

Update on the Regional Comprehensive Economic Partnership agreement – NGO briefing

11 September 2015

Dr Belinda Townsend, Dr Patricia Randal and Dr Deborah Gleeson

The Regional Comprehensive Economic Partnership (RCEP) agreement is currently under negotiation between ASEAN member states plus the six countries that have existing trade agreements with ASEAN; Australia, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, Vietnam. Unlike the TPPA, the United States is absent from the RCEP negotiations while India and China are included.

Since 2012 there have been nine rounds of negotiations with almost no public debate. However, the East Asian Business Council have been providing their input and recommendations to negotiators. The August 24 meeting of RCEP Trade Ministers urged acceleration of the negotiations with the aim of finishing in 2016.

The agreement originally included chapters on trade in goods, services, investment, economic and technical cooperation, intellectual property, (including patents on medicines, copyright, geographic indicators, genetic resources, etc), competition, and dispute settlement. New chapters include Financial Services, Telecommunications and Electronic Commerce.

There are huge variations in the size, levels of development and economic interests of these countries. Japan, Australia and New Zealand and Korea are highly industrialised in all sectors. China and India have both industrialised sectors and large more traditional rural sectors. Most ASEAN countries are developing economies, and some are categorised as least developed countries.

While RCEP was initially framed as an agreement that would be more flexible for low and middle income countries, there is evidence that some governments from industrialised countries are seeking to pursue aspects of the Trans Pacific Partnership (TPP) agenda in areas like pharmaceutical patents and investor-state dispute settlement which would be very damaging for developing countries. There is a longer term perspective of consolidating regional agreements. The APEC Secretariat has commissioned a [feasibility study](#) of the consolidation of RCEP, TPP, ASEAN and bilateral agreements into a Free Trade Area of the Pacific which would comprise all the APEC countries, including the US, Canada, Mexico, Peru, Chile and Russia.

Intellectual property and medicines

Leaked negotiating texts by [Japan](#) and [South Korea](#) for an intellectual property (IP) chapter in RCEP are particularly alarming. The two countries appear to act as a proxy for the international pharmaceutical industry by seeking stringent IP measures that go beyond those required in the Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS) and that are similar to some aspects of the leaked TPP IP chapter. These include measures to extend patent terms and data exclusivity - further delaying generic entry, to broaden the scope of patentability – making it easier to obtain patent monopolies, and measures to apply IP 'in-transit' - threatening the global trade of legitimate lifesaving generic medicines. See a short analysis [here](#). [IP proposals from ASEAN and India](#) have also been leaked and these proposals contain wording that is much more consistent with public health objectives.

We understand that there is now a consolidated intellectual property chapter text in which the stringent Japanese and South Korean proposals are bracketed – meaning they are not agreed to by the negotiating countries but not yet taken off the table. The proposals would be disastrous not only for least developed countries – middle income countries that are [already paying high prices](#) would pay even more. If India and China were to agree, access to medicines could be hampered across the globe.

Negotiating countries are also considering signing up to other international IP agreements including many World Intellectual Property Organization treaties as part of RCEP. Agreements such as the Patent Law Treaty (2000) which harmonizes procedural aspects of patent law may curtail flexibilities such as those in the current Indian patent system to prevent the patenting of known medicines.

Investor-state dispute settlement

We understand that the Ministers have agreed in principle to include an Investor-State Dispute Settlement (ISDS) in RCEP. [Legal scholars and civil society groups](#) have raised serious concerns over public health and other ‘safeguards’ proposed for ISDS in the TPP and argued that the most effective way to protect health, environment and other public interest regulation is not to include ISDS in trade agreements.

We understand that there have been ISDS proposals tabled by Korea and Japan which are likely to be similar to those in their own bilateral agreements and in the TPP leaked text. There is as yet no consolidated text and other governments like India and China are likely to table different proposals or concept papers based on their own experience. The Indian government is currently considering a revised draft [Bilateral Investment Treaty](#) which considerably reduces investor rights compared with other version of ISDS. However this could be substantially revised as a result of comments from an Indian consultation process with industry and civil society groups. ISDS will be discussed at the next round of negotiations in mid-October in Pusan, Korea.

Timetable for future RCEP negotiations

Mid-October 2015 negotiations in Pusan, South Korea.

Early 2016 negotiations in Australia

May 16, 2016 Australia will host ASEAN FTA review meeting

Mid-June 2016 negotiations in Auckland, New Zealand

Recommendations

- Civil society groups should ask for access to texts
- Civil society groups should make submissions on ISDS before the October negotiations.
- Civil society groups should step up our monitoring of the accelerated negotiations and exchange information through the listserv.
- Australian groups will seek more intensive consultation and organise our own activities around the Australian meetings.