

Asian Development Bank RCEP Conference

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Fonterra Speaking Notes

My thanks to the Asian Development Bank for the invitation to participate in this conference and for the opportunity to contribute to it.

There has been quite a lot written about the RCEP including that it will provide an overarching mechanism for regional trade with the benefit of a single set of rules and procedures for accessing preferential tariffs across the region.

This sounds good from a policy perspective, but in a region awash with more ambitious trade deals which offer more opportunity than the RCEP it is unlikely to achieve its goals.

RCEP may be 'comprehensive', but like all such agreements it is at heart a 'trade in goods' agreement. This is evidenced by media and political coverage invariably focussing on increased market access for goods.

In this context, the important things to know are - **Market Access** (what's in it for me) – **Rules of Origin** (how do my goods qualify) & (a subset of the Rules of Origin) the **Operational Certification Procedures** (what paperwork do I need).

Market Access & Rules of Origin are closely associated and complimentary in terms of function – that is protecting a party's defensive interests.

- **Market Access** does this by way of absolute numbers (extended or partial tariff elimination, exclusions, quantitative restrictions, and quotas).
- **The Rules of Origin** do this by making it harder for your trading partner's goods to become 'originating'.

While Market Access and the Rules of Origin set the ambition for the agreement – they do not determine its success. It is the Operational Certification Procedures that will 'make-or-break' the RCEP because this is where customs and trade engage, and preferential access accepted or denied. In this regard the RCEP breaks no new ground.

RCEP won't lack for success - there are opportunities, especially in cases where two of the Parties don't have an existing trade agreement - but it does mean that the measure of success is comparatively low compared to agreements with fewer parties.

Opportunities however limited are always welcome and worth pursuing.....so you would think - but this is often not the case.

Experience with other agreements tells us that if the certification procedures are interpreted, implemented, and enforced differently by different customs agencies, the resultant uncertainty and risk will make any improved market access less attractive.

RCEP is competing with agreements across the region that not only offer better market access opportunities – they also offer business friendly certification processes that reflect the modern trade and customs risk assessment environment. Many of these agreements include RCEP Parties.

In terms of alignment, i.e., an overarching mechanism and a single set of rules – RCEP is an opportunity lost. RCEP's certification procedures, rather than providing a single clear process offers options with varied timelines extending out 10 to 20 years.

Considering all the RCEP Parties are signatories to the WTO Trade Facilitation Agreement; all have, to one degree or another invested in IT customs systems, and during COVID evidenced a capability to manage electronic documents, it's quite amazing that the certification timeline agreed doesn't specify an electronic ambition.

Thankfully the RCEP negotiators agreed to a prescribed format for the Certificate of Origin for those that use them. This is an improvement over the CP-TPP as it negates the possibility of each party prescribing their own.

Due to the impact these procedures have on trade agreements, I've often wondered why an MFN type clause doesn't exist, whereby if any of the negotiating parties accepts electronic documents, even simple PDFs, or declarations on trade documents in any other agreement or for normal trade, they cannot agree to otherwise in the agreement under negotiation. It would certainly help with the regional alignment of these rules.

Another well-known problem is direct consignment and RCEP makes no progress with this. RCEP identifies Certificates of Non-Manipulation, invoices, and transport documents as examples of appropriate documentation. They are not.

- **Certificates of Non-Manipulation** are not always available as not all transit countries issue them in which case an alternative route to market must be found which adds complexity to the supply-chain as well as increasing costs and risk for traders.
- **Invoices** tend to show only the export shipping details. In instances of 3rd party invoicing, exporters, importers or sellers are not likely to be aware of the shipping details other than export departure and import arrival.

Shipping routes are increasingly fluid with vessels redirected enroute, goods transhipped, etc without the knowledge of the exporter or importer and as a result invoices are unlikely to reflect the transport.

- **Transport Documents** especially 'through-Bills-Of-Lading' are increasingly seen by customs as useful for origin verification with the expectation that all transit ports will be shown. This is generally not the case and the lack of voyage data (at least in the eyes of customs) negates the use of the transport document for this purpose.

To be fair, the RCEP uses words like 'may' and 'such as', but without doubt some customs will implement regulations, rules or practices that effectively mandate these documents.

There is also a question of reasonableness and appropriateness of using documents issued by people who have no obligation or accountability under the agreement, and who are also outside the control of the exporter, importer and (for this purpose) both the exporting & importing customs.

Origin verifications rarely question the originating status of the goods. My experience is that 90% + of verifications are focussed solely on the paperwork, from the colour of the ink, the position of a stamp, the formatting of the paper, the legibility of a signature, etc. This makes certification extremely important in terms of RCEP utilization.

Business is grateful for the benefits that trade agreements make possible. However, all trade agreements including the RCEP add complexity to the trading environment.

Manufacturers, certification issuing bodies, exporters & importers not only require knowledge of the rules and procedures, but they must also have confidence in the processes to balance the available preferences with the administrative burden and risk to access them.

RCEP offers limited market access advantages over existing agreements, but if the certification rules were more progressive and applied consistently it may have outweighed some of the RCEPs tariff disadvantages.

Although the RCEP is a new agreement, most of the Parties are old friends and know each other well. Much of the text follows a standard formula meaning the standard set of problems will arise and it is hoped implementers will use the established lines of communication to engage each other to constructively align interpretative differences and smooth any bumps along the way.

Is RCEP a new paradigm – I don't think so – at least not for trade in goods.

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