

Summary of Outcomes

The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement initially negotiated between the 10 members of ASEAN (Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam) and six regional countries with which ASEAN has existing free trade agreements (Australia, China, India, Japan, South Korea, and New Zealand).

RCEP was concluded and signed in November 2020, with the exception of India which withdrew from negotiations in November 2019. A fast-track accession process has been established should India wish to re-join RCEP in future.

RCEP will enable New Zealand to deepen our connection with, and facilitate our economic integration in, the Asia-Pacific region. Our relationships in this region are vital. RCEP covers nearly one third of the world's population and its markets currently take more than half New Zealand's total goods and services exports. The RCEP region is the engine room for the global economy. RCEP will play a key part in New Zealand's own COVID-19 Trade Recovery Strategy.

RCEP is called a comprehensive agreement because it promotes economic integration within the Asia-Pacific region through rules in a broad range of fields. RCEP preserves New Zealand's right to regulate for legitimate public policy purposes and will uphold the Treaty of Waitangi. Investor-State dispute settlement (ISDS) is excluded from RCEP. RCEP will also provide improved market access for New Zealand service exporters and investors, especially into the largest ASEAN countries and China. For New Zealand goods exporters, RCEP will increase demand for New Zealand inputs into regional supply chains and save them time and money through new rules that facilitate trade and reduce non-tariff barriers.

The 15 RCEP countries represent:

- 2.3 billion people (30% of the world's population);
- \$38,813 billion of Gross Domestic Product (30% of world GDP).¹ Five RCEP countries are members of the Group of 20 (G20), the international forum for global economic cooperation: Australia, China, Indonesia, Japan, and South Korea;
- 56% of New Zealand's total exports, representing 61% of New Zealand's goods exports (worth \$36.6 billion) and 45% of New Zealand's services exports (worth \$11.8 billion);²
- 61% of foreign direct investment in New Zealand (worth \$68.7 billion);³
- 7 of New Zealand's top 10 trading partners based on two way trade (exports and imports): China, Australia, Japan, Singapore, South Korea, Thailand and Malaysia.⁴

¹ International Money Fund World Economic Outlook sourced from Haver

² Statistics New Zealand: December 2019

³ Statistics New Zealand: March 2019

⁴ Statistics New Zealand: Goods and Services Trade by Country: December 2019

Key Features of the RCEP Agreement

Trade in Goods

New Zealand has existing FTAs with all the RCEP countries,⁵ which have already eliminated tariffs on most New Zealand exports. RCEP does not therefore deliver significant new market access for goods exports as a result of tariff cuts. RCEP does, however, reduce tariff barriers for New Zealand exporters into Indonesia for the following products:

- Elimination of the 5% unbound tariff on beef exports (other cuts with bone in), and all sheep meat exports.
- Elimination of the 5% applied MFN⁶ tariff and 2.5% reduced ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) tariff on preserved and prepared meat exports.
- Elimination of the 10% applied MFN tariff and 5% reduced AANZFTA tariff on table salt exports.
- Elimination of the 15% applied MFN tariff and 7.5% reduced AANZFTA tariff on fish and fish product exports.
- Elimination of the 5% applied MFN tariff and 4% reduced AANZFTA tariff on liquid milk, grated or powdered cheese, honey, avocados, tomatoes, persimmons, and many manufactured goods (including ships' or boats' propellers and blades, pumps, motors and electrical circuit boards).

In addition to these tariff outcomes, RCEP contains enhanced trade facilitation measures and other provisions that respond to concerns raised by New Zealand goods exporters regarding non-tariff barriers impacting trade. Many of these outcomes improve the status quo under existing FTAs such as the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), and extend some of the high standards contained in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) to a broader set of New Zealand's trading partners. These outcomes will lower compliance costs, reduce the time exporters spend waiting for goods to clear customs, and enhance transparency and predictability for businesses operating in the RCEP region. Some examples include:

- **Trade in Goods** Chapter, which provides enhanced transparency on import licensing procedures, commitments to facilitate future tariff transpositions,⁷ and a forum for cooperation on good regulatory practice in relation to measures affecting trade in goods. The goods chapter also provides an avenue for New Zealand to address non-tariff barriers maintained by an RCEP country by providing for a consultation mechanism with clear and

⁵ New Zealand – Australia Closer Economic Relations (CER), ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), New Zealand – Malaysia Free Trade Agreement, New Zealand – Thailand Closer Economic Partnership, the Trans Pacific Strategic Economic Partnership (P4), New Zealand – Korea Free Trade Agreement, New Zealand – China Free Trade Agreement, New Zealand – Singapore Closer Economic Partnership, Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).

⁶ Most Favoured Nation (MFN) tariff rate, the 'standard' tariff rate applied on an import from a country with most favoured nation status as a member of the World Trade Organisation.

⁷ Tariff commitments are based on an international system of goods classification called the Harmonised Commodity Description and Coding System (HS). The World Customs Organisation is responsible for the HS and revises the system at regular intervals (roughly every five years) to ensure that it reflects changes in technology and patterns of international trade. Each time the HS is revised, the tariff commitments in FTAs need to be 'transposed' into the new revised nomenclature. New Zealand has had past experiences where this transposition process has been used to undermine tariff commitments. RCEP contains robust rules to ensure future transpositions are carefully managed and verified.

predictable processes and timeframes. There is also provision for a future work programme on sectoral initiatives, which provides an opportunity to seek further sector-specific obligations aimed at reducing unnecessary barriers to trade in sectors of interest to New Zealand, such as wine and cosmetics. RCEP parties have also reaffirmed their commitment to the elimination of agricultural export subsidies, and to work together to prevent their reintroduction in any form, reinforcing New Zealand's long-standing aim to eliminate agricultural export subsidies globally.

- **Rules of Origin and Operational Procedures** Chapter, which will reduce compliance costs as traders will have a number of options on the type of proof of origin documentation they can use. Third party issued certificates of origin, self-declaration by approved exporters and self-declaration by exporters and producers (subject to an implementation period) will all be available. Overall, the Schedule of Product Specific Rules will provide traders with co-equal value add or change in tariff classification rules. This reflects New Zealand's preferred approach.
- **Customs Procedures and Cooperation** Chapter, which draws on important trade facilitation principles from the WTO Trade Facilitation Agreement and is designed to facilitate trade through the simplification and streamlining of customs and border procedures. The Chapter will provide predictability and transparency of importing and exporting processes. These benefits are particularly significant for economies such as New Zealand, with a large proportion of Small and Medium Businesses (SMEs) – given that higher trade administration and transaction costs are a bigger challenge for SMEs than for larger enterprises.
- **A Standards, Technical Regulations, and Conformity Assessment Procedures** Chapter which includes provisions to enhance transparency in the development of technical barriers to trade (TBT) measures in the RCEP region and promote greater regulatory cooperation and good regulatory practice. In the longer-term, this is expected to lead to regulatory frameworks in RCEP markets that would make it easier for New Zealand exporters to determine the requirements for exporting. The chapter also has provisions to minimise the adverse effects regulations can have on trade by reducing transaction costs for businesses, and to provide mechanisms for RCEP parties to address specific trade issues with the aim of reducing or eliminating unnecessary TBTs.
- **A Sanitary and Phytosanitary (SPS)** Chapter which upholds the WTO SPS Agreement and facilitates trade while also preserving New Zealand's existing biosecurity and food safety regimes. The RCEP SPS chapter provides better outcomes than AANZFTA in a number of trade-facilitating ways including in relation to:
 - i. equivalence - encouraging importing parties to accept that New Zealand goods meet their SPS requirements if New Zealand demonstrates that its SPS measures achieve the same level of protection – i.e. equivalent, without having to be identical; regionalization (promoting acceptance of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence);
 - ii. emergency measures - if a Party adopts an emergency SPS measure that impacts New Zealand's trade, it is required to hold discussions on request and take due account of information provided;

- iii. transparency - the SPS chapter contains several provisions which require parties to provide documents in English, a better outcome than both CPTPP and AANZFTA.
- A **Trade Remedies** Chapter which preserves New Zealand's rights and obligations under relevant WTO agreements (the Agreement on Anti-Dumping, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards). It confirms that WTO rules will apply to the application of global safeguards and to the administration of anti-dumping and countervailing duties on trade between RCEP parties. The chapter also sets out non-binding guidance on best practices to enhance transparency and due process in anti-dumping and countervailing duty proceedings, which will be beneficial to New Zealand exporters wishing to access trade remedy proceedings in RCEP parties. This includes guidance for providing opportunities to remedy or explain deficiencies in requests for information, procedures for offering and concluding undertakings, and providing public notices and explanations for determinations.

Trade in Services

New Zealand already benefits from services commitments by other RCEP parties through existing FTAs, such as AANZFTA, CPTPP as well as our bilateral FTAs with South Korea and China. However, RCEP represents a meaningful step forward because:

- New Zealand will benefit from new commitments by some RCEP parties that go beyond existing FTAs. For example, Philippines has agreed new commitments in professional services,⁸ computer and related services, education services,⁹ environmental services¹⁰ and air transport services¹¹. Thailand has agreed new commitments in professional services,¹² computer related services,¹³ research and development services, distribution services, education services¹⁴ and air transport services. Indonesia has agreed to new commitment in education services¹⁵, engineering services¹⁶, and computer-related services¹⁷.
- New Zealand exporters currently grapple with a complex web of different rules when they trade in the RCEP region, having to navigate up to nine sets of rules stemming from existing FTAs. RCEP will establish a consistent framework and a single set of services rules for the entire RCEP region. This will improve regulatory certainty and transparency for New Zealand service suppliers across the RCEP region as a whole, and give them greater confidence to enter these markets.

⁸ Including bookkeeping, integrated engineering, veterinary medicine, environmental planning, architecture, interior design, forestry, customs broker, optometry, and respiratory therapy.

⁹ Adult education services, including for cross-border delivery.

¹⁰ Refuse disposal services, services to reduce exhaust gases, site remediation services.

¹¹ Ground handling services.

¹² Taxation services, veterinary services, industrial design services.

¹³ Cross-border delivery of consultancy services, hardware consultancy, software implementation, and data processing services.

¹⁴ Cross-border delivery into Thailand and through the establishment of a commercial presence.

¹⁵ Post-secondary technical and vocational education, technical and vocational secondary education, language course and training, football and chess.

¹⁶ Engineering design for industrial processes and production.

¹⁷ Consultancy related to installation of computer hardware, maintenance and repair of office machinery and equipment, data processing.

In the COVID-19 environment, the ability of New Zealand service providers to deliver their services cross-border - with the provider based in New Zealand and the customer based in their home country – will be increasingly important. This has been a consistent negotiating priority for New Zealand and the commitments in this area exceed what was achieved with ASEAN markets in AANZFTA. The need for providers to be able to deliver cross-border is particularly important in the education sector and RCEP makes improvements in this area – for example new market access commitments for cross-border trade in education services with Philippines, Thailand and Laos.

Sitting under the services chapter are three sector-specific annexes: the Telecommunications Services Annex, the Financial Services Annex and the Professional Services Annex.

- The **Telecommunications Annex** sets out regulatory disciplines for telecommunications services that build on WTO commitments contained in the GATS Telecommunications Annex and Basic Telecommunications Reference Paper. It extends and updates these regulatory disciplines to reflect the developments in approaches to the regulation of markets since the conclusion of the GATS in 1990. All the disciplines in the Annex are consistent with current New Zealand regulatory settings and ensure that our unique approach to regulating telecommunications services can meet the obligations.
- The **Financial Services Annex** provides New Zealand financial service suppliers with more transparency and certainty regarding access to RCEP markets. Like telecommunications, financial services are an important underlying service that is essential for all international trade and investment. The obligations in the Financial Services Annex to make information available, respond to enquiries and deal with applications expeditiously, and to not restrict the transfer of information or prevent the processing of information by a financial services provider in its territory, are consistent with current New Zealand domestic regulations and practice.
- The **Professional Services Annex** encourages RCEP parties to establish arrangements for the mutual recognition of qualifications, licensing regimes and registration procedures for professional services. The Annex aims to help facilitate the ability of professional services suppliers to be able to deliver their services across RCEP parties.

The **Movement of Natural Persons Chapter** provides rights for New Zealand business persons engaged in international trade to temporarily enter the markets of RCEP parties to conduct trade in goods, supply services or undertake investment activities. The chapter provides for the transparent and expeditious processing of applications for temporary entry. While enabling entry of this nature, the rules contained in the chapter do not apply to measures affecting access to the employment market of New Zealand, or any measures regarding nationality, citizenship, residence, or employment on a permanent basis.

Investment

New Zealand already benefits from investment commitments by other RCEP parties through existing FTAs, such as AANZFTA, CPTPP as well as our bilateral FTAs with South Korea and China. However, RCEP represents a meaningful step forward because:

- New Zealand will benefit from new commitments by some RCEP parties that go beyond existing FTAs. In particular, China and ASEAN countries that are not party to CPTPP will be making investment market access commitments for the first time to New Zealand.¹⁸
- As with exporters, New Zealand investors must also navigate the complex web of different rules when they trade in different jurisdictions. RCEP will establish a consistent framework and a single set of investment rules for the entire RCEP region. This will improve regulatory certainty and transparency for New Zealand businesses across the RCEP region as a whole, and give them greater confidence to invest in these markets.

The specific advantages provided by the investment chapter to New Zealand investors in other RCEP countries and RCEP country investors in New Zealand include:¹⁹

- *Non-discrimination*: Provides that New Zealand investors and investments cannot be discriminated against by a RCEP government, compared to its own domestic investors in like circumstances, or against other foreign investors (for example, it removes the ability for more onerous authorisation requirements to be placed on a New Zealand investor by a RCEP Party).
- *Standard of treatment*: Confirms that investors and investments are to be treated in accordance with the minimum standard of treatment under customary international law, including fair and equitable treatment and full protection and security.
- *Control over investments*: Enables New Zealand investors to retain greater control of their investments in other RCEP parties. For example, it removes the ability to impose or enforce conditions on investment in relation to the volume or value of imports associated with investments. It also removes the ability to impose a nationality requirement in the appointment of senior management positions.

Membership in RCEP will also promote the investment environment in New Zealand to potential investors from the region, through generating increased knowledge of and confidence in New Zealand's transparent investment regime. This is expected to encourage inward investment flows into New Zealand.

New Zealand was successful in excluding Investor State Dispute Settlement (ISDS) from RCEP. However, New Zealand's position on ISDS was not shared by all RCEP parties and a work programme will commence, no later than two years after entry into force (to be concluded within the following three years), to consider whether or not to amend RCEP to include ISDS. Any such change would require the consent of all RCEP parties, including New Zealand.

¹⁸ While AANZFTA contains market access commitments such as national treatment, these commitments are not currently in force pending negotiation of specific schedules of commitments for investment. The national treatment obligation in the New Zealand China FTA only applies to treatment within the scope of the bilateral investment treaty between New Zealand and China.

¹⁹ These rules are not absolute – New Zealand (and other RCEP parties) provide for a number of exceptions to the application of these rules in their schedules. For example we have retained policy space for New Zealand's investment screening regime under the Overseas Investment Act, including to ensure that we can continue to introduce changes such as the temporary notification regime in response to the economic impact of Covid-19.

Intellectual Property

The intellectual property (IP) commitments made in RCEP provide increased certainty for New Zealand exporters when protecting and enforcing their IP rights in the RCEP region. This is accomplished by providing a regional framework for:

- harmonising and aligning procedures and standards for the protection and enforcement of intellectual property rights.
- reducing regulatory and business compliance costs associated with those procedures.
- enhancing the transparency and due process in the IP regimes of the RCEP parties.
- facilitating information sharing, cooperation and capacity building between RCEP parties to ensure high quality IP rights are granted or registered and they can be enforced.

An additional feature contained in RCEP, but not included in all our existing FTAs with these partners, is the inclusion of a consultation mechanism to facilitate efficient resolution of any issues regarding the implementation of the obligations in the chapter. This will provide an alternative to the more elaborate and costly formal dispute resolution chapter.

A key benefit for New Zealand in the RCEP IP chapter is the outcomes on geographical indications²⁰ (GIs), which extend advantages previously secured in CPTPP to a wider group of trading partners. In particular, the agreement requires RCEP parties to adopt or maintain due process and transparency obligations in respect of any regime they provide for the protection of GIs. There would be a range of advantages for New Zealand exporters, including:

- The ability to challenge the protection of a name as a GI in another RCEP Party, if the name is known to consumers in the Party concerned as the common descriptive term for the relevant good. This would reduce the risk that New Zealand exporters of those goods might be prevented from using common descriptive terms to describe their goods.
- Where an RCEP Party has entered into an international agreement with a third Party that includes obligations to protect specific names as GIs, New Zealand exporters would have a reasonable period of time and opportunity to provide comments on whether or not those names should be protected.
- Increased transparency and due process in RCEP parties' processes for the protection of GIs, irrespective of whether protection was through domestic procedures or under any international agreement.

Another feature of the Agreement is recognition that some RCEP parties require, in their patent systems, prior and informed consent, access and benefit sharing for accessing and using genetic resources and traditional knowledge and folklore (GRTKF). This is the furthest that any of New Zealand's FTAs have gone in recognising GRTKF. It is a significant step at the international level to reaffirm the region's commitment to the rights and interests of indigenous peoples in genetic resources and traditional knowledge. The text also retains the

²⁰ A geographical indication is a sign or name used to identify a good as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin – for example 'champagne'. The issue is important to a number of New Zealand producers who export products with names claimed as GIs by the EU but considered generic in many other markets (for example the cheeses 'feta' and 'parmesan').

policy flexibility required for RCEP parties when considering genetic resources, traditional knowledge and folklore.

A Modern FTA

RCEP includes chapters in a number of areas that are new for some RCEP parties and will modernise New Zealand's trading relationships with these countries in line with our best practice from recent FTAs.

- An **Electronic Commerce** Chapter, which will allow businesses and consumers to transact online with confidence; protect the privacy and rights of consumers; and establish a framework for discussing fast-changing and emerging issues. The chapter will introduce specific rules on e-commerce for the first time in a trade agreement with South Korea, and expand existing rules in AANZFTA and the New Zealand-China FTA. The inclusion of these e-commerce obligations will modernise the trading relationship with our RCEP partners, particularly those not party to CPTPP.
- A **Competition Policy** Chapter which will facilitate economic efficiency and consumer welfare through the promotion of open and competitive markets. The chapter requires RCEP parties to have in place competition laws and maintain independent competent authorities to enforce laws which prohibit anti-competitive conduct and promote consumer welfare. This will be an important step forward in the region. RCEP will ensure that those competition laws are transparent and follow due process in its enforcement. The chapter also establishes systems to facilitate cooperation between the parties' competition authorities.
- A **Government Procurement** (GP) Chapter which promotes more transparent procurement processes. Cooperation provisions will also provide an avenue that can be used to enhance mutual understanding of RCEP parties' respective government procurement laws, regulations and procedures, and a mechanism to facilitate consultation and exchange of information on such matters. While CPTPP contains more ambitious GP commitments, RCEP is significant as it is the first time that major ASEAN economies such as Indonesia, Thailand and Philippines will take meaningful Government Procurement commitments. This establishes a foundation for us to expand on in the future.
- A **Small and Medium Enterprises** (SMEs) Chapter which requires RCEP parties to share complete information about RCEP online and include links to other information of relevance to SMEs doing business within the RCEP parties. The provisions align with the practice in New Zealand of ensuring businesses have good access to information, so they can make the best decisions to manage and grow their business.
- The **Economic and Technical Cooperation** Chapter aims to enhance the benefits of economic growth and development through the RCEP Agreement. It provides an opportunity to better coordinate New Zealand's economic and technical cooperation activities across the RCEP region, without committing New Zealand to any particular activity. It also enhances New Zealand's reputation as a trusted, valued and fair trading partner, by recognising the constraints faced by developing and least developed ASEAN Member States.

Preserving Rights

- As with all of New Zealand's contemporary trade agreements, RCEP includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. The Treaty of Waitangi exception allows the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty, without being obliged to offer equivalent treatment to persons of other countries that are party to the Agreement. This exception applies in respect of matters covered by the entire RCEP Agreement.
- RCEP will not impact the Government's right to regulate for legitimate public policy purposes, including health (the **Pharmac** model is protected), environment, security and taxation. Investor-state dispute settlement (**ISDS**) has been excluded.²¹
- New Zealand's schedule of commitments contains a number of exceptions which reserve policy space including for our investment screening regime under the Overseas Investment Act.
- Explicit policy space for the **creative arts** has also been maintained, albeit through reservations in New Zealand's services and investment schedules rather than a cross-cutting general exception (as was New Zealand's preference).

²¹ RCEP does provide for the parties to review the exclusion of ISDS within five years of entry into force, but any change requires consensus of all parties (i.e. New Zealand retains a veto).