCEP agreement.

Concerning the “three TPP principles” of (1) no prohibitions or restrictions on the cross-border transfer of information by electronic means, (2) prohibition to request locating or using computing facilities, and (3) prohibition of requiring the transfer of source codes, RCEP covers (1) and (2) but excludes (3) as a matter to be deliberated in the future. RCEP also does not include the provision on “prohibition of forced use of specific encryption and forced disclosure of encryption keys” covered in such agreements as the Japan-US Digital Trade Agreement. It has been also decided that “non-discriminatory treatment of digital products” will be discussed in future negotiations, just like (3).

For provisions (1) and (2), CLMV has been given a grace period of five years after the

agreement enters into force (CLM can extend this grace period by an additional three years). Also, Parties are not prevented from adopting “any measure that the Party considers necessary to achieve a legitimate public policy objective” as an exception. While this exception does not allow the Parties to take measures in “a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade,” the necessity behind the implementation of such a public policy shall be decided by the implementing Party. Furthermore, a Party may also exceptionally adopt “any measure that it considers necessary for the protection of its essential security interests,” and it has been provided that such measures shall not be disputed by other Parties (Article 12.14 and 12.15). If these two exceptional treatments are used in an abusive manner, (1) and (2) may lose substance and therefore we need to watch how the Parties will manage these exceptional treatments.

It should be noted that although financial services are not covered in the chapter on electronic commerce, the annex on financial services provides that the Parties shall not take measures that prevent “transfers of information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory” (Article 9, Annex 8A Financial Services).

The dispute settlement procedures stipulated in Chapter 19 is not applied to this chapter, and in the event of any differences between Parties regarding the interpretation and application of this Chapter, such differences may be resolved through consultation and by referring the matter to the RCEP Joint Committee. However, the application of Chapter 19 to this chapter will be reviewed as part of any “general review” of the agreement undertaken every five years, and it has been provided that “Chapter 19 (Dispute Settlement) shall apply to this Chapter between those Parties that have agreed to its application” after the completion of the review (Article 12.17).

3. “Evolution” of RCEP is required

Now signed, RCEP faces four issues going forward. As described in earlier sections, how quickly the agreement comes into effect and the return of India constitute the first two issues.

The third challenge is RCEP’s expansion. As mentioned earlier, countries and separate customs territories other than India are allowed to newly join RCEP 18 months after the date of its entry into force. The start of negotiations to join RCEP does not need to wait this period. While for Japan the CPTPP is more attractive given its higher level of liberalizations and rules relative to RCEP, joining RCEP may be a realistic option for countries and separate customs territories that find it difficult to join the CPTPP for various reasons.

While the third issue is quantitative growth that involves increasing the number of participating economies, the fourth challenge addresses qualitative growth of the RCEP. Even in the few chapters examined in this report, we saw many provisions that will require review or further considerations after the agreement comes into force. Just as the TPP was labeled a “living agreement” as it requires constant improvement and development, RCEP must also be considered a “living agreement” with the prospects of future evolution.

In this sense, RCEP marks a starting point for future evolution, and not the final form, that provides a foundation to promote dialogue and cooperation to achieve this evolution. Thus, the signing of the agreement this time is not the end of negotiations, but the beginning of the review and consideration process.

Companies operating in the regions covered by this agreement will also face the challenge of how best to use RCEP in consideration of such expected evolution. They will need to consider how to take advantage of RCEP when responding to the ongoing US-China tensions, reviewing their supply chains amid the spread of the new coronavirus, and taking measures regarding digitalization and green growth. In the mid to long term, skillful use of the RCEP agreement is expected to make a real difference in boosting the competitiveness of companies.