Labour Dimensions in Regional Economic Integration
Comparative Study of TPP and RCEP

John West
Executive Director, Asian Century Institute

Executive Summary

Preliminary considerations

-- Since the 2008 Lehman shock, there has been a generalised slowdown in trade and investment liberalisation and a rise in protectionism, which are affecting the prospects for the RCEP and TPP.

-- Continuing financial sector scandals highlight the risks of opening markets to trade in financial services.

Regional Comprehensive Economic Partnership (RCEP)

-- The Regional Comprehensive Economic Partnership (RCEP) is a negotiation which seeks to create an economic partnership agreement between the ten ASEAN member states and those countries which already have free trade agreements (FTAs) with ASEAN – Australia, China, India, Japan, Republic of Korea and New Zealand -- the “Plus-6 countries”.

-- But creating one agreement out of all these different agreements is very complex. Progress is slow. Deadlines are being missed. It is not clear if an agreement will be achieved. In any event, the RCEP does not have a labour chapter, nor will it include opening of markets for financial services.

Trans-Pacific Partnership Agreement (TPP)

-- TPP negotiations involving Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam were successfully concluded on 6 October 2015. But ratification by the US Congress looks problematic.

-- The TPP includes liberalisation of financial services. But this brings many risks to local financial institutions and workers, to financial inclusion, and financial stability.

-- The TPP also includes a labour chapter requiring all Parties to adopt and maintain in their laws and practices the fundamental labor rights. But commitments are vague and implementation mechanisms look weak.

Paper presented at the Knowledge Sharing Session of the 10th UNI Apro ASEAN Bank Unions Council Meeting held on 21st October 2016, Kota Kinabalu, Sabah, Malaysia
Labour Dimensions in Regional Economic Integration

Comparative Study of TPP and RCEP

1. Preliminary considerations

--- International trade and investment have been major drivers of prosperity in Asia. But opening to international trade and investment creates winners and losers. And it has also been a major factor behind Asia’s rising inequality. When governments open up to international trade and investment, they should also implement social policies to compensate losers, and share the benefits more equally. But all too often that does not happen

--- Arrangements like the TPP and RCEP are often referred to as free trade agreements (FTAs). But this is wrong. They virtually never result in pure free trade. And also, they contain many other things in addition to trade. For example, only six of the thirty chapters of the TPP deal with traditional trade issues.

--- While TPP and RCEP are referred to as instruments of regional economic integration, they also have a strong political dimension. The TPP is one example of a politically motivated project, being a key element of President Obama’s “pivot” to Asia. President Obama is promoting the TPP as a means for the US, rather than China, to set the trade rules for the 21st century. Politics can determine who is and is not included in the arrangement -- for example, Vietnam is included in the TPP, but China is not (in fact China declined an invitation to participate). Politics can also affect the amount of market opening.

--- Some eight years after the Lehman shock, and the beginning of the global financial crisis, many banks have not changed their behaviour. The recent Wells Fargo scandal is another wakeup call. In Australia, my own country, there have been many recent banking scandals, and the right-wing government is resisting many calls to have a Royal Commission on the Australian banking sector. Thus, as we open up our markets further to financial services under the TPP, governments will have to be very strong in implementing their prudential regulation and supervisory frameworks, and even stronger in developing programmes of financial education and consumer protection policies.

--- Since the 2008 Lehman shock, there has been a generalised slowdown in trade and investment liberalisation and a rise in protectionism. There has also been a slowdown in trade, which is now growing more slowly than GDP, reversing the globalisation trend of past decades. These developments are also affecting the RCEP and TPP.
2. **Regional Comprehensive Economic Partnership (RCEP)**

The Regional Comprehensive Economic Partnership (RCEP) is a negotiation which aims to achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement between the ten ASEAN member states and those countries which already have free trade agreements (FTAs) with ASEAN – Australia, China, India, Japan, Republic of Korea and New Zealand -- the “Plus-6 countries”. The RCEP were launched in in November 2012, with the goal of completing the deal by end 2015.

On paper, the RCEP looks like a huge deal:

--- it involves half the world’s population, with these 16 countries having a combined population of 3 1/2 billion. These countries also account for 30% of global GDP and about a quarter of world exports and foreign investment. It could thus be the world’s biggest trading bloc.

--- it covers trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues. The RCEP should thus be well placed to facilitate the operation of Asia’s global value chains, although it does not include chapters on state-owned enterprises, the environment or labour.

--- the RCEP promises to rationalise into one agreement the complex "noodle bowl" of agreements between ASEAN and the Plus-6 countries, as well as the more than 20 bilateral agreements between individual ASEAN countries and individual Plus-6 countries. For example, Singapore has bilateral agreements with all the Plus-6 countries.

--- as well as rationalising the noodle bowl of agreements, the RCEP is supposed to result in “significant improvements” over the existing free trade ASEAN+1 FTAs, while recognizing the individual and diverse circumstances of the participating countries, according to the Guiding Principles and Objectives for Negotiating the RCEP.

--- the RCEP will also require agreements between those Plus-6 countries that don’t have agreements between themselves (the ASEAN/Plus-6 agreements are presently “hub-and-spoke” arrangements). The most notable cases which require new deals are: India with China, Australia/New Zealand, and Japan; and Japan with China.

--- in the press the RCEP is billed as a China-led negotiation, which excludes the US, and which seeks to rival the US-led Trans Pacific Partnership. And unlike the TPP which includes only 4 ASEAN countries, the RCEP includes all ASEAN countries. So the RCEP is like Malaysia, it’s “truly Asia”.

While on paper the RCEP looks like a huge deal, in reality it is much more modest:
the negotiating deadline of end-2015 was initially extended to 2016, and now there is the hope that it will be finalised in 2017. The ministerial statement after the recent meeting in Laos spoke of the desire to finalise the RCEP “swiftly” without setting a specific deadline.

the objective of rationalising into one agreement the complex "noodle bowl" of agreements between ASEAN and the Plus-6 countries is in fact very complex and difficult, as many of these agreements are quite different from each other, having been negotiated at different points in time. The complex noodle bowl is an important issue because it makes it difficult for business, especially small business, to use the agreements.

negotiating agreements between China and Japan, and then between India and China, Japan and Australia/New Zealand is again very complex and difficult.

the immense diversity of the RCEP countries, from Cambodia, Laos and Myanmar to Singapore, Australia and Japan also makes negotiation very complex and difficult. The RCEP negotiations do provide special treatment to the less-developed countries. But this also weakens the ambition of RCEP.

while the media talk of RCEP as being a China-led negotiation, officially it is an ASEAN-led deal (“ASEAN Centrality”). But from all reports, the RCEP negotiations are suffering from a lack of strong leadership. And some countries like India and Indonesia are not enthusiastic at all about RCEP.

There have also been very few consultations with business, labour and civil society stakeholders. This is unfortunate, because their substantive inputs could only improve the quality of the deal. Overall, RCEP scores extremely low for transparency. The TPP has been criticised for a lack of transparency, but the RCEP is much worse.

In conclusion, RCEP is a negotiation which is not very ambitious, and is unlikely to result in an improvement in market opening on the existing ASEAN Plus-6 agreements. There is a risk of moving backwards to a lowest common denominator. Many vested interests are pushing against market opening. And deals between the Plus-6 countries will be weak at best.

In short, it is not even clear that RCEP will even be concluded. And moreover, the RCEP does not have a labour chapter, nor will it include opening of markets for financial services.

It should be noted that while the US has not been invited to the RCEP negotiations, the US is also not interested in the RCEP as it considers it is not comprehensive and low standard. US business and political elites are only interested in the TPP.

Most ASEAN countries have many other things on their minds rather than RCEP and TPP. For example, Thailand is in the hands of its military government, Malaysia is in the midst of the crime of the century, and the Philippines has a new leader who President Obama called a “colourful guy”.

Paper presented at the Knowledge Sharing Session of the 10th UNI Apro ASEAN Bank Unions Council Meeting held on 21st October 2016, Kota Kinabalu, Sabah, Malaysia
3. Trans-Pacific Partnership Agreement

The TPP shares some similarities with RCEP in that it is a regional arrangement for the Asia-Pacific region. It is another mega-deal whose members (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam) account for 36% of world GDP, and 26% of world trade, though only 11% of world population.

It is billed as a deal that it will establish a more seamless trade and investment environment across 12 countries by setting commonly-agreed rules and promoting transparency of laws and regulations. The TPP will provide greater certainty for businesses, reduce costs and red tape and facilitate participation in regional supply chains.

But it is very different in many respects.

-- it includes the US, Canada, Mexico, Chile and Peru from the Americas. It does not include Asia’s giants of China, India and Indonesia. It splits ASEAN by including only Brunei, Malaysia, Singapore and Vietnam. But most other ASEAN countries (and some others) have expressed interest in joining the TPP in a second wave of membership.

-- it is much more ambitious on issues like market opening, and intellectual property. It also tackles issues like state-owned enterprises, environment, financial services and labour which are not covered by RCEP.

-- the TPP would bring great benefits to TPP members, according to a number of studies. The World Bank has estimated that Vietnam’s economy would, thanks to the TPP, be 10% bigger by 2030, while Malaysia’s would be 8% bigger, Brunei’s 5% bigger, and Singapore’s would be 3% bigger. The Asian countries which would lose the most from the TPP are Thailand, Korea, the Philippines, India, and China. There are other studies which come up with opposite conclusions. For example, the AFL-CIO, the US trade union group concludes that the “TPP would increase corporate profits and skew benefits to economic elites, while leaving workers to bear the brunt of the TPP’s shortcomings, including lost jobs, lower wages and continued repression of worker rights”.

-- the TPP negotiations were successfully concluded on 6 October 2015. But for the TPP to come into effect, it will require ratification by the US Congress. President Obama hopes that this will occur during Congress’s “lame duck” session between the US Presidential election of November 8, 2016, and on January 20, 2017. But there is much debate about whether this will actually occur. To come into force, the TPP requires ratification by all signatories, or alternatively, two years after signature, ratification by states corresponding to 85% of the GDP of the signatories. The TPP will thus be decided between the United States and Japan, which together represent just under 80 percent of the total GDP of the signatories.
a major difference between the TPP and the RCEP is that TPP has a financial services chapter and a labour chapter.

4. **TPP’s financial services chapter**

The TPP’s financial services chapter opens markets for financial services providers and workers in the TPP countries. Each TPP country shall permit the sale of financial services across borders from suppliers located in other TPP countries -- services including deposit taking, lending, insurance and reinsurance, payments services, clearing and settlement, trade in financial instruments and issuance of securities as well as auxiliary services.

The TPP also recognises the need to fully regulate financial markets so as to ensure financial stability, and provides TPP governments with broad latitude for prudential regulation, including emergency measures in the event of financial crisis, and full ability to perform robust oversight of financial service providers.

The chapter includes several core obligations: (i) national treatment for investors and investments in financial institutions in TPP countries, that is, no discrimination against foreign providers of services in favor of its own nationals; (ii) most-favored nation treatment, that is, no discrimination in favor of one TPP country over another TPP country; (iii) market access, which provides that no country may impose quantitative restrictions on the number of financial institutions, total value or number of financial services transactions or assets or restrictions on the type of legal entity through which a financial institution may supply a service in another TPP market.

The chapter includes rules that would allow a Party’s financial institution to supply a new financial service in the territory of another Party when that Party already permits the supply of that service by its local financial institutions. The TPP Parties agree not to impose nationality requirements on senior management or other essential personnel, or impose nationality or residency requirements on more than a minority of the board of directors of a financial institution of another TPP Party.

In practical terms, all this means that we can expect to see many more Western banks, insurance companies and other financial institutions present and active in other TPP countries. And many of these financial institutions will come from America since its financial sector is the most dynamic in the world. This can bring benefits as more competitive financial services being offered, and as competition boosts the efficiency of local financial institutions.

But it also brings many risks, such as:

-- local financial institutions and their workers can suffer at the hands of aggressive international financial institutions.

---
local consumers can also suffer from these institutions’ unethical behaviour, such as predatory lending.

financial inclusion can deteriorate as big international financial institutions may not be interested in serving low-income consumers and micro, small and medium enterprises.

countries can get entangled in financial crises generated by reckless behaviour by international financial institutions.

in the event of a financial crisis in their home market, international financial institutions can withdraw from other markets, causing even further disruptions.

The TPP speaks nicely about prudential regulation. But this is easier said than done. Even in the US, financial regulators have enormous difficulty regulating and supervising their financial system -- especially in the face of the armies of financial engineers and corporate lawyers. Financial regulators in smaller, less sophisticated ASEAN countries face daunting challenges, especially since international financial institutions often develop cosy relationships with high-level political leaders as a way of insulating themselves from the rule of law.

It will be even more important for ASEAN countries to strengthen consumer protection laws and financial education. But once again, this is much easier said than done. International financial institutions lobby ferociously against consumer protection laws. And the experience of advanced countries shows how difficult it can be to improve financial education.

5. TPP’s labor chapter

The TPP is claimed to have the strongest protections for workers of any trade agreement in history. It requires all TPP Parties to adopt and maintain in their laws and practices the fundamental labor rights as recognized by the International Labor Organisation (ILO), including freedom of association and the right to collective bargaining; elimination of forced labor; abolition of child labor; and the elimination of employment discrimination. It also includes commitments, again required for all TPP Parties, to have laws governing minimum wages, hours of work, and occupational safety and health. All these are fully enforceable and backed up by trade sanctions.

The TPP is thus pathbreaking as, according to the US government, there are only four other trade agreements in the world that provide strong, fully-enforceable requirements to adopt and maintain fundamental ILO labor rights and to effectively enforce labor laws. These are the U.S. Free Trade Agreements (FTAs) with Peru, Panama, Colombia, and Korea.

Some of the specific commitments of ASEAN countries are:
The Vietnam implementation plan includes commitments on the part of Vietnam to allow workers the autonomy to form and operate unions of their own choosing. Currently, all trade unions must be affiliated with the government-connected trade union confederation.

The Malaysia implementation plan commits Malaysia to significant legal and institutional reforms, in particular in the areas of forced labor and freedom of association. Related to forced labor, Malaysia commits to fully implement the recently passed amendments to the Anti-Trafficking law to allow trafficking victims to travel, work, and reside outside government facilities, including while under protection orders.

Brunei only recently joined the ILO and had labor laws that lacked certain protections and guarantees that a modern labor-relations system would normally provide. Thanks in large part to pressure from TPP, Brunei recently passed legislation amending its labor laws to remove broad discretion of the government to register or cancel a trade union’s registration, prohibit anti-union practices, remove certain restrictions on union operations, and strengthen certain child labor protections.

To promote the rapid resolution of labor issues between TPP countries, the Labor chapter establishes a labor dialogue mechanism that countries can use to try to resolve any labor issue between them.

In conclusion, the TPP seems to provide a great improvement in labour rights and conditions in the member countries. The biggest risk and challenge will be implementation in front of the profound problems in the four ASEAN TPP signatory countries:

In Brunei, the human and labor rights situation is dire. The country adheres to a strict penal code based on Sharia law, which mandates flogging, dismemberment and death by stoning for crimes such as adultery, alcohol consumption and homosexuality.

Malaysia has grave problems with every one of the five fundamental labor rights. Particularly troubling is its profound failures to protect workers from forced labor and human trafficking.

Even in glitzy Singapore there are substantial legal limitations on freedom of association, collective bargaining and the right to strike.

And without the freedom to exercise fundamental labor rights, labor abuses in Vietnam are pervasive, artificially suppressing wages, stifling the ability of Vietnamese workers to escape poverty.

The US trade union, AFL-CIO, has thus strongly criticised the TPP as follows: “Unfortunately, the grim conditions facing workers in TPP partner countries were not effectively addressed in the TPP text or consistency plans. Many commitments to improve labor rights remain vague,
and the proposed enforcement scheme relies on the discretion of the next administration ... The United States has never imposed trade sanctions or even a fine as a response to labor violations by FTA partner countries.”

Bangladesh may be a different country from most ASEAN countries, but the lessons of the Rana Plaza tragedy are salutary. In the words of Philip Jennings, General Secretary, UNI Global Union, "Many were complicit: the international brands that turned a blind eye to glaring problems in the factories where their garments were made; the factory owners who knowingly put their workers at risk in order to keep costs low; and the Bangladeshi authorities who made no effort to enforce their own health and safety laws”.

There is thus a real risk, that no-one takes these commitments seriously. And poor workers accept the situation because they are desperate to have a job to support their families. There is also a real risk that high level geopolitical and commercial factors mean that governments go soft on implementation. It will take a huge amount of trade union activism to change attitudes, and get enterprises and governments to take these issues seriously.

6. Linkage between RCEP and TPP

The future of the TPP could have an impact on the RCEP negotiations.

If the TPP does not make it through Congress, and its future looks problematic, the seven TPP members which are also participants in RCEP (namely, Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam) may shift their negotiating energies to the RCEP and push for a more substantive outcome.

If TPP does make it through Congress, the other RCEP countries will feel that they will lose through trade and investment diversion. They will thus likely push for rapid inclusion in the TPP.