DECEMBER 2020 | N°10

Global watch on culture and digital trade

CEIM | GRIC | FICDC

ONLINE PLATFORMS AND TRADE AGREMENTS IN ASIA: CULTURAL AND REGULATION ISSUES

By Dr. Antonios Vlassis (Center for International Relations Studies-CEFIR, Université de Liège)

Analytical report, December 2020

The December report firstly focuses on the Regional Comprehensive Economic Partnership signed by China, Japan and 13 other countries in Asia and Pacific. Secondly, it analyses the initiatives taken by Indian government in order to impose new regulations for online platforms. Thirdly, it highlights the new guidelines that China intends to adopt seeking to curb the power of its biggest Internet companies. Finally, the report deals with Disney Plus and its launch in Latin America.

Regional Comprehensive Economic Partnership

On November 15, after eight years of talks, 15 countries in Asia and the Pacific formally signed the Regional Comprehensive Economic Partnership (RCEP), one of the world's largest regional free trade agreements, totalling 2.2 billion people and covering 28 percent of the global trade. The RCEP encompasses China, South Korea, Japan, Australia, New Zealand, and the ten members of the Association of Southeast Asian nations, such as Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

As New York Times mentioned, "the RCEP will most likely formalize rather than remake business between the countries". For instance, Australia and New Zealand have already concluded trade agreements with all the participants to the RCEP.

In addition, the RCEP's rule of origin will set common standards for how much of a product must be produced within the region for the final product to qualify for duty-free treatment. There will also be a single certificate of origin that the 15 countries will be able to use to sell to anybody in the region. Besides, the pact allows countries to keep a broad range of tariffs for imports of goods and services from sectors considered as especially important or sensitive.

It's worth underlying six key points:

- (i) the RCEP becomes the first major regional agreement that connects China, Japan and Korea in a single free trade grouping;
- (ii) the pact has been shaped by the leadership of China as a counterweight to US economic influence in the region, by the economic crisis due to the Covid-19 pandemic, as well as by the nationalist and unilateralist agenda of the US since the administration Trump pulled the US out of the Transpacific Partnership (TPP);
- (iii) the RCEP reveals that economic powers in Asia and Pacific has developed the ability of cooperation and consensus about working together and going forward without the leadership of the United States;
- (iv) the Comprehensive and Progressive Agreement for TPP (CPTPP, the successor of TPP without the US**[1]**) includes strong rules on intellectual property, on investment and it has a very detailed e-commerce section. According to analysts, all of these are in RCEP, but they are much less elaborated and rigorous;
- (v) the RCEP does not deal with sensitive issues, such as protecting independent labour unions, establishing unified standards on environment or limiting government subsidies to state-owned enterprises – issues included in the CPTPP;
- (vi) the pact does not include India, another regional economic giant, since India has pulled out of the negotiations in July.

Regarding the audiovisual and broadcasting sector, the participants to the RCEP incorporate broad exceptions included in the Annex II 'Schedule of Specific Commitments for Services', in the Annex III 'Schedule of Reservations and Non-Conforming Measures for Services and Investment', as well as in other sections of the agreement.

[1] The CPTPP, also known as TPP-11, is a trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Six members of the CPTPP, such as Australia, Brunei, Japan, Malaysia, New Zealand and Vietnam, also signed the RCEP.

As such, in the Annex 8B, 'Telecommunication Services', the participants explicitly mention that this Annex shall not apply "to measures affecting the cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services".

The text also includes a very short section of 12 pages on Electronic Commerce, showing that the goal of the participants was to not deal with sensitive issues affecting sovereign functions of the State. In this sense, in the 'Article 12.15: Cross-border Transfer of Information by Electronic Means', the text indicates that "nothing in this Article shall prevent a Party from adopting or maintaining any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective (…) or any measure that it considers necessary for the protection of its essential security interests".

Moreover, it's revealing that about the sectors 'Audiovisual services' and 'Broadcasting' in the Annex II and III, the participants often enter in the appropriate space the term 'Unbound', showing that the members wish to remain free in these sectors to introduce or maintain measures inconsistent with market access and national treatment.

In addition, according to their international commitments, all the participants include reservations for adopting or maintaining national measures with respect to the film and television production and distribution and to the national content on radio and television and in films. It's necessary to note that no mention to the Convention on Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005) is included in the RCEP. Thailand, Myanmar, Brunei, Malaysia, Singapore, Philippines, Japan and Laos are not Parties to the 2005 Convention.

Please see below some of the exceptions included by China, South Korea, Japan, and Australia:

China

Regarding 'Audiovisual services' (videos, including entertainment software and distribution services, as well as sound recording distribution services), the Annex II mentions that "foreign services suppliers are permitted to establish partly foreign-invested enterprises with Chinese partners to engage in the distribution of audiovisual products, excluding motion pictures, without prejudice to China's right to examine the content of audio and video products".

In addition, with respect to ‘Cinema Theatre Services’, “foreign services suppliers are permitted to construct or renovate cinema theatres, with foreign investment no more than 49 per cent”. Finally, as regards ‘Audiovisual services’, the Annex II explicitly stresses that “in accordance with China’s commitments under General Agreement on Trade in Services (GATS), and without prejudice to compliance with China's regulations on the administration of films, China allows the importation of motion pictures for theatrical release on a revenue-sharing basis and the number of such imports shall be 20 on an annual basis”.

South Korea

With respect to the sector ‘Communication Services’, the Annex III states that Korea reserves the right to adopt or maintain any measure relating to broadcasting services (…) to subscription-based video services**[1]**, (…) as well as, any measure setting criteria for determining whether broadcasting or audiovisual programmes are Korean. Furthermore, as regards the sector ‘Digital Audio or Video Services’, the Annex III stresses that “with respect to digital audio or video services targeted at Korean consumers, Korea reserves the right to adopt any measure to promote the availability of such content”.

Japan

With respect to ‘Audiovisual Services’, the Annex III emphasizes that Japan reserves the right to adopt or maintain any measure with respect to the supply of audiovisual post-production services. Regarding « Information and Communications », the Annex III states that Japan reserves the right to adopt or maintain any measure relating to investment or the supply of services in broadcasting industry. According to the Annex III, broadcasting means the transmission of telecommunications with the aim of direct reception by the public (paragraph 1 of Article 2 of the Broadcast Law) and does not include on-demand services including those services provided over the Internet.

[1] Subscription-based video services mean subscription-based video services that are supplied to end-users over any type of transmission network and includes Internet Protocol-based Television (IPTV), Interactive Broadcasting and Over-the-top Content Services.

Australia

The Annex III explicitly states that Australia reserves the right to adopt or maintain any measure with respect to:

(a) the creative arts, cultural heritage and other cultural industries, including audiovisual services, entertainment services and libraries, archives, museums and other cultural services; and

(b) broadcasting and audiovisual services, including measures with respect to planning, licensing and spectrum management, and including: (i) services offered in Australia; and (ii) international services originating from Australia.

According to the Annex III, creative arts include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete art form divisions.

India seeks to regulate digital media

Mid-November, India's government has issued an order bringing the regulation of online platforms under the purview of the Ministry of Information and Broadcasting (MIB) in a first step to regulate the country's digital landscape. In this sense, news on social media platforms such as Facebook and audiovisual content on streaming platforms, such as Netflix and Disney Plus Hotstar will henceforth come under the authority of the MIB. The fact that the previously self-regulated Indian streaming sector was brought under the MIB triggered discussions around possible government censorship.

It's worth reminding that in September 2020, a self-regulation code to regulate Indian streaming content was signed by 15 of the country's leading streamers, including Netflix, Amazon Prime Video, Disney Plus Hotstar, Viacom18's Voot. The 'Universal Self-Regulation Code for OCCPs (Online Curated Content Providers)' created by the Internet and Mobile Association of India (IAMAI) was seen as self-regulation by the industry, rather than control and censorship imposed by the government.

New guidelines for the Chinese internet giants

Early November, China proposed stricter anti-monopoly guidelines seeking to curb the power of its biggest internet companies, such as Alibaba, Tencent and JD.com. The 22-page draft by the State Administration for Market Regulation (SAMR) intends to define anti-monopoly behaviour for the tech sector in order to protect fair market competition and to ensure healthy growth for the internet economy. As Bloomberg stressed, Alibaba, Tencent, JD.com and Baidu grew massively and came to dominate the entire digital ecosystem in the country, whereas the government has played a key role in developing the tech sector through strict regulations, blocking the activities of US digital giants, such as Facebook, Amazon, Netflix and Google. The new rules will attempt to stop companies from sharing sensitive consumer data, teaming up to push out smaller rivals and selling at a loss to eliminate competitors. SAMR is seeking public feedback on the draft rules until November 30. Alibaba CEO Daniel Zhang said China's new restrictions on tech companies are "timely and necessary".

In addition, it's interesting to note that in the second quarter of its financial year, losses of Chinese e-commerce giant Alibaba narrowed at the digital entertainment and media activities. As Variety mentioned, streaming service Youku saw a 45% increase in its average daily subscriber base and cut its losses, though it did not disclose the relevant data. However, Alibaba Pictures, the film company of Alibaba, saw its revenues to be shrunk in the six months from April to September 2020. They had declined by 40% compared with the equivalent period in 2019. Finally, for the three months from July to September 2020, revenues for the tech giant Tencent climbed by 29% to 18.4 million USD. According to Variety, combined subscription numbers across video, literature and music climbed by 25% year on year to 213 million.

Disney Plus surpasses 70 million subscribers and launches across Latin America

Disney Plus reached 73.7 million paying subscribers as of October 2020, marking a spectacular leap from the 28.6 million subscribers that Disney Plus had before the Covid-19 pandemic and the lockdown measures taken since February 2020. In addition, Hulu, another streaming platform of Walt Disney Company, has now 36.6 million subscribers, while ESPN Plus has grown to 10.3 million subscribers.

In mid-November, Disney Plus was launching across Latin America. The global streaming platform already has 70 original shows in development in Latin America – including Brazil, Mexico, Argentina and Colombia. Moreover, Disney Plus has signed a joint subscription deal in Brazil with Globoplay, the Video-on-Demand platform of Brazilian broadcaster group Globo, the biggest media company in Latin America.

Sources :

- RCEP text and associated documents, Link.
- Disney's Fiscal Full Year and Q4 2020 Earnings Results, 12 novembre, Link.
- Addressing RCEP, Biden says US should ensure it sets trade rules, Inside US Trade, 16 novembre, Link.
- China-Led trade pact is signed, in challenge to US, New York Times, 15 novembre, Link.
- What you should know about RCEP, Asia's new trade agreement, Brookings, 19 novembre, Link.
- India will likely go for bilateral trade pacts for now – not mega deals like RCEP, CNBC, 25 novembre, Link.
- Indian Streaming Platforms Weigh Up Unclear Future of Content Regulation, Variety, 25 novembre, Link.
- Indian move to regulate digital media raises censorship fears, The Guardian, 11 novembre, Link.
- Morgan Stanley names Internet companies that will be hit by China's proposed anti-monopoly rules, CNBC, 11 novembre, Link.
- Dissecting China's Crackdown on its Internet Giants, Bloomberg, 13 novembre, Link.
- Disney Plus to Ramp Up Original Production In Latin America, Variety, 17 novembre, Link.

PUBLICATION DIRECTOR
Gilbert Gagné, Researcher at CEIM and Director of the Research Group on Continental Integration (GRIC).

AUTHOR
Antonios Vlassis, Lecturer and Researcher, Center for International Relations Studies (CEFIR)-University ofLiège, CEIM member.

Centre d'études sur l'intégration et la mondialisation (CEIM)
UQAM, 400, Sainte-Catherine street East, Hubert-Aquin Pavilion, Suite A-1560, Montréal (Québec) H2L 2C5 CANADA. Phone number : 514 987-3000, ext. 3910 / Email : ceim@uqam.ca / Website: www.ceim.uqam.ca

International Federation of Coalitions for CulturalDiversity (IFCCD)
33 Milton street, Suite 500, Montréal (Québec), H2X 1V1, CANADA. Phone number: 514 277-27666 / Email: coalition@cdc-ccd.org / Website : www.ficdc.org

Layout by IFCCD