

# Realising the promise of integrated Asian trade: The case for the RCEP



Intra-Asian trade represents nearly two thirds of total Asian trade as of 2016, according to the Asian Development Bank. This is in stark contrast to the past two years where the large markets of the US and the European Union dominated the majority of Asian exports. As with the rest of the world, however, trade volumes in Asia have grown at a slower rate over the past two years, although the growth in trade amongst regional trading partners has generally outpaced the overall growth in trade. What does all this mean? Intra-Asian trade will continue to increase its share of total Asian trade flows, making the need for a regional trade pact imperative as global supply chains consolidate in Asia Pacific. With the Trans-Pacific Partnership (TPP) nearly, though not entirely, eliminated as a possibility the region looks to the China-led Regional Comprehensive Economic Partnership Agreement (RCEP) to fill the gap. In order to achieve the promise of fully integrated Asia Pacific trade, however, some argue that the RCEP will need to be more ambitious and address more than simply tariff rate reductions.

The TPP, which included extensive provisions for customs modernisation, trade facilitation, and environmental and labour protections, was intended to be amongst the largest regional trade agreements ever implemented, covering 12 countries, which account for 40% of global GDP and 20% of global trade. Although President Donald Trump withdrew the US from the TPP, no other party to the agreement has followed the US's lead. In fact, the remaining 11 countries may indeed move forward with ratification without the US. Alternatively, the TPP may be abandoned entirely. If this is the case, the RCEP will be needed to provide the facilitation measures the TPP included.

The RCEP consists of the 10 member states of the Association of Southeast Asian Nations (ASEAN) and six states

with which ASEAN has existing free trade agreements. Whilst the TPP excluded the largest Asian economy, China, the RCEP notably excludes the largest global economy, the US. If the RCEP is ultimately implemented, it would create one of the world's largest free trade zones, with almost 50% of the world's population and worth 24% of global GDP. Although no details are available, we can gather, based on statements of some negotiating parties, that the RCEP may not include the broad trade facilitations included in the TPP.

Consequently, truly integrated Asian trade may well continue to depend on the World Trade Organisation's (WTO) Trade Facilitation Agreement (TFA). It is certain that a scaled-back approach that relies on the TFA to fill the gaps of the RCEP will help to expedite the negotiation process and is likely to result in a quicker conclusion. However, where will that leave regional trade in Asia? Table 1 shows a comparison of the facilitation provisions of the TPP and the WTO TFA. While not exactly the same, the WTO TFA may well suitably fill gaps:

WTO TFA	TPP, Chapter 5
Article 1: Publication and availability of information	Article 5.1: Customs procedures and facilitation of trade
Article 2: Consultation	Article 5.2: Customs cooperation
Article 3: Advance ruling	Article 5.3: Advance rulings
Article 4: Appeal/Review procedures	Article 5.4: Response to requests for advice or information
Article 5: Other measures for transparency, etc.	Article 5.5: Review and appeal
Article 6: Fee and charges	Article 5.6: Automation
Article 7: Release and clearance of goods	Article 5.7: Express shipments
Article 8: Border agency cooperation	Article 5.8: Penalties
Article 9: Movement of goods intended for import	Article 5.9: Risk management
Article 10: Formalities	Article 5.10: Release of goods
Article 11: Transit	Article 5.11: Publication
Article 12: Customs cooperation	Article 5.12: Confidentiality

Both the WTO TFA and TPP contain provisions for expediting the movement, release and clearance of goods. Both agreements set out measures for effective cooperation between customs on trade facilitation and customs compliance issues. Both agreements also make provision for, *inter alia*, advance rulings.

The articles covering advance rulings from the respective agreements are set out side-by-side in Table 2.

Table 2

WTO TFA Article 3: Advance rulings	TPP Article 5.3: Advance rulings
<p>1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party, with regard to:</p> <ul style="list-style-type: none"> <li>(a) tariff classification;</li> <li>(b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;</li> <li>(c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and</li> <li>(d) such other matters as the Parties may decide.</li> </ul> <p>2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the requester is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.</p> <p>3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to</p>	<p>1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.</p> <p>2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:</p> <ul style="list-style-type: none"> <li>(a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or</li> <li>(b) has already been decided by any appellate tribunal or court.</li> </ul> <p>3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.</p> <p>4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.</p> <p>5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.</p> <p>6. Each Member shall publish, at a minimum:</p> <ul style="list-style-type: none"> <li>(a) the requirements for the application for an advance ruling, including the information to be provided and the format;</li> <li>(b) the time period by which it will issue an advance ruling; and</li> <li>(c) the length of time for which the advance ruling is valid.</li> </ul>

Table 2, continued

WTO TFA Article 3: Advance rulings	TPP Article 5.3: Advance rulings
<p>provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.</p> <p>4. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or if the ruling was in error.</p> <p>5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.</p> <p>6. No Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.</p> <p>7. Each Party shall ensure that requesters have access to administrative review of advance rulings.</p> <p>8. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its advance rulings publicly available including online.</p>	<p>7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.</p> <p>8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.</p> <p>9. Definitions and scope:</p> <p>(a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to: (i) the good's tariff classification; and (ii) the origin of the good.</p> <p>(b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on: (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts; (ii) the applicability of the Member's requirements for relief or exemption from customs duties; (iii) the application of the Member's requirements for quotas, including tariff quotas; and (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.</p> <p>(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.</p> <p>(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular</p>

Table 2, continued

WTO TFA Article 3: Advance rulings	TPP Article 5.3: Advance rulings
	consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

The WTO TFA may indeed prove to be a superior agreement under which to provide for the trade facilitation needed to develop further the regionally integrated trade promised under the RCEP. For example, the WTO TFA specifically mentions that rulings should cover the application of customs valuation criteria, whilst the TPP encourages members to provide advance rulings on the appropriate method or criteria, and the application thereof, to be used for determining the customs value. The WTO TFA further states that each party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, whilst the TPP states that each member shall issue an advance ruling in a reasonable, time-bound manner. Finally, the WTO TFA states that each advance ruling shall remain in effect for at least three years, whilst the TPP states that the advance ruling shall be valid for a reasonable period of time after its issuance.

Although perhaps a bit of a misnomer, the RCEP may be the right agreement at the right time to integrate the increasingly interdependent economies of Asia under a mega-regional trade agreement. The passage of the WTO TFA may enable the negotiations to proceed at an expedited pace with this existing agreement providing the backbone of customs cooperation and procedural transparency. In this pragmatic way, the RCEP may well deliver on the promise of integrated regional trade in Asia.