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The new CPTPP trade pact is much like the old TPP

By Martin Khor

The new agreement that eleven countries are signing on 8 March in Chile in place of the Trans Pacific Partnership Agreement (TPP) is like old wine in a new bottle --- without the United States but retaining most of its controversial elements.

The TPP seemed to have died when President Donald Trump pulled the United States out of it early last year.

But the remaining 11 members have rescued it almost intact, giving it a new name, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The 11 countries, nicknamed the TPP11, are Chile, Peru, Mexico, Canada, Japan, Vietnam, Malaysia, Brunei, Singapore, Australia and New Zealand.

The original TPP had been pushed along most adamantly by the US before Trump became President, with Japan as the next big advocate. They succeeded in getting into the lengthy text many controversial chapters and provisions, including on investment policy

and protection, government procurement, state-owned enterprises, intellectual property (IP) and e-commerce.

For some developing countries in the TPP, especially Vietnam and Malaysia which do not have bilateral trade agreements with the US, the attraction was to get more open markets for their exports, especially to the US, which has the biggest market in the world. With the US now out, the main benefits for them in the CPTPP would be lost.

The developing countries generally dislike the other aspects, especially procurement, state owned enterprises and IP, as these intrude into their domestic arena and seriously restrict what policies they can retain or introduce. But they were willing to accept these, though reluctantly, in exchange for more exports to the other TPP countries.

With the US out of the picture, the cost-benefit balance has shifted. The benefits have been reduced, but the costs remain as long as the controversial issues are retained.

The CPTPP text shows that 22 provisions (out of the over 1,000 total provisions) of the TPP have been "suspended", rather than removed. This is in anticipation that the US might return. The chances of that are quite good, as Trump has announced that the US may reconsider its decision to withdraw, if it gets a better deal.

If the US re-joins, it is likely that the eleven countries will lift the suspended provisions and the CPTPP would in effect become the TPP again.

The suspensions are mainly in the IP chapter. Some of the extreme clauses which the US insisted on (but which many others were unhappy over) will not come into effect in the CPTPP.

Suspended are some provisions that adversely affect access to medicines, including obliging the TPP countries to allow patents for a second use of a medicine, and for new methods for using the medicine. Also suspended is a clause to extend the normal patent term of 20 years if a country delays granting a patent for a new medicine.

But some other TPP provisions on IP remain. In particular, countries must join an international treaty known as UPOV91 under which farmers will not be able to save and exchange seeds that are protected by big corporations, but have to buy the costly seeds in order to plant new crops.

Most other provisions that are suspended are of minor importance, and thus much of the original TPP remains.

The most problematic issues retained in the CPTPP include:

- Investment liberalisation. Countries have to open up to other CPTPP members' companies and investors to enter and invest in their territory. They could take over the business of some domestic producers and service providers.
- Investor protection. Foreign investors can bring host governments to an international tribunal for loss of present and future profits or reduced value of their assets if government introduces new economic, social or environmental policies that affect their business or even their business expectations.
- Government procurement. Most governments in developing countries give preferential treatment to local companies when granting construction and other projects. This preference is also provided when the government purchases materials and services. Under the new agreement, these preferences will end as foreign firms from CPTPP countries will have to be given equal treatment as local firms in government procurement above a certain level. The aim is to enable foreign firms to obtain more business and revenue. But the disadvantage to the host country is that their ability to provide a boost to local firms and the domestic economy (as under the original procurement policy) would be severely eroded.
- State owned enterprises (SOEs). In many countries, SOEs play multiple significant economic and social roles. Under the CPTPP, these roles will be much constrained and reduced by new rules that prohibit or make it more difficult for SOEs to obtain financing or preferential treatment from the government. The rules also prevent SOEs from giving preferential treatment (for example in their procurement) to other local firms. The aim is to enable foreign companies to better compete with the SOEs and obtain more market share.
- Intellectual property. Despite some provisions being suspended, the CPTPP has remaining clauses that can have negative effects such as higher costs for medicines, educational materials and farm inputs.

Policy makers should have done new cost-benefit analyses of the CPTPP, especially since the main TPP benefit of the US market opening is now lost in the new agreement. But very few countries have done a new analysis, or they have not revealed the results.

Would it really be worthwhile for the developing countries in the CPTPP to lose so much

policy space (i.e. the ability and freedom of a country to formulate its own policies in accordance with its own priorities and national goals), in order to gain new but limited export opportunities?

This question is made more pertinent because of two factors. One, the new opportunities are limited because of the absence of the biggest player, the US. Two, the extra exports are offset by the inflow of new imports, so that the trade gains may be meagre, or even negative if the extra imports exceed the extra exports.

But then, some decisions including whether to join a trade agreement are sometimes made without careful enough study. Also, sometimes, decisions are taken based not only on economic costs and benefits, but on geo-political and other factors.

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