REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

RESPONSE BY AUSTRALIAN SERVICES ROUNDTABLE

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Introduction

The Australia Services Roundtable (ASR) is Australia's only dedicated whole-of-services industry organisation representing the national voice of the Australian services sector. ASR is a member of the Global Services Coalition, a cooperative group of national service industry representative bodies from Europe, the United States/Canada and Asia.

ASR brings together Australia's leading services firms. We provide a forum for dialogue for the services sector, including financial services, professional services, IT services, tourism, energy, education, the research community and industry. We are committed to raising the profile of the sector and advocating for sustainable policy responses that drive innovation and productivity domestically and in the international trade arena.

Sectors represented include financial services (banking, insurance, securities, fund management), professional services (accounting, legal, engineering, architecture), health services, education services, environmental services, energy services, logistics, tourism, information technology, telecommunications, transport, distribution, standards and conformance, audio-visual, media, entertainment, cultural and other business services.

RCEP

ASR supports Australia's efforts to negotiate an economic partnership reflecting the potential for a regional integrated market in Asia. The November 2012 launch in Phnom Penh of RCEP negotiations, on the back of long term activities through CEPEA and EAFTA, has signaled Australia's strategy to work through ASEAN and FTA partners to assemble an emerging regional economic architecture. ASR especially endorses RCEP objectives to reach a comprehensive and high quality agreement that substantially eliminates restrictions and discriminatory measures in respect of services trade, seeking "significant improvements over the existing ASEAN+1 FTAs."

Existing FTAs between ASEAN and China, Japan, South Korea, India, Australia and New Zealand could eventually lead to the creation of an integrated market with a combined market population of more than three billion people, and a combined GDP of about US$19.78 trillion (based on 2011 figures).[1] With the region accounting for more than half of the global market and about a third of global economic output, a successful RCEP would significantly boost global trade and investment as well as regional activity. In addition, the RCEP strategy complements current efforts by Government to capitalise on expanding Asian middle class demand for services and other trade outcomes under the

1 East Asia Forum: http://www.eastasiaforum.org

"Australia in the Asian Century" program and business engagement plans. We already have a broad and diverse range of trade/investment interests in RCEP nations – according to DFAT, 48,000 Australian companies export to RCEP and an estimated 5,400 Australian companies are represented in RCEP nations. While our overall trade growth in two-way trade has peaked at 7.8% in the past ten years, trade with RCEP nations in the same period was 10.7%. This can be expected to increase with new country engagement strategies to be developed by DFAT, outlining visions for where trade relationships with those nations should be in 2025.[2]

While it can be assumed RCEP will help further entrench ASEAN centrality in the region, the progress and conclusion of RCEP negotiations are dependent on the timely conclusion of the AEC Blueprint, which is scheduled for completion in 2015. The implementation of the Blueprint, in turn, is dependent on domestic reforms and behind-the-border (non-tariff) measures, such as regulatory governance and coherence, competition policy, intellectual property rights and coordination between negotiating and implementing agencies in ASEAN countries. Building up cohesive and strong domestic constituencies in ASEAN+6 countries is critically important to providing domestic policy support for the timely conclusion of RCEP negotiations. In this context, ***the involvement and active participation of the private sector is critically required.***

RCEP Challenges

Because all sectors and modes of supply will be subject to RCEP negotiations, ASR urges leaders to orient their efforts towards the specific challenges facing services trade and investment, created or exacerbated by the dual impacts of global financial crises and increasing digital trade. In addition, technology advances since GTS was established have been so extensive that a new approach is warranted.

Electronically Delivered Services/Cross Border Data Flows/Digital Trade

It is clear that the Internet has become an important new 'trade route' for the 21st Century. Many types of services are increasingly being delivered electronically via the Internet and other networks, leading to growth in "digital trade," and this growth can be expected to continue with further advances in information and communication technology (ICT). These advances include the flexibility of cloud computing which can provide enormous benefits to SME's in all nations to ramp up their services delivery models for little cost, thus enhancing their ability to grow and prosper. Electronic delivery of services is simply not possible without the ability to send and receive information over

2 Japan, China, Indonesia, India and South Korea.

networks, so any restrictions on cross-border data flows may create digital trade barriers. ASR considers it a high priority for leaders to ensure that RCEP includes binding commitments to allow cross-border data flows in the provision of covered services and to prohibit requirements for local data storage and processing. 'New' digital trade rules would complement cross-border market access and national treatment commitments. Services enabled by information and communication technology include insurance, financial, telecommunication, business, professional, technical and information technology services, along with royalties and license fees. These "knowledge-based services" can often be digitised (into 'products') and delivered electronically, making them well suited for digital trade providing they do not face traditional or new trade barriers.

It is important to note that digital trade is not just an issue for the ICT sector or 'Internet companies'. Rather, in light of the wide range of services that can be delivered electronically, it is clear that cross-border data and digital trade are important issues for a large part of the business community, including SMEs. Service providers from many sectors, and *all businesses with global operations*, rely on ICT infrastructure and cross-border data flows to operate, so these issues are *critical for the economy as a whole*. Many companies have a stake in ensuring open markets for electronically delivered services, whether as a provider or a user of those services, or both.

Localisation

Requirements such as on-shore data or server storage, or local employment mandates/quotas should be eliminated as part of RCEP. Requiring in-country processing or data management will not ensure the protection of that data. Security concerns must e addressed through market-driven technical security solutions, secure operating procedures (as part of SLAs) and user education. With proper procedures in place, transnational data management is not a sovereign risk. Exceptions or carve-outs for these issues must not be trade restrictive.

Financial Services

In the financial services sector many types of services can be performed across borders, without sacrificing appropriate prudential supervision. These services include buying and selling financial products across borders, participating in and structuring transactions, and providing investment advice.
RCEP should permit firms to provide services cross-border to clients and qualified investors without establishing a commercial presence and without being subject to separate licensing and approval requirements of the type that generally apply to firms commercially present in a market. RCEP should aim to facilitate measures allowing transfers of information or the processing of

financial information, including transfers of data by electronic means, where the transfers of information or processing of financial information is necessary for the conduct of the ordinary business of a financial service supplier.

RCEP and TPP

ASR would be concerned to see any development of competition emerging between RCEP and the Trans-Pacific Partnership (TPP). While the two regional trade pacts have quite similar objectives; trade liberalisation and economic integration, any competition between the two to be Asia's predominant economic arrangement has the potential to divide the ASEAN countries and de-stabilise existing trade relationships.

The TPP aims to establish at least a regional agreement that will further liberalise trade in the Asia Pacific, and may potentially lead to even greater regional economic integration. In 2011, the total GDP of TPP countries was US$20 trillion, with the US accounting for three quarters of this. In line with its pivot toward Asia, the US has encouraged the expansion of the TPP, arguing that TPP needs to be broadened in order to cover relevant elements of economic cooperation and to meet the economic challenges of the 21st century. The TPP countries have negotiated on which areas should be covered by the agreement; these now include trade in goods and services, investment, intellectual property rights (IPRs), environmental protection, labour, financial services, technical barriers and other regulatory issues.

RCEP has a different origin from the TPP. ASEAN has FTAs with non-ASEAN countries, such as China, South Korea, Japan, India, Australia and New Zealand, separate from one another. The ASEAN framework for RCEP is an initiative to gather all these agreements into an integrated regional economic agreement. However, it will hopefully establish deeper economic cooperation than the existing FTA agreements. RCEP aims to open up more trade in goods and services, eliminate trade barriers, and gradually liberalise services and provide for greater foreign direct investment in ASEAN and its external trading partners. Given the similarities between the two agreements, RCEP may pose a challenge to the TPP and ASR urges leaders to be aware of both the similarities *and* the differences between these two regional negotiations and manage progress accordingly. TPP and RCEP may come into conflict due to the relationship between the US and China, as each seeks to shape economic cooperation in the Southeast and East Asian regions in order to secure economic interests. These issues should not become the predominant factor in how either of the regional economic architectures develops.

Negotiating Principles

The eight RCEP negotiating principles agreed by the leaders are unassailable. They provide for open accession and thus leave open the possibility of other regional economic partners eventually being drawn into the agreement. While ASR endorses these Principles, we seek minor clarifications as to the implementation of some of them.

As a preliminary statement, ASR notes the application of GATS Article V (**Principle 1**), and urges the inclusion in RCEP of the widest possible sectoral coverage with no *a priori* exclusion of any mode of supply. In this regard we welcome recognition that, in addition to goods, services and investment, RCEP will address additional issues such as electronic commerce, IP and competition as well as labour and the environment.

Principle 2 aims to develop “broader and deeper engagement with significant improvement” over current ASEAN + FTAs. While this is to be welcomed, it should be noted that Agreements on trade in services and investment have not been included in all ASEAN+1 FTAs, so the RCEP starting point is especially low. Agreements on services trade are included in the ASEAN–Australia/New Zealand, ASEAN–China and ASEAN–South Korea FTAs, but not in the ASEAN–Japan or ASEAN–India FTAs.

Similarities do exist however in the level of liberalisation commitments among ASEAN+1 FTAs.[3] The ASEAN Framework Agreement on Services (AFAS) indicates that sectoral patterns of liberalisation processes for trade in services under ASEAN+1 FTAs are similar, so consolidating these FTAs into one regional partnership should be possible, but not simple. In order for RCEP to gain substantial new commitments that are genuinely broader and deeper with significant improvements, leaders should start with the higher standards currently offered under ASEAN+1 FTAs, rather than the zero base in, say, the ASEAN-India FTA.

An agreement on investment is included in the ASEAN–China, ASEAN–South Korea and ASEAN–Australia/New Zealand FTAs, but a comparison reveals several differences with respect to national treatment, performance requirements and market access. RCEP’s Guiding Principles and Objectives for Negotiating must aim to create a liberal and competitive investment environment in the region, and negotiations for investment need to cover the four pillars of promotion, protection, facilitation and liberalisation.

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3 www.eria.org/ERIA_DP_2011_02.pdf

If **Principle 2** delivers 'deeper and broader engagement with significant improvements' over current FTAs, clarification is sought as to the inter-working with **Principle 5** which prohibits any RCEP provision detracting from any FTA between and among participating nations. If this is intended to avoid rules and provisions conflicting as between RCEP and any FTA, ASR supports the Principle. However, as a matter of national sovereignty, where Agreements are caused to live 'side by side' (and RCEP offers better provisions than individual FTAs), participating countries should be permitted to rely on the 'most advantageous' provision where required.

Principle 3 aims to enhance transparency in trade relations. ASR considers regulatory simplicity, transparency and efficiency, including predictability and coherence, are important determinants of services competitiveness, as is the support for services innovation and Small and Medium-Sized Enterprises (SMEs). As many of the constraints to services trade are behind-the-border measures, a regulatory reform agenda is important not only for domestic services efficiency but also for services trade.
Transparency is also pertinent to modes of delivery. Most services firms are "multi-modal" and thrive best in a regulatory environment that allows maximum flexibility to switch between modes. Face-to-face contact between a services provider and a client is consistently described by services firms as essential, even for firms operating chiefly via mode 1 or mode 3 (cross-border trade and commercial presence respectively). This means that ease of operating via mode 4 (movement of natural persons) always matters for international business in services. ASR welcomes RCEP's aim to cover all modes as part of the negotiations. On a specific practical level, ASR encourages negotiators of the RCEP to consider a program akin to the APEC travel card among member countries which provides much valued ease of access for business travellers in the region

Principle 4 recognises the stark development contrast in the region covered by RCEP. Development gaps are so wide that to establish and pursue common goals in the region will be very difficult; per capita incomes range from US$1,000 to US$48,000 and this gap is widening. There is no doubt that if the region is left to develop for itself along current strategies, this gap will not close. The need for rigorous efforts to mobilise financial, technological and human resources to accelerate economic growth is critical. In fact, restricted foreign access to Asian services markets acts as a barrier to poverty alleviation and improved prosperity in less-developed Asian nations.[4]

However, "special and differential treatment" for least-developed Member States must be circumscribed by the overall objective of eliminating individual domestic policies and laws which do

4 PECC Task Force Services 2011.

not align with regional trade initiatives; those least-developed ASEAN members already suffer from multiple internal challenges relating to both behind-the-border trade barriers and explicit technical trade barriers, such as sticky labour laws, lack of infrastructure, localisation rules and forced local ownership. Allowing some Members to further entrench these barriers under the guise of differential treatment risks compromising the goals of RCEP. There should be an emphasis on providing time extensions to less-developed Members rather than lowering the threshold level for negotiations. The link between trade and investment (particularly through FDI) and increased prosperity, has been broadly accepted by trade commentators. Even if ASEAN members take steps to increase intra-ASEAN trade, they will not obtain the potential benefits of trade liberalisation with greater investment unless supported by a broader enabling environment. Hence, special treatment strategies which might be used to erect barriers will contribute to a loss of momentum in integration and compromise RCEP success.

Principles 6-8 are endorsed by ASR.

In closing…

ASR supports the intent and current approach of the RCEP negotiations. ASR urges the Australian negotiators involved with RCEP to be fully aware and cognizant of the needs and considerations of the Australian services sector, which represents over 75 percent of our local economy. ASR actively encourages the negotiating teams to make time and resources available to appropriately engage with the local services industry, through bodies such as ASR, to make sure that they are representing needs in a truly informed and current manner.

ASR views RCEP as a significant priority issue for its membership and the entire local services sector and is very keen to be closely engaged with the continuing process of these negotiations.

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