

Trade and Human Rights; RCEP, an Emerging Challenge



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Introduction

RCEP (Regional Comprehensive Economic Partnership) is a proposed free trade agreement (FTA) between 10 countries of the ASEAN (Association of South East Asia Nations) and their trade partners, China, Japan, India, South Korea, Australia and New Zealand.¹ In operation, the mega FTA will cover 45% of the global population, 30% of the global GDP, 27.4% and 23% of the world's trade and goods and services respectively.² The concept was launched in ASEAN Summit in 2011 and the negotiations began in 12th ASEAN Summit. Till date 18th round of negotiations have been held. However, there has been very little progress due to conflict of interests between the countries which have an export led growth model and those who have consumption based growth model. 19th round of negotiations will be held during 18th to 28th July at Hyderabad, India.

The RCEP was increasingly being seen in competition to the TPP (The Trans Pacific Partnership) led by the US under Obama involving 11 of the Pacific Rim countries. However, as Donald Trump became the President, he withdrew from the TPP making it redundant. Since then, RCEP has risen in profile manifolds. The most significant implication of the RCEP is that world's two most populations nations, and three of the biggest economies (China, 2nd, Japan 3rd and India 7th) will be involved in this trade agreement.

¹ ASEAN Countries include Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

² Why RCEP is Vital for India, BipulChatterjee and Surender Singh, 3rd March 2015, The Diplomat

As per the Guiding Principles and Objectives of the RCEP, it is aimed to be a comprehensive and cover a large number of subjects including trade in goods and services, investment, intellectual property, economic and technical cooperation, competition, dispute settlement and other issues related to government regulation.³ Special and differential treatment (S&DT) is available for least developed countries in the group (known as CLMV) Cambodia, Lao, Myanmar and Vietnam. One of the key principles also mentioned is that of making “significant improvements over the existing ASEAN + 1 FTAs” while recognizing the “individual and diverse circumstances of the Participating countries”.⁴

India and the RCEP

India has announced a new foreign trade policy in April, 2015, which aims to increase India’s share of the global trade from current 2.1% to 3.5% and double exports (\$900 billion) by 2020.⁵ The United States is by far is India’s largest single country trading partner, with whom its bilateral trade in goods and services stood at \$ 66.9 billion in 2013-14. In 2014, the two countries have agreed to a target of \$ 500 billion per year without setting a deadline.

In the past decade India has signed FTAs with ASEAN, Korea, Japan and Malaysia. However, some insiders admit that India’s trade partners have gained more from these agreements than India. India’s experience with

³ Ministry of Commerce, Govt of India, 2015

⁴ ibid

⁵ India’s Trade Policy Dilemma and the role of domestic reforms, Hardeep S Puri, 6th February, 2017, carnegieindia.org

the regional trade agreements (RTAs) have been less than satisfactory because of lack of competitiveness of its manufacturing sector and the lack of innovation and investment in sectors such as textiles, garments and pharmaceuticals.⁶In the case of ASEAN-India FTA, post FTA India's import from ASEAN rose by 79%, while its exports grew only by 39%.⁷

RCEP is a crucial consideration in India's trade policy. It is hoped that while RCEP would complement India's existing trade agreement with ASEAN countries it its existing trade partners like Japan and South Korea, it will also act as a stepping stone to India's Act East Policy, especially with its absence in other two regional blocs, APEC and TPP. Besides, RCEP will facilitate India's integration into sophisticated regional production networks. India with its comparative advantage in ICT, IT enabled services, professional services, healthcare and education services will have greater access to new markets. The RCEP agenda brings with it the demands for market opening and the focus is India (and also Indonesia).⁸ India had initially adopted a three tiered approach, where tariff reduction was based on whether it has a FTA with member country of RCEP or not.⁹ Under Tier 1, India offered 80% reduction in tariff lines to ASEAN countries. Out of which 65% will come into force once the RCEP is enforced and the rest 15% will take place over next 10 years. In tier 2,

⁶ibid

⁷India changes track at RCEP negotiations, Kavaljit Singh,13th August 2016, www.madhyam.org

⁸ India's RCEP Challenge, 3rd December 2014, www.financialexpress.com

⁹ India has already signed FTAs with ASEAN, Japan and South Korea.

India offered 65% tariff elimination to South Korea and Japan. In tier 3, India offered 42.5% reduction in tariff lines to China, Australia and NZ, with whom it has no FTAs.

Current Status of RCEP Negotiations

RCEP negotiations have missed several deadlines. It was expected to be finalized by 2015 and then 2017. However, it seems that the negotiations will extend into 2018. This is because the member countries are yet to agree on tariff reduction for goods while discussions on the services have come to a standstill. The members are expected to make their second round of offers as tariff reduction before the next meeting in July 2017 at Hyderabad.

India has changes its position significantly from its initial 3 tier tariff reduction offer. Now India is willing to offer a reduction on 80% of all tariff lines with a 6% deviation for the nations. Under this scenario, India may offer a reduction on 86 – 74% of goods depending on trade relations with member countries.¹⁰

Other nations want to restrict deviation to 1 to 2 % but richer nations like Australia and New Zealand want a reduction up to 92% of all goods items.¹¹ On services trade, where India is primarily interested in securing greater market access and easing restrictions in the sector, it is especially looking at opening up issues under Mode 4, which deals with cross-border migration of service professionals, discussions on services trade have affected by global

¹⁰SubhayanChakaborty, Business standard, New Delhi, 24th May 2017, www.businessstandard.com

¹¹ibid

protectionism in the sector.¹²The coverage given to services and digital economy was very modest and it would have no protection for labour and the environment.¹³

Following the RCEP trade ministers meeting held in Hanoi in May 21-22, the Indian Commerce ministry said that several areas still required to be negotiated to finality. India has also proposed a RCEP business card for business people, on the lines of the APEC Business cards.¹⁴

Major Concerns Regarding RCEP

RCEP is being negotiated in the shrouds of secrecy. There is no text available to the public and it raises suspicion. The general feeling in the past decade has moved against such trade agreements done to a number of reasons. There have been very few consultations with stakeholders except business community in the member countries. There have been no public consultations in India either with the CSO and the stakeholders. Civil society and the farmers groups have already raised this issue and have opposed stricter medicine non-policies at RCEP negotiations.¹⁵Civil society have raised concerns such as lack of disclosure policy, restricted access to medicine and increased protection of

¹² *ibid*

¹³ India pressured to give up on tariffs at RCEP, Hanoi, www.thedollarbusiness.com

¹⁴ India urges speedier RCEP negotiations, May 24 2017, www.sarkaritel.com

¹⁵ Civil society opposes stricter medicine monopolies at RCEP negotiations, Belinda Townsend, Shailly Gupta, Patricia Randal and LeenaMenghaney, The third World Network

investors' rights etc.¹⁶ A number of trade unions and farmers groups supported by Lavia Campesina has also opposed RCEP on the grounds of apprehensions with regard to dilution of labour laws, unequal competition for Indian farmers and possible damage to Indian manufacturing, dairy and agriculture sectors.¹⁷The activists have also called for *ex ante* human rights assessments of the FTAs, and that ASEAN intergovernmental Commission on HR (AICHR) and NHRIs in member countries must pitch in to help government assess the social impacts of mega regional trade agreements.¹⁸

Probable Impacts

India will have a number of adverse impacts on economy, workers and migrants, agriculture and land and access to life saving medicines.

Impacts on economy: There are growing concerns of cheap Chinese manufacturing goods glutting Indian markets. Right now Chinese products have to pay duty in India. But for products where duty differential matters, China has to have a joint venture in Thailand or Malaysia from where products can be exported to India at zero duty under

¹⁶ Civil society raises concern on RCEP negotiations, 20th April, 2016, Down to Earth

¹⁷ Activist say the RCEP free trade pact will damage Indian manufacturing, dairy and agriculture sectors, 2nd December 2014, the Business World,

¹⁸ A new generation of FTAs that privilege business interest over human rights, ShaliniBhutani, 30th August 2016

ASEAN-India FTA.¹⁹ However, after RCEP come into operation Chinese goods would probably enter duty free in India. India's trade deficit with China has been rising and stands at \$51.8 billion in 2015. With a bilateral trade of \$11.2 billion, India's exports to china were \$9.6 billion while imports were \$61.5 billion.²⁰ China's exports have been growing at a much faster pace than India's. India frequently uses anti-dumping duties.²¹ Much of the stiff competition from Chinese imports is in products manufacture by India's Micro, Small and Medium enterprises that have been demanding cuts on cheaper imports. India also runs trade deficit with RCEP nations – Australia, South-Korea, Japan, Malaysia and Indonesia.²² However, more than economic impacts the FTAs also bind future governments with commitments, irrespective of results of future elections and parliamentary approval and severely compromises sovereignty of the country.

While the benefits of joining RCEP are still ambiguous; India joining RCEP could result in significant revenue loss as the country imposes higher MFN applied tariff rates (both in manufactured goods and agriculture products) in comparison to other RCEP countries. According to Commerce ministry officials have estimated

¹⁹The RCEP effect on India, Ajay Srivastava, the Hindubusinessline, 11th July 2016

²⁰India changes track at RCEP negotiations, Kavaljit Singh, 13th August 2016, [www. madhyam.org](http://www.madhyam.org)

²¹ During 1994 – 2014, there were 134 cases where India imposed anti-dumping duties on goods from China.

²²India changes track at RCEP negotiations, Kavaljit Singh, 13th August 2016, [www. madhyam.org](http://www.madhyam.org)

the potential tax revenue loss from joining RCEP could be around 1.6% of country's GDP.²³

Employment and Workers: One million people enter workforce every month in India. However, the jobs creation has not been able to keep up the pace. During 1991-2013, India created only 140 million jobs – a fraction of more than 300 million required, the presence of 7.7 million unemployed people is a time bomb that any government can hardly overlook.²⁴ The unemployment has been rising despite the fact that India achieved near two digits growth rate during majority of the year in the decade. In 2015, India attracted more FDI than China and the US tripling Greenfield FDI, which reached an estimated \$63 billion.²⁵ However, this has failed to translate into jobs. India's Skill India Mission, which focuses on creating skilled and employable workforce, seeks to skill 500 million people by 2020, also seems to have done poorly in getting people employed.²⁶

India's entry into RCEP is further expected to compound these problems as it might endanger jobs of people working in SMEs hit by cheap imports. Besides, a further deterioration in labour and environmental standards is also expected with RCEP, as the government wants to make India a factory of the world, as RCEP aims to make

²³ *ibid*

²⁴ why RCEP is vital for India, the diplomat.com

²⁵ India's Trade Policy Dilemma and the role of domestic reforms, Hardeep S Puri, 6th February, 2017, carnegieindia.org

²⁶ While India has capacity to train 7 million every year, under Skill India Mission in 2015 half of the capacity were trained, fewer got certification and less than a quarter of the capacity were placed in jobs

the region a factory of the world.²⁷ Wage depression can also be expected in order to make Indian manufacturing sector more competitive.

Agriculture and Land: Agriculture sector though already witnessing unfair competition and reduced protection, will be hit double hard. One, that agricultural products will face unfair competition. Second, RCEP will also impact the country to provide higher levels of IP protection to the seeds and conform to UPOV legislation. The country's legislation – Protection of Plant Varieties and Farmers' Rights Act, 2001 – provides freedom to cover farmers' seeds. Availability of the own seeds and seed sovereignty is one of the most likely casualty of the India's joining RCEP.²⁸

Another issue of potential conflict will be land. Land is already recognized as by far the most serious impediment to the revival of the manufacturing sector is the scarcity of land.²⁹ Huge tracts of agriculture land have been already diverted to nonagricultural uses (SEZ infrastructure and real estate) and further alienations of agriculture land is the most obvious probability. This is despite the fact that ministry of agriculture recognizes that alienation of land is one of the pressing challenges in agriculture.³⁰

²⁷ To facilitate GOI in make in India program the government has already diluted labour and environmental standards, one bill on labour laws is expected to come up in the Parliament in the next session

²⁸ Civil society raises concern on RCEP negotiations, 20th April, 2016, Down to Earth

²⁹ India's Trade Policy Dilemma and the role of domestic reforms, Hardeep S Puri, 6th February, 2017, carnegieindia.org

³⁰ Ministry of Agriculture and Farmers' Welfare, GOI, Annual report, 2016

Public services and access to life saving medicines: If leaks of the draft negotiation text are to be believed, Japan and South Korea are pressing for increased TRIPS Plus IP protection regimes in the RCEP. They have proposed several provisions that would award additional privileges to the pharmaceutical industries. These include patent term extensions, seizure of suspected IP infringing medicine in trans-shipment and equally worrying damages for patent infringement determined according to the value assessed by the patent owner.³¹ If these proposals are agreed, they could delay the market entry of generic drugs in the region. The impact may be felt globally.

India and China is major supplier of generic medicine from the world's poor, the role of Indian generic firms in substantially lowering the prices of HIV medicines is well known and appreciated. This has been possible because India's IP laws balance private rights with the public investments.³² India does not grant IP protection beyond 20 years and also does not grant patents for new forms or new uses of a known substance. This protection may be lost if Japan's proposal are agreed. It is also crucial that other low and middle income countries CMLV, Thailand and Philippines don't agree to these proposals. They can completely safeguard these interests in the provisions of the WTO TRIPS.³³

³¹ RCEP, the trade agreement you have never heard of but should be concerned about, www.theconversation.com

³² *ibid*

³³ Civil society opposes stricter medicine monopolies at RCEP negotiations, Belinda Townsend, Shailly Gupta, Patricia Randal and LeenaMenghaney, The Third World Network

Patients groups including Delhi Network of Positive People (DNP+) along with International Treatment Preparedness Coalition South Asia protested against Japan Embassy in New Delhi in June 2015. Stating the “leaked RCEP text appears to be a carbon copy of the worst IP provisions of the TPP that seek to stamp out generic competition and restrict access to affordable medicine.”³⁴The UN Secretary General’s high level panel on access to medicines, in a report released in September 2016, recommends that countries undertake rigorous public health impact assessment of proposed trade agreement as an imperative to inform the negotiations.³⁵The member countries of the RCEP must take a note of it.

Conclusion

Export led growth has been a dominant paradigm for East Asian Economies. However, the global financial crisis of 2008 and the subsequent recession in developed countries have revealed the vulnerabilities of export led growth models, China, South Korea and Japan are the main protagonists of this paradigm. Bulks of India’s growth emanates from domestic consumption which constitutes nearly 70% of the GDP.³⁶India may incur losses by not joining RCEP; however joining RCEP would definitely

³⁴Press statement: civil society raises major concerns on India’s engagement with the massive RCEP trade deal, donttradeourlivesaway, 11th June 2015

³⁵Civil society opposes stricter medicine monopolies at RCEP negotiations, Belinda Townsend, Shailly Gupta, Patricia Ranald and LeenaMenganey, The Third World Network

³⁶India changes track at RCEP negotiations, Kavaljit Singh, 13th August 2016, [www. madhyam.org](http://www.madhyam.org)

have economic, social and environmental costs. A certain threat to livelihoods of millions of farmers and workers due to cheaper imports is a real and present danger.

Given the experiences of India at FTA's, it would be more prudent to focus on domestic reforms, invest in trade infrastructure and to address deficiencies in the existing bilateral FTA's. As common framework TPP and RCEP are expected to help uniformly the trade standards in ASEAN other FTA's. However, a recent working paper from ADB, have expressed concerns that the two FTA's may affect – ASEAN Solidarity and hinder its internal economic cooperation and integration.³⁷RCEP may take a year or two to conclude. India should also be resolute on its stand for protection to manufacturing and agriculture sectors. There is a certain need for caution.

³⁷ TPP and RCEP; Boon or Bane for ASEAN?, 9th September, 2015, www.theaisafoundation.org

