

RCEP: Importance of rules for businesses

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(Note) Please be advised that today's presentation and responses include personal views, which are not necessarily be the official position of GoJ.

History of Pre-RCEP negotiations (2006-2012)

- 2001 China proposed the East Asia Free Trade Area (EAFTA) with ASEAN+3 membership, followed by the Track Two Study (2005-2009).
- 2006 Japan (METI) proposed the **Comprehensive Economic Partnership of East Asia (CEPEA)** in its “Global Economic Strategy” with ASEAN+6 membership.
- 2008 CEPEA Phase I Report was adopted
- 2009 CEPEA Phase II Report was adopted
- * Reflecting the interests of wide membership, the report emphasized the economic cooperation and facilitation of trade and investment together with their liberalization.
- 2010 APEC Japan Summit issued the **“Pathways to an FTAAP”**.
- * CEPEA was listed, together with EAFTA & TPP, as one of the pathways to an FTAAP.
- 2011 ASEAN proposed the RCEP at its Summit (**“ASEAN Framework for RCEP”**)
- 2012 16 Leaders (i.e., ASEAN+6) agreed to launch the RCEP negotiations (**“RCEP Guiding Principles and Objectives”**)
- * Aim to achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement.
 - * Negotiation Coverage: (a) trade in goods, (b) trade in services, (c) investment, (d) economic and technical cooperation, (f) intellectual property, (g) competition policy, (h) dispute settlement, and (i) other issues
 - * Recognize the “ASEAN Centrality”.

RCEP negotiations (2013–2020)

Since 2013, the RCEP participating countries have vigorously negotiated with 31 Trade Negotiating Committee Meetings, 20 Ministerial Meetings and 4 Summits.

2013 RCEP negotiation was launched (in May)

2017 1st RCEP Summit

2018 2nd RCEP Summit

2019 3rd RCEP Summit *PM Modi announced that India will not join RCEP of the present form.

2020 4th RCEP Summit (conclusion & signing of the Agreement)

➡ The issue coverage expanded dramatically to include, for example, e-commerce, SMEs, and government procurement, which were not covered in the ASEAN-Japan CEP.

1. Initial Provision and General Definitions	2. Trade in Goods	3. Rules of Origin	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	<u>9. Temporary Movement of Natural Persons</u>	10. Investment
<u>11. Intellectual Property</u>	<u>12. Electronic Commerce</u>	<u>13. Competition</u>	<u>14. Small and Medium Enterprises</u>	15. Economic and Technical Cooperation
<u>16. Government Procurement</u>	17. General Provisions and Exceptions	18. Institutional Provisions	19. Dispute Settlement	20. Final Provisions

* Underlined chapters were not covered in the ASEAN-Japan CEP.

Important rules for businesses (example-1)

Intellectual Property Rights (Chapter 11)

Article 11.26: Protection of Well-Known Trademarks

1. Each Party shall provide for appropriate measures to refuse or cancel the registration, and to prohibit the use,¹⁸ of a trademark that is identical or similar to a well-known trademark for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark.
2. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.
3. No Party shall require, as a condition for determining that a trademark is a well-known trademark, that the trademark has been registered in that Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

Article 11.27: Bad Faith Trademarks

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trademark was made in bad faith in accordance with its laws and regulations.

Example of alleged infringement of well-known trademark



上海企業が出願申請中のマーク



Concerns/interests of Japanese businesses (including SMEs):

- ❑ While expanding the regional operation in Asia-Pacific is indispensable, insufficient IPR protection is one of the bottlenecks. Especially for SMEs and local businesses, lack of clarity & transparency in legal enforcement in some of the RCEP signatory states are big concerns.

=> High expectation on enhanced IPR protection based upon RCEP IPR Chapter.

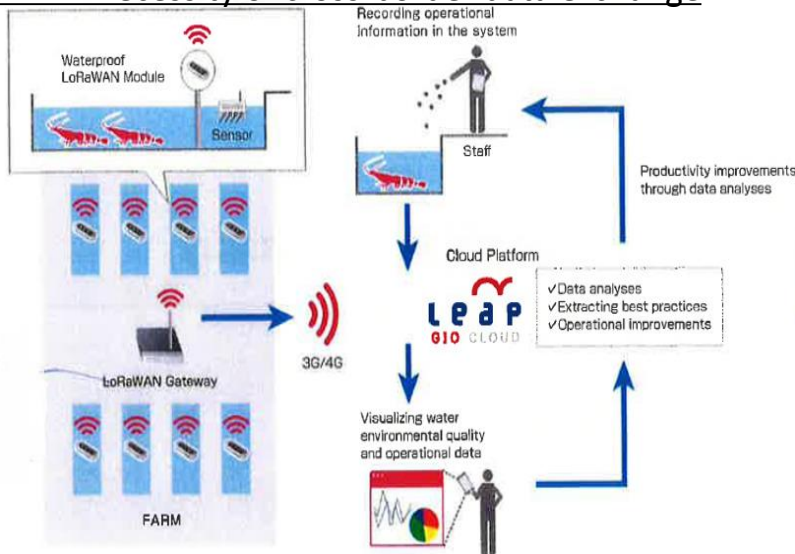
Important rules for businesses (example-2)

Electronic Commerce (Chapter 12)

Article 12.15: Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹⁴ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
 - (b) any measure that it considers necessary for the protection of its essential security interests.

Example of JP start-up's collaboration with companies in ASEAN => Necessity of cross-border data exchange



Concerns/interests of Japanese businesses (including SMEs):

- ❑ Regardless of the size and sectors, cross-border utilization of data has been becoming more significant. (e.g., utilize the data collected in Thailand in other countries (e.g., Indonesia, Viet Nam and Malaysia))
- ❑ Stringent restrictions on cross-border data flow in some of the RCEP signatory states, in the form of cybersecurity law or privacy law/regulation could impede the smooth business operations.

=> High expectation for freer cross-border data flow in accordance with RCEP E-Commerce Chapter

Way forward (implementation and beyond)

- Significance of full implementation of the RCEP Agreement. (not limited to liberalization (goods/services), but enforcement of rules, including smooth implementation after transition period)
 - => Operationalizing 4 Subsidiary Bodies established at the 1st RCEP Joint Committee (26th-27th April).
 - => Function of the RCEP Secretariat
- A General Review of the Agreement is conducted five years after the entry into force. In conducting a review, the implementation issues and some “missing parts” should be duly taken into considerations.
<Ref.> Chapters/provisions stipulated in the CPTPP Agreement but not in the RCEP Agreement;
State-Owned Enterprises, Labor, Environment, Source Code (E-Commerce), etc.

