



4

Trade in Services and Investment

Chapter

Chapter 4 Trade in Services and Investment

Section 1 Trade in Services

As a comprehensive, modern, and mutually beneficial free trade agreement, the signing of the RCEP marks a victory for multilateralism and free trade. Compared with the General Agreement on Trade in Services (GATS), the RCEP's regulations for trade in services are more proactive in promoting a high level, high quality, more comprehensive and modernized liberalization of trade in services. The RCEP, in its overall structure, commitment approach, and promotion of liberalization in key service areas, presents a higher standard in all aspects.

I. Definition, Content and Scope of Application of Trade in Services

(A) Definition of Trade in Services—Descriptions of the Four Modes

The World Trade Organization's General Agreement on Trade in Services (GATS) classifies international trade in services into four modes of supply, namely, cross-border supply, consumption abroad, commercial presence and movement of natural persons, of which cross-border supply, consumption abroad, and movement of natural persons are collectively referred to as "cross-border trade in services".

1. Cross-border supply

Also known as mode 1, this is the provision of services by a service supplier from the territory of one Party to the territory of any other Party, i.e. the consumer and the service supplier are located

in different countries, and in the process of supplying the services, only the service itself crosses national borders. For some, there is no movement of people, goods, and capital; the service is realized through telecommunications and computer networking. For example, a lawyer in Country A provides legal consulting services to a client in country B by mail. For others, it involves the movement of people, materials, or capital. For example, a leasing company in country A provides transport services to a client in country B. According to the International Department of the Ministry of Commerce, trade in services provided by cross-border supply accounts for about 30% of the total trade in services, and mainly includes international transportation, international telecommunications, online audiovisual networking, and remote calling. Figure 4.1.1 illustrates the supply processes of the four modes of trade in services.

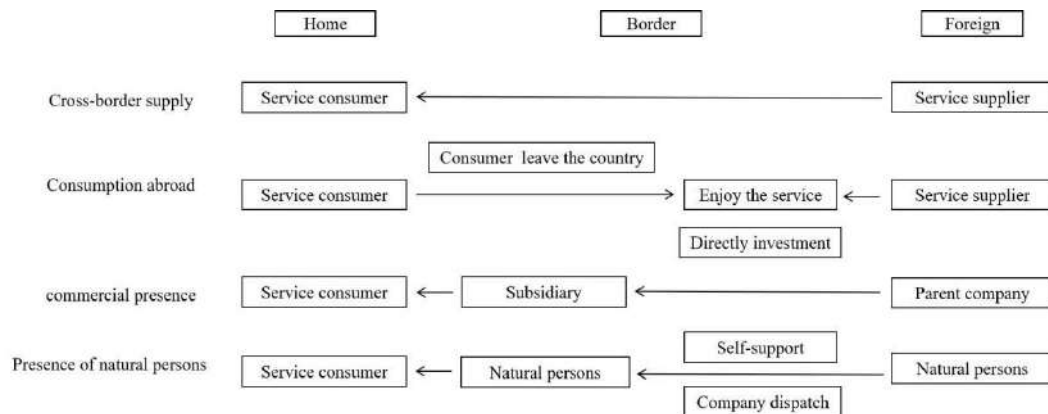


Figure 4.1.1 Service supply processes of the four modes of trade in services⁷

2. Consumption abroad

Also known as mode 2, the service supplier provides a service to a service consumer of any other Party in the territory of one Party, i.e., the consumer makes use of services in another country. For example, a consumer from country A enters country B for tourism,

⁷Source: For more details, see Jia Huaiqin, "The Coordination of the Four Modes of Service Supply and the Binary Framework of Trade-in-Services Statistics: A Review of the 'Simplified Methodology' of the Manual on Statistics of International Trade in Services", *Statistical Research*, No. 3, 2003, pp. 9-13.

or an aircraft from country A receives overseas maintenance services in country B. Trade in services provided by consumption abroad accounts for about 15% of total trade in services and mainly involves tourism, education, legal and overseas medical care.

3. Commercial presence

Also known as mode 3, the provision of services by a service supplier of a Party by establishing a commercial presence in the territory of any other RCEP Party, i.e., an enterprise of one country supplies services by establishing a commercial presence in the territory of another country. Commercial presence includes not only legal persons in the strict legal sense, but also legal entities with the same characteristics, such as representative offices and branches; for example, a bank in country A opens a branch in country B. Trade in services provided by commercial presence accounts for about 50% of total trade in services and mainly includes commercial establishments in finance, construction, telecommunications accounting, etc.

4. Presence of natural persons

A service supplier for a Party provides services through the presence of a natural person in the territory of any other Party, i.e., an individual enters the territory of another country for the purpose of providing services. For example, a doctor from country A travels to country B to provide medical services to patients in country B. Trade in services provided by the movement of natural persons accounts for about 5% of total trade in services and mainly includes foreign teachers, doctors, senior management executives of multinational companies, installers of professional equipment, etc.

Different modes of trade-in-services supply account for different percentages of trade in services. Among the four modes of global trade-in-services supply, cross-border supply, consumption abroad, commercial presence and movement of natural persons

account for 35%, 10%-15%, 50%, and 1%- 2% respectively. Due to the indivisible and non-storable nature of trade-in-services supply, some services must be provided through commercial presence. However, with the rise of the Internet and digital technologies, some services can also be delivered through cross-border supply. Consumption abroad and movement of natural persons are constrained by the inconvenience of human movement and national restrictions on the movement of natural persons, and take up a lower proportion. In particular, the movement of natural persons involves sensitive issues such as entry and residence, with many countries taking a cautious attitude.

(B) The Content of Trade in Services

The main text of the RCEP consists of 20 chapters, with three chapters related to trade in services, namely, Chapter 8, "Trade in Services", Chapter 9, "Temporary Movement of Natural Persons", and Chapter 10, "Investment". In the Chapter on Trade in Services, the three annexes on financial services, telecommunications services, and professional services form the main content of the Chapter, together with the main text. Among the RCEP annexes, there are three schedules on specific commitments related to trade in services, namely: the Schedule on Specific Commitments listed as Positive Lists, 8 in total; the Schedules on Reservations and Non-conforming Measures listed as Negative Lists, 7 in total; and the Schedules of Specific Commitments on the Temporary Movement of Natural Persons, 15 in total. In general, the entire trade-in-services regulations of the RCEP consist of "3 chapters + 3 regulation-based annexes + 3 schedules of partial concessions".

Table 4.1.1 The Components of RCEP Regulations on Trade in Services

Chapter 8	Trade in service	ANNEX II	Schedules of Specific Commitments for Services
	ANNEX 8A Financial services		(Positive list: eight)
	ANNEX 8B Telecommunication	ANNEX III	Schedules of Reservations and Non-Conforming Measures for Investment

	services		
	ANNEX 8C Professional services		(Negative list:seven)
Chapter 9	Presence of natural persons	ANNEX IV	Schedules of Specific Commitments for Presence of natural persons
Chapter 10	Investment		(Fifteen)

(C) The Scope of Trade in Services

Free trade agreements usually specify the service sectors and scope of activities to which the articles related to trade in services apply. The RCEP's Chapter on Trade in Services clearly states that the articles are applicable to the service sectors open in each Party, but the following five services are excluded from the RCEP regulations on trade in services:

- 1)(1) Government procurement;
- 2)Subsidies or grants such as government-supported loans, guarantees, and insurance;
- 3)Services provided in the exercise of governmental authority;
- 4)Cabotage in maritime transport services;
- 5)Air transport services in addition to the six services, that is, only the following six service subsectors are included in the scope of the regulations for trade in services: air transport services in aircraft repair and maintenance, the selling and marketing of air transport services, computer reservation system services, specialty air services, ground handling services, and airport operation services.

Also excluded from the scope of trade in services are services affecting a natural person looking to enter the employment market of another country, and services related to nationality, citizenship, residence or employment on a permanent basis.

II. Core Regulations

(A) Market Access

Market access is a core obligation of the Positive List model.

The obligation requires that a country making a commitment shall treat the services and service supplies of any other RCEP Party no less favorably than promised under the terms, limitations and conditions agreed to and stipulated in the Schedules of Specific Commitments for Services. For those sectors in which the country has made market access commitments, whether specific commitments under the Schedules of Specific Commitments or compliance with non-conforming measures under the Schedules of Commitments for Non-Conforming Measures, the Agreement requires that the country not impose restrictive measures on service suppliers in a particular area or in its entire territory in the following six areas:

- 1) The number of service suppliers;
- 2) The total value of service transactions or assets;
- 3) The total number of service operations or total quantity of service output;
- 4) The total number of natural persons that may be employed by the service sector or service supplier that are necessary for and directly related to the supply of that specific service;
- 5) The participation of the legal entity or type of joint venture in the service provided by the service supplier;
- 6) Limiting foreign capital participation by setting a maximum percentage limit in foreign shareholding or the total value of individual or aggregate foreign investment.

(B) National Treatment

National treatment is a core obligation of the Positive List model. The obligation requires that for sectors included in the schedules of concessions, subject to the conditions and qualifications therein, each Party shall treat the services and service suppliers of any other RCEP Party no less favorably than it

treats its own comparable services and service suppliers, in all measures affecting the supply of services.

(C) The Most-Favored-Nation Treatment

The Most-Favored-Nation (MFN) treatment is also a core obligation of the Positive List model. Its application extends beyond the agreement region by introducing a "third-party MFN clause", which stipulates that a Party shall treat services and service suppliers of another Party no less favorably than it treats services and service suppliers of any other RCEP Party or non-Party. However, a Party may be exempted from the MFN obligation in three cases: 1) where the Party has entered into an international agreement in force or an international agreement signed before the entry into force of the RCEP; 2) where the Party is a Member State of the ASEAN that has entered into an agreement for economic integration for goods, services and investment among the Members States of the ASEAN; and 3) where the Party has granted some treatment or benefit to a neighboring country.

(D) Regulation on Future Liberalization

Regulation on future liberalization, also known as ratchet clause, requires parties with commitments using Positive Lists to mark sectors or subsectors for further liberalization with "FL" in the sectors for which they have open commitments. That is, it requires the selective identification of sectors for "further liberalization in the future". At the same time, no new restrictions may be added to the sectors or subsectors marked with "FL" to ensure progressive liberalization in the future while locking in the level of existing commitments. The existence of the ratchet clause allows liberalization in trade in services to only go forward and not backward, and is generally closely linked to the Negative Lists. The inclusion of Negative List elements in the Positive Lists made by the RCEP Parties reflects their determination to liberalize trade in

services in the future.

(E) Transparency List

Transparency is another Negative List element on the Positive Lists, which requires Parties that have made commitments in liberalizing trade in services using Positive Lists to prepare a non-binding "transparency list" to be sent to other RCEP Parties and published online. They must also disclose existing restrictive measures taken by that Party's central government in sectors where liberalization commitments have been made, which are inconsistent with the Party's "national treatment" and "market access" obligations. The lists cover the sectors, subsectors and activities involved; the inconsistent measures, the legal source of such measures, and a brief description thereof.

(F) Domestic Regulation

Domestic regulation requires that in sectors where specific commitments have been made, each Party shall ensure that all measures of general application affecting trade in services are implemented in a reasonable, objective and impartial manner, and that the following requirements are imposed on the Parties and their competent authorities:

1) The Parties shall maintain or establish as soon as possible judicial, arbitral or administrative tribunals or proceedings;

2) There should be prompt review of administrative decisions affecting trade in services when requested by affected service suppliers, and provision of appropriate remedies where the request is justified;

3) The competent authority of the Party shall specify the information to be added when the information provided by the applicant is incomplete, shall not delay in providing information on the status of the application and, when the application is

terminated or denied, shall notify the applicant in writing, as far as possible, without undue delay, of the reasons for the action taken and provide an opportunity to resubmit a new application;

(G) Recognition

To facilitate trade in services that require special education, experience, authorization, licensing or certification, all free trade agreements contain articles on "mutual recognition". The RCEP stipulates that each Party shall recognize qualifications or professional experience that have been acquired in some way by a service supplier in another Party. In particular, it is important to note that any MFN treatment provided by one Party should not guarantee the recognition of education, experience, authorization, licenses or certificates of another Party, and that mutual recognition shall not constitute a means of discrimination.

(H) Local Presence

Local presence is a core obligation of the Negative List model. Local presence is only a prerequisite for the supply of services by way of commercial presence, requiring that no Party shall require a service supplier of another Party to establish or maintain a representative office, branch or any other form of enterprise in its territory or to become a resident thereof, i.e., a service supplier may supply services without establishing a commercial presence or becoming a resident of the host country.

III. Interpreting Regulations in the Annexes on Trade in Services

The RCEP's Chapter on Trade in Services contains three annexes on financial services, telecommunications services, and professional services. The annexes on financial services and telecommunications services provide more comprehensive and higher-level commitments in the fields of finance and telecommunications, and the annex on professional services

makes cooperative arrangements for mutual recognition of professional qualifications.

(A) Financial Services

The RCEP's articles on services introduce for the first time articles on new financial services, self-regulatory organizations, and transfers of financial information and processing of information. The articles on financial services represent the highest level of commitment of the Parties in the region in finance. The articles are committed to enhancing the transparency of financial regulation and creating a fairer, more open, and more stable competitive environment for financial service suppliers of all Parties, while also leaving room for Parties to improve regulation and maintain financial stability.

A new financial service is a financial service that is not offered in the territory of Party A but is offered and regulated in the territory of Party B. Host country A should endeavor to permit financial institutions of Party B, established in its territory, to offer that new financial service in its territory. In providing the new financial service, Party A should endeavor to accord the same treatment to the financial institutions of Party B established in the territory of Party A. The supply of the new financial service is subject to the condition that the host country need not amend its existing laws and may enact a new regulation or other subsidiary measures to permit the supply of the service. The supplier of the new financial service should comply with the licensing, legal form, and other requirements of the host country.

Self-regulatory organizations refer to any non-governmental body, including any securities or futures exchange or market, clearing or payment and settlement structure or other organization or association listed below. If Party A requires the financial institutions of Party B to provide certain financial services within

Party A only if it joins the self-regulatory organization in Party A, then it should be treated equally in terms of membership. For example, membership in the China Interbank Market Dealers Association is required to underwrite bonds; domestic and foreign applicants should be given the same treatment in obtaining membership.

The Article on transfers of financial information and processing of information requires that a Party shall not prevent financial service suppliers in its territory from transferring and processing information that is necessary to carry out their daily operations. A Party may require financial service suppliers to comply with laws and regulations relating to data management and the protection of personal privacy for regulatory or prudential reasons.

(B) Telecommunications Services

The RCEP's articles on services introduce for the first time articles on number portability and unbundled network elements, and articles to improve regulation and transparency. The articles on telecommunications services generally set rules for non-discriminatory use of the respective telecommunications-related infrastructure and supply of telecommunications services, and for the first time include several articles to promote fair competition and better protect consumer interests, providing an open and fair environment for the coordinated development of the regional information and communication industry.

Number portability refers to the ability of end-users of public telecommunications services to retain the same phone number when switching between public telecommunications service suppliers of the same type. For example, when switching from China Mobile to a service provided by China Telecom, the phone number can remain unchanged. The terms stipulate that each Party

must ensure number portability for mobile services within a technically feasible range.

Network elements refer to the basic telecommunications network elements, such as switches, subscriber lines, fiber optics, and other elements available for lease. It stipulates that each Party must ensure that the dominant telecommunications operators in its territory provide access to network elements to another Party's supplier on a non-bundled basis and on reasonable, non-discriminatory and transparent terms or conditions, i.e., no bundling to force a sale or a purchase, or disguise higher barriers. A Party may legally determine the network elements to be provided within its territory and the suppliers that can access them.

A new regulatory article emphasizes market forces and does not require regulation in non-essential circumstances. The transparency article offers the relevant public telecommunications network or service supplier an opportunity for feedback in the territory of a Party when that Party seeks comment on a proposed law or regulation.

(C) Professional Services

The RCEP's articles on professional services aim to eliminate barriers to the supply of professional services in terms of qualifications, credentials and licensing requirements in domestic regulations, and to facilitate the supply of professional services such as accounting, legal and architectural, and engineering services in the region, which will promote the liberalization of trade in services in three main ways:

(1) Facilitate dialogue and consultation. Strengthen dialogue among relevant recognition bodies for professional qualifications and encourage consultation among relevant bodies on professional qualifications, licensing, or registration in professional services sectors of common interest.

(2) Encourage the formulation of common standards. The relevant institutions of the Parties should work together to develop common professional standards and guidelines in areas such as education, examinations, experience, conduct and ethics, professional development and recertification, the scope of practice, and consumer protection;

(3) Leave room for subsequent practical cooperation. The relevant institutions of the Parties are encouraged to arrange any form of negotiations for the mutual recognition of professional qualifications, licenses or registrations in professional services sectors of common interest. The Parties may periodically review the implementation of the Annex on Professional Services.

IV. Other Regulations

(A) Interpreting the Regulations on Temporary Movement of Natural Persons

The RCEP covers a relatively complete range of persons in terms of movement of natural persons, including business visitors, intra-corporate transferees, contract service suppliers, and installation and service personnel. The Parties undertake to grant a certain period of stay, visa issuance, and various trade and investment activities for the above-mentioned persons in the region, subject to conditions.

Compared with other agreements, some parties in the RCEP also make commitments to the spouses and family members of the persons concerned, guaranteeing that the spouses and family members of the persons concerned can also obtain visas for the same period of stay, so as to relieve worries for the persons involved in cross-border trade and investment-related activities.

At the same time, the RCEP guarantees more efficient and transparent application processing. The regulations require Parties to commit to informing applicants of their processing status; accept

applications for immigration in electronic format under the same conditions as applications submitted in paper form; and publish all explanatory material relevant to this section.

(B) The Chapter on Investment

Six of the articles in the RCEP's Chapter on Investment deal with investment in services, as commercial presence is a mode for the supply of trade in services based on investment activities. In fact, the RCEP regulations integrate investment rules for services into trade rules, and therefore its mode of service supply is equally applicable to interpreting the relevant articles in the Chapter on Investment. Unlike in the Chapter on Trade in services, the commercial presence in the Chapter on Investment primarily involves protecting investment in services, mainly in ensuring fair and equitable treatment, expropriation, foreign exchange transfer, and compensation for losses. The commercial presence in the Chapter on Trade in Services primarily involves investment liberalization services, mainly in the Most-Favored-Nation Treatment, prohibiting performance requirements, the Negative Lists for investment, etc.

Table 4.1.2 The relevant articles in the RCEP's Chapter on Investment applicable to commercial presence (mode 3)

Articles	Object	Contents
Article 10.5	Treatment of Investment	Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with the customary international law minimum standard of treatment of aliens.
Article 10.7	Senior Management and Board of Directors	No Party shall require the particular nationality of senior management, but each party may require a particular nationality of the board of directors without materially impair the ability of the investor to control over their investment.
Article 10.9	Transfers	Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory.
Article 10.11	Compensation for Losses	Each Party shall make compensation for investment losses caused by armed conflict, civil strife, or state of emergency.
Article 10.12	Subrogation	Each Party shall recognize subrogation or assignment of any rights or claims in respect of the investment
Article 10.13	Expropriation	No Party shall expropriate or nationalise a covered investment either directly.

(C) Comparison of GATS and RCEP regulations on services

This section compares the relevant regulations in the RCEP's and GATS's Chapters on Trade in Services, as shown in Table 4.1.3.

Table 4.1.3 Comparison of the GATS's and RCEP's Chapter Articles on Trade in Services

Serial number	GATS	RCEP
1	Scope and Definitions	Definitions
2	Most-Favoured-Nation Treatment	Scope
3	Transparency	Scheduling of Commitments
4	Disclosure of Confidential Information	National Treatment
5	Economic Integration	Market Access
6	Domestic Regulation	Most-Favoured-Nation Treatment
7	Recognition	Schedules of Specific Commitments
8	Monopolies and Exclusive Service Suppliers	Schedules of Non-Conforming Measures
9	Business Practices	Additional Commitments
10	Emergency Safeguard Measures	Transparency List
11	Payments and Transfers	Local Presence
12	Restrictions to Safeguard the Balance of Payments	Transition
13	Government Procurement	Modification of Schedules
14	General Exceptions	Transparency
15	Subsidies	Domestic Regulation
16	Market Access	Recognition
17	National Treatment	Monopolies and Exclusive Service Suppliers
18	Additional Commitments	Business Practices
19	Negotiation of Specific Commitments	Payments and Transfers
20	Schedules of Specific Commitments	Denial of Benefits
21	Modification of Schedules	Safeguard Measures
22	Consultation	Subsidies
23	Dispute Settlement and Enforcement	Increasing Participation of Least Developed Country Parties which are Member States of ASEAN
24	Council for Trade in Service	Review of Commitments
25	Technical Cooperation	Cooperation
26	Relationship with Other International Organizations	Annexes
27	Denial of Benefits	--
28	Definitions	--
29	Annexes	--

At the level of article coverage, the GATS's Chapter on Trade in Services contains 29 articles, and the RCEP's Chapter on Trade

in Services contains 25 articles. The RCEP framework and content are basically consistent with the World Trade Organization's General Agreement on Trade in Services (GATS), but do not include articles on economic integration. In addition, economic and technical cooperation, government procurement, institutional provisions, dispute settlement and other articles are only listed in the RCEP and not separately stated in the Chapter on Trade in Services.

1. Using Negative Lists to Make Open Commitments

In terms of the commitment method, the GATS adopts the Positive List for making commitments, while the RCEP adopts a combination of Positive List and Negative Lists for making such commitments. 7 Parties of the RCEP, namely Japan, Korea, Australia, Singapore, Brunei, Malaysia, and Indonesia, have adopted the Schedules of Non-conforming Measures, i.e., the Negative List method; 8 Parties of the RCEP, namely China, New Zealand, Thailand, the Philippines, Cambodia, Vietnam, Laos, and Myanmar, have adopted the Schedules for Specific Commitments, i.e., Positive List method, and have included in their Positive Lists three Negative Lists, namely, future liberalization regulations, transparency list provisions, and Most-Favored-Nation Treatment. In addition, these 8 Parties promised to move to an all-Negative List in the future. Within three years after the entry into force of the Agreement (12 years for Laos, Cambodia, and Myanmar), they will submit a Negative List and provide an equal or higher level of commitments on liberalization. These must be achieved within 6 years after the date of entry into force of the Agreement (15 years for Laos, Cambodia, and Myanmar) to realize a higher level of trade-in-services liberalization with commitments using a Negative List.

2. A Higher Standard in the Level of Openness for Core

Obligations

The core obligations of the RCEP's Chapter on Trade are based on the GATS, but with a higher standard of openness. For example, the MFN agreement of the RCEP introduces a third-party MFN clause that extends the scope of application beyond the region and is no longer limited to parties within the Agreement. Also, the transparency list used by the RCEP and the ratchet effect built into its future liberalization regulations will only drive the liberalization of trade in services forward.

3. Key Service Areas Are Open More Comprehensively

As far as the annexes are concerned, the GATS offers regulations for air transport services, maritime transport services, movement of natural persons, financial services, and telecommunications services in the annexes of the Chapter on Trade in Services. The RCEP focuses on financial services, telecommunications services, and professional services at a higher level in the annexes of the Chapter on Trade in Services, and for the first time, introduces new high-standard and more comprehensive liberalization articles in both financial services and telecommunications services, offering commitments on the movement of natural persons in a separate chapter.

V. Trade in Services Sectors

The classification of the RCEP trade in services is based on the Provisional Central Product Classification (CPC) developed by the United Nations Bureau of Statistics (UNBS) in 1991, which includes 160 specific service activities in 12 broad categories.

The CPC number is similar to the tariff code for trade in goods: the more digits in the code, the more specific that particular service subsector. For example, 93 stands for health-related and social services; 931 stands for human health services; 9311 stands for hospital services; 9312 stands for medical outpatient and dental

services; 93121 stands for general outpatient services; 93122 stands for specialty outpatient services.

Excluding the 12th category (Other Services), there are 154 specific service activities in the first 11 categories, including 46 commercial services, 24 communication services, 5 construction services, 5 distribution services, 5 educational services, 4 environmental services, 17 financial services, 4 health services, 4 tourism services, 5 entertainment services, and 35 transportation services.

(A) Business services

Business services refer to the exchange of services involved in commercial activities. The Negotiating Group on Trade in Services lists six categories of commercial services, which include both individual consumer services and business and government consumer services.

Professional services. These include legal; accounting, auditing and bookkeeping; taxation; architectural design; medical and dental; veterinary; services provided by midwives, nurses, physiotherapists and caregivers; urban planning and landscape architecture; installation and assembly works (excluding architectural engineering services), such as installation and assembly of equipment; centralized engineering services and others.

Computer and related services. These include consultation for computer hardware installation; software development and implementation; data processing; database services and others.

Research and development services. These include research and development of natural sciences; research and development of social sciences and humanities; research and development services of marginal disciplines.

Real estate services. These refer to the exchange of services

within the field of real estate, involving owned or leased real estate; real estate services based on fees or contracts, but not including leased land services.

Leasing services without manned operators. These mainly include the leasing of ships; the leasing of aircraft; the leasing of other transportation equipment such as cars, trucks, and aircraft; and the leasing of other machinery and equipment such as computers and entertainment equipment. However, it does not include the employment of operators or training services for the required personnel that may be involved therein.

Other services. These include advertising; market research and opinion polls; management consultation; services related to management consultation; technical testing and analysis; services related to agriculture, forestry, livestock, mining and manufacturing; services related to energy distribution; the placement and supply of personnel services; investigation and security services; related scientific and technical consulting services; repair and maintenance of equipment; the cleaning of buildings; photography; packaging; printing and publishing; conference and other services.

(B) Communication services

Communication services refer to all services related to information products, operations, storage devices and software functions. Communication services are provided by the public communication department, information service sector, closely related business groups, and private enterprises for information transfer and service supply among themselves. They include postal services; express delivery services; telecommunications services, which include telephone, telegraph, data transmission, telex, fax, etc.; audiovisual services, which include film and video production and distribution services, film projection services, radio and television broadcasting services; and other telecommunications

services.

(C) Construction services

Construction services mainly refer to the entire service process of engineering and construction from design and site selection to construction. Specifically, they include the general construction of buildings; general construction of civil works; installation and assembly work; renovation work on buildings; and other services.

(D) Distribution services

These refer to the exchange of services in the process of product sales. They mainly include: wholesale commerce; retail services; sales-related agency fees and commissions, etc.; franchising services; and other sales services.

(E) Education services

These refer to service interactions between parties in tertiary education, secondary education, primary education, adult education, and other education; for example, the exchange of international students and visiting scholars.

(F) Environmental services

These refer to sewerage services; waste disposal services; sanitation and similar services, etc.

(G) Financial services

These primarily refer to the banking and insurance industry and related financial service activities, and include all insurance and related services, like life, accident and health insurance services, non-life insurance services, reinsurance and retrocession services; ancillary insurance services (including insurance brokerage, insurance agency services); banking and other financial services (excluding insurance), including the acceptance of public deposits and other repayable funds and all types of loans like consumer credit, mortgage loans, factoring and financing of commercial transactions, financial leasing, all payment and money

remittance services, guarantees and acceptances, trading on the exchange, open market or other venues, on their own or on behalf of their clients; other services, etc.

(H) Health and social services

These mainly refer to medical services and other human health-related services; social services, and others.

(I) Tourism and related services

These refer to hotel and catering services (including take-out services); travel agency and tour operator services; tour guide services and others.

(J) Cultural, recreational, and sports services

These refer to all cultural, entertainment, press, library, and sports services, such as cultural exchange and cultural performances, excluding radio, film, and television. They include cultural and recreational services (except audiovisual services); news agency services; libraries, archives, museums, and other cultural services; sports and other recreational services.

(K) Transport and freight services

These specifically include air, sea, rail, pipeline, inland and coastal, road transport freight, and passenger services, including the above modes of transport (excluding aerospace) equipment with personnel leasing, equipment repair and maintenance, towing and barging services, equipment support services, etc. They also include space launches and transport services, such as satellite launches; all auxiliary modes of transport services, which mainly refer to customs brokerage, cargo handling, warehousing, port services, pre-sail inspection services.

VI. Trade in Services Commitments

(A) Commitment in the Most-Favored-Nation (MFN) Treatment

For the eight countries that have adopted Positive Lists for making commitments, only China, Thailand, Vietnam, and New

Zealand have made MFN commitments, as shown in Table 4.1.4.

Table 4.1.4 Countries and sectors adopting Positive Lists that are committed to the Most-Favored-Nation Treatment

Countries	Sectors
China	Professional Services, Courier services, Architectural services, Engineering services, Environmental services, Rail Transport Services, Road Transport Services, etc.
Thailand	Consultancy services related to the installation of computer hardware, Software implementation services, Basic research services in engineering and technology, Operation Management and supply chain management consulting services, Services incidental to Manufacturing
Viet Nam	Environmental impact assessment services, Catering food services, Catering drink services
New Zealand	Sewage services, Architectural services, Urban planning and urban landscape architectural services, veterinary services, On-line information and database retrieval, Hotel and restaurant including Lodging services, Aviation services

The sectors for which all seven countries reserved commitments in the MFN Negative List model are public services and infrastructure-related sectors, and sectors related to national sovereignty and security. At the same time, each party makes reservations for the remaining sectors according to its own national conditions, as shown in Table 4.1.5.

Table 4.1.5 Countries and sectors adopting Negative Lists that do not make MFN commitments

Countries	Common reserved sectors	Each Party retains sectoral areas
Australia	Public services provided by government; Services relating to key infrastructure; National sovereignty and security	Patent attorneys; Migration agent; Life insurance services; services and libraries, archives, museums and other cultural services; Fishing and services incidental to fishing; Agriculture services; Financial services.
Japan		Tally services; Water transport; Fisheries; Cross-border finance; Audio-Visual services.
Rep. of Korea		Railway transport; Telecommunications services; Road transportation Services; Audio-Visual services; Legal services; Accounting and auditing services; Tax accountant; Veterinary services; Financial services.
Singapore		Private investigation services; Security consultation and Guard services; Services related to manufacture; Shipping and tally; Culture; Distribution, Publishing and Printing of Newspapers.
Malaysia		Education services; Tourism and travel related services; Architectural services; Engineering services; Legal services; Distribution Trade Services; Broadcasting; Fisheries; Gaming services; Culture; Veterinary services; Healthcare services; Medical specialty services; Research services; : Postal services; Mining and quarrying; Agriculture; Forestry
Brunei		Aviation services; Broadcasting; Land transport;

Darussalam		Mining; rental services; Legal services; Real estate services; Taxation; Postal services; Distribution Trade Services; Distribution, Publishing and Printing of Newspapers; Financial services.
Indonesia		Aviation services; Fisheries; Marine; Engineering services; Manufacture; Agriculture; Forestry.

(B) Natural Person Commitments

China has made commitments to grant temporary entry and residence to four categories of persons, including business visitors, intra-corporate transferees, contract service suppliers, and installers and service personnel. At the same time, China is committed to granting the spouses and family members of the above-mentioned persons temporary entry and residence rights under reciprocal circumstances. China's level of commitment is among the highest among the RCEP parties, comparable to China's existing FTA practices. The details are shown in Table 4.1.6.

Table 4.1.6 Commitments made by China in the movement of natural persons

Description of Category	Conditions and Limitations (including length of stay)
Business Visitor	Temporary entry and temporary stay is limited to a 90-day period.
Intra-corporate transferees (ICTs)	Temporary entry and temporary stay as stipulated in the terms of contract concerned or an initial stay of three years, whichever is shorter.
Contractual Service Supplier (CSS)	Temporary entry and temporary stay for a CSS is subject to the duration of contract, but shall not exceed one year.
Installers and Servicers	Temporary entry and temporary stay for such natural persons is subject to the duration of contract, but shall not exceed three months.
Accompanying Spouses and Dependents	Temporary entry and temporary stay shall not exceed 12 months, and shall not exceed the same period of stay for the entrants.

All 14 Parties other than China have made commitments for the movement of natural persons. The commitments of 4 Parties for the movement of natural persons besides those in the ASEAN are shown in Table 4.1.7. They all involve business visitors, intra-corporate transferees, and contract service suppliers. Only Australia and Japan have made commitments for the spouses of natural persons who are not business visitors, extending their

period of stay to the same length as that of the entrant.

Table 4.1.7 Commitments made by Australia, Singapore, Japan, and South Korea in the movement of natural persons

Description of Category	Australia	New Zealand	Japan	Rep. of Korea
Business Visitor	1)Service sellers: six months and up to a maximum of 12 months. 2)Business visitors (negotiations or meetings): a maximum of three months. 3)Business visitors (investment): a maximum of three months. 4)Business visitors (sale): a maximum of three months.	A period not exceeding in aggregate three months in any calendar year	1)Business visitors (negotiations or meetings): up to 90 days. 2)Business visitors (investment): a period of up to five years, which may be extended.	Up to 90 days.
Intra-Corporate Transferees	1)Executives and Senior Managers: up to four years. 2)Specialists: up to two years.	Up to a maximum of three years.	Up to five years, which may be extended.	Up to three years.
Independent Executives	Up to a maximum of two years	--	--	--
Contractual Service Suppliers	Up to 12 months	Up to a maximum of 12 months.	Up to five years, which may be extended.	Up to one years.
Contractual Service Suppliers	--	Up to a maximum of 3 months.	--	--
Specialists	--	--	Up to five years, which may be extended.	--
Spouses	Same period as for the temporary entrant.	--	Same period as for the temporary entrant.	--

The ASEAN Parties are committed only to business visitors, intra-corporate transferees, and installation and service personnel, with intra-corporate transferees being the only sector in which all 10 countries have made commitments, as shown in Table 4.1.8.

Table 4.1.8 Commitments made by the ASEAN Parties in the movement of natural persons

	Business Visitor	Intra-Corporate Transferees	Contractual Service Suppliers (CSS)	Installers or Maintainers
Philippines	An initial period of 30 days, which may be extended	An initial period of 30 days, which may be extended	--	--

Malaysia	A period not exceeding 90 days.	Up to two years and may be extended every two years.	--	A duration of three months or the period of contract, whichever is less.
Thailand	A period not exceeding 90 days	An initial period not exceeding one year, which may be extended for a further three terms of not more than one year each.	--	--
Singapore	--	A three-year period that may be extended for up to two additional years for a total term not exceeding five years.	--	--
Indonesia	A period of 60 days, extendable to a maximum of 120 days.	Up to two years and could be extended for a maximum two times subject to two years extension each time.	--	--
Viet Nam	Service sales: up to 90 days. Business visitors (investment): up to 90 days.	An initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. At least 20 percent of the total number of managers, executives, and specialists shall be Vietnamese nationals. However, a minimum of three non-Vietnamese managers, executives, and specialists shall be permitted per enterprise.	A period of 90 days or for the duration of the contract, whichever is shorter	--
Brunei Darussalam	--	A three-year period that may be extended for up to two additional years for a total period not exceeding five years.	--	--
Lao People's Dem. Rep.	A maximum duration of stay of 90 days.	One year which may be renewed every six months for up to three years	--	--
Myanmar	A maximum stay of 70 days, and renewable	A maximum stay of 70 days, and	--	--

	for a period of three months to one year with recommendation of the ministry concerned	renewable for a period of three months to one year with recommendation of the ministry concerned		
Cambodia	1)Business visitors (negotiations or meetings): a period of 90 days for an initial stay of 30 days, which may be extended. 2)Business visitors (investment): a commercial establishment are not subject to a maximum duration of stay. Economic Needs Testing Requirement is applied.	Up to maximum of five years in total.	--	--

VII. Interpreting the Schedule of Commitments for Trade in Services

(A) How to Read the Schedule of Specific Commitments for Services

1. The Positive Lists

Schedules in Specific Commitments for Services are commitments and concessions made in the form of a Positive List. The Positive List refers to the fact that the subjects, scope and areas of market access permitted by the government are tabulated under a list. Under the Positive List model, market players only have the corresponding freedom of action in matters clearly stipulated by law and regulations⁸. 8 Parties, including China, have adopted the Positive List approach to trade-in-services commitments, and have promised to offer a Negative List within 6 years after the entry into force of the Agreement. Excerpted below are sections from the Schedule of Specific Commitments made by China, used as illustrations on how to interpret the Positive List

⁸Wang, Liming. "The superiority of the Negative List management model." http://www.ccpph.com.cn/xsts/jj/201405/t20140505_175331.htm. ccpph.com.cn. 2014-05-05

schedule of concessions.

2. Interpreting the Positive List in the Schedule of Concessions

Example: Table 4.1.9 shows some excerpts from the Schedule of Specific Commitments made by China in the RCEP Agreement for Trade in Services.

Table 4.1.9 Schedule of Specific Commitments made by China (excerpts)

Service supply methods: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; (4) movement of natural persons.

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	“Foreign-invested enterprises or companies” in this Schedule refer to enterprises that are wholly or partly invested by foreign investors and registered within the territory of China under Foreign Investment Law of the People’s Republic of China (2019), subject to the terms and limitations set out under specific sectors in this Schedule.	(3) None except for those indicated in the Market Access column.	
II. SPECIFIC COMMITMENTS			
6. ENVIRONMENTAL SERVICES (excluding environmental quality monitoring and pollution source inspection) A. Sewage Services (CPC 9401) B. Solid Waste Disposal Services (CPC 9402) C. Cleaning Services of Exhaust Gases (CPC 9404) D. Noise Abatement Services (CPC 9405) G. Sanitation Services (CPC 9403)	Unbound except for environmental consultation services. None Wholly foreign-owned enterprises are permitted. Unbound except as indicated in horizontal commitments.	None None None Unbound except as indicated in horizontal commitments.	

Commitment methods. The schedule of concessions can be divided into two main parts. The first part is the "Horizontal Commitments", which are applicable to all services sectors and activities listed in the schedule of concessions. The second part lists the Sector-specific Commitments, which are further

concessions based on the Horizontal Commitments applicable to specific sectors or subsectors in the schedule of concessions. The Parties do not make any commitments for sectors and subsectors not listed in the schedule of concessions.

Table columns. The Schedule of Commitments is listed under four columns, from left to right: "Sector or Subsector", "Limitations on Market Access", "Limitations on National Treatment", and "Additional Commitments".

The first column shows the service sectors and subsectors involved in the content of the other three columns. China's commitments in liberalizing trade in services are at the highest level of the existing FTAs, with 22 newly committed service sectors added, such as R&D, management consulting, manufacturing-related services, air transport. It has also enhanced its commitment level in 37 sectors such as finance, law, construction, shipping, over and above the 100 sectors when China first entered the WTO. For example, the Specific Commitments in Table 3.1.9 list the environmental services sector and its subsectors, including sewage services, solid waste disposal services, cleaning services of exhaust gas, noise abatement services, and sanitation services.

The second column lists any limitations of market access consistent with the six forms of limitation, when services in each sector and subsector are provided in one of the four modes. To avoid duplicating the four modes of service supply, the mode of service supply is represented at the top of each page in the Schedule of Commitments by (1), (2), (3), and (4), with an additional number indicating the service supply mode. Thereafter, the number represented by the service mode is added before each listed element. For example, Table 3.1.9 indicates that China has no commitments for environmental services provided by other

RCEP Parties by cross-border supply, except for environmental consulting services; there are no restrictions on consumption outside of China; commercial presence allows wholly foreign-owned enterprises; and there is no commitment to the movement of natural persons except in horizontal commitment.

The third column lists in the same manner the limitations on national treatment adopted for foreign service suppliers. For example, China has no restrictions on foreign supply of environmental services by way of cross-border supply, consumption abroad, and commercial presence.

The fourth column lists additional commitments bound under Article 9 of the Agreement. Since China and the other RCEP Parties have only made additional commitments for individual service activities, unless specifically pointed out in the interpretation below, the Party is not bound by additional commitments for a particular sector.

In particular, it is important to note that if a limitation is specified in the horizontal commitment in the Schedule of Commitment Concessions for a particular mode of service supply, the latter is considered to be limited even if not explicitly stated in the Sector-specific Commitment.

Level of commitment: The method in which the commitment is expressed in the schedule of concessions for each mode of service supply is called the level of commitment. There are three levels of commitment. The first is "None", which means that the Party does not impose any limitations on market access (or national treatment) for the service activity. The second is "Unbound", which means that the Party does not assume any obligations and retains full policy freedom. The third type of commitment, in between the first two, details the content and nature of the limitations on market access or national treatment adopted. Both the "Unbound" and "Detailed"

forms of commitment are binding commitments, i.e., the services in the schedule of concessions will be treated no less favorably than at the level specified in the schedule of concessions, when the services supplied are in the manner specified.⁹

(B) How to Read the Schedule of Non-Conforming Measures

1. The Negative Lists and examples

The Negative List, also known as the Restricted List, the Prohibited Table or the Restricted Table, is a concept relative to the Positive List. It refers only to the list of matters prohibited by law and regulations. For matters beyond the list, laws and regulations will not intervene, and market participants have the freedom of action. The Negative List is in line with the "law does not prohibit freedom" concept in the rule of law.

Among the RCEP Parties, 7 Parties—Japan, Korea, Australia, Singapore, Brunei, Malaysia and Indonesia—have adopted full Negative Lists for commitments in all types of trade in services and investment¹⁰, including cross-border trade in services. The other 8 Parties, including China, adopted Negative Lists for commitments in investment. Compared with the Positive List, the Negative List is more open and requires the listing of existing laws and regulations that limit foreign investment, thus requiring more transparency in the domestic policies for countries that formulate Negative Lists.

The RCEP's Schedules of Non-Conforming Measures expressed in the form of Negative Lists usually consist of three parts, namely List A, List B, and an appendix. Only Australia among the RCEP parties has List C after these three parts, as a supplement to the appendix.

Both List A and List B are Negative Lists, but the former is referred to as the first type of Negative List and the latter as the

⁹Secretariat of the World Trade Organization. *Introduction to the Uruguay Round Agreement* (Chinese translation) [M]. Beijing: Law Press 2001.252-253

¹⁰Among them, Korea, Singapore, Malaysia and Indonesia have made commitments to the financial services sector in the form of Positive Lists.

second type, based on the differences in their international binding effect. The first category is for services and investment allowing the retention of existing restrictions; the second category not only allows the maintenance of existing restrictions, but Parties can also reserve the right to amend the existing restrictions or adopt more stringent restrictions for the relevant industries. In short, the second type of Negative List allows Parties to retain greater autonomy and a higher degree of restriction on foreign services and investment. The two types of Negative Lists also contain slightly different basic elements in the Schedule of Non-conforming Measures, with the first type of Schedule of Non-conforming Measures consisting mainly of "Sector or Subsector", "Obligation Concerned", "Level of Government", "Source of Measure", and "Description". The second type of Negative List does not list many sources in the Schedule of Non-conforming Measures.¹¹

The Appendix of the Schedule of Non-conforming Measures is presented in the form of a Positive List, which serves to offer additional descriptions of different industries or sectors by each Party under its own circumstances. For example, Australia does not restrict primary education in education services under List B in the Schedule of Non-conforming Measures, but does not make any commitment for primary education in the Positive List of open education sectors within the appendix. One can see that the appendix tends to be more restrictive for Negative Lists. Among the RCEP Parties that have made commitments in the form of Negative Lists, all the other five Parties, except Japan and Brunei which do not have appendices, provide additional descriptions for different sectors and different modes of service supply. The commitments made by Australia for Telecommunications Services in List A will be interpreted below as an illustration.

¹¹Nie, Pingxiang, Dai, Li. "Analysis of the Negative List management model in the United States and what China can learn from it [J]." *International Trade*, 2014(04):33-36.

2. Interpreting the Negative List in the Schedule of Concessions

Table 4.1.10 is extracted from List A of the Schedule of Non-conforming Measures in Australia's Chapter on Trade in Services in the RCEP.

Table 4.1.10 Excerpts from Australia's Commitments on "Telecommunications Services"

9	Sector	:	Communication Services
	Subsector	:	--
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment(Article 8.4 and Article 10.3) Market Access (Article 8.5) Senior Management and Board of Directors (Article 10.7)
	Description	:	Trade in Services and investment Aggregate foreign equity is restricted to no more than 35 percent of shares of Telstra. individual or associated group foreign investment is restricted to no more than five per cent of shares. The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.
	Source of Measure	:	Telstra Corporation Act 1991(Commonwealth)

Apart from the serial numbers and symbols, Australia's Schedule of Non-conforming Measures is divided into 2 main columns, with the left column listing the relevant elements: "Sector and Subsector", "Level of Government", "Obligations Concerned", "Description" and "Source of Measure", respectively. "Sector and Subsector" refers to the sector targeted by the list item, i.e. the sector in which the party restricts foreign investment; "Level of Government" refers to the level of government that maintains the listed measures, i.e. the level of government that implements the measures, which may be taken by the central government or the local government, or by the central government and the local government at the same time. The "Obligations Concerned" are for national treatment, the Most-Favored-Nation Treatment, performance requirements, senior management and board of directors in one or several exceptions, specifically the main body of

articles related to the restrictive measures described in the list. "Description" details the non-conforming measure to which the list item relates, i.e., the specific formulation of the restriction. The "Source of Measure" is the law, regulation or measure that is the source of the non-conformity covered by the list item, i.e. the legal basis for that restriction.

For example, in Schedule 3.1.10 of the Non-conforming Measures in Australia's Chapter on Telecommunications Services, the first line indicates that the sector in which foreign investment is restricted is the telecommunications services sector; the restrictions are implemented by the central government; the specific obligations violated by the restrictions are the national treatment article, the market access article and some or all of the obligations imposed by senior management and the board of directors, and as required by the Negative List, as long as the "Description" column in the Schedule of Non-conforming Measures describes the restrictive measure clearly, although the restrictive measure involved is inconsistent with the above-mentioned articles, it will still be considered to have met the requirements. The specific Australian restrictions on the telecommunications sector are as follow: there are restrictions on the percentage of foreign equity in Telstra; and there are nationality restrictions on Telstra's senior management and most directors. In other words, full liberalization of services is achieved for all telecommunications services except for Telstra. The legal and regulatory basis for these restrictions is the Commonwealth's Australian Telecommunications Corporation Act 1991.

(C) How to Read the Schedule of Specific Commitments on Temporary Movement of Natural Persons

1. The Schedule of Specific Commitments on Temporary Movement of Natural Persons and an Example

Compared to the Schedule of Specific Commitments for Services and the Schedule for Non-conforming Measures, the Schedule of Specific Commitments on the Temporary Movement of Natural Persons is relatively simple and easy to understand. The Schedule has only two columns, with the category description on the left indicating what type of natural person's movement is being committed to. The right column gives the conditions and limitations, indicating the length of entry and stay or extendability for the natural persons on the left. The following is an example of China's Schedule on Temporary Movement of Natural Persons in the RCEP.

Table 4.1.11 Excerpts from China's Schedule of Specific Commitments on the Temporary Movement of Natural Persons

Description of Category	Conditions and Limitations (including length of stay)
<p>A. Business Visitor</p> <p>Definition: A natural person of a Party receiving no remuneration from a source located in China and who is: (i) a service seller, a sales representative of a service supplier of a Party and is seeking temporary entry and temporary stay into China for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly; (ii) an investor, or a duly authorised representative of an investor, seeking temporary entry into China to establish, expand, monitor, or dispose of a commercial presence of that investor; or (iii) a goods seller who is seeking temporary entry into the territory of China to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public.</p>	<p>Temporary entry and temporary stay for a business visitor is limited to a 90-day period.</p>

2. Interpreting the Schedule of Specific Commitments on Temporary Movement of Natural Persons

As shown in Table 4.1.11, a business visitor is a person of a Party who does not receive remuneration from that Party, while ensuring that the person's status is that of a service seller, an investor, a duly authorized representative of an investor, or a goods

seller who is temporarily entering that Party seeking to negotiate the sale of goods, for which such person is required to have a temporary entry and stay of not more than 90 days.

Section 2 Investment

The RCEP's Chapter on Investment integrates and upgrades the investment regulations of the former ASEAN "10+1" Free Trade Agreement, making comprehensive and balanced investment arrangements and forming the largest investment agreement in Asia. The chapter will help reduce the negative impact of the COVID-19 pandemic on the investment of the Parties, create a more stable, open, transparent and convenient investment environment for investors of the region, and provide a strong impetus to attract foreign investment and promote regional development.

I. The Content, Definitions and Scope of Application of the Investment Regulations

The RCEP regulations on investment specifically refer to Chapter 10, with a total of 18 articles covering four standard aspects in investment protection, liberalization, promotion, and facilitation. They are based on the original "ASEAN '10+1' Free Trade Agreement" investment regulations with additional commitments like the Most-Favored-Nation (MFN) Treatment, the adoption of Negative Lists for market access commitments in non-services trade, and the use of the ratchet mechanism (i.e., future liberalization cannot be retrogressive). This chapter is accompanied by two annexes, "Customary International Law" and "Expropriation", as well as a Schedule of Reservations and Non-conformity Measures for Services and Investment for each Party.

The RCEP's Chapter on Investment is used to constrain the measures adopted or maintained by a Party with respect to the investors and investments of another Party. The main implementors of the measures include various levels of government, competent authorities, or non-governmental institutions so authorized.

Investments are defined broadly, covering almost all forms of investments in economics and finance. They refer to "every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment", and exist in the following forms:

(1) The enterprise and its branches, i.e., the commercial presence mode, in which an enterprise of one country provides services by establishing a commercial presence in the territory of another country;

(2) Various forms of shares: shares, stocks and equity;

(3) Various forms of bonds: bonds, debentures, loans and other forms of debt;

(4) Various rights under contract: turnkey, construction, management, production or revenue-sharing contracts;

(5) Intellectual property rights and goodwill;

(6) Various kinds of rights conferred: franchising, licensing, authorization;

(7) Any rights related to movable and immovable property: leases, mortgages, liens, pledges;

(8) Reinvested earnings: profits, interest, capital gains, dividends, royalties, and other expenses.

II. Core Regulations

(A) Articles on Investment Liberalization

1. National Treatment

National treatment means that the Parties undertake to treat each other no less favorably than their own investments and

investors with respect to the establishment, acquisition, expansion, management, conduct, operation, sale, or other disposition of investments in their respective territories, with the main emphasis on "domestic and foreign equality". The Agreement further emphasizes that the national treatment shall be no less favorable than the most favorable treatment accorded by a government to investments and investors under like conditions by that government other than of the central level.

2. The Most-Favored-Nation Treatment

The Most-Favored-Nation (MFN) treatment means that the Parties shall treat each other's investments and investors no less favorably than they treat any non-Party investment or investor, now or in the future, with the MFN treatment emphasizing "domestic and foreign equality". The MFN treatment applies to the same extent as national treatment, including the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of the investment. The Agreement further clarifies that the MFN treatment does not encompass any international dispute resolution procedures under other existing or future international agreements.

3. Treatment of Investment

Fair and equitable treatment appears frequently in regional investment regulations and is an important component of the treatment of investment. However, the concept and scope of fair and equitable treatment are also controversial in international theory and international practice. Therefore, there is a certain ambiguity in the understanding of fair and equitable treatment, which can be interpreted flexibly by investors when applied to protect themselves and their investments.

The Articles further specify the obligation of the Contracting Parties to support and permit fair and equitable treatment in

statutory or administrative proceedings and their duty to take reasonable and necessary measures to protect investors and the security of their investments, though they do not provide additional substantive rights. In their own best interests, and provided that they do not conflict with the international obligations voluntarily assumed by sovereign states, the Parties' assertion of fair and equitable treatment is to be interpreted in accordance with their domestic law.

4. Prohibition of Performance Requirements

Some host countries insist that foreign investment enterprises must meet certain local content requirements or must purchase and use local products. This can affect the industrial pattern of foreign investment enterprises and also increase enterprise costs to a certain extent. Article 6 of the Investment Chapter in the RCEP stipulates that a Party shall not impose or compel an investor to export a given level or percentage of goods, or to achieve a given level or percentage of domestic content, or to purchase or use goods produced in its territory, or give preference to goods produced in its territory, or purchase goods from persons in its territory.

Building on the World Trade Organization's Agreement on Trade-Related Investment Measures (TRIMs), the RCEP introduces eight prohibitions, such as prohibiting the transfer of a particular technology, a production process, or other proprietary knowledge to a person in its territory; sales in specific markets; and interference with licensing contracts. The RCEP can be seen as a complement and development of the TRIMs, helping to protect the intellectual property rights of the Parties as well as the security of their investments.

However, Myanmar, Laos, and Cambodia have expressed reservations about the prohibition on "the transfer of a particular

technology, a production process, or other proprietary knowledge to a person in its territory" and "to adopt a given rate or amount of royalty under a license contract, in regard to any license contract in existence at the time the requirement is imposed or enforced, or any future license contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or enforced in a manner that constitutes direct interference with that license contract by an exercise of non-judicial governmental authority of a Party".

The RCEP's Chapter on Investment explicitly states that Parties are prohibited to impose investor performance requirements in many aspects of investment, as conditions to receive or to continue receiving benefits. Examples include requirements for export levels, domestic content, sourcing options, and technology transfer. In addition, the RCEP also allows Parties to specify under List A and List B of Annex III (the Schedule of Reservations and Non-conforming Measures for Services and Investment) any existing or new measures currently in force or adopted that do not meet the prohibition of performance requirements.

5. Senior Management and Board of Directors

Article 7 of the RCEP's Chapter on Investment states that a Party may not require a legal person investing in that Party to appoint a natural person of a particular nationality to a senior management position. However, a Party may still make nationality requirements for a majority of the members of the board of directors or any committee, provided that such requirement does not materially impair the investor's ability to exercise control over its investment.

(B) Articles on the Promotion of Investment

The RCEP's Article on the Promotion of Investment is more

specific and enforceable. The Parties encourage a variety of ways to enhance regional investment and promote exchanges. Both Parties agreed to promote investment by organizing joint investment promotion activities, promoting business matching activities, conducting information exchange between the two Parties, and organizing and encouraging investment-related seminars.

(C) Article on Investment Protection

1. Transfers

A Party shall permit the transfer of investments in the territory of that Party by other investors. The transfer shall be made freely and without delay into and out of the territory of that Party, in any freely usable currency at the market rate of exchange prevailing at the time of transfer.

The list of transfers includes: the capital of an investment; profits, capital gains, interest, technology royalties and other recurring income arising from the investment; proceeds from the sale of an investment covered in whole or in part, or proceeds from the liquidation of an investment covered in whole or in part; payments under contracts entered into by the investor or its covered investment and payments made under the terms of expropriation and compensation for losses; payments arising from the settlement of disputes; and the income of one Party's citizen in the territory of another Party for investment-related work, etc.

The Agreement specifies that a party may prevent or delay a transfer in equitable, non-discriminatory circumstances implemented in good faith, including, inter alia, the following: bankruptcy, insolvency, or protection of creditors' rights; failure to fulfill the host party's transfer requirements with respect to securities, futures and other derivatives transactions; criminal offenses and recovery of proceeds of crime; financial reporting or

record keeping of transfers used to assist law enforcement or financial regulatory authorities; ensuring compliance in judicial or administrative proceedings; taxation; social security, public retirement or compulsory savings schemes; any labor compensation in the discontinuation of foreign investment projects; severance entitlements of employees; and registration and other formalities required by central banks and other authorities.

The relevant rights and obligations of a Party that is a member of the IMF are not affected by this Agreement, and a Party may not impose restrictions on any capital transactions that are inconsistent with its specific commitments under this Agreement. In the event of a balance of payments imbalance or at the request of the IMF, the host country may take the necessary regulatory measures to restrict or even prohibit the free transfer of foreign capital.

2. Expropriation and Compensation for Losses

(1) Direct expropriation

Considering the risk of expropriation of overseas assets, the Agreement stipulates that no Party shall expropriate, nationalize or take other equivalent measures against the investments of investors of other RCEP Parties, and that expropriation shall meet the four conditions of public purpose, non-discrimination, compensation, and due process of law.

The expropriation must be carried out in a non-discriminatory and equitable manner. In the context of "expropriation", "discrimination" is generally considered to exist in two situations: first, measures applied to a specific party for reasons substantively unrelated to the issue, such as the nationality of the company. Second, "discrimination" encompasses situations in which several parties in the same situation are treated differently.

When expropriation is carried out in a non-discriminatory manner and under due process of law, the Parties shall provide

timely, adequate and effective compensation to investors. First, the act of reimbursement shall be timely and without unreasonable delay. Where delays occur, compensation shall include appropriate interest as specified by the Contracting Parties. Second, compensation shall be calculated on the basis of the fair market value of the expropriated investment at the time the expropriation is announced, or at the time the expropriation occurs. Third, the market value should not change in value in any way as a result of the expropriation being made public in advance. Fourth, the amount paid in compensation shall be freely transferable.

Land expropriation is an important manifestation of a country's economic sovereignty and an important subject for investors' interests, involving huge economic benefits, and therefore each Party has made careful provisions for land expropriation. Any measures regarding land acquisition and its compensation of losses shall comply with the existing domestic laws and regulations of each Party, and the amount of compensation shall be revised in accordance with the general market value of the land.

In addition, the compensation of losses stipulates that the investor should be given national treatment or Most-Favored-Nation Treatment to compensate for losses due to force majeure factors other than natural disasters that occur in the investment of one Party in the territory of the other Party.

(2) Indirect expropriation

Under Annex 10B of the RCEP's Chapter on Investment, indirect expropriation has the same effect as direct expropriation, but the Party's act of expropriation does not give rise to a formal transfer of ownership. Non-discriminatory regulatory actions taken by a Party to achieve a legitimate public welfare objective do not constitute indirect expropriation.

Indirect expropriation under the RCEP is judged on a

case-by-case basis, taking into account three main factors: (1) the economic impact of the government action; (2) whether the government action violates a prior binding written agreement made by the government to the investor through a contract, license or other legal documents; and (3) the nature of the government action, including its objectives and context.

(D) Article on the Facilitation of Investment

The Article on the Facilitation of Investment mainly contains dispute prevention and coordination and resolution mechanisms for foreign complaints. Facilitation of investment is improved by simplifying the application and approval process, promoting the dissemination of investment information, and improving infrastructure to create a stable, favorable, and transparent business environment for investors and investments.

III. Comparing the RCEP's Chapter on Investment and the Content in the "10+1" Investment Agreement

The RCEP's Chapter on Investment contains a total of 18 articles and 2 annexes, with four major articles, namely protection, liberalization, promotion, and facilitation of investment. It also stipulates the obligations of the parties in terms of national treatment, Most-Favored-Nation Treatment, and treatment of investment, and integrates and optimizes the "10+1" investment agreement by improving the articles on the facilitation of investment, on prohibiting performance requirements and allowing the parties to make commitments in the form of Negative Lists measures that are inconsistent with the relevant obligations of the chapter. In general, the RCEP's Chapter on Investment covers the "10+1" investment agreement and further refined the latter to help protect the interests of investors. Tables 4.2.1 and 4.2.2 below offer a comparison of the two chapters.

Table 4.2.1 Comparing the RCEP's Chapter on Investment and the Content of the "10+1" Investment Agreement

Chapters	RCEP	ASEAN "10+1"
Definitions	Article 10.1	Article 1
Scope	Article 10.2	Article 3
National Treatment	Article 10.3	Article 4
Most-Favoured-Nation Treatment	Article 10.4	Article 5
Treatment of Investment	Article 10.5	Article 7
Prohibition of Performance Requirements	Article 10.6	-
Senior Management and Board of Directors	Article 10.7	-
Reservations and Non-Conforming Measures	Article 10.8	Article 6
Transfers	Article 10.9	Article 10
Special Formalities and Disclosure of Information	Article 10.10	-
Compensation for Losses	Article 10.11	Article 9
Subrogation	Article 10.12	Article 12
Expropriation	Article 10.13	Article 8
Denial of Benefits	Article 10.14	-
Security Exceptions	Article 10.15	Article 17
Promotion of Investment	Article 10.16	Article 20
Facilitation of Investment	Article 10.17	Article 21

Table 4.2.2 Comparing the RCEP's Chapter on Investment and the Main Articles of the "10+1" Investment Agreement

Chapters	RCEP	ASEAN "10+1"
Definitions	Article 10.1	Article 1
Scope	Article 10.2	Article 3
National Treatment	Article 10.3	Article 4
Most-Favoured-Nation Treatment	Article 10.4	Article 5
Treatment of Investment	Article 10.5	Article 7
Prohibition of Performance Requirements	Article 10.6	-
Senior Management and Board of Directors	Article 10.7	-
Reservations and Non-Conforming Measures	Article 10.8	Article 6
Transfers	Article 10.9	Article 10
Special Formalities and Disclosure of Information	Article 10.10	-
Compensation for Losses	Article 10.11	Article 9
Subrogation	Article 10.12	Article 12
Expropriation	Article 10.13	Article 8
Denial of Benefits	Article 10.14	-
Security Exceptions	Article 10.15	Article 17

Promotion of Investment	Article 10.16	Article 20
Facilitation of Investment	Article 10.17	Article 21

The RCEP's Chapter on Investment is a huge advancement of the "10+1" Investment Agreement, offering investors more investment protection. Its many articles draw from the prior experiences of other recent large FTAs to more effectively protect and benefit the world's largest free trade area.

IV. The Characteristics and Impact of the Investment Regulations

The RCEP's Chapter on Investment fully reflects the latest trend of high-standard liberalization of investment and investment protection, with notable features such as expanding the scope of investments, lowering the market access threshold, clarifying the treatment of investment, prohibiting performance requirements, refining investment transfers, strictly enforcing expropriation and nationalization, promoting the facilitation of investment, and strengthening intellectual property rights protection.

(A) Expanding the Scope of Investments

The scope of investments specifically defined under the RCEP is broad and includes not only investments and project investments in the traditional sense, but also bond investments, intellectual property rights, monetary claims, and contractual rights.

(B) Lowering the Market Access Threshold

In the "Annex III - Schedules of Reservations and Non-conforming Measures for Services and Investments", the RCEP Parties have unanimously adopted a Negative List format for market access for investment in non-service sectors and made commitments for a higher-level liberalization, greatly enhancing the transparency of each Party's policies.

The Negative List indicates that the host government is restricting foreign investment in the form of a list. Areas other than the restricted items are presumed to be permitted for legal

investment. A Negative List pursues the "law does not prohibit freedom" concept. As a means for the government to regulate market access, the Negative List plays an important role in clarifying the relationship between the market and the government, defining the boundaries of government management of the market, and ensuring that the main subjects that are allocated with resources can play its important function. Compared with the Positive List, a market managed using a Negative List is freer and more open, more in line with the international standards for trade and investment liberalization.

Adopting a Negative List in the RCEP's Chapter on Investment helps remove invisible barriers in some sectors. Parties should be committed to providing an equal or higher level of liberalization as those given in the Schedules of Reservations and Non-conforming Measures for Services and Investment, and must apply a ratchet mechanism (i.e., ensuring that future liberalization is non-retrogressive) to enhance certainty and predictability of investment.

(C) Clarifying the Treatment of Investment

Treatment of Investment generally refers to the legal standard of treatment accorded by the host country to foreign investment and foreign investors.

The RCEP's Chapter on Investment prescribes standard articles in national treatment, Most-Favored-Nation Treatment, minimum treatment standards, like in other current international investment agreements. All of these important substantive articles reflect the Agreement's advanced international level in investor protection. The articles on national treatment, Most-Favored-Nation Treatment and minimum treatment standards mean that the Parties' policies for foreign investment will be further liberalized, with very clear and specific guidelines for fairer and more equitable

treatment of foreign investors. This will significantly enhance and facilitate investment in the RCEP region.

(D) Prohibiting Performance Requirements

Performance requirements, also known as performance standards, are requirements imposed by the host country for the establishment, acquisition, expansion, management, operation, sale or other disposition of the foreign investment (mandatory performance requirements) or for the receipt of benefits from the host country (incentive performance requirements).

The RCEP, by providing detailed prohibitions against various aspects of performance requirements, clarifies that the parties shall not impose or enforce performance requirements on foreign investors in many areas, removes performance requirements on foreign investors, does not force them to transfer technology, does not implement export performance, etc., fully demonstrating its stance in protecting investors and promoting the liberalization of investment.

(E) Refining Investment Transfers

The Article on Investment Transfers is an important tool in protecting the investors' rights to transfer funds and the host country's need to maintain financial order, making them the most difficult core article to agree on in investment agreements. The RCEP Parties all reached a consensus, and the Article on Investment transfers is detailed and easily attainable, effectively protecting investors in all aspects of investment transfers.

The Article on Transfers is clearly based on equitable and non-discriminatory principles, and a core requirement of the transfer Article is that each Party should allow all transfers of amounts in covered investments (e.g., capital, profits, dividends, royalties, etc.) into and out of its territory, freely and without delay.

(F) Strictly Enforcing Expropriation and Nationalization

Expropriation and nationalization have always been risk factors in cross-border investment globally. In accordance with international practice, expropriation and nationalization must be followed by appropriate and reasonable compensation to the injured foreign investors.

Article 13 of the RCEP's Chapter on Investment stipulates the circumstances of expropriation and nationalization. In Annex II of Chapter 10, circumstances that do not constitute expropriation and nationalization, direct expropriation, and manifestations of indirect expropriation are further clarified. The Agreement strictly and detailedly stipulates the circumstances of expropriation and nationalization by the Contracting Parties and sets forward specific requirements on how to compensate investors, which will to a certain extent deter expropriation and nationalization of the governments involved and effectively protect the rights and interests of the investors after the expropriation.

(G) Promoting the Facilitation of Investment

Recognizing that the level of investment facilitation varies considerably among the Parties, the RCEP Parties comprehensively improve facilitation of investment measures in order to significantly stimulate investment, such as improving the institutional environment, financial efficiency, and business environment. The RCEP's Chapter on Investment also addresses the appointment of the board of directors and senior management of covered investments, the disclosure of trade secrets, compensation for losses due to situations such as armed conflicts, the substitution or transfer of investment rights, as well as dispute prevention and coordinated settlement of complaints by foreign businessmen, making specific provisions for each Party.

(H) Strengthening Intellectual Property Rights Protection

The Chapter on Intellectual Property, which is closely related to

the RCEP's Chapter on Investment, contains 83 articles and 2 annexes, and is the longest and most extensive in the RCEP text, as well as the most comprehensive chapter on intellectual property rights (IPR) protection among all the FTAs signed by China so far. The chapter covers a wide scope, such as copyright, trademarks, geographical indications, patents, industrial designs, genetic resources, traditional knowledge and folklore, unfair competition, enforcement of Intellectual property rights, cooperation, transparency, and technical assistance. It includes both the main traditional IPR topics and reflects the new trends in the development of IPR protection. It has comprehensively enhanced the overall level of IPR protection in the region, and will help promote innovation cooperation and the sustainable development of the region.

Section 3 Electronic Commerce

Cross-border e-commerce refers to a form of international business activity in which transaction subjects belonging to different countries, make payments and settlements through an e-commerce platform, and deliver goods and complete transactions through cross-border logistics. There are three forms of its development. First, traditional manufacturing, commercial enterprises and brokers can release merchandise information on large cross-border e-commerce platforms and carry out online payment for international wholesale trade. Another way is to open stores on third-party cross-border e-commerce platforms to sell goods to global consumers through online retail. The third way is for enterprises to launch an independent cross-border website, such as LightInTheBox and Osell.com, to sell goods directly to global consumers through online retail.

Cross-border e-commerce involves a wide range of subjects,

and enterprises or individuals of any size and type can choose to participate in cross-border e-commerce activities in any way that suits their development. There are four main modes of cross-border e-commerce: M2C (Manager to Consumer), B2C (Business to Customer), C2C (Consumer to Consumer), B2B2C (Business to Business to Consumer).

The RCEP's Chapter on Electronic Commerce, Chapter 12, includes a total of 17 articles on paperless trade, electronic authentication and electronic signatures, online consumer protection, online personal information protection, unsolicited commercial e-messages, domestic regulatory framework, customs tariffs, transparency, cybersecurity, location of computing facilities, cross-border transfer of information by electronic means, dialogue on e-commerce, and settlement of disputes. These regulations are set up to create a beneficial environment for e-commerce use and cooperation among Parties, to make Parties aware of the economic growth and opportunities offered by e-commerce, to establish a mechanism framework to strengthen consumer confidence in e-commerce, and to facilitate the development and use of e-commerce.

I. The Content, Objectives and Scope of Application of the Chapter on Electronic Commerce

The specific content of the RCEP's Chapter on Electronic Commerce is shown in Table 3.3.1, which encourages Parties to switch commercial management and procedures to electronic means, create a favorable environment for e-commerce, safeguard personal information, protect online consumers, and enhance regulation and cooperation on unsolicited commercial electronic messages and improve the regulatory framework. It also regulates the location of computer facilities and the transfer of information across borders through electronic means. In addition, the Chapter

on E-commerce also makes provisions for parties not to impose customs duties on electronic transfers. Its objectives are threefold: first, to promote e-commerce among the Parties, and the wider use of e-commerce globally; second, to create an environment of trust and confidence in the use of e-commerce; and third, to enhance cooperation among the Parties in the development of e-commerce.

This Article is applicable to measures affecting electronic commerce adopted or maintained by a Party, but shall not apply to government procurement, and to information held or processed by a Party and measures relating to such information. For example, the location of computing facilities, electronic means of cross-border information transfers, etc. shall not apply to measures adopted by a Party that are inconsistent with its trade in services and investment obligations.

The principles of this chapter are for Parties to recognize the economic growth and opportunities offered by e-commerce, the importance of establishing a framework to promote consumer confidence in e-commerce, and the importance of facilitating the development and use of e-commerce.

Table 4.3.1 List of e-commerce terms

Section	Article
Section A General provisions	Article 12.1: Definitions Article 12.2: Principles and Objectives Article 12.3: Scope Article 12.4: Cooperation
Section B Trade facilitation	Article 12.5: Paperless Trading Article 12.6: Electronic Authentication and Electronic Signature
Section C Creating a conducive environment for electronic commerce	Article 12.7: Online Consumer Protection Article 12.8: Online Personal Information Protection Article 12.9: Unsolicited Commercial Electronic Messages Article 12.10: Domestic Regulatory Framework Article 12.11: Customs Duties Article 12.12: Transparency Article 12.13: Cyber Security
Section D Promoting cross-border electronic commerce	Article 12.14: Location of Computing Facilities Article 12.15: Cross-border Transfer of Information by Electronic Means
Section E Other provisions	Article 12.16: Dialogue on Electronic Commerce Article 12.17: Settlement of Disputes

II. Core Regulations

(A) Paperless Trade

Cross-border electronic commerce must invariably be accompanied by exchanges in transaction documents. Traditional paper-based trade is time-consuming, with a high risk of document loss or damage, and high document delivery costs, making it difficult to meet the needs of efficient modern offices. The RCEP's Chapter on E-commerce requires that Parties cooperate at the international level and that trade management documents submitted in electronic form enjoy the same legal effect as paper documents. Parties should make trade management documents publicly available in electronic form, enhance the acceptability of electronic documents among Parties, and promote the development of paperless trade.

(B) Electronic Authentication and Electronic Signature

The RCEP's Chapter on E-commerce defines electronic authentication as the process of verifying or testing an electronic statement or request for the purpose of establishing the reliability of that statement or request. Taking into account the international standards for electronic authentication, each Party shall allow participants in electronic transactions to choose the appropriate technologies and implementation models for electronic authentication, without limiting the recognition of that technology and model. Each Party shall give participants in electronic transactions an opportunity to prove that their electronic transactions comply with the laws and regulations with respect to electronic authentication, and encourage the use of interoperable electronic authentication to facilitate international trade and improve the efficiency of transactions.

Concerning electronic signatures, the RCEP's Chapter on E-commerce specifies that Parties shall recognize the legal validity

of signatures solely signed by electronic means, unless otherwise subject to other laws and regulations. The recognition of electronic signatures can simplify the different stages of the signing process and improve the overall economic efficiency. For example, Article 3 of China's "Electronic Signature Law" stipulates that for contracts, certifications and documents in civil activities, the parties may agree not to use electronic signatures and data messages. Concerning the validity of electronic signatures, there are also some differences between countries. In Japan, for example, a reliable electronic signature is the active information record of that person in an electromagnetic format. In China, a reliable electronic signature includes four basic conditions: the production data used for electronic signature is proprietary to the electronic signer; during the act of signing, the electronic signature production data is controlled only by the electronic signer; any changes to the electronic signature can be detected after the act of signing; any changes to the content and format of the data message can be detected after the act of signing. Therefore, the RCEP's relaxed provisions on electronic signatures do not mean that there are no restrictions on the use of electronic signatures in each country. The recognition of electronic signatures, however, can simplify the different stages of the signing process and improve overall economic efficiency, which is of great significance to the development of cross-border e-commerce and digital trade.

The articles on electronic authentication and electronic signature complement paperless trade, and when electronic documents have legal effect, electronic authentication and electronic signature have the same legal effect.

(C) Online Consumer Protection

Parties should recognize the importance of adopting and maintaining transparent and effective consumer protection

measures for e-commerce to enhance consumer confidence, and cooperation among the Parties' competent authorities in e-commerce-related activities to strengthen consumer protection. Parties shall adopt laws and regulations to protect online consumers from harm and the potential harm caused by fraudulent and misleading practices. At the same time, each Party shall publish information on the consumer protection it provides to e-commerce users, including information on the channels, procedures, and contact information for consumers seeking redress, as well as any legal requirements that e-commerce users need to comply with to legally protect the interests of online consumers.

Cross-border e-commerce, which has both transnational and electronic network attributes, faces greater risks and uncertainties. Consumers are exposed to many risks including inadequate communication with sellers, insufficient information about products and services, advance payment, after-sales product services and compensation for delayed receipt, fraud and deceit, and personal information being accessed by third parties, so the RCEP's regulations on online consumer protection are necessary.

(D) Online Personal Information Protection

Electronic commerce enables online transactions between businesses and individuals, and between individuals and others, regardless of space and time constraints. Parties shall develop a legal framework to ensure that the personal information of e-commerce users is legally protected, taking into account international standards, principles, guidelines, and criteria of relevant international organizations or bodies, and encourage corporate entities to publish their policies and procedures related to the protection of personal information, including on the Internet. As with the Article on online consumer protection, the RCEP also

requires that each Party should publish information about the consumer protection it provides to e-commerce users, including ways for consumers to seek redress, and the need for businesses to comply with any legal requirements to ensure that online users' personal information is not infringed.

Compared with other trade agreements, the RCEP has two main expansions in its article on online personal information protection. One is changing the previous "transparency measures" to "Each Party shall publish information on the personal information protection it provides to users of electronic commerce". This is more specific than the previous principle articles. Second, the scope of online protection has been expanded to require parties to cooperate to the extent possible to protect personal information transferred from one Party to another. Overall, the content of the Agreement aims to protect consumers and enhance consumer confidence.

(E) Unsolicited Commercial Electronic Messages

The RCEP defines unsolicited commercial electronic messages as electronic messages, such as spam and junk mail, that are sent to the electronic address of the recipient for commercial or marketing purposes without the recipient's consent or when the recipient has explicitly refused them. Considering the great damage that unsolicited commercial electronic messages may cause to the economic interests of individuals, enterprises and countries, the RCEP requires that each Party should adopt or maintain the following measures for unsolicited commercial electronic messages:

- 1) requires suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages;

- 2) requires the consent, as specified according to its laws

and regulations, of recipients to receive commercial electronic messages;

3) provides for the minimization of unsolicited commercial electronic messages.

In order to more effectively regulate and supervise unsolicited commercial electronic information suppliers, Parties may provide relevant recourse to unsolicited electronic information suppliers who violate the rules. Such regulations are analogous to the user's "right to be forgotten" under the EU General Data Protection Regulation (GDPR), i.e., the right to request the deletion or discontinuation of the use of a citizen's personal data when it is no longer legally necessary, if the use of that citizen's data was based on his/her consent and he/she has withdrawn consent or the storage period has expired. The RCEP also strengthens the regulation of unsolicited commercial electronic messages, protects and respects personal information, and prohibits the sending of spam to individuals without their consent.

(F) Domestic Regulatory Framework

Parties should adopt or maintain a legal framework for regulating electronic transactions, taking into account the *UNCITRAL Model Law on Electronic Commerce (1996)*, the *UN Convention on the Use of Electronic Communications in International Contracts*, or other international conventions and model laws applicable to electronic commerce. While the *UNCITRAL Model Law on Electronic Commerce* sets many regulatory measures and requirements for online consumer protection and personal information protection, in terms of domestic regulatory framework, the RCEP requires that each party should strive to avoid imposing any unnecessary regulatory burden on electronic transactions, create a favorable environment for electronic commerce, and reduce unnecessary regulatory

measures.

(G) Customs Duties

The World Trade Organization, in its Global Declaration on Electronic Commerce, stipulates that Parties shall not impose customs duties on electronic transmissions, and the RCEP's Chapter on E-commerce similarly specifies that each Party shall maintain its current practice of not imposing customs duties on electronic transmissions. On the one hand, each Party may make adjustments to its customs duties on electronic transmissions in the framework of the e-commerce work plan and in accordance with the WTO Ministerial Conference. On the other hand, a Party may impose other duties, fees, or other charges in accordance with the articles of the RCEP, provided that such duties, fees, or other charges are imposed in a manner consistent with this Agreement.

(H) Cyber Security

The RCEP's Chapter on E-commerce encourages Parties to build the capabilities of their respective competent authorities responsible for computer security incident responses including through the exchange of best practices, and use existing collaboration mechanisms to collaborate with other RCEP Parties on cybersecurity-related matters.

In addition to collaboration, the RCEP is mindful of the need to enhance the technical capabilities of cybersecurity firms through market-based competition, giving all cybersecurity firms equal competitive status. The Annex to Chapter 8 of the RCEP on Telecommunications Services states that Parties recognize the value of competitive markets in providing a wide range of choices in the supply of telecommunications services and in promoting consumer welfare, and that effective competition, where it exists, may obviate the need for regulation. To this end, Parties may rely directly on market forces, particularly in market sectors that are or

may be competitive or have lower thresholds.

The RCEP also takes note of the differences in communication security and confidentiality claims between the Parties and makes a trade-off between data localization and cross-border information transmission. Specifically, it provides for legitimate public policy objectives in terms of the location of computing facilities, cross-border transmissions of information via electronic means. Apart from the two necessary measures taken for basic security interests, it emphasizes the key principles of data flow, but also takes into account cybersecurity requirements for data localization.

(I) Location of Computing Facilities

Computing facilities are computer servers and storage devices used for the processing or storage of information for commercial purposes. The RCEP specifies the location of such computing facilities, and each Party may take measures with respect to the use or location of computing facilities to ensure the security and confidentiality of communications. However, no investor or service supplier may be required to use a computing facility in the territory of that Party, or to locate the facility in the territory of that Party, as a condition of doing business in the territory of that Party. However, the use of the measure is permitted if the Party considers the placement of computing facilities in its territory by the investor or service supplier to be necessary to achieve its legitimate public policy objectives, provided that it does not constitute unjustified discrimination or impose a restraint on trade. This means that digital localization is not completely prohibited in the RCEP context and is more in the interest of developing countries. In the long run, the free flow of data is crucial to the development of the digital economy, and the RCEP content is in line with the trend of free data flow, but free data flow should be a gradual process. A complete ban on digital localization can sometimes jeopardize cybersecurity

and instead be detrimental to the development of the digital economy.

In the course of normal business activities, an enterprise has the right to decide where to locate its computing facilities, and the host country cannot force the enterprise's computing facilities to remain within its national territory. The host country may impose requirements on the location of an enterprise's computing facilities if the location of the facilities goes beyond normal business activities, creates security concerns for the host country, or if it is legitimate public policy to change the location of the computing facilities.

(J) Cross-Border Transfer of Information by Electronic Means

Under the Article, a Party may not prevent the cross-border transfer of information by electronic means by an investor or service supplier for the purpose of conducting business, taking into account that other RCEP Parties may have their own regulatory requirements for the transfer of information by electronic means. However, if the Party considers that the cross-border transfer of information by electronic means by an investor or service supplier is necessary to achieve its legitimate public policy objectives, it is permitted to use the measure as long as it does not constitute unjustified discrimination or impose a restriction on trade. This means that a Party may regulate electronic transfer for reasons of fundamental national security interests or legitimate public policy objectives.

(K) Dialogue on Electronic Commerce

Parties should recognize the value of dialogue in promoting the development and use of electronic commerce, including with stakeholders where appropriate. The dialogue on e-commerce needs to consider the following issues: first, e-commerce cooperation; second, current issues facing the treatment of digital

products, source code, cross-border data flow in financial services and the location of computing facilities; third, other matters relevant to the development and use of e-commerce, such as anti-competitive practices, online dispute resolution and the promotion of skills relevant to e-commerce, including the temporary movement of professionals across borders.

With regard to the format and participants of the dialogue, the RCEP's Chapter on E-commerce specifies that Parties may hold dialogue forums on mutually agreed topics, which may involve the business sector, experts, academia, and other stakeholders as appropriate. As direct participants and stakeholders in cross-border e-commerce, enterprises can form industry organizations to actively participate in the e-commerce dialogue and promote the resolution of relevant issues.

III. Other Regulations

(A) Transparency

Where feasible, each Party shall publish all measures related to electronic commerce through Internet channels as soon as possible to make them available to the public. Upon request, each Party shall respond as promptly as possible to relevant requests from other RCEP Parties for specific information, including measures on e-commerce implementation, cooperation, transparency, etc., to ensure that both Parties communicate and cooperate in a more efficient manner and to reduce trade frictions with respect to e-commerce activities.

(B) Settlement of Disputes

In the event of a disagreement between the Parties, they shall first consult in good faith and make every effort to reach a mutually satisfactory solution. If no solution is reached, the matter may be referred to the RCEP Joint Committee.

With respect to the settlement of disputes, the RCEP has a

separate chapter, Chapter 19 (Dispute Settlement), which stipulates the detailed regulations. The difference between Article 17 (Settlement of Disputes) of this Chapter and Chapter 19 (Dispute Settlement) is that no Party may resort to dispute settlement under Chapter 19 (Dispute Settlement) with respect to any matter arising under this Chapter. As part of the general review of this Agreement pursuant to Chapter 20, Article 8 (General Review), the Parties shall consider the application of Chapter 19 (Dispute Settlement) to this Chapter. Upon completion of the review, Chapter 19 (Dispute Resolution) shall be applied between the Parties that have consented to its application to this Chapter.