

Analysis of existing laws and regulations under the background of RCEP

Yujun Tan¹, O'brin Mary^{*}

¹Silc Business School, Shanghai University, Shanghai, P.R. China, 201800

Abstract: *The Regional Comprehensive Economic Partnership Agreement (RCEP) is an important path for building an Asia-Pacific Free Trade Area and has been unanimously endorsed by member states since its inception. With the signing of the Regional Comprehensive Economic Partnership (RCEP), there are still legal and regulatory issues to be discussed. This paper systematically expounds the laws and regulations involved in the signing of the Regional Comprehensive Economic Partnership (RCEP) and explains the relevant problems. Through the analysis of the relevant laws and regulations involved under RCEP, this paper provides strategic reference for China to actively participate in promoting the further development of RCEP in line with the changing trend of the Global Free Trade Agreement.*

Keywords: *RCEP, Regional comprehensive economic partnership, Laws and regulations*

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I. Introduction

1.1 Research Background

The Regional Comprehensive Economic Partnership (RCEP) is an eight-year agreement initiated by ASEAN in 2012 and developed by fifteen members including China, Japan, the Republic of Korea, Australia, New Zealand and the 10 ASEAN countries.

On November 15, 2020, the Fourth Regional Comprehensive Economic Partnership (RCEP) Leaders' Meeting was held by video, after which the 10 ASEAN countries and 15 Asia-Pacific countries, including China, Japan, South Korea, Australia, and New Zealand, formally signed the Regional Comprehensive Economic Partnership (RCEP).

The signing of the Agreement on Regional Comprehensive Economic Partnership marks the official launch of the free trade zone with the largest population, the largest economic and trade scale, and the greatest development potential in the world.

Under the RCEP cooperation framework, many laws will cover it. For example, the relevant content of international commercial law, international trade law, anti-dumping and anti-monopoly law, intellectual property protection law and so on. The Regional Comprehensive Economic Partnership (RCEP), as a transnational agreement, will involve many foreign-related laws and may raise many problems, so in this context, this article will elaborate on the relevant laws involved and analyze them to draw conclusions.

1.2 Research Methodology

This research report mainly adopts the literature research method and the qualitative research method, and summarizes the research conclusion by enumerating and analyzing the laws and regulations that exist under the RCEP signature, supplemented by the descriptive research method to explain the potential problems and summarize the research conclusions.

II. RCEP covers the relevant laws and regulations

2.1 Intellectual Property Law

2.1.1 Relevant intellectual property regulations of the RCEP

The RCEP consists of twenty chapters, and Chapter 11 deals with intellectual property rights, which is divided into fourteen sections with a total of eighty-three articles. It involves all the intellectual property objects provided for in Article 123 of the Civil Code and is rich in content and has profound influence. As shown in Figure 1.

CHAPTER 11

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 11.1: Objectives

1. The objective of this Chapter is to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through the effective and adequate creation, utilisation, protection, and enforcement of intellectual property rights, while recognising:
 - (a) the Parties' different levels of economic development and capacity, and differences in national legal systems;
 - (b) the need to promote innovation and creativity;
 - (c) the need to maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;
 - (d) the importance of facilitating the diffusion of information, knowledge, content, culture, and the arts; and
 - (e) that establishing and maintaining a transparent intellectual property system and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide confidence to right holders and users.
2. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Figure 1. Intellectual Property stipulation

1、 Determine intellectual property development goals

Article 1 of Chapter 11 of RCEP defines the objectives of intellectual property rights.

On the one hand, we should deepen economic integration and cooperation by creating, applying, protecting, and implementing intellectual property rights.

On the other hand, it is necessary to consider the various levels of economic development among the parties, and to balance the rights of intellectual property rights holders and the legitimate rights and interests of intellectual property users.

At the same time, it may be necessary to take measures to prevent the oblige from abusing intellectual property rights. Parties should recognize that ownership of intellectual property rights does not necessarily create a dominant market position.

2、 Balance the copyright systems

In the section of copyright and related rights, a total of five articles provides a framework for the main copyright systems.

First, clarify the exclusive rights of authors, performers, and producers of phonograms, and highlight the information network transmission enjoyed by authors and performers.

Second, the right to receive remuneration for broadcasting.

Thirdly, the element of "intentional communication" in the exclusive right of broadcasting organizations can be interpreted as "recommunication to the public".

Fourth, give full play to the role of copyright collective management organizations.

Fifthly, there are conditional restrictions on copyright and appropriate use is allowed.

3、 Unified basic standards for trademarks

First, unify the concept of trademark. That is, any mark or any combination of marks that can distinguish the goods and services of an enterprise from those of other enterprises shall be able to constitute a trademark.

Second, we should uniformly stipulate that collective trademarks, certification trademarks and geographical indications should be protected.

Third, unify the trademark classification system. The translated version of the classification system should obey the Nice Agreement.

Fourth, unify the main process of trademark registration and application.

Fifth, the malicious application for a registered trademark shall be resisted.

4、 Patent processes for increasing efficiency and speed

First, refine the patentable object and exclude the reverse.

Second, the patentee shall be granted patent rights, which are divided into two categories: products and services.

Third, the procedures of registration should increase efficiency and speed.

Fourth, the international patent classification system should be introduced uniformly.

5、 Regulating unfair competition in commerce

First, RCEP requires contracting parties to effectively prevent unfair competition. It includes the acts of unfair competition in the provision of goods and services covered by paragraph 2 of Article 10 of the Paris Convention.

Second, unify the domain name management policy. In accordance with their respective national top-level domain name (ccTLD) management systems.

Third, protect undisclosed information.

6、 Countries have transition period for applying some provisions of RCEP

"Transition period" refers to the period before a party shall fully implement some provisions of Chapter 11 (intellectual property rights). This includes transition periods for least developed country parties and for specific parties.

2.1.2 Analysis

At present, the global free trade agreement is in a period of change, and the issue of intellectual property rights occupies a very key position. The TRIPS Agreement launched under the framework of WTO in 1995 has extended the protection of intellectual property rights to a wide range of fields, including international trade, investment, technology transfer and so on. With the continuous development of economy and technology, especially after 2010, the newly signed FTA shows a trend of strengthening the protection of intellectual property rules, with wider protection objects, more detailed new contents, stricter supervision, and more comprehensive law enforcement measures. The successful signing of RCEP has pushed intellectual property protection to a new level. RCEP has made detailed provisions on all-round, multi domain and high-level aspects of intellectual property. Among them, RCEP focuses on specific provisions on trademarks, patents, and copyrights. These specific provisions are conducive to promoting the better implementation and implementation of relevant laws and regulations on intellectual property protection in various signatory countries and are more conducive to the protection of intellectual property exchange and transfer activities between countries. In view of the frequent export of knowledge, patents, and technologies in the world today, RCEP's strengthened provisions on intellectual property rights conform to the trend of the times and pave the way for cooperation among RCEP signatories. At the same time, it has also promoted the rooting and implementation of intellectual property protection in different countries and promoted the overseas recognition and implementation of China's intellectual property protection laws and regulations. Therefore, China's supporting legislation in the fields of investment protection and intellectual property protection should also be conducted in succession. Laws and regulations that conflict with RCEP shall be revised in a timely manner.

2.1.3 Existing risks

The instability of regional policy legal risk often affects the consistency of intellectual property rule system. This risk mainly comes from three aspects: first, the frequent political changes and civil war conflicts in many countries in Southeast Asia and South Asia lead to great changes in intellectual property protection policies; Secondly, the policies and laws related to intellectual property in some countries along the line are not perfect, and the intellectual property management policies adopted for foreign-funded enterprises are vulnerable to interference from factors outside the region where the strategy is implemented; Finally, it is reflected in the recognition and construction of the regional intellectual property system. The relationship between the governments of different member states in the region is complex, and the international conventions, international treaties and domestic intellectual property laws and regulations involved are quite different, which is easy to hinder the regional intellectual property system of RCEP. Mitigating the legal risk of intellectual property policy is the proper meaning of international economic exchanges.

2.1.4 Risk response measures

As for the policy and legal risks faced by RCEP, it should be recognized that the home country government must be the main body to control, reduce and resolve risks. Therefore, China should further strengthen dialogue and cooperation with governments of RCEP countries, adhere to the principle of "one country, one discussion, one matter", and jointly negotiate on policy risks signing, legal barriers, rule barriers and other issues in the process of intellectual property system integration, so as to improve the consensus of political mutual trust; The rule of law is the passport for RCEP to the world and the safety valve for coping with risks and challenges. It is necessary to build an effective regional multilateral intellectual property protection coordination mechanism, promote high-level, multi-level and all-round intellectual property dialogue and cooperation in the region, gradually formulate an action plan for the integration of regional intellectual property rules, effectively coordinate the differences in the intellectual property systems of member states in the region, and constantly forge consensus, Consolidate the foundation of the rule of law for the construction of regional intellectual property integration, and promote the reform of the regional intellectual property rule system.

2.2 Competition law

2.2.1 Relevant competition regulations of the RCEP

RCEP has twenty chapters in total, and Chapter 13 specifies intellectual property rights, with nine articles in total. It refers to the Anti Unfair Competition Law of the people's Republic of China and the anti-monopoly law of the people's Republic of China, which specify the provisions related to competition in detail. As shown in Figure 2.

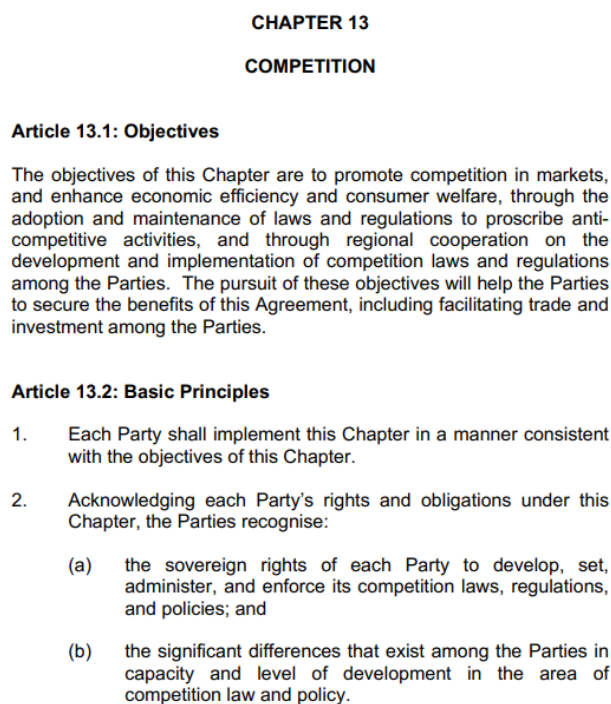


Figure 2. Competition stipulation

RCEP's competition rules and regulations play a very influential role in eliminating trade barriers among members, ensuring orderly market competition within countries, and regulating anti-competitive behaviors of enterprises.

The chapter "competition" of RCEP requires that all members should have relevant laws and regulations prohibiting anti-competitive activities, which should be applied and implemented based on the principle of non-discrimination. Each member shall also have one or more competition authorities and shall ensure their decision-making independence in law enforcement. In addition, this chapter also puts forward requirements on the transparency of law enforcement, as well as procedural safeguards such as defense and appeal.

RCEP also agreed on the cooperation between the competition authorities of each member, such as sharing non confidential information on laws and policies, exchange of consultants / experts, exchange of officials, participation in initiative projects, etc. In addition, the competition authorities of various countries can also cooperate in the enforcement process, such as timely notification and consultation when it has a substantial impact on the major interests of a member, or even take enforcement action on the same or related anti-competitive behavior.

In addition, "consumer protection" is also an important part of the "competition" chapter of RCEP. Improving consumer welfare is one of the goals pursued by competition policy. Member States will also cooperate on consumer protection laws and enforcement. Article 7 of this chapter specifically states that Member States should have laws and regulations to prohibit the use of misleading practices, false or misleading descriptions in trade; At the same time, we also recognize the importance of raising awareness of consumer complaint mechanisms and using them.

At the same time, RCEP also considers the differences in development levels among its members, providing a transition period for Brunei, Cambodia, Laos, Myanmar, and other countries to conduct domestic legislation and improve the regulatory system.

2.2.2 Analysis

RCEP competition policy defines the competition legislation and law enforcement principles that all parties must follow together, which is conducive to promoting transparent, fair, and just law enforcement. At the same time, it stipulates a variety of forms of cooperation in competition law enforcement, which is conducive to strengthening exchanges and cooperation in the field of competition policy. These Provisions are of great significance for all parties to cooperate to stop monopolistic acts that damage bilateral trade and investment, create a good trade and investment environment, and promote trade and investment liberalization and facilitation. The competition policy chapter of RCEP has agreed on technical cooperation matters. Therefore, the parties to RCEP agree that it is in their common interest to carry out multilateral or bilateral cooperation on technical cooperation activities to build the necessary capacity to enhance competition policymaking and competition enforcement, considering the availability of resources of the parties. Through the implementation of RCEP competition policy, the import and export competition among signatory countries will be more rational, to promote the signatory countries to compete within the legal framework and avoid the occurrence of vicious competition such as monopoly and dumping.

In addition, contracting parties are required to apply their competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership system, that is, to adopt neutral competitive laws and policies. Finally, it can promote market competition, improve economic efficiency and consumer welfare.

2.3.3 Existing risks

Although the United States has not joined the RCEP agreement, since President Biden officially took office, it has positioned China as the "most serious competitor". In the later interim strategic policy, it has officially upgraded the past two-way strategy of dealing with China to the "new three axes", that is, competition, cooperation, and confrontation. This is the background for the US Congress to launch the strategic competition act of 2021. Therefore, some countries that have signed RCEP are prone to vicious and unfair competition with China in the international market under the instructions or influence of the United States. These countries may formally raise their strategic competition with China to the level of law and system, which precisely stems from the differences and confrontation between countries' consciousness, values, and political systems. Of course, it is not terrible to have differences and differences. What is terrible is that some RCEP signatories may impose their ideology, values, and political system on the RCEP agreement, and some countries may override the RCEP agreement due to their selfish interests in competition.

2.3 E-commerce law

RCEP has twenty chapters in total. Chapter 12 specifies intellectual property rights, including five sections and seventeen articles. The e-commerce law of the people's Republic of China regulates the development prospect of the e-commerce industry.

2.3.1 Relevant E-commerce regulations of the RCEP

The e-commerce chapter in RCEP contains 17 clauses, including definition, principles, scope, cooperation, paperless trade, unsolicited commercial electronic information, domestic regulatory framework, customs duties, transparency, network security, location of computing facilities, cross-border information transmission, e-commerce dialogue and dispute settlement. As shown in Figure 3.

CHAPTER 12

ELECTRONIC COMMERCE

**SECTION A
GENERAL PROVISIONS**

Article 12.1: Definitions

For the purposes of this Chapter:

- (a) **computing facilities** means computer servers and storage devices for processing or storing information for commercial use;
- (b) **covered person** means:
 - (i) a "covered investment" as defined in subparagraph (a) of Article 10.1 (Definitions);
 - (ii) an "investor of a Party" as defined in subparagraph (e) of Article 10.1 (Definitions), but does not include an investor in a financial institution or an investor in a financial service supplier;¹ or
 - (iii) a service supplier of a Party as defined in Article 8.1 (Definitions),

but does not include a "financial institution", a "public entity", or a "financial service supplier", as defined in Article 1 (Definitions) of Annex 8A (Financial Services);
- (c) **electronic authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability; and
- (d) **unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the

Figure 2. Competition stipulation

The relevant provisions of RCEP on e-commerce are intended to promote the use and cooperation of e-commerce between contracting parties, and set out provisions to encourage contracting parties to improve trade management and procedures through electronic means; Requests parties to create an enabling environment for electronic commerce, protect the personal information of users of electronic commerce, provide protection for online consumers, and strengthen supervision and cooperation on unsolicited commercial electronic information; Put forward relevant measures and directions for the location of computer facilities and the cross-border transmission of information by electronic means, and set up a regulatory policy space. The parties also agreed to maintain the current practice of not imposing tariffs on electronic commerce in accordance with the decisions of the WTO Ministerial Conference.

2.3.2 Analysis

The chapter of RCEP e-commerce is the first comprehensive and high-level plurilateral e-commerce rule achievement reached in the Asia Pacific region. This chapter covers a wealth of relevant contents such as promoting the use and cooperation of e-commerce, including rules such as promoting paperless trade, promoting electronic authentication and electronic signature, protecting the personal information of e-commerce users, protecting the rights and interests of online consumers, and strengthening regulatory cooperation for unsolicited commercial e-information. In addition, the parties also reached important consensus on cross-border information transmission, information storage and other issues in the agreement. These contents will provide institutional guarantee for members to strengthen cooperation in the field of e-commerce, help create a good e-commerce development environment, promote the improvement of e-commerce laws and regulations of relevant countries, and enhance the policy mutual trust, regulation mutual recognition and enterprise interoperability in the field of e-commerce of members, which will greatly promote the development of e-commerce in the region.

In addition, for consumers and enterprises that depend on the import of raw materials and parts from countries within the region, the cost will be reduced due to the elimination of tariff and non-tariff barriers.

Consumers will be able to buy products from countries within the region with excellent quality and low price through e-commerce, and the "threshold" for small and medium-sized enterprises to enter countries within the region through e-commerce will also be reduced. Through the relevant provisions of the chapter on e-commerce, it is more conducive for Chinese enterprises to go global, make full use of both international and domestic markets and resources, and improve their international competitiveness with the help of RCEP.

2.3.3 Existing risks

At present, with the continuous development of e-commerce industry, the laws of e-commerce industry are also constantly improving. In 2020, China promulgated the e-commerce law of the people's Republic of China. Since then, China's e-commerce development has been legally constrained. However, in the RCEP signatory countries, the development of e-commerce in the contracting countries is uneven, and the supporting laws of the contracting countries are also relatively lacking. Therefore, if there are e-commerce legal problems in the RCEP contracting countries, it is difficult to deal with them. With the help of the relevant provisions of the chapter on RCEP e-commerce, the e-commerce exchanges of the RCEP contracting countries have been standardized to a certain extent, but there may still be problems related to the relevant e-commerce laws and regulations to be discussed, the legalization of e-commerce in RCEP contracting countries still has a long way to go.

III. Conclusion

As an international treaty, the relevant provisions of RCEP agreement need to be transformed into domestic laws if they are applicable in China. China should adjust corresponding domestic laws, regulations, and management measures according to the terms of RCEP agreement. RCEP also requires the Chinese government to uniformly open the domestic market in a wider range of fields, further relax market access restrictions, create a first-class business environment with higher standards, and provide more support for enterprises and individuals' trade.

At the same time, with the promulgation of China's foreign investment law, export control law, e-commerce law and other laws in the past two years, and the revision of copyright law, patent law and other relevant laws, the relevant laws issued by the National People's Congress and its Standing Committee are highly compatible with RCEP legislation, and the degree of revision is relatively small. Therefore, the revision of RCEP law will focus on administrative regulations and departmental rules, including tax rate adjustment in goods trade, establishment of negative list in service trade, improvement of negative list in investment, and opening of movement of natural persons (such as immigration management policies). Some key areas may need to be improved compared with RCEP. RCEP is rich in content and contains a large number of rules, covering all aspects of trade and investment liberalization and facilitation. The Chinese government also needs to do an excellent job in authoritative interpretation and public publicity of RCEP related policies through various channels, so that enterprises can understand and use RCEP, truly make RCEP an effective help for enterprises to participate in international economic cooperation and enjoy the policy and legal dividends brought by RCEP.

If WTO is the 1.0 version of China's integration into the new world economic and trade order after its reform and opening, RCEP can be said to be the 2.0 version of China's efforts to build a multilateral trading system. The updated version is not only the content of the agreement, but also reflects China's determination to continuously deepen reform and opening. It is also a model to practice the concept of "community with a shared future for mankind" and contribute China's wisdom in the era of competition and cooperation.

In an era when the global trade system and various regional trade systems coexist and compete, how to integrate the common market and safeguard the common interests of the country and humankind reflects the wisdom of the country in the global economy and trade. RCEP is more like the "integrator" of regional economic and trade rules, which will help to enhance China's right to formulate rules in the global economy and trade. After the signing of RCEP, China has signed nineteen free trade agreements with foreign countries and twenty-six free trade partners, making China move towards the goal of basing itself on the surrounding areas, radiating the "the Belt and Road" and promoting the development of global regional economic integration.

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