

## Some 'Leaked' Texts

[Draft Intellectual Property \(IP\) Text](#)

[Draft IP Text from India](#)

[Trade in Services: Articles 19 & 20](#)

[Competition](#)

[Draft Investment Text: India](#)

[Investment Chapter: "Temporary Safeguard Measures"](#)

## Further Reading

[India Changes Tack on RCEP Negotiations](#)

[CSOs say No to 'TRIPS Plus' Measures in RCEP](#)

[Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices](#)

[India's Model Bilateral Investment Treaty Text](#)

## RCEP Member Countries (16)

### 10 ASEAN:

Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam;

### Plus 6 others:

Australia, China, India, Japan, South Korea and New Zealand

## HISTORY

Negotiations for RCEP were launched alongside the East Asia Summit in Cambodia in Nov 2012. The 1<sup>st</sup> round of RCEP talks was held in May 2013 in Brunei Darussalam; 17 rounds have been held until March 2017.

## NEXT

Forthcoming rounds of the RCEP will be held in the Philippines (May 2017) and in India (July 2017).



Issued in Public Interest by

**MADHYAM**

[www.madhyam.org.in](http://www.madhyam.org.in)

Prepared by Shalini Bhutani

# UNDERSTANDING RCEP

## Regional Comprehensive Economic Partnership

The 'mega regional'  
Free Trade Agreement  
under negotiation  
in  
Asia & Pacific

What India's position is and  
What it ought to be?

March 2017

## Democratic Process & Public Consultation

Article 253 of the Constitution of India gives Parliament the power to make laws for implementing any treaty, agreement or convention with another country or countries. This must be in consultation with states and respecting the federal distribution of powers between the Centre and the states.

In India, public consultations on proposed FTAs are usually confined to big businesses and industry associations. In the RCEP, brief stakeholder consultations sometimes happen alongside the official talks only on the insistence of civil society groups but the negotiating texts are not publicly available. Without access to the details of their government's negotiating positions and draft texts ordinary citizens find it very difficult to meaningfully engage. Civil society groups have long been demanding transparency in trade negotiations and asking for a white paper from the government.

One may directly contact the concerned officials in the Department of Commerce, Ministry of Commerce & Industry with questions on RCEP and India's positions on this mega regional FTA and its various chapters: [astpd-doc@nic.in](mailto:astpd-doc@nic.in)

## KEY SECTORAL CONCERNS

The Government of India (GoI) is neither averse to the idea of RCEP in principle, nor wants to conclude a deal in haste. India has already signed an FTA with ASEAN in 2009, which is core to the government's 'Act East Policy'. RCEP however opens India to other non-ASEAN members in the region. Some developed country governments in RCEP are trying to insert texts from the failed Trans-Pacific Partnership (TPP) into RCEP; that is a cause for worry. RCEP will be a legally binding agreement in which all signatory member-states (including India) will have to abide by time-bound commitments.

### AGRICULTURAL TRADE

RCEP will go against the food sovereignty of its poorest member countries. It will continue the push for the production of cash crops for export. India needs to be particularly careful against heavily-subsidised agricultural products, including dairy from Australia, traded via RCEP.

### INTELLECTUAL PROPERTY

IP rules have implications for both pharma and farming. India has taken a position that it will not go beyond its existing IP law on seeds – the Protection of Plant Varieties & Farmers' Rights Act; Japan and South Korea want higher UPOV-like IP for plant varieties from all RCEP member countries. This could impact farmers' seed freedoms over IP-protected varieties.

### Public Health

India has very clearly said it will not go beyond what the WTO TRIPS Agreement requires it to do on IP protection. For tighter IP rules would mean limited capacity for the government to provide affordable medicines to its people. Likewise, demands for 'WTO-plus' data exclusivity (DE) for drugs and agrochemicals, could delay regulatory approvals for off-patent products. This means an increase in prices and deepening of the control of strong MNCs supplying these products.

## SERVICES

Other public services that are essential for all citizens are also impacted by RCEP. They are at risk of being 'traded-off' against GoI's interest in seeking liberalisation of IT & IT-enabled services. Meanwhile, substantive telecommunication's chapter rules from the TPP have been proposed in the RCEP. E-commerce and digital trade so far kept out of WTO might find its way in through RCEP rules on the subject.

## MANUFACTURED GOODS

China and other merchandise exporting countries want greater access to India's large market. GoI revisited its three-tiered approach to tariff liberalisation with respect to trade in goods, but has not revealed its final tariff reductions. Other RCEP members would benefit from India's reduction in import duties, though GoI wants to give different tariff cuts to its non-FTA partners like Oz, NZ & China. Nevertheless, this could be at the cost of Indian producers. Moreover, vital issues such as workers' demands for labour rights, living wages and social security will not be addressed by RCEP-like trade deals.

## INVESTOR PROTECTION

RCEP has a proposed chapter on investor protection. India should not accept higher standards on protecting foreign investments as proposed by Japan and South Korea. India should stick to the key elements of its own model bilateral investment treaty (BIT) text, which the Union Cabinet approved in 2015.

### Investor-State Dispute Settlement

As proposed by Japan and South Korea, RCEP could have an investor-state dispute settlement (ISDS) mechanism, allowing foreign investors to directly sue the host State through international arbitration, thereby bypassing domestic courts. India must resist such proposals as the country is already facing many costly arbitration suits under previously signed BITs.