

# NEW MEGA-TREATY IN THE PIPELINE:

## What does RCEP mean for farmers' seeds in Asia?



There was once a great diversity of rice varieties in Madhya Pradesh, India, each with its own distinct use. Farmers sow some rice varieties to feed themselves and their families, while others are sown for the market.

(Photo: Vikal P. Sangam)

In February 2016, the Trans Pacific Partnership (TPP), a controversial new trade agreement covering 12 countries of the Asia-Pacific region, was signed in Aotearoa/New Zealand. The result of a US-driven process, the agreement aims to boost trade and investment among a select group of countries—excluding China. The TPP will have a major impact on farmers’ access to and control over seeds. But there is another “mega” trade deal sneaking into Asia: the Regional Comprehensive Economic Partnership (RCEP). In this report, GRAIN looks at what RCEP might mean for farmers’ seeds in the region, in the context of the recently signed TPP.

### New trade deals, harsher seed rules

Hot on the heels of the TPP, another regional trade agreement is currently being negotiated, which will push restrictions on farmers’ seeds. Less well known than the TPP, RCEP will include the ten members of the Association of Southeast Asian Nations (ASEAN): Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. It will also include six regional partners that already have free trade agreements (FTAs) with ASEAN: Australia, China, India, New Zealand, Japan and South Korea. While the TPP accounts for 800 million people and 13% of world trade, RCEP will cover more than four times the population—affecting 3.5 billion people and 12% of world trade.<sup>1</sup>

Like other FTAs, RCEP will be broad in scope, covering a range of issues from trade in goods and services to investment, economic and technical cooperation, intellectual property, competition and dispute settlement. Often considered a “tamer” version of the TPP, many expect RCEP to be more favourable to low and middle-income countries, with fewer demands for

harmonisation, lower standards and slower timetables to reduce tariff barriers. Leaked negotiating texts, however, raise serious concerns for farmers’ control over seeds and the fate of indigenous and local people’s traditional knowledge in Asia.

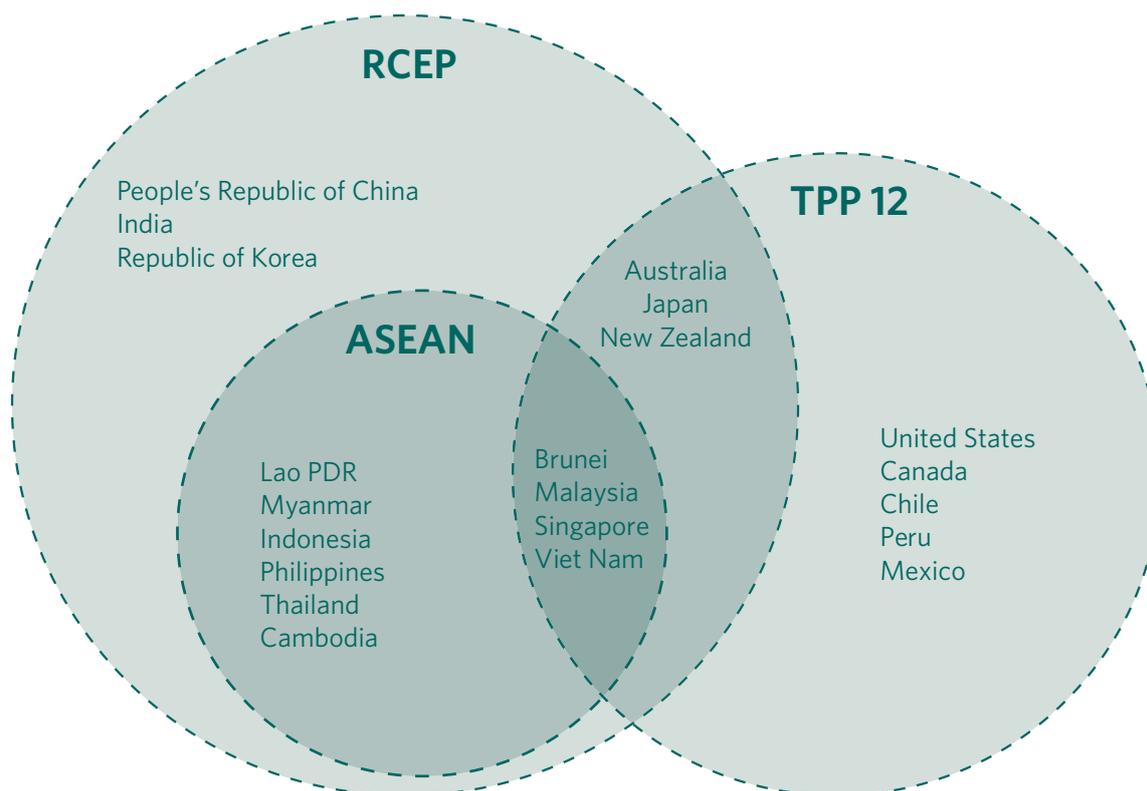
### Seeds: the backbone of farming

Farmers select crops based on a number of considerations, including soil type, dietary preferences, livestock needs, weather patterns, water availability and local culture. They have long traditions of saving and freely exchanging seeds amongst themselves, crossing different varieties and storing seeds for the next planting season. However, these traditions can no longer be taken for granted. Since the Green Revolution of the 1960s, farmers across Asia have been hit hard by successive waves of government and corporate programmes designed to replace farmers’ seeds with so-called high yielding varieties. Today, genetically modified (GM) seed companies from the West, as well as hybrid rice seed producers from China, are vying for control of Asia’s seed supply.

These companies promote their products as “better” than farmers’ seeds—with the aim of ultimately displacing them. What’s more, they pressure governments to change seed laws to allow for the privatisation of seeds. According to the Asia Pacific Seed Association, farm-saved seeds account for 80-90% of all seeds used in

1. Richard Macauley, “Thought the TPP was a big deal? China’s rival free trade pact covers half the world’s population”, *Quartz*, 8 October 2015, <http://qz.com/519790/thought-the-tpp-was-a-big-deal-chinas-rival-free-trade-pact-covers-half-the-worlds-population/>

Graph: ASEAN, RCEP, and TPP member states



Source: Jingyang Chen/The Asia Foundation

Asia. The industry wants to replace this self-sufficient local supply with commercial seeds.<sup>2</sup>

The corporate push to control and monopolise seeds takes multiple forms. One strategy is to put pressure on countries to privatise seeds through intellectual property legislation that requires either plant variety protection or patenting. But other kinds of laws yield the same effect. For example, seed certification rules, marketing regulations, and food safety regimes. Even rules that are presented as “soft” intellectual property, such as geographical indications (origin labelling), can make it illegal for farmers to save, swap, sell or plant their own seeds.

Trade agreements have become the mechanism of choice for making governments implement these kinds of rules. Since 1995, the World Trade Organisation (WTO) has a special agreement on intellectual property—the Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS—that imposes seed privatization on all its members. But for seed companies like

2. Jagveer S. Sindhu, “Harmonization of seed regulations will promote the seed industry in the Asia/Pacific region”, March 2006, <https://www.seedquest.com/forum/s/SindhuJagveer/06mar.htm>

Monsanto and Syngenta, the WTO agreement does not go far enough.

### Leaked documents point to real dangers

In 2015, civil society organisations published several leaks of proposed intellectual property rights (IPR) text from Japan, South Korea, India and the ASEAN Secretariat in the context of RCEP negotiations. They point to a number of real dangers for farmers’ seeds:

#### *Japan and Korea want all RCEP members to join UPOV 1991*

UPOV 1991<sup>3</sup> is a set of common standards on how countries should implement plant variety protection, which favours seed companies at the expense of farmers. Under UPOV 1991, seed companies get exclusive rights to control the production, reproduction, sale, export and import of “their” varieties. Anyone who wants to engage in these activities must obtain a license and pay a royalty. Under UPOV 1991, you cannot save or exchange the seeds of a privatised variety unless you

3. 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## Box 1. Trade deals privatising seeds in Asia

The WTO agreement on intellectual property states that members can exclude “plants” or “animals” from their patent systems, but they must offer some kind of monopoly right (like a copyright) to plant breeders. After the WTO deal was signed, Japan, the US and the European Union began pushing for bilateral trade deals with Asian countries that would go a step further.<sup>i</sup> In some cases, like under the Japan-Indonesia economic partnership agreement, they required that their trading partners join or at least implement the provisions of UPOV. In other instances, like the US-Vietnam bilateral trade agreement, they pushed for patent laws to be extended to plants and animals. In some countries, farmers’ organisations and social movements succeeded in resisting these campaigns or are still fighting them.

The recently signed TPP says that countries can continue to exclude plants and animals from their patent laws, as the WTO allows, but they must 1) join UPOV and implement the very strict UPOV rules of 1991, and 2) provide patent protection for inventions “derived from plants”.<sup>ii</sup> This includes seeds that are the result of certain breeding techniques—thus allowing companies to gain patent rights over GM and other non-naturally occurring crops in the TPP member states.<sup>iii</sup>

The TPP goes even further by indicating that intellectual property regimes are relevant to the protection of traditional knowledge about plants and animals. The TPP encourages governments to codify this knowledge in databases, so that they can be used to review patent applications (to determine whether an invention is novel). The TPP also opens to the door to trade in GM seeds by setting up procedures to deal with their low level presence in shipments of non-GM seeds, regardless of national bans, and by creating a forum among member states to discuss “enhancing” trade in biotechnology.<sup>iv</sup>

i. See GRAIN, “Trade agreements privatising biodiversity”, February 2016 (updated dataset) for a detailed list. Available from: <https://www.grain.org/article/entries/5070-trade-deals-criminalise-farmers-seeds>

ii. “Trans Pacific Partnership Agreement”, [https://www.mfat.govt.nz/assets/\\_securedfiles/Trans-Pacific-Partnership/Text/18.-Intellectual-Property.pdf](https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Text/18.-Intellectual-Property.pdf) [Art 18.7, 18.16 and 18.37].

iii. The opinion of the US Trade Representative’s intellectual property advisory committee on this is worth reviewing. “Report of the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15)”, Washington DC, 3 December 2015, <https://ustr.gov/sites/default/files/ITAC-15-Intellectual-Property.pdf>, p. 10.

iv. “GFOPS report on Trans-Pacific Partnership Agreement”, Washington DC, December 2015, <https://ustr.gov/sites/default/files/ATAC-Grains-Feed-Oilseed-and-Planting-Seeds.pdf>, p. 10-11.

pay a fee and the government allows it. This exclusive right of the corporate breeder even extends to the harvest of the crop in certain situations.

Under UPOV 1991, seed companies can claim that their rights were infringed upon if someone multiplies their seeds without their permission or exchanges seeds that are similar to the companies’ variety. Therefore, this proposal sets a dangerous precedent, as farmers’ varieties could be targeted, seized and destroyed.<sup>4</sup>

4. Of the 16 countries involved in the RCEP negotiations, only four are members of UPOV 1991: Australia, Japan, South Korea and Vietnam. All the others would have to adopt national laws that conform to UPOV 1991 and then obtain UPOV’s approval. (New Zealand, already a member of UPOV 1978, has to be UPOV 1991-compliant under the TPP.)

### *Japan wants to criminalise seed saving*

Japan’s proposal for RCEP aims to place the wilful infringement of plant variety rights under criminal law.<sup>5</sup> This means that the import and export of seeds would be monitored, and any shipment of seeds suspected of having been produced without the breeder’s authorisation or payment of a license fee would be suspended. If the seeds were found to infringe on a breeder’s monopoly right, they would be destroyed immediately and penalties would have to be paid.

5. Draft text on areas not covered in the Possible Common Elements from the 2nd WGIP to be discussed in the negotiation of the RCEP. Submitted by Japan on 3 October 2014. Available from: [Bilaterals.org](http://www.bilaterals.org/?rcep-draft-ip-text-from-japan-2014), 10 February 2015, <http://www.bilaterals.org/?rcep-draft-ip-text-from-japan-2014>



Japan and South Korea are in closed-door negotiations, aggressively pushing for stronger intellectual property provisions such as patent term extensions, data exclusivity and lowering of the patentability criteria. (Photo: ITPC)

This escalation in punishment for multiplying seeds could have consequences for farmers in the region. Many borders within the RCEP area are porous and people often take seeds with them as they move across the region. Under some trade agreements the mere suspicion of carrying seeds across borders could give rise to criminal sanctions, whether the infraction was deliberate or not. While not going that far yet, Japan's proposal would take Asia in that direction.

*India wants all RCEP members to codify traditional knowledge and make it available to patent offices*

Under the intellectual property chapter of RCEP, the government of India wants to keep intellectual property rules on patentability at the level of the WTO TRIPS Agreement.<sup>6</sup> But it also wants to push the provisions of the Convention on Biological Diversity (CBD) concerning access to genetic resources and the development of databases of traditional knowledge related to farmers'

6. "RCEP: draft IP text from India (October 2014)", Available from: [Bilaterals.org](http://www.bilaterals.org), 8 June 2015, <http://www.bilaterals.org/?rcep-draft-ip-text-from-india-oct>

seeds. In fact, India is demanding that all countries accede to and implement the Nagoya Protocol of the CBD.<sup>7</sup> India also wants to require that all patent offices of RCEP member states demand a declaration of origin of biological material used in any invention, for the purpose of benefit sharing.

Seeds are not software; the very notion of not only patenting, but digitising life and traditional knowledge is hugely contested. If digital libraries of genetic resources or traditional knowledge are compiled and made available, companies like Monsanto or Syngenta could easily tap into this pool of information and appropriate the knowledge and genetic resources belonging to farming and indigenous communities.

Farmers across India have been actively debating the pros and cons of documenting their varieties in biodiversity registers for decades. Many are against such tools, even if they are designed for local control, because the risk of losing that control is large and potentially disastrous.<sup>8</sup> Furthermore, many social movements do not agree with the notion that traditional knowledge or biodiversity, like farmers' seeds, are vested in governments. Under the CBD, India claims national sovereignty, and thus state ownership, of seeds. However, many believe that seeds and knowledge about seeds should remain with local communities.

*What does this mean for farmers?*

Over the past 50 years, many countries' seed policies have become stricter for farmers—and more liberal for seed companies—despite strong resistance from peasant movements. In Thailand, for instance, thousands of people marched in the streets of Chiang Mai in 2013, when drafts of FTA talks with the European Union were leaked. The leaked drafts demanded that Thailand implement UPOV 1991, which farmers feared would further restrict their ability to save and exchange seeds.

In many Asian countries, existing laws are already hindering farmers' freedom to save, breed and exchange seeds. Indian farmers have long protested against the Plant Variety Protection and Farmers' Rights Act 2001 that restricts farmers' seed exchanges. In China, a nationwide farmers' seed network has been working

7. [The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization](http://www.bilaterals.org) is a 2010 supplementary agreement to the 1992 Convention on Biological Diversity.

8. La Vía Campesina and GRAIN, "Seed laws that criminalise farmers: Resistance and fightback", 8 April 2015, <https://www.grain.org/article/entries/5142-seed-laws-that-criminalise-farmers-resistance-and-fightback>

## Box 2. India, RCEP and the risk of losing seeds<sup>i</sup>

The government of India has long been wary of “WTO-plus” rules on intellectual property, particularly for the seed and pharmaceutical sector. Yet India has not stood up to such measures either at the WTO or in bilateral fora such as its talks with the US. New trade deals such as RCEP will pressure the government to go beyond what it has committed to at the WTO.

India already has a law on seeds called the Protection of Plant Varieties and Farmers’ Rights Act of 2001. This law is less stringent than UPOV 1991. It allows farmers to continue with their seed practices, except that they cannot sell packaged seeds of protected varieties. The space for both small farmers and public breeders to freely work with seeds will be lost if RCEP goes the way of what Korea and Japan are proposing. The seed industry in India, be it through the National Seed Association of India or the Asia & Pacific Seed Association, has been lobbying the government for harmonisation of seed laws and would be happy to see UPOV 1991 standards brought in through RCEP.<sup>ii</sup>

India is the only country within RCEP to have proposed that traditional knowledge be included in the trade deal. This is because India has previously had problems of “biopiracy” from countries such as Japan. But this proposal is highly controversial and bound to trigger important debates between civil society groups and governments, not only in India, about whether incorporating traditional knowledge in a trade treaty is the right way forward.

i. This box was contributed by Shalini Bhutani, a legal researcher and policy analyst associated with the Forum Against FTAs in India.

ii. Shalini Bhutani, “For the love of the seed industry”, *India together*, 17 February 2015, <http://indiatogether.org/indian-seed-congress-2015-agricultural-alliance-between-industry-and-public-sector-agriculture>

since 2014 to change the country’s seed laws to better reflect farmers’ concerns. Their proposed revisions include a demand to protect farmers’ rights to sell and exchange conventional seeds without a commercial license. They also call for the recognition of farmers’ collective rights and support for farmers’ group breeding and seed selection efforts.<sup>9</sup>

It is clear that RCEP will restrict seed saving and seed exchange at a time when, under the extreme pressures of climate change, farmers need more diversity in their fields, not less. Furthermore, it could increase their dependence on external inputs and raise their costs of production if they can only obtain seeds legally by buying them from a licensed seller and if their rights to keep seeds for the next season are restricted or banned. Opponents of RCEP say that the trade deal could force farmers to pay triple the current price for seeds.<sup>10</sup>

UPOV 1991 enables the privatization of farmers’ seeds in two additional ways. First, companies and breeding

institutes can take farmers’ seeds, reproduce them, do some selection to stabilise or homogenise them, and then claim rights to them as a variety that they “discovered”. Second, UPOV 1991 stipulates that rights granted to one variety can extend to “similar” varieties, which can easily include farmers’ materials.<sup>11</sup>

With RCEP, farmers could face even harsher and stricter sanctions. In a country like Indonesia, where the existing Plant Variety Protection law already includes heavy sanctions on farmers who develop and exchange seeds, advancing criminal sanction through RCEP could further criminalise farmers who are simply engaging in the age-old practices of seed saving and breeding.

### Urgent work is needed!

Trade agreements like RCEP should not give corporations monopoly rights over seeds, prevent farmers from saving seeds or promote GMOs—but that is what they do. And it is not enough to remove these provisions from the negotiations because these trade agreements are inherently biased towards facilitating the business dealings of corporate and political elites. RCEP is also a

9. Farmer Seed Network China information booklet, contact: [fsnchina@outlook.com](mailto:fsnchina@outlook.com)

10. Nanchanok Wongsamuth, “Seed prices a tough nut in Thai-EU free trade talks”, *Bangkok Post*, 9 November 2013, available from: <http://bilaterals.org/?seed-prices-a-tough-nut-in-thai-eu>

11. GRAIN, “UPOV 91 and other seed laws: a basic primer on how companies intend to control and monopolise seeds”, 21 October 2015, <https://www.grain.org/e/5314>

geopolitical tool to counter or offset the TPP, but does nothing to advance local communities' interests. We are not even allowed to see the texts!

RCEP could be signed in Laos as early as August 2016. We need to urgently step up our work to raise awareness about what RCEP means for farmers and food sovereignty in Asia. We also need to help farmers' unions,

indigenous peoples' organisations and food rights activists to join forces with other sectors like access to medicines or digital rights campaigners, fisher folk groups and small retail supporters. Such alliances are needed if we are to stop these trade talks that stand to endanger the lives and livelihoods of billions of people.

### Box 3. Will RCEP open Asia's door to (more) GMOs?

GMOs are currently legally grown in just four RCEP countries: India, China, Australia and the Philippines. But pressure to change legislation in order to facilitate the approval of more GM crops in the region is increasing, especially from seed companies and their lobby groups.

In late 2014, the Director General of Thailand's Department of Agricultural Extension and Monsanto representatives issued a statement urging the Thai government to authorise trials and the commercial planting of GMOs.<sup>i</sup> This was followed by lobby work to pass a biosafety bill, which Thai civil society calls a "GMO liberalisation bill". In December 2015, the Supreme Court of the Philippines declared the country's only policy document governing the use of GMOs null and void. Now the Department of Trade and Industry (DTI) is organising consultations dominated by GMO promoters including Monsanto and Syngenta to fast track a new GM policy.<sup>ii</sup> Previously, in October 2015, Monsanto had made a strong move to push for approval of GM crops in front of the Philippine Congress, stating that the country could face a food crisis if it does not put biotechnology at the heart of its food security programme.

China, a key driver of RCEP, has been laying the groundwork for domestically grown GMOs. In 2014, the country launched a campaign, including media and public seminars, to quell people's concerns.<sup>iii</sup> And in Indonesia, the Department of Agriculture announced in late 2015 that it would soon allow for the commercial planting of GM corn and sugarcane, despite the fact that the current legislation prohibits the use of GM seeds since the conflict around the poor performance of Bt cotton in 2001.<sup>iv</sup>

i. Witoon Lianchamroon, "Seeds corporations take advantage once again - pushing for GMOs under a military government", *Biothai*, 20 October 2014, <http://www.biothai.org/node/298>.

ii. Masipag, "Fast-tracking of new GM policy shows pro-industry bias" 29 January 2016, <http://masipag.org/2016/01/fast-tracking-of-new-gm-policy-shows-pro-industry-bias/> and personal communication.

iii. Bloomberg News, "China to battle GMO crop fear from field to dinner table", 8 October 2014, <http://www.bloomberg.com/news/articles/2014-10-08/china-to-battle-gmo-crop-fear-from-field-to-dinner-table>

iv. GRAIN, "Bt cotton...through the back door", *Seedling*, Vol. 18, Issue 4, December 2001, <https://www.grain.org/article/entries/314-bt-cotton-through-the-back-door>

## Going further

— Chee Yoke Heong, "Opposition mounts against regional trade pact threatening human rights", *Third World Resurgence*, N° 298/299, June/July 2015, Third World Network, <http://www.twn.my/title2/resurgence/2015/298-299/econ1.htm>

— Public Citizen and Third World Network, "International Convention for the Protection of New Varieties of Plants 1991 (UPOV 1991)", TPP expert analysis, *WikiLeaks*, 9 October 2015, <https://wikileaks.org/tpp-ip3/upov/page-1.html>

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GRAIN is a small international non-profit organisation that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems. *Against the grain* is a series of short opinion pieces on recent trends and developments in the issues that GRAIN works on. Each one focuses on a specific and timely topic.

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