

The Legal Framework of China-Australia Trade under RCEP: Impacts and Challenges

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Abstract: China-Australia trade relations have a long history, with China serving as Australia's largest trading partner for many years. In the era of economic globalization, these trade relations are facing new development opportunities as well as major challenges. The establishment of the Regional Comprehensive Economic Partnership (RCEP) has provided a new legal framework and policy guidance for China-Australia trade liberalization and economic cooperation. It deepens regional economic integration and creates a more open and stable trade environment by reducing trade barriers, expanding market access and promoting supply chain integration. While the agreement brings potential benefits, it also presents challenges. Differences in trade policies, regulatory frameworks and geopolitical tensions may prevent the full realization of RCEP's advantages. Furthermore, industries in both countries must adapt to changing trade structures, market competition and environmental sustainability requirements. Under these circumstances, it is crucial to examine the impacts and challenges of China-Australia trade under the RCEP framework for understanding regional economic integration, identifying potential risks, and providing valuable insights for policymakers and businesses. This study employs the methods of literature analysis, case study and comparative analysis to explore the legal impact of RCEP on China-Australia trade. Based on these findings, it proposes corresponding policy recommendations to assist the government in formulating more targeted trade policies and assist enterprises in optimizing their market strategies for a balanced development of China-Australia economic and trade relations, and to promote the stable and sustainable development of China-Australia economic and trade relations.

Keywords: RCEP, regional free trade agreement, China, Australia

1. Introduction

RCEP is the world's largest regional free trade agreement (FTA) within the domain of international trade law. Initiated by the ten ASEAN countries and co-signed by China, Japan, South Korea, Australia and New Zealand, the agreement was officially signed on November 15, 2020, and came into effect on January 1, 2022 [1]. RCEP provides an important legal framework for China-Australia trade, particularly in tariff reduction and exemption, market access, trade in services, investment protection and intellectual property protection. By facilitating deeper economic cooperation and expanding international trade opportunities, PCEP marks a new turning point in China-Australia trade relations and plays an important role in developing regional economic integration and globalization [2].

Despite the potential benefits, the agreement still faces challenges in the dispute settlement mechanism, rules of origin, and legal application standards. To be specific, RCEP does not specify how anti-dumping disputes are to be handled, and its complex calculations of rules of origin. Additionally, differences in China-Australia legal systems and inconsistencies in regulatory standards, as well as deficiencies in intellectual property protection and dispute settlement mechanisms may hinder the real landing of trade liberalization. These challenges may affect the implementation of the agreement and its effectiveness in fostering economic cooperation. Therefore, this study explores the advantages, limitations and coping strategies through an in-depth analysis of the legal framework of China-Australia trade under the RCEP rules, in order to optimize the trade environment and promote the sustainable development of economic cooperation between the two countries. Through qualitative analysis methods, including legal text interpretation, case study and comparative analysis, the study conducts comparative research with the frameworks of WTO, CPTPP and USMCA to explore the legal impact of RCEP on China-Australia trade. Key areas of focus include tariffs and rules of origin, trade in services and market access, intellectual property protection and dispute settlement mechanism, and assesses its impact on China-Australia trade and the challenges it faces.

Findings indicate that while RCEP effectively reduces trade barriers and enhances market access, improvements are still needed in several areas, including the dispute settlement mechanism, simplification of rules of origin, and coordination of the legal system. In this regard, this study proposes policy recommendations, such as optimizing the certification of origin, strengthening dispute settlement, deepening cooperation in trade in services, and enhancing intellectual property protection. These measures aim to improve the implementation effect of RCEP in China-Australia trade and promote the long-term and stable development of bilateral relations.

2. Legal Framework of RCEP

2.1. RCEP as a part of international economic law

RCEP is a legally binding regional free trade agreement (FTA) that adheres to the fundamental principles of international law and functions as a multilateral international treaty. It imposes legal obligations on all member countries that have signed and ratified the agreement. The World Trade Organization WTO is the most important multilateral trade organization in the world, while CPTPP and USMCA are all important regional trade agreements in the world. A comparative analysis of the WTO, CPTPP and USMCA provides a comprehensive understanding of RCEP's positioning within the global trade system, helping to clarify its advantages, limitations and future development direction. Such an analysis is crucial for policymakers and businesses in formulating policies and enterprise coping strategies.

RCEP as a part of international economic law, needs to be consistent with the WTO in terms of rules and expand on this basis. For example, regarding tariff reduction, the WTO mainly reduces tariffs through the Most Favored Nation (MFN) treatment and tariff reduction schedules, which apply universally to all members. RCEP further reduces tariffs among member countries on the basis of compliance with the WTO's provisions on Regional Trade Agreements (RTAs), which stipulate that each party will gradually reduce or eliminate about 92% of tariffs within 20 years, with more than 65% of merchandise trade enjoying zero percent. In terms of intellectual property rights, RCEP further improves intellectual property protection standards on the basis of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For example, RCEP added provisions for copyright collective management organizations (CMOs) to the agreement [3].

Compared with CPTPP, RCEP is weaker in terms of the depth of rules, especially in the area of e-commerce. While CPTPP prohibits data localization requirements and ensures the free flow of data, RCEP allows member states to impose restrictions on data flows based on national security concerns.

Furthermore, compared with USMCA, RCEP rules are more flexible, emphasizing interdependence among member states and preserving policy space for developing countries, while the USMCA is dominated by the United States and has stricter rules, especially in digital trade, which are more inclined to preserve the dominance of U.S. technology companies.

While the RCEP agreement does not have some of the disciplines of other agreements such as the CPTPP, it does represent a significant commitment to economic liberalization by the East Asian bloc. Unlike many other FTAs, it allows developing countries in the agreement to phase in liberalization over a considerable period, while still ensuring that full and substantial liberalization of goods and services is eventually achieved [4].

2.2. Legally binding nature of RCEP

The legally binding force of RCEP is mainly analyzed in terms of hard law, soft law, and dispute settlement mechanism. RCEP adopts a hybrid model of “hard law + soft law”, with hard law in key economic areas (e.g., tariff concessions, investment protection, and dispute settlement) and soft law in sensitive areas (e.g., environmental protection, competition policy, and labor standards). RCEP, as an agreement, has been adopted as an important tool for the development of the international trading system. Its enforceability relies largely on the design and implementation of hard law, which is reflected in some of its provisions. For example, Chapter VIII on trade in services provides for a “negative list” system, whereby member countries are required to clearly list restrictive industries, and industries not listed should be automatically liberalized. The existence of RCEP’s hard law rules ensures the effective implementation of the agreement, reduces the likelihood of non-compliance by member countries, and enhances the stability of trade and investment. Nonetheless, relying solely on hard law is insufficient for a regional trade agreement. Many provisions within RCEP are also characterized by soft law. For example, in government procurement, currently, RCEP itself does not make specific commitments on government procurement, but only establishes a framework for transparency and cooperation. Soft law can help to enhance cooperation among RCEP member states, but it also has limitations. For example, they lack authority due to their soft-binding nature [5]. This lack of authority is not sufficient. This lack of authority will further lead to difficulties in implementation, inconsistent application of rules, and disputes. To address these problems, the dispute settlement mechanism of RCEP is particularly important, RCEP provides a set of formal dispute settlement mechanism (DSM) for trade and investment disputes between member states to ensure the effective implementation and enforcement of the agreement.

The DSM is one of the most influential dispute settlement systems in the global trading system and serves as the cornerstone of the rule of law in international trade. A comparative analysis between RCEP’s dispute settlement mechanism and WTO’s dispute settlement mechanism can better understand the advantages and disadvantages of RCEP's dispute mechanism. First, regarding scope, RCEP excludes some emerging issues from the scope of application of the dispute settlement mechanism, while the scope of application of WTO is wider [6]. Second, RCEP emphasizes consultation and negotiation, and the dispute settlement is more flexible, avoiding excessive legal constraints on member states. In contrast, the WTO adopts a mandatory dispute settlement procedure, including consultation, expert panel decision and appeal mechanism. Moreover, the RCEP dispute settlement mechanism applies to regional, small-scale trade disputes, and its advantages are flexibility, speed and low cost, but lack of legal binding. The WTO dispute settlement mechanism applies to global trade disputes, and its advantage is that it is more legally mandatory and enforceable.

3. Legal Implications and Challenges of RCEP on China-Australia Trade

3.1. Tariffs and Rules of Origin

Tariffs and rules of origin are key determinants of international trade flows and market competitiveness. Therefore examining tariffs and rules of origin under RCEP is essential for understanding the challenges in China-Australia trade. In terms of tariffs, under the agreement, more than 90% of intra-regional trade in goods will eventually achieve zero tariffs. China's tariffs on products from ASEAN, Australia and New Zealand will eventually be reduced to zero for more than 90% of its products. For products from Japan and South Korea, tariffs will be reduced to zero on 86% of goods [7]. The reduction of tariffs between individual member countries under the framework of RCEP has provided great opportunities for trade between China and Australia. However, there are both challenges and opportunities. For example, the RCEP does not specify how anti-dumping disputes should be handled. Instead, it refers to the existing WTO rules, which allow member countries to take anti-dumping measures "consistent with WTO rules". Member countries can still use anti-dumping as a political tool. For example, China imposed anti-dumping duties on Australian barley and wine in 2020-2021, while Australia took similar measures against Chinese steel and aluminum products [8]. Thus RCEP has limited impact on political trade disputes (e.g. anti-dumping measures).

Regarding rules of origin, RCEP allows for the accumulation of materials, parts and components, and production processes between all 15 member countries. This means even if the final processing or manufacturing of a product does not meet the criteria for full origin, as long as the materials used are from an RCEP member country, it may qualify as originating, and thus be eligible for tariff reductions and exemptions under RCEP [7]. For a resource such as Australia, the RCEP is a good example of how to achieve this. For resource-based economies such as Australia, and manufacturing centers such as China, Japan, and ASEAN, this rule will facilitate deeper trade cooperation. However, companies in China and Australia must ensure that their products comply with the RCEP's rules of origin to benefit from the tariffs. Companies must correctly calculate the Regional Value Component (RVC), ensuring that at least 40% of the product's value originates from within the RCEP member countries. However, the complexity of supply chains in some industries (e.g., electronics, automobiles, textiles) makes it difficult to accurately identify the country of origin. For example, China Hisense Group, a leading Chinese manufacturer of home appliances and electronic products, has a share of the Australian market. The origins of its major components are more diverse, with some coming from RCEP members, such as China and Japan, and some from non-RCEP members, such as the United States. The core components (e.g. processor chips, software) come from non-RCEP countries such as the U.S. and Germany, which makes cumulative calculations more difficult and may result in the products not being able to enjoy tariff preferences.

3.2. Trade in Services and Market Access

Trade in services and market access are important components of international trade agreements. A comprehensive examination of the provisions concerning trade in services and market access in RCEP is essential for facilitating the entry of Chinese and Australian multinationals into new markets and further promoting trade growth. RCEP is committed to establishing a transparent and predictable legal framework that ensures that member countries follow clear rules in the area of trade in services. According to Chapter VIII (Trade in Services) of the RCEP agreement, each member state is required to progressively reduce or eliminate restrictions on trade in services in accordance with its Schedule of Specific Commitments [7]. The liberalization of the services sector has made it easier for

companies and professionals from Australia, Japan, China and ASEAN to expand their business and create more opportunities for cooperation.

Regarding market access, no restrictions should be set on the number of service suppliers, the total value of services, or the percentage of foreign ownership [7]. These provisions will be expected to promote cross-border trade in services, entry of foreign capital, mobility of talent, digital economy and financial services. While the benefits of these provisions generally outweigh the potential drawbacks, some challenges remain. One such challenge stems from the differences in legal systems between China and Australia. China belongs to the civil law system and relies mainly on statutory law, while Australia belongs to the maritime law system and relies mainly on case law. Therefore, there is a huge difference between the legal systems of the two countries, and this difference will lead to differences in the trade process between China and Australia. For example, in 2009, four employees of the Australian mining company Rio Tinto (including the Australian Hustler) were arrested in China on suspicion of illegally obtaining trade secrets during iron ore negotiations. The Chinese authorities regarded this as a case involving state secrets, whereas the Australian government and Western observers considered it a matter of trade secrets [9].

In addition to these legal differences, while RCEP provides a harmonized framework for member countries, there are differences in domestic laws, administrative regulations and policy implementation. One of the main challenges is the difference in regulatory standards. For instance, in 2020, Australian lobsters exported to China were subjected to stringent customs inspections and detained for exceeding heavy metal standards. While China's food safety standards are more stringent, Australian standards are more internationalized and allow for higher levels, resulting in compliance challenges for companies under the RCEP framework [10].

3.3. Intellectual Property Protection

Intellectual property protection is not only a guarantee for the rights and interests of innovators, but also an important means to promote technological progress, facilitate economic growth, maintain market order, protect cultural and creative industries and enhance national competitiveness. Therefore, the importance of studying RCEP's protection of intellectual property rights is self-evident. RCEP's protection of intellectual property rights is formulated on the basis of a number of existing international intellectual property rights protection frameworks, including the TRIPS Agreement, the WIPO Performances and Phonograms Treaty, the Paris Convention (protection of industrial property rights), and the Berne Convention (protection of literary and artistic works), etc. [11]. However, RCEP differs from these international treaties in that its IP provisions are more flexible but less binding. Therefore, RCEP provides better market access conditions and an IPR protection environment for China and Australia's technological development and enterprise globalization and helps to maintain technological advantages. However, its weak dispute settlement mechanism, lagging adjustment of regulations in some member countries, and loopholes in technology protection may lead to a less stable business environment and restriction of technology export.

4. Future Legal Perspectives and Recommendations

Given the existing limitations within RCEP, particularly concerning tariffs, rules of origin, trade in services and market access, and intellectual property protection, the following optimization recommendations can be put forward to enhance the stability and sustainable development of China-Australia trade. First, the certification of origin procedures should be simplified and mutual recognition of electronic certificates of origin should be promoted to reduce compliance costs for enterprises, while the anti-dumping dispute settlement mechanism should be improved to reduce politicization of trade frictions. Second, in terms of trade in services and market access, cooperation

between China and Australia in trade arbitration and cross-border investment regulation can be promoted by strengthening the coordination of the legal system to bridge the differences in the legal system, and setting up a mechanism for mutual recognition of industry standards (e.g., food safety and environmental protection standards), so as to reduce the cost of compliance for enterprises. In addition, market access rules should be optimized to foster digital economy cooperation. This includes promoting the free flow of data, facilitating e-commerce access, and enhancing mutual recognition of cross-border professionals, which would improve the mobility of high-end service industries.

In terms of intellectual property protection, the RCEP dispute settlement mechanism should be strengthened, enforcement efforts should be enhanced, and the TRIPS mechanism should be used to promote developing countries to shorten the transition period for regulatory adjustments, to minimize loopholes in technology protection. Meanwhile, Chinese and Australian enterprises should strengthen cooperation in areas such as patent sharing, technology licensing and joint R&D to reduce the risk of IPR disputes and optimize the mechanism for protecting trade secrets to prevent knowledge leakage due to legal differences. Through implementing these measures, trade facilitation and market transparency can be further enhanced, and China-Australia economic and trade cooperation can be promoted in a more stable and efficient direction.

5. Conclusion

As the world's largest free trade agreement, RCEP provides a legal framework and policy guidelines for China-Australia trade, and plays a positive role in reducing tariff barriers, optimizing market access, and strengthening intellectual property protection. However, challenges remain, including weak dispute settlement mechanisms, inconsistent standards of legal application and complex rules of origin still affecting its implementation and legally binding power, which may lead to trade friction and market access barriers. In order to optimize the implementation effect of RCEP in China-Australia trade, legal and policy coordination should be strengthened. This can be achieved by improving the dispute settlement mechanism, upgrading the facilitation of cross-border trade in services, and promoting the mutual recognition of industry standards. Such measures will strengthen the resilience and competitiveness of the economy and ensure that the commitment to regional trade liberalization is truly put into practice.

References

- [1] Australian Government. (2022). *Regional Comprehensive Economic Partnership (RCEP) Agreement: Australia's Participation and Benefits*. Australian Department of Foreign Affairs and Trade.
- [2] Hu, Y. (2023). *Research on the Impact of RCEP on China-Australia International Trade*. Master's thesis, School of International Business, Shandong University of Finance and Economics.
- [3] Huang, Z. (2022). Overview of 'WTO-extra rules and WTO-plus rules' in RCEP IP chapter. *Frontiers in Business, Economics and Management*, 4(2), 16-18.
- [4] Park, J. (2022). The Economic Cooperation Potential of East Asia's RCEP Agreement. *Journal of International Trade and Economic Development*, 31(5), 765-789.
- [5] Guo, Z. (2024). Reflection on the Role and Limitations of International Soft Law. *Dispute Settlement*, 10(5), 345-352.
- [6] Feng, Q. (2024). Research on Dispute Settlement Mechanism of Regional Comprehensive Economic Partnership from a Comparative Perspective. *Open Journal of Legal Science*, 12(7), 4281-4289.
- [7] RCEP Secretariat. (2020). *Regional Comprehensive Economic Partnership Agreement*. ASEAN Secretariat, Jakarta.
- [8] Rühmann, D. (2023). Conflating trade with policy: The role of international trade frameworks in Australia-China trade relations. *Melbourne Journal of International Law*, 24(1), 149-190.
- [9] BBC News. (2010). Rio Tinto Bribery Trial: Stern Hu Sentenced in China.
- [10] ABC News. (2020). Australian Lobster Exports to China Face Delays Due to Customs Checks.

- [11] *Phoebe, M. (2023). RCEP's Intellectual Property Rights Chapter: Relevance, Implications, and Contributions to Asia-Pacific's IP Regime.*