INDIA'S NO TO RCEP COULD STILL BE A NO

Relevant for: International Relations | Topic: RCEP and India

Last week, 15 East Asian countries agreed to take their economic integration several notches higher by forging the Regional Comprehensive Economic Partnership (RCEP), the largest free trade agreement (FTA) ever. In 2019, RCEP members accounted for about 30% of world output and population and 28% of world trade. But more importantly, about 44% of their total trade was intra-RCEP, which is a major incentive for the members of this agreement to agree to the deal for this could contribute to the strengthening of the regional value chains. This may well prove propitious for the RCEP member countries in their efforts to recover from the downturn.

The initiative to establish RCEP was taken by the member-states of the Association of Southeast Asian Nations (ASEAN) in 2011. These countries had adopted a resolution "to establish an ASEAN-led process by setting out principles" that would allow ASEAN members to "engage interested ASEAN FTA partners in establishing a regional comprehensive economic partnership agreement". The "Guiding Principles and Objectives", the de facto negotiating mandate for RCEP, spoke of "progressively eliminating tariff and non-tariff barriers on substantially all trade in goods" and achieving "high level of tariff liberalization, through building upon the existing liberalization levels between RCEP participating countries and through tariff elimination on a high percentage of both tariff lines and trade value". As regards services, RPCs agreed to conclude a comprehensive and high quality agreement that would "substantially eliminate restrictions and/or discriminatory measures".

Editorial | Threat or treat: on RCEP trade deal

And, finally, RCEP negotiations on a framework for investment "to cover the four pillars of promotion, protection, facilitation and liberalization". It was, therefore, quite clear that the RCEP participating countries (RPCs) had given themselves an ambitious agenda of trade and investment liberalisation.

Several commentators have observed that RCEP is not likely to usher in comprehensive economic integration in East Asia. It appears that this view has arisen by comparing RCEP with the Trans-Pacific Partnership (TPP), which would have been the world's most extensive FTA in terms of market opening had the Trump Administration decided not to abandon it. But there have always been doubts whether the TPP was promoting "free trade" or a highly discriminatory "managed trade". This was because the TPP included several regulatory issues including the controversial labour and environmental standards and issues such as "anti-corruption", all of which could raise regulatory barriers and severely impede trade flows.

In contrast, RCEP includes traditional market access issues, following the template provided by the World Trade Organization (WTO). However, it also includes issues that are currently being discussed by several groups of WTO members as a part of their agenda to "reform the multilateral trading system". These issues are electronic commerce, investment facilitation, which seems to be the first step towards a multilateral agreement on investment and creating an enabling environment for the participation of small and medium enterprises in global trade.

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While India has been opposed to the inclusion of all these issues in the WTO, the formation of RCEP could provide serious momentum to the discussions in Geneva, especially after the

Organization convenes under its new Director General.

The question is, would RCEP be able to realise its primary objectives of trade and investment liberalisation? In case of trade in goods, RCEP members have taken big strides towards lowering their tariffs. For instance, China has agreed to cut its average tariffs from 9.4% in 2014 (adopted as the “base year” for tariff cuts”) to 1.2% for Australia and all ASEAN members, by the 10th year of implementation of RCEP, and has also committed to reduce tariffs on almost 90% of its imports from these two RCEP members to 5% or less. Further, less than 4% of its products figure in the exclusion list, implying that their tariffs will not be reduced. Vietnam’s tariff offers to China look similar: average tariffs would drop from 10% in 2014 to 2% by the 10th year, and nearly 90% of its imports from China will be tariff-free.

Moreover, Vietnam does not have an exclusion list. Among the major economies in the region, Malaysia has had the lowest levels of protection and this will be reduced as it implements its commitments under RCEP.

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In contrast to their market access commitments under goods, commitments made by RCEP members for services trade liberalisation do look shallow in terms of the coverage of the sectors. Movement of natural persons, an area in which India had had considerable interest, is considerably restricted. RCEP members have allowed relatively limited market access only to individuals in managerial positions or those having high levels of skills. The areas of investment and electronic commerce, in both of which India had expressed its reservations on the template adopted during RCEP negotiations, the outcomes are varied. The text on investment rules shows that it is a work-in-progress. The rules on dispute settlement procedures are yet to be written in, and, therefore, it will be interesting to see whether the controversial investor-state-dispute-settlement (ISDS) mechanism is included.

In case of electronic commerce, RCEP members have agreed not to “prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person”. However, a member can deny transfer of information if it is necessary to “achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade”. In addition, members are free to adopt a “legal framework which ensures the protection of personal information of the users of electronic commerce”.

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In the months following India’s disengagement from RCEP negotiations, several RPCs had expressed their strong desire to get India re-engaged. These efforts are now “official”: prior to the signing of the deal, RCEP Ministers adopted a Declaration on India’s Participation in the agreement through which the door has been left open to India to join RCEP Agreement as an original signatory. Further, India has been invited to participate in RCEP meetings as an observer and in economic cooperation activities undertaken by RCEP members. And, finally, RCEP members have agreed to commence negotiations with India once India submits a request in writing of its intention to accede to the agreement The question is, have the circumstances under which India had distanced itself from the RCEP negotiations become any better for it to join the agreement in the near future?

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The answer seems to be unambiguously in the negative on two counts. The first is that during the RCEP negotiations, India had raised a number of concerns, two of which, namely, the levels of market access it was expected to provide, especially the deep cuts in tariffs on imports from China, and provisions relating to the investment chapter, have become even more significant over the past several months. Since the border clashes, India has imposed a number of import restrictions on Chinese products and has also subjected investment flows from its northern neighbour to greater scrutiny. Both these measures would have been infructuous if India were a party to the RCEP.

Second, India's initiative for its economic turnaround, the Atmanirbhar Bharat Abhiyan, is primarily focused on strengthening domestic value chains, while RCEP, like any other FTA is solely focused on promoting regional value chains.

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