# Introduction to the Regional Comprehensive Economic Partnership (RCEP) Symposium

**By:**

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February 8, 2021

The contributions to the symposium on the Regional Comprehensive Economic Partnership (RCEP) feature essays from across the world. The topics are diverse too: some dwell on the geopolitical implications of the RCEP, some dwell on its dispute settlement chapter, while some others on issues which the text of the Agreement either ignores or deals with only perfunctorily. Despite the divergence of the views of the contributors, on some points, they broadly tend to agree. They clearly perceive the RCEP as the beginning of a growing trend where economies in the Asia-Pacific region could play a much more pivotal rule in global trade rulemaking. They also tend to agree that compared to the other mega-regional trade agreements, the RCEP is less ambitious in its scope in that it has scant provisions on matters such as labour rights or environmental standards. And broadly, the contributions predict that the signing of the RCEP may give an impetus to the US joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which though may somehow

be jolted by the pressing domestic challenges of the new US administration.

Bryan Mercurio's essay titled 'The Regional Comprehensive Economic Partnership (RCEP): Separating Fact from Fiction' argues that contrary to what many have claimed, the Agreement is not a political triumph for China nor a paradigm shift in potential economic impacts. It projects that as there was no free trade agreement (FTA) involving China, Japan, and South Korea,; much of the RCEP's trade creation would likely be limited to these three state parties. The essay points out that the benefit of comparatively liberal RCEP rules of origin of would likely be undermined by intra-RCEP tariff and non-tariff barriers. It posits that RCEP cannot be a symbol of China's rulemaking in the global trade arena, since many of the rules were set by Association of Southeast Asian Nations, (ASEAN), Australia, and Japan. The essay predicts that without immediate US attention to and engagement with the Asia-Pacific region, US relations with many of its historic allies are likely to be re-shaped, if not severely dented.

Henry Gao and Gregory Shaffer's paper titled 'The RCEP: Great Power Competition and Cooperation over Trade' sees the RCEP, the first regional trade agreement signed by China, as the emergence of China as a rulemaker in global trade law making. Pointing to the liberal rules of origin of the RCEP, their essay predicts that it would draw more investment to China and the other RCEP member countries. The essay argues the inclusion of rules on e-commerce and the digital economy in the RCEP as a compromise by China and takes this as a symbol that future agreements in the World Trade Organization (WTO) on this between China and others led by the US, may be possible. It also forecasts that the conclusion of this Agreement may mean that the Biden administration may be more interested in joining the (CPTPP).

Meredith Kolsky Lewis' essay titled 'Geopolitical Implications of RCEP' predicts that the simplified rules of origin would likely mean drawing more investment in RCEP countries as it happened among North American Free Trade Agreement (NAFTA) parties after they signed the FTA. It argues that much of the new trade which would occur among the parties are likely to be concentrated among the non-ASEAN parties who did not have a pre-existing FTA between themselves. It predicts that as a response to the RCEP, the Biden administration may want to join the CPTPP, but given the apprehension among many in the US about any

new free trade agreements and the ongoing COVID-19 pandemic related challenges may make it very difficult for the US administration to do the same.

Pointing to the myriad of existing trade agreements between the RCEP member states, the essay 'Systemic Implications of the RCEP for the International Economic Law Governance' by Makane Moïse Mbengue and Stefanie Schacherer argues that it would pose some challenges to the economic integration in the Asia-Pacific region. In particular, the essay points out that in the case of any inconsistency between a pre-existing FTA involving RCEP parties and the text of the RCEP, how the inconsistency would be resolved is unclear. The essay also shows that the Agreement in its current shape is more a framework Agreement than a concluded, fully-functioning treaty. All these being said, the essay argues that it deals a blow on the standing of the US as a global trade policymaker and also somewhat pushes the WTO to the fringe. The essay optimistically suggests that Agreements like the RCEP and African Continental Free Trade Agreement (AfCFTA) could herald a revival of some sort of Bandung-era where Asian and Southern states could set new standards in trade law-making rather than importing standards from the template of the economically developed states.

Jane Kelsey's essay titled 'RCEP: Nothing to See and Everything to See,' views the RCEP, like the other mega-regional trade agreement, as a response to the stalled progress in the negotiations at the WTO. However, she notes that in view of India's withdrawal from the RCEP, its key economic argument does not subsist any more. The essay regrets the secrecy surrounding RCEP negotiations, the manner in which business lobby groups had access to it, while other groups, including parliamentarians, were virtually in the dark. Despite that, the vigilance of the civil society groups and their concerted effort meant that some of their concerns were reflected in the final text. The essay argues that the watering down of the rules on government procurement and e-commerce rules, absence of investor-state dispute settlement (ISDS) provision was the combined outcome of efforts by strange bedfellows: the unyielding position of developing country members and some constituencies in developed country members being sympathetic to the position of developing country members. The essay argues that the RCEP as being somewhat of a retreat from 'hyper-globalisation' – though not a paradigm shift, a step in the right direction.

Maria Adele Carrai's essay 'The RCEP and a Geopolitical Pivot to the Asia-Pacific' views the RCEP giving new vitality to the Asia-Pacific region. It argues that despite the somewhat limited scope of the Agreement when contrasted with other mega-regional trade agreement such as the CPTPP, this is a rather comprehensive Agreement. It predicts that while the RCEP would generate further trading exchanges between the RCEP member countries, a more decisive impact of the RCEP is in its geopolitical shift towards the Asia-Pacific region away from the Atlantic countries. The paper argues that although China would be the biggest of the RCEP countries, in some ways, this Agreement allows the ASEAN member states to engage with China on a better footing in an environment which is more constrained by the multilateral rules embodied in the RCEP.

Anastasia Telesetsky's paper titled 'The Status Quo of RCEP: A Squandered Opportunity for Regional Social and Environmental Cooperation' focuses on what the RCEP does not cover or pays scant to – labour rights and environmental standard. However, the concern of this paper is not merely about the RCEP, but about almost all regional or mega-regional free trade agreements. The central thesis of the paper is that RCEP merely preserves the status quo with regard to labour rights and environmental standards. The paper argues that FTAs should incorporate of annual auditing that these agreements have on labour rights and environmental sustainability.

In her essay titled 'The Geopolitical Impact of RCEP- Another feather to the Chinese Crown?', Rumana Islam, argues that RCEP is a welcome development in an era of increasing anti-globalism. It claims that although the RCEP is a creature of the ASEAN member states, it would in the long run, benefit China both economically and strategically. Her essay views India's withdrawal from the RCEP as a symbol of Indian isolationism from greater Asian regionalism. The essay argues that the RCEP would also pose strategic challenges to the Biden administration. However, Islam notes that the signing of the RCEP does not mean that RCEP members would sever their economic and strategic ties with the US. Instead, it would mean a new dimension in the US's relation with RCEP member countries.

Farhaan Uddin Ahmed's essay titled 'Special and Differential Treatment of LDC Parties in RCEP's Dispute Settlement Mechanism: Mere Words or Effective

Safeguards?' delves on a very niche topic – the special and differential provision in Article 19.18 of the RCEP which deals with the rights of least developed country (LDC) members in the dispute settlement process of the Agreement. The essay points out that it very much resembles Article 24 of the World Trade Organization's Dispute Settlement Understanding. Taking a textual approach, the essay implies that in its current shape, the S&D provision's actual impact is very difficult to gauge.

Naimul Muquim's essay titled 'The Regional Comprehensive Economic Partnership (RCEP): A Dilemma for People and Human Rights in the Global South?' takes a rather dim view on the potential outcome of the RCEP. It opines that the marginalised groups such as farmers and women may be further marginalised by the RCEP. The paper asserts that this may happen because, inter alia, some RCEP provisions may encourage land grabbing by large corporations while others may unnecessarily increase protection of intellectual property rights. The essay also laments a paucity of provisions protecting the labour rights and environment.

'RCEP's Contribution to Global Data Governance' by Thomas Streinz analyses the role of the RCEP in the current debate on the rules regulating electronic commerce and digital trade. It argues that RCEP more or less follows the TPP model of data mobility as a sort of goal to be pursued by international economic law. Just as the TPP did, the RCEP underscores that the need to protect personal data is stemming not from any privacy or human rights concerns, rather for the intrinsic economic value of data. The essay foresees that the provisions of the RCEP on the governance of data may resurface in future trade agreements when states would want to combine the goal of ensuring data mobility with unbridled regulatory freedom of states.

In her essay titled 'RCEP Investment Rules: Help or Hindrances to Asia's COVID-19 recovery?', Alicia Nicholls takes up the issue of investment rules of the RCEP. She lauds the temporary absence of the ISDS provision in the text of the RCEP as a welcome development, but ponders as the other international investment agreements (IIAs) between RCEP countries may provide for ISDS, why the parties did not unequivocally oust the scope of ISDS among them forever or at least temporarily in relation to COVID-19 measures. This possibly means that the temporary limitation on ISDS claims is an interim step, not any

principled stance on restraining ISDS claims. The essay predicts that investment promotion and facilitation provisions in the RCEP may boost post COVID-19 economic recovery in the RCEP countries, provided the parties take concrete measures to operationalise the investment facilitation and promotion provisions in the RCEP.

**Contributors**

Bryan Mercurio: The Regional Comprehensive Economic Partnership (RCEP): Separating Fact from Fiction

Henry Gao and Gregory Shaffer: The RCEP - Great Power Competition and Cooperation over Trade

Meredith Kolsky Lewis: Geopolitical Implications of Regional Comprehensive Economic Partnership

Maria Adele Carrai: The RCEP and a Geopolitical Pivot to the Asia-Pacific

Jane Kelsey: RCEP: Nothing to See and Everything to See

Makane Moïse Mbengue and Stefanie Schacherer: Systemic Implications of the RCEP for the International Economic Law Governance

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Alicia Nicholls: RCEP Investment Rules: Help or Hindrances to Asia's COVID-19 Recovery?

Anastasia Telesetsky: The Status Quo of RCEP: A Squandered Opportunity for Regional Social and Environmental Cooperation

Rumana Islam: The Geopolitical Impact of RCEP - Another Feather to the Chinese Crown?

Naimul Muquim: The Regional Comprehensive Economic Partnership (RCEP): A Dilemma for People and Human Rights in the Global South?

Thomas Streinz: RCEP'S Contribution to Global Data Governance

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