RCEP: Nothing to See and Everything to See

By:

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Negotiations for a Regional Comprehensive Economic Partnership (RCEP between the ten members of the Association of South East Asian Nations (ASEAN) - Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar/Burma, Philippines, Singapore, Thailand and Vietnam - and six other (broadly) Asian countries, being Australia, China, India, Japan, New Zealand and South Korea, were launched in November 2012.

Eight years later, following numerous missed deadlines, the parties announced agreement on the text. Market access talks would continue. The final RCEP text was signed virtually on 15 November 2020. Significantly, 15 of the 16 negotiating parties did so. India had announced in November 2019 that it could not join on the current terms.

The formal rationale for RCEP was to consolidate and extend the bilateral free trade agreements between ASEAN, which negotiated as a bloc, and its FTA partners. In reality, RCEP was a product of its time. Multiple objectives and complexities were similar to, but also very different from, the other mega-regional negotiations that marked the past decade: the Trans-Pacific Partnership Agreement (TPP/TPPA) (rebranded as the Comprehensive and Progressive Investment Partnership (TTIP), Trade in Service Agreement (TiSA), and Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union.

There are clear commonalities. All the mega - regionals were, to some extent, a response to the stagnation of the multilateral trade regime dating back to the collapse of the Seattle ministerial conference of the World Trade organization (WTO) in 1999, if not before. They all involve World Trade Organization (WTO) Members and comply with its neoliberal ideology that privileges capital at the expense of "people and planet". All of them expanded the range of public policy matters brought under the rubric of "trade" rules by extending WTO obligations ("WTO-plus") and covering new issues ("WTO-extra"). All were negotiated in secret forcing non-participants, including domestic politicians, to rely on leaked texts, and fueling criticisms of their democratic deficit and attack on sovereignty.

There are particular parallels with the TPPA, whose negotiations were launched two and a half years before RCEP and concluded in November 2015. Seven participants overlapped both agreements: four within ASEAN (Brunei, Malaysia, Singapore and Vietnam) along with Australia, Japan and New Zealand. There was intense pressure, mainly from the latter group, to mirror the TPPA and have China and India adopt its "gold standard" 21st century rules.

The two agreements were comparable in economic scale, with RCEP covering half the world's population (including China, India and Indonesia) and a third of global trade and GDP. Both were boosted by inflated projections of economic gains that relied on unrealistic modelling and ignored the extensive network of pre-existing FTAs. Access to the US was the main selling point for other TPPA parties, and its withdrawal made the deal even harder to justify. For RCEP, the prize was India, with its massive market and no FTAs with China, Australia or New Zealand. India's withdrawal stripped the agreement of its principal economic rationale.

Nevertheless, RCEP is quite distinctive. Unlike the TTPA, the developing countries were not mere supplicants to an agenda set by the global North. Leaked chapters on intellectual property, investment, services, and electronic commerce revealed a complex matrix of country positions within a legal framework that overlapping significantly with, but also diverged from, the TTPA. Developing countries in RCEP had the advantage of analysis about the implications of many TTPA chapters. Several of these, including state-owned enterprises, labour and environment, were omitted from the the final RCEP text, the IP chapter was stripped back, investor-state dispute settlement (ISDS) was left to future negotiation, and the e-commerce and government procurement chapters were not enforceable.

That does not mean RCEP is benign. It still guarantees foreign investors and service suppliers rights to operate in the market of the parties without constraints or local preferences, in more sectors such as finance, health, education, environmental, distribution and computer and related services. Worse, it commits them to adopt a dangerous "negative list" approach, where they must specify which measures, activities or sectors are *not* subject to those rules, within six years for developing countries or 15 years for the three least developed countries (LDCs) of Lao PDR, Cambodia and Burma/Myanmar. The investment chapter included TPPA- type restrictions on requiring foreign investors to transfer technology; failure of developing countries to secure effective "negative list" protections would deepen the digital divide.

There is nothing that guarantees any benefits to small and medium enterprises (SME), indigenous peoples, women or workers. The SME and cooperation chapters are weak and unenforceable. The Asia-Pacific arm of the International Trade Union Confederation denounced RCEP as an "insubstantial deal" that was created without social dialogue and a comprehensive impact assessment, and consequently "would jeopardize the potential for a sound industrial base for most countries, aggravate inequality and social-economic vulnerability, and lower income for workers and farmers". Furthermore, "the RCEP would hinder our efforts to build back better after COVID-19 towards a sustainable, inclusive and resilient world by escalating the division of labour in global supply chains, privatisation of essential services, and the dominance of corporation on our governments. Public services as well as the government's ability to regulate in the interest of own people would be weakened. Therefore, the agreement is clearly against our prosperity in future."

Another, major difference is the absence of a single dominant negotiating power in RCEP. It was widely and wrongly depicted as a China-led rival to the TPPA, especially in the US where Obama famously sought to sell the unpopular deal to a reluctant American public and Congress by depicting the two agreements as a contest over who would write the trade rules for the 21st century: America or China. This vastly over-simplified the dynamics.

Obviously, the RCEP's rules would have to be acceptable to China to achieve consensus. But ASEAN is a powerful bloc that negotiated as a whole, so its internal positions and negotiating compromises had to satisfy its ten diverse members. India is a champion of development priorities and flexibilities in the WTO and had a massive politically active population. As it showed, it was not going to be bullied. New Zealand and Australia are renowned for their far-reaching demands on agriculture and services. Japan took over as the main champion of the TPPA following the US withdrawal, and the leaked texts show it was the main proponent of TPPA- style provisions.

So what lessons can be learned from RCEP, especially for other regions where a similar mix of issues and players are involved?

One is the role of non-actors in the negotiations and their influence on the outcome. Clearly, this Agreement was about business, and despite the secrecy of the process, they enjoyed privileged access during negotiations, as well through regional lobby groups and, presumably, at home. By contrast, other affected interests, from parliamentarians and trade unions to indigenous peoples and farmers, were excluded from information, let alone any equivalent participation.

Despite - or because of - this, advocated of access to medicines, workers' rights, trade justice, development and women, kept pressure on delegations nationally and internationally. they followed a classic "inside/outside" strategy. On the "inside", constant pressure on host countries resulted in "stakeholder" sessions that were often token and always voluntary for delegations to attend. Despite those constraints, joint civil society initiatives across the participating countries, presence at negotiations and sharing of analysis based on available information clearly influenced some delegations and were reflected in the final text.

Actual protests were, however, muted. Compared to the massive mobilisations against other mega-regionals, RCEP was comparatively low-profile. China's involvement posed the biggest perceived threat to domestic interests, including human rights, but it already had FTAs with most participating countries. Political conditions in many countries that hosted the talks also prevented effective protest and dissent. India was really the only site of multiple, major mobilisations. The impact of tariff cuts on products from China, and of New Zealand and Australia diary imports on India's 100 million farmers, as well as extreme demands on services, made RCEP economically, socially and politically untenable for the Indian government.

This experience shows the importance for activists and advocates to work together to understand the particular context of a negotiation, anticipate the potential content and points of friction, and create opportunities for "inside" and :outside" influence.

A second point of reflection is the potential for Third World countries to reject, or alternatively prevent the enforceability of, particularly toxic provisions when they work together. The leaked RCEP texts that did circulate showed string internal resistance to highly controversial proposals. There was almost no support to extend monopoly rights for Big Pharma over medicines, although some such provisions remained. Widespread reliance on government procurement as socio-economic policy tools ensured the chapter on government procurement was weak and unenforceable. Likewise, there was a refusal to negotiate a TPPA- style chapter that required state-owned enterprises to operate as private commercial businesses without government support, despite repeated attempts to do so.

A number of RCEP countries had withdrawn from bilateral investment treaties or committed not to include ISDS in future agreements. Their resistance resulted in a rendezvous clause to begin discussions within two years of RCEP's entry into force, but the outcomes were subject to consensus. In the later stages, there was growing recognition that TPPA-style e-commerce rules could prevent countries from regulating Big Tech companies, including their control over data, anti-competitive practices and taxation. That saw provisions on source code omitted, the inclusion of a self-judging security exception for the obligation to allow data transfer, and the chapter was unenforceable. Undoubtedly China played an important role in that outcome, but countries like Indonesia, India and Vietnam were already facing challenges over moves to regulate the digital domain.

These TTPA - minus aspects of RCEP were achieved because some developing countries held the line, often under external pressure, and negotiators had access to sympathetic and robust analysis they could trust. That alone was not enough to achieve consensus. More powerful countries are not known for their altruism to developing countries in such situations. It became imperative that they also faced political pressure from their constituencies to reject the same harmful provisions and support developing country positions. Unlikely as it may sound, that was evident in RCEP in relation to pharmaceuticals and ISDS.

A final observation is less positive. Even before the Covid-19 pandemic and its potentially devastating aftermath, there was abundant evidence that the neoliberal trade regime is in crisis. TTIP and TiSA were never concluded, CETA crept over the line, the US withdrawal from the TPPA, India quit RCEP, and the UK voted to exit the EU. The main negotiating and dispute settlement functions of the WTO were paralysed. The Asia Pacific Economic Cooperation (APEC) forum, which was a rallying point to advance the neoliberal trade agenda, was cancelled in Chile in 2019, held as a virtual non-event in Malaysia in 2020, and will be hosted remotely by New Zealand in 2021.

For years UNCTAD has argued that hyperglobalisation, and the free trade agreements that promote it, has created unsustainable levels of instability, inequality, insecurity and ecological harm and called for a new paradigm of trade rules that is participatory and development-friendly, recognises the role of regulation and local political oversight, and can promote a level playing field and prosperity for all. The final RCEP argument is a symptom of that malaise - a step back from the excesses of the TPPA, but is a long way from a new paradigm.

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