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TPP11 and RCEP Compared

November 2017: This is an updated version of an earlier post on Talking Trade, modified to reflect the TPP11 changes and the expansion of the agenda in RCEP. However, because RCEP, especially, remains under negotiation, the assessment should be viewed with some caution. For further discussion on how you can use or influence these agreements, please see us soon at the Asian Trade Centre.

	RCEP	TPP11 or CPTPP
<i>Membership</i>	<p><i>16 countries in Asia</i></p> <ul style="list-style-type: none"> • 10 ASEAN members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam • 6 ASEAN Foreign Partners: Australia, China, India, Japan, New Zealand and South Korea • 	<p><i>11 countries across the Pacific</i></p> <ul style="list-style-type: none"> • 7 Asian members (also in RCEP): Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam • Plus Canada, Mexico, Chile, and Peru
<i>Status of Negotiations</i>	<p><i>Ongoing</i></p> <ul style="list-style-type: none"> • 20 rounds finished in 2017 • 3 rounds currently scheduled for 2018 • The Asian Trade Centre will continue to attend future RCEP rounds and we are working to ensure more spots for companies to participate 	<p><i>Concluded Awaiting Final Signature</i></p> <ul style="list-style-type: none"> • Original TPP12 texts and schedules released in February 2012 • Modification of deal in 2017 • Leaders announced broad outlines of TPP11 in November 2017 • Final signature expected in early 2018 • Entry into force in 2018
<i>Scope</i>	<p><i>16 substantive chapters including:</i></p> <p>Goods, services, investment, rules of origin, customs, e-commerce, intellectual</p>	<p><i>Contains 30 chapters</i></p> <p>Goods, services, investment, e-commerce, trade remedies, intellectual property, government procurement, regulatory</p>



	property, development, legal, government procurement, and some standards (TBT and SPS, albeit under different names)	coherence, competition policy, environment, labor, legal, standards and more All original texts and schedules are available for viewing at: http://www.tpp.mfat.govt.nz/text TPP11 suspended 20 provisions of original agreement. For details on these elements, see our <i>Policy Brief 17-11</i> , www.asiantradecentre.org
<i>Depth of Coverage, Goods</i>	<i>Modest?</i> <ul style="list-style-type: none"> Deal not yet concluded, but cuts do not automatically mean tariff elimination or tariffs to 0 Example: tariff coverage could be at 90%, (10% excluded entirely) and not all drop to 0 even at end of full implementation 	<i>Very deep</i> <ul style="list-style-type: none"> All goods included, and every tariff line addressed All about a tiny handful tariffs drop to 0, including sensitive items normally carved out or excluded from trade deals Some problematic tools remain for some members (TRQs, safeguards, etc)
<i>Depth of Coverage, Services</i>	<i>Modest?</i> Services coverage, so far, not great—limited list of included services sectors, all others not open (positive list scheduling)	<i>Excellent</i> Every single service sector (160+) opened for TPP member firms except those explicitly listed as closed and most exceptions not commercially meaningful
<i>Depth of Coverage, Investment</i>	<i>Strong</i> <ul style="list-style-type: none"> Investment more promising as RCEP members want inbound investment Negative list scheduling means all opened, unless sector is explicitly listed as closed (list could be longish?) RCEP currently includes ISDS provision to help protect investors 	<i>Excellent</i> <ul style="list-style-type: none"> Negative listing: Every single investment sector also opened for TPP member firms (except for those listed as closed) Strong protection for all investors, including ISDS (although tobacco explicitly carved out of ISDS coverage)



<i>e-Commerce</i>	<i>Should be good</i> RCEP should benefit from being negotiated second—e-commerce rules can be broad and include provisions across chapters to benefit smaller firms	<i>Good</i> First major agreement to cover digital trade and e-commerce. New rules for data flows, data localization, encryption, source code. But also has policy flexibilities
<i>Government procurement</i>	<i>Included</i> Early days of formal negotiations, but most likely outcome is inclusion of more transparency	<i>Opened to TPP firms</i> <ul style="list-style-type: none"> • Government procurement contracts opened for TPP firms at the federal level above a threshold • Members have specific schedules
<i>Competition</i>	<i>Unclear?</i> Required by leaders' statement, but unclear where negotiations currently stand because RCEP countries have varying commitments on competition policy at domestic level	<i>Strong</i> Two chapters on competition, including one to set rules for many state-owned enterprises (those engaged in commercial competition)
<i>Trade Facilitation and Customs</i>	<i>Yes</i> RCEP apparently allowing WTO's Bali Trade Facilitation agreement to become "floor" of commitments and scheduling additional promises above this threshold	<i>New customs rules</i> TPP includes many new provisions including self-certification, advanced rulings, time deadlines for some customs clearance, etc. to move cargo through customs faster and easier
<i>Standards</i>	<i>Limited</i> <ul style="list-style-type: none"> • Likely to be restatement of existing provisions in WTO and ASEAN+1 agreements? • New rules for food (SPS) and other standards (Note that ASEAN uses different terminology for TBT) 	<i>Some New Provisions</i> TPP's SPS and TBT chapters have some provisions that go beyond existing commitments



<i>Intellectual Property</i>	<i>New rules</i> RCEP countries are moving to include new provisions on IP that go beyond existing commitments, unclear exactly how far and in which areas these will extend, but especially new rules possible for digital trade?	<i>New rules</i> TPP created new IP provisions in nearly every category of IP to update existing rulebooks Even with suspended provisions, TPP11 IP chapter remains most extensive in agreement
<i>Trade Remedies</i>	<i>Yes</i> RCEP moved from expert group discussions to formal negotiations on topic in 2017, but mixed views on trade remedies among members	<i>Yes</i> Short chapter in TPP, although some safeguards, for instance, appear in market access commitments
<i>Movement of People</i>	<i>Some Commitments</i> While some have been pushing hard for the movement of services workers, this is highly sensitive for RCEP	<i>Minimal</i> TPP has a chapter on business mobility that allows the temporary movement of workers for services (mostly for intercorporate transferees) See agreement for specific member commitments in each category
<i>Environment</i>	<i>None</i>	<i>Yes</i> TPP environment chapter contains commitments on fish, fish subsidies, endangered species trade, logging, ozone, and more
<i>Labor</i>	<i>None</i>	<i>Yes</i> TPP has a chapter on labor which includes protection of worker rights such as no use of forced labor, child labor, minimum wages and decent working conditions [Note that with US withdrawal from



		agreement, the more onerous conditions in side letters with Vietnam, Malaysia and Brunei are no longer applicable]
<i>SMEs</i>	<i>Yes</i> Commitment to build website	<i>Chapter, but limited</i> SME chapter in TPP is basically website, but note that commitments in agreement can be very helpful to smaller firms (even if the overall agreement is complicated to use)
<i>Development</i>	<i>Extensive commitments</i> RCEP explicitly recognizes developmental dimensions of trade and builds in flexibilities for developing countries, LDCs, plus capacity programs	<i>Limited commitments</i> TPP includes a norm that all members agree to same provisions with no distinction between countries—hence limited flexibilities and modest capacity building included in agreement
<i>Transparency Provisions</i>	<i>Minimal or modest</i>	<i>Extensive</i> Every single chapter in TPP includes provisions for greater transparency, particularly in rulemaking to allow input and time for adjustment
<i>Flexibilities</i>	<i>Extensive</i> Nearly every provision includes extensive flexibilities for members	<i>Limited</i> Flexibilities granted for public health, animal health, public security, etc. Otherwise, limited flexibilities in agreement
<i>Dispute Settlement</i>	<i>Yes, unlikely to be used?</i> The track record in Asian agreements suggests that dispute settlement provisions will not be used in RCEP—disputes likely to be taken up at WTO?	<i>Designed to be used regularly</i> TPP provisions on disputes show intentions to use provisions (although absence of Americans from final agreement may alter use of DSM?)



<p><i>Third Party Participation in the Negotiating Process</i></p>	<p><i>Almost none</i></p> <p>RCEP has provided limited options for third-parties (businesses, NGOs, media) to provide input at domestic level or directly to officials or to learn about outcomes</p>	<p><i>Extensive</i></p> <p>Some TPP members provided extensive opportunities for input at the domestic level plus the TPP included stakeholder outreach sessions for input directly to officials and had media follow negotiation rounds</p>
<p><i>Accession clause</i></p>	<p><i>Unclear</i></p> <p>Officially, the criteria for membership in RCEP is an existing ASEAN agreement</p>	<p><i>Yes</i></p> <p>Explicit provisions for adding new members—gives priority to APEC members, but not limited to APEC only</p> <p>Note, however, that the accession procedures, which were underspecified in original TPP12 agreement, have been reworked in CPTPP or TPP11 deal</p>
<p><i>What next?</i></p>	<p><i>Negotiations continue</i></p> <p>RCEP has 3 rounds currently scheduled for 2018—hope is to conclude by end of year?</p>	<p><i>Movement towards entry into force</i></p> <p>After leader signature in early 2018, TPP11 will come into force once the 6th country completes domestic procedures</p> <p>It will be very important to watch the implementation of the TPP11 rulebook at the domestic level in some TPP member countries</p> <p>This is likely to happen much sooner than many expect—likely within 2018</p>

For more information on TPP11 and RCEP or how your company can benefit from these Asian trade agreements, please contact us.

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