

Opening of China's Service Industry in the 14th Five-year Plan — Taking RCEP and CPTPP as References

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Abstract: More than 20 years have passed since China joined the WTO, and the 14th Five-year Plan is being implemented. The Chinese government's established policy is to commit itself to opening the service industry. However, many differences remain in the details of the terms of the CPTPP and RCEP related to trade in services. The contribution of this article is that, according to the specific requirements of the 14th Five-year Plan for opening China's service industry, it compares the terms of trade in services between the RCEP and CPTPP and analyzes the main differences between these agreements. Finally, this article provides legal suggestions for further opening China's service industry. As a large developing country, if China wants to catch up as soon as possible with the development of the international service industry and increase the opening of the service industry, it need first become aware of existing problems, clarify the differences between the current international advanced standard systems, and classify them according to their degree of implementation. While adjusting from easy to difficult, China has continuously stimulated market vitality and imagination on key issues such as policy formulation and regulatory transparency, service industry market openness, and data cross-border convenience.

Keywords: Trade in Services, China, CPTPP, RCEP, The 14th Five-year Plan

I. INTRODUCTION

Since the introduction of the reform and opening-up policy, especially after joining the World Trade Organization (WTO), driven by factors such as industrialization, urbanization, globalization, and technological progress, the development opportunities and potential of China's service industry have been continuously expanding, and the service industry has demonstrated outstanding

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performance.

According to the National Bureau of Statistics of China, as the world's second largest economy, China's gross domestic product (GDP) in 2019 was 99,086.5 billion yuan, with a growth rate of 6.1% throughout 2018, and its per capita GDP exceeded the \$10,000 mark for the first time.¹ Among these growth rates: the added value of the primary industry was 7,046.7 billion yuan, an increase of 3.1%; the added value of the secondary industry was 38,616.5 billion yuan, an increase of 5.7%; the added value of the tertiary industry was 53,423.3 billion yuan, an increase of 6.9%.² The growth rate of the tertiary industry remained the fastest, not only faster than the growth rate of the other two industries, but also faster than the growth rate of the GDP. In 2019, the added value of the tertiary industry accounted for 53.9% of the GDP, which was a major improvement compared with that of 2016, the first year of the 13th Five-year Plan. For example, the ratio of the added value of these three industries to the GDP was 8.6:39.8:51.6 in 2016; and in 2019, it became 7.1:39.0:53.9, of which the primary industry decreased by 1.5%, the secondary industry decreased by 0.8%, and the tertiary industry increased by 2.3%.³ In 2015, the added value of China's service industry accounted for 50.5% of the GDP, exceeding 1/2 for the first time, truly making this industry into the "half of the country" of the national economy.⁴ Since then, this proportion of added value has increased year by year, approaching 54.5% in 2020,⁵ and the service industry has become increasingly dominant.⁶

1 National Bureau of Statistics of China, Statistical Communiqué of the People's Republic of China on National Economic and Social Development in 2019, http://www.stats.gov.cn/tjsj/zxfb/202002/t20200228_1728913.html (Last Visited on March 23, 2022).

2 *Ibid.*

3 National Bureau of Statistics of China, Statistical Communiqué of the People's Republic of China on National Economic and Social Development in 2016, http://www.stats.gov.cn/tjsj/zxfb/201702/t20170228_1467424.html (Last Visited on March 23, 2022).

4 National Bureau of Statistics of China, Statistical Communiqué of the People's Republic of China on National Economic and Social Development in 2015, http://www.stats.gov.cn/tjsj/zxfb/201602/t20160229_1323991.html (Last Visited on March 23, 2022).

5 National Bureau of Statistics of China, Statistical Communiqué of the People's Republic of China on National Economic and Social Development in 2020, http://www.stats.gov.cn/tjsj/zxfb/202102/t20210227_1814154.html (Last Visited on March 23, 2022).

6 Ministry of Commerce of the People's Republic of China, Report on China's Foreign Trade Situation (Fall 2021), <http://images.mofcom.gov.cn/zhs/202111/20211129152550467.pdf> (Last Visited on March 24, 2022).

In 2021, when faced with challenges such as the complicated international environment and the spread of the COVID-19 pandemic, under the government's strong leadership, and with the people's efforts, the service industry continued to demonstrate excellent performance. In 2021, the first year of the 14th Five-year Plan, the data released by the National Bureau of Statistics of China showed that the service industry's added value for that year was 60.968 trillion yuan, an increase of 8.2% over 2020 and an average growth rate of 5.0% within these two years. Statistics also show that in 2021, the service industry's added value accounted for 53.3% of the GDP, contributing 54.9% to economic growth, driving GDP growth by 4.5%, with 13.9%, 16.5%, and 1.4% higher than the secondary industry respectively.⁷

According to the law of industrial transfer and structural upgrading, as well as considering China's huge market, the growth of urban and rural residents' income, the upgrading of the consumer demand structure, and the increase of the urbanization rate, it can be predicted that the scale and proportion of the service industry's added value during the 14th Five-year Plan will not be difficult to achieve, as there is a new level of aggregate indicators such as this industry's scale and proportion of employment. As the largest industry in China's current economy, the service industry has become the main driving force and new engine for national economic development. On one hand, "China is entering the era of service economy" has gradually become the consensus of all social sectors. On the other hand, China's service economy is large but not strong, its overall quality need be urgently improved, and its inability to meet the people's needs for consumption upgrades has gradually become prominent. The real difficulty is how to effectively change its development mode, promote the service industry's transformation and upgrading, achieve high-quality development, continuously improve this industry's competitiveness, as well as actively and effectively implement this industry's functions. To achieve this arduous task, it is necessary to implement comprehensive policies while making key breakthroughs and substantial leaps in important areas of the service industry and emerging business formats. Further accelerating the pace of opening

7 National Bureau of Statistics of China, Statistical Communiqué of the People's Republic of China on National Economic and Social Development in 2021, http://www.stats.gov.cn/tjsj/zxfb/202202/t20220227_1827960.html (Last Visited on March 23, 2022).

the service industry is highly significant for China's economic transformation, upgrading, and high-quality development.⁸

For a long time, China has restricted itself from opening the service industry to the outside world, and hence has a limited understanding of service standardization and rarely participates in formulating international service industry standards, so that it lacks the right to speak. The world is undergoing profound and unprecedented changes. In addition, the scientific and technological revolution has extensively promoted the innovation of the service industry and service trade. Furthermore, the industrial and consumption revolutions have altered many countries' comparative advantages. When considering trade in services as a percentage of the GDP in 2020, China (4.2%) was below-average among the major world economies (See Table 1).⁹ During the 14th Five-year Plan, it is necessary to seize the opportunity of the opening of the service industry to promote China's service standards as well as to enhance its voice and influence in global governance. It is also necessary to emphasize the international integration of service supply and service consumption, in addition to adapting to this industry's international standards and behavioral rules, which can help China to more closely integrate into the international market while enabling its service industry to spread across the world.

Table 1. Trade in Services as a Percentage of GDP in 2020

Country	Brazil	Canada	France	Germany	India	Italy	Japan	Russia	UK	US
Percentage	5.4	11.7	18.7	16.0	12.0	9.5	7.1	7.5	21.4	5.6

On November 6, 2019, the Ministry of Commerce of the People's Republic of China and the WTO jointly held a press conference on the World Trade

8 Hua Ercheng, On the Strategic Position of the Service Industry in the National Economic Development, *Economic Research Journal*, Vol. 36, No. 7, 2001, pp. 3-8; Zhang Zaijin and Bai Chong'en, Size of Government, Rule of Law, and the Development of Services Sector, *Economic Research Journal*, Vol. 42, No. 6, 2007, pp. 51-64; Jiang Xiaojun, Growth of Service Industry: True Meaning, Multiple Influence and Trend, *Economic Research Journal*, Vol. 46, No. 4, 2011, pp. 4-14; Li Ping, Fu Yifu and Zhang Yanfang, Can the Productive Service Industry Become New Momentum for China's Economic Growth, *China Industrial Economics*, Vol. 34, No. 12, 2017, pp. 5-12; Lin Yifu, China's New Development Paradigm and Prospect of Future Economic Development in the Great Change that Has Been Unseen over the Last One Hundred Years, *Journal of Peking University (Philosophy and Social Sciences)*, Vol. 58, No. 5, 2021, pp. 32-40.

9 The World Bank, Trade in Services (% of GDP), <https://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS> (Last Visited on March 24, 2022).

Report 2019 (Chinese Version) at the China International Import Expo. This report focused on trade in services and pointed out that between 2005 and 2017, global trade in services grew by an average of 5.4% per year, vastly exceeding the 4.6% of trade in goods. It also showed that the services sector contributed two-thirds of global economic output, attracted more than two-thirds of foreign direct investment, and provided two-thirds of employment in developing countries and four-fifths of employment in developed countries. It predicted that by 2040, trade in services may account for one-third of world trade (currently one-fifth), which means that in just 20 years, the share of trade in services in global trade would increase by 50%.¹⁰

The WTO's World Trade Report 2021 examined why the interconnected global trading system was both vulnerable and resilient to crises such as the COVID-19 pandemic, how it can help countries to become more economically resilient to shocks, as well as what can be done to make the system better prepared and more resilient in the future.¹¹ In 2020, the nominal dollar value of global trade in goods and services fell by 9.6%, while the global GDP fell by 3.3%, which is the worst recession since World War II.¹² The World Trade Report 2021 and the World Trade Statistical Review 2021 analyzed the fragility and resilience of the global trading system during the COVID-19 pandemic. It pointed out that due to the increasing frequency of global natural disasters and other risk shocks, it is necessary for all parties to assign major importance to and actively respond to relevant risks.¹³ The main points of the WTO reports are: First, today's global economy is characterized by high trade linkages and increased resilience, even if it is more vulnerable to shocks from natural and man-made disasters. For example, when the COVID-19 pandemic disrupted existing supply relationships, trade enabled countries to respond to the shock by switching suppliers. Second, policies aimed at increasing economic resilience by returning to production, promoting self-sufficiency, and de-integrating trade

¹⁰ World Trade Organization, World Trade Report 2019, https://www.wto.org/english/res_e/booksp_e/executive_summary_world_trade_report19_e.pdf (Last Visited on March 24, 2022).

¹¹ World Trade Organization, Vulnerabilities, Resilience in Global Trading System Examined in World Trade Report 2021, https://www.wto.org/english/news_e/news21_e/wtr_16nov21_e.htm (Last Visited on March 24, 2022).

¹² *Ibid.*

¹³ World Trade Organization, World Trade Statistical Review 2021, https://www.wto.org/english/res_e/statistics_e/wts2021_e/wts2021_e.pdf (Last Visited on March 24, 2022).

tended to have the opposite effect. Third, strengthening economic resilience requires more regional and global multilateral cooperation. The strong support of international trade rules can help avoid and reduce risks for more trade cooperations at the multilateral or regional level, respond to shocks, and recover from them.¹⁴

According to the World Bank Policy Research Report 2020, although the cost of trade in services dropped by 9% between 2000 and 2017, the current cost of cross-border trade in services is twice that of trade in goods, and there are still many policy barriers.¹⁵ The costs of trade in services and goods are measured in five dimensions: transportation costs, infrastructure and border costs, information transmission costs, trade policy barriers, and government governance level.¹⁶ The report shows that, compared with the cost composition of trade in goods, the importance of policy barriers and regulatory differences in trade in services has increased significantly in the cost composition, reaching 31%, which is 1.8 times that of trade in goods, while government governance level accounts for 10%, which is 2.5 times that of trade in goods.¹⁷ Reducing the cost of trade in services requires efforts to reduce policy barriers, limit regulatory differences, and improve government governance. In the sense of reducing differences in the above mentioned several aspects, it is urgent to strengthen the unification of rules for international trade in services.

When examining the latest international law system, the terms of trade in services, such as new or upgraded terms of e-commerce, represent the latest interest demands of all countries. The current global economic development situation involves regional differences, while local and peripheral trade alliances endlessly emerge. Among these, the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),¹⁸ as new and high-level free trade agreements, include in-depth discussions on rules for trade in services.¹⁹ As the highest-level

¹⁴ *Ibid.*

¹⁵ The World Bank, Policy Research Reports 2020, <https://openknowledge.worldbank.org/handle/10986/2171> (Last Visited on March 24, 2022).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ RCEP Chinese News, Regional Comprehensive Economic Partnership Text, <https://cn.rcepnews.com> (Last Visited on March 24, 2022).

¹⁹ Australian Government Department of Foreign Affairs and Trade, Comprehensive and Progressive Agreement for Trans-Pacific Partnership Text, <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/outcomes-documents/Pages/smes-and-the-cptpp> (Last Visited on March 24, 2022).

regional trade agreement that China has signed, the RCEP has adjusted and innovated the content of its chapters on trade in goods and services as well as e-commerce, which is highly significant for improving resource allocation efficiency and promoting the continuous expansion of economic cooperation in the Asia-Pacific region. The CPTPP is the world's highest-level economic and trade agreement as well as the first to include content related to e-commerce, data circulation, state-owned enterprises, and designated monopolies. The CPTPP's implementation will continue to impact the existing international trade rules and global strategy.²⁰

While committing to the 14th Five-year Plan,²¹ the Chinese government would effectively widen and deepen the opening to the outside world, promote international cooperation, as well as achieve mutual benefit and win-win results. China's current efforts to benchmark the advanced international rules and promote the opening of the service industry need be strengthened, and its reform measures need be more precise. In the context of reorganizing the global economic structure, the Chinese government has publicly stated that it is applying to join the CPTPP, which can not only increase the efforts to open the service industry, but also focus on its quality. Opening and connecting with international rules along with connecting domestic and foreign markets can provide a direction and basic framework for the continued development of China's service industry while reducing the trial-and-error cost of formulating its rules.²²

The contribution of this article is that, according to the specific requirements of the 14th Five-year Plan for opening China's service industry, it compares the terms of trade in services between the RCEP and CPTPP and also

20 Sun Lei and Qi Junyan, The Scope and Depth of China's Regional Service Trade Openness: Assessment on Schedule of China under 14 FTAs, *International Economics and Trade Research*, Vol. 33, No. 4, 2017, pp. 39-53; Zhang Tianguai, RCEP: Characteristics, Challenges and Prospects, *Global Review*, Vol. 13, No. 2, 2021, pp. 120-135; Sheng Bin, China, CPTPP and New International Economic and Trade Rules, *China Economic Review*, Vol. 2, No. 4, 2021, pp. 92-96.

21 State Council of the People's Republic of China, the 14th Five-year Plan Text, http://www.gov.cn/xinwen/2021-03/09/content_5591776.htm (Last Visited on March 23, 2022).

22 Su Qingyi, Should China Join the CPTPP? *International Economic Review*, Vol. 24, No. 4, 2019, pp. 107-127; Liu Bin and Yu Jimin, The Feasibility and Path Selection of China's Joining the CPTPP, *Asia-Pacific Economic Review*, Vol. 36, No. 5, 2019, pp. 5-13; Liu Xiangdong and Li Haodong, Analysis on the Feasibility and Implementation Strategy of China's Proposal to Join the CPTPP, *Globalization*, Vol. 9, No. 5, 2019, pp. 57-69; Lu Xinhong, Is the Time and Conditions Ripe for China to Join the CPTPP, *Finance and Economy*, Vol. 40, No. 9, 2019, pp. 63-67; Chang Jing, The Feasibility and Strategic Path of China's Joining the CPTPP, *Practice in Foreign Economic Relations and Trade*, Vol. 39, No. 3, 2021, pp. 27-30.

analyzes the main differences between these agreements. Lastly, this article provides legal suggestions for further opening China's service industry.

II. COMPARISON OF SPECIFIC TERMS OF TRADE IN SERVICES BETWEEN THE RCEP AND CPTPP

A. General Differences between the RCEP and CPTPP

A comparison of the CPTPP and RCEP provisions for trade in services shows that they differ in terms of most-favored-nation treatment (MFN), national treatment, market access, and non-conforming measures. Moreover, the CPTPP embodies the strict features of the Trans-Pacific Partnership Agreement (TPP), while the RCEP's provisions are unclear and tend to cause ambiguity during implementation.²³

The texts of the RCEP and CPTPP include various topics in different chapters. For instance, Chapter 8 of the RCEP and Chapter 10 of the CPTPP are both on trade in services, but each has specific differences in their content and scope. For example, in addition to Chapter 8 (Trade in Services), the RCEP contains three other chapters in its Annex: "Financial Services" (Annex 8A), "Telecommunications Services" (Annex 8B) and "Professional Services" (Annex 8C). In addition to its main body, Chapter 10 of the CPTPP (Cross-border Trade in Services) includes "Professional Services" (Annex 10-A) and "Express Delivery Services" (Annex 10-B), along with separate chapters for "Financial Services" (Chapter 11) and "Telecommunications" (Chapter 13).

Since the RCEP is China's latest accession and the highest-level regional trade agreement among the signed agreements, it aligns more closely with China's recent stance on opening its service industry on international trade platforms. Therefore, this article focuses on the content in Chapter 8 of the RCEP (Trade in Services) as the research scope, and examines the differences between these agreements under the main clauses in the trade in services chapter and the additional chapters on finance, telecommunications, and professional

23 Quan Yi, Comparison of CPTPP and RCEP Service Trade Rules and China's Service Industry Opening, *Strategy World Economy Studies*, Vol. 40, No. 12, 2021, p. 30.

services.²⁴

While focusing on the 14th Five-year Plan, and based on classifications from Chinese scholars,²⁵ this article is summarized according to three dimensions: differences in the priority of MFN and the transition list, differences in transparency and dispute resolution requirements, and differences in cross-border data flow permission.²⁶

B. MFN in RCEP Has No Priority and Involves More Constraints

The MFN clause is a very common and vital clause in international trade. It is specifically defined as “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties” (Article 1 of GATT 1947).²⁷ The basic goal of this clause is to enable all members participating in the multilateral trading system to share the benefits resulting from the conclusion of treaties. At the same time, it has a certain degree of exclusivity, which can further promote economic cooperation among members and enhance regional economic vitality. However, the MFN clauses in most international trade agreements include certain limitations and exceptions, such as regional integration organizations, government subsidies or government procurement, taxation, and country-specific exceptions. On the other hand, current regional trade agreements and multiple global trade agreements are intertwined, creating the “spaghetti bowl effect”: A single country might sign multiple trade agreements at the same time, creating the problem of having different priorities for the entry into force of MFN clauses from different agreements when entering a specific market. Therefore, as one of the core clauses in international economic and trade agreements, the MFN clause’s scope of application

²⁴ *Ibid.*

²⁵ Wang Siyu and Zhang Kaiyi, Research on the Opening Path of China’s Service Industry under the Agreement of RCEP and CPTPP, *Asia-Pacific Economic Review*, Vol. 38, No. 6, 2021, pp. 108-118.

²⁶ Todd Allee and Manfred Elsig, Why Do Some International Institutions Contain Strong Dispute Settlement Provisions? New Evidence from Preferential Trade Agreements, *The Review of International Organizations*, Vol. 11, No. 1, 2016, pp. 89-120; Shang Peixuan, Dispute Settlement Mechanism under US-China Phase One Agreement: Legal Norms and the Political Logic Behind, *Journal of SUIBE*, Vol. 28, No. 1, 2021, pp. 64-75.

²⁷ World Trade Organization, The General Agreement on Tariffs and Trade (GATT 1947), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#art1 (Last Visited on March 24, 2022).

and priority tend to provide a foundation for the entire agreement's strength and binding force.

The trade in services chapters of the RCEP and CPTPP define the MFN clauses in different ways.²⁸ The MFN clause in the CPTPP (Article 10.4) is broadly applicable under the overall coverage of "Cross-border Trade in Services", and it does not set exceptions by narrowing the scope of application, adding priority requirements, and adding transitional clauses.²⁹ The content is concise and lacks excessive constraints.

Firstly, the application scope of the RCEP's MFN clauses is narrowed to the sectors listed in the specific commitment table, since its effectiveness has been restricted as a "Positive List" (Paragraph 1 of Article 8.6).³⁰ Secondly, the priority of the MFN clauses in the RCEP is also restricted. On one hand, the contracting countries that enter into force or sign earlier than the MFN clauses in the RCEP can take precedence over it (Paragraph 3 of Article 8.6).³¹ On the other hand, the interests of the ten Association of Southeast Asian Nations (ASEAN) countries are added to the MFN clauses (Paragraph 4 of Article 8.6).³² That is, in the above two situations, RCEP members can use the MFN clauses from other signed agreements to avoid the RCEP when facing trade disputes, which reduces its binding force. Article 8.12 of the RCEP adds "Transition" provisions. Furthermore, Article 8.23 of the RCEP adds participation provisions for "Least Developed Country Parties which are Member States of ASEAN" by giving Cambodia, Laos, and Myanmar a maximum 15-year suspension period

28 *Supra* n. 25.

29 Article 10.4 of CPTPP (Most-favoured-nation Treatment): "Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party".

30 Paragraph 1 of Article 8.6 of RCEP (Most-favoured-nation Treatment) narrows the scope of MFN to "the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an MFN".

31 Paragraph 3 of Article 8.6 of RCEP agrees that "Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement".

32 Paragraph 4 of Article 8.6 of RCEP agrees that "Notwithstanding paragraphs 1 and 2, each Party which is a Member State of ASEAN reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is a Member State of ASEAN taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the Parties which are Member States of ASEAN".

(Paragraph 7 of Article 8.12), while providing least developed country parties who are ASEAN members with additional support in aspects such as service capacity, business technology, access to information networks, and provision of facilitation measures.

This is not only due to the differences in the economic and service industry development of RCEP members, but also since many parts of RCEP consider the ten ASEAN members as a whole. As a result, the RCEP has “high internal friction” that creates a less formal relationship among its members compared with those of the CPTPP, as well as an insufficient guarantee for the RCEP’s implementation.³³ Therefore, to bridge the gap among the RCEP members and attract the participation of least developed countries, it is necessary to set up transition clauses. This would create inconsistencies in the specific implementation of the MFN clauses. Therefore, compared with the counterparts of the CPTPP, Chapter 8 of the RCEP (Trade in Services) has a weaker binding force.

C. The RCEP Has Low Transparency and an Incomplete Dispute Settlement Mechanism

Political, economic, and cultural differences tend to cause friction and conflict during international exchanges. Better policy transparency and effective dispute settlement mechanisms are important means for resolving trade frictions between contracting parties and improving the efficiency of resource allocation. In terms of financial services, both RCEP and CPTPP contracting parties demonstrate more consistent attitudes under transparency clauses,³⁴ that is, each contracting party promises to improve regulatory transparency in financial services.

In terms of transparency, the CPTPP provides more opportunities for financial institutions and cross-border financial service suppliers, especially for the disclosure of relevant documents. Compared with the RCEP, the CPTPP has clearer requirements for quality and availability, and can provide sufficient

³³ *Supra* n. 25.

³⁴ Paragraph 1 of Article 7 of Annex 8A of RCEP: “Financial service means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance)”.

guidance for financial service suppliers to enter the domestic market and increase the predictability of entry. The first difference between them is the written comments requirement from the CPTPP (Paragraph 4 of Article 11.13).³⁵ The second is that the public availability of application requirements in the CPTPP (Paragraph 8 of Article 11.13) is not in the RCEP (Paragraph 8 of Article 7 of Annex 8A).³⁶ And the third is a shorter notification time for applicants of administrative decisions in the CPTPP (120 days, Paragraph 10 of Article 11.13) compared with that of the RCEP (180 days, Paragraph 8 of Article 7 of Annex 8A).³⁷

In terms of dispute settlement, the CPTPP clearly requires establishing a Committee on Financial Services (Article 11.19) to establish supervisory agencies among contracting parties. It also proposes to establish the Committee on Financial Services to monitor the implementation, review financial service issues, participate in dispute settlement, and annually evaluate this implementation. In addition, the CPTPP mentions that “the principal representative of each Party shall be an official of the Party’s authority responsible for financial services set out in Annex 11-D (Authorities Responsible for Financial Services)” (Article 11.19), while the RCEP abbreviates the terms of consultation and

35 Paragraph 4 of Article 11.13 of CPTPP: “At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation”.

36 Paragraph 8 of Article 11.13 of CPTPP: “Each Party’s regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services”. Paragraph 8 of Article 7 of Annex 8A of RCEP: “A Party’s regulatory authority shall make available to interested persons of another Party its requirements, including any documentation required, for completing applications relating to the supply of financial services”.

37 Paragraph 10 of Article 11.13 of CPTPP: “A Party’s regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of another Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter”. Paragraph 10 of Article 7 of Annex 8A of RCEP: “A Party’s regulatory authority shall make an administrative decision on a complete application of a financial service supplier of another Party relating to the supply of a financial service within 180 days, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter”.

dispute settlement and does not establish a similar body. Instead, financial services dispute settlement is unified under Chapter 19 of the RCEP (Dispute Settlement), with a lack of detailed rules and an insufficient guarantee for financial service suppliers to adjudicate when disputes arise.

As for telecommunications services, relevant chapters of the RCEP and CPTPP both support transparency, but the degrees of regulatory disclosure under their detailed rules are still quite different. There is a clearer definition for information disclosure requirements in the CPTPP, as it includes the phrases “any interested persons” and “the ability to comment”. Article 13.22 of the CPTPP (Transparency) stipulates: “Further to Article 26.2.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input for a proposal for a regulation, that body shall: (a) make the proposal public or otherwise available to any interested persons; (b) include an explanation of the purpose of and reasons for the proposal; (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment; (d) to the extent practicable, make publicly available all relevant comments filed with it; and (e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation”. In Article 16 of the RCEP (Transparency), the degree of regulators’ disclosure is conservative. Regarding the aspect of “when its telecommunications regulatory body seeks input on a proposal for a law or regulation”, the RCEP only “provides relevant suppliers of public telecommunications networks or services of another Party operating in its territory an opportunity to comment”. It does not mention interested persons as in the CPTPP, and its terms do not actively mention information disclosure.³⁸

In terms of dispute settlement, the CPTPP not only establishes a special committee to facilitate settlement of disputes related to telecommunications services, but also refines specific dispute clauses to provide sufficient support for contracting parties to seek settlement after disputes arise. The CPTPP requires the establishment of a “Committee on Telecommunications composed of government representatives of each Party” to monitor the implementation, the need to “discuss any issues related to this Chapter and any other issues

38 Fang Rui'an, *The Challenge of CPTPP Telecom Service Trade Rules to China, Practice in Foreign Economic Relations and Trade*, Vol. 39, No. 10, 2019, pp. 18-20.

relevant to the telecommunications sector as may be decided by the Parties” and the requirement to “report to the Commission on the findings and the outcomes of discussions of the Committee” (Article 13.26). Article 13.21 of the CPTPP (Resolution of Telecommunications Disputes) provides details of “Resourse, Reconsideration, and Judicial Review” for dispute settlement. The RCEP does not set up a special committee, nor does it provide specific implementation clauses for dispute settlement. It may also face the problem of having insufficient agreement support for involved enterprises.³⁹

In addition, regarding non-discrimination, the CPTPP emphasizes timeliness (Article 13.1) while the RCEP lacks this focus (Paragraph (i) of Article 1 of Annex 8B).⁴⁰

Regarding professional services, although the RCEP has no explicit provision on transparency in its chapters, some Chinese scholars have considered that the clarity of “professional recognition, licensing and registration” provision can be applied as a standard. The reason is that professional services mainly involve the concept of talent and serve the needs of contracting parties on issues related to recognition of professional qualifications, licensing, or registration. Therefore, whether to point out the needs of specific types of talent or to clarify the standards for talent introduction can reflect the degree of transparency in these chapters.⁴¹

The CPTPP includes more details about the specific industries and occupations involved in professional services. It also deepens professional service certification based on Asia-Pacific Economic Cooperation (APEC)’s existing registration authorization standards and mutual recognition arrangements. It will help provide clear guidelines for members to establish the core industry categories of professional services and help to improve the operability of implementation. Firstly, Annex 10-A of the CPTPP (Professional Services) includes descriptions for “Engineering and Architectural Services, Temporary Licensing

³⁹ *Ibid.*

⁴⁰ Article 13.1 of CPTPP: “... non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness”. Paragraph (i) of Article 1 of Annex 8B of RCEP: “... non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances”.

⁴¹ *Supra* n. 25.

or Registration of Engineers, Legal Services”. Secondly, Paragraph 6 of Annex 10A of the CPTPP stipulates: “Each Party shall encourage its relevant bodies to work towards becoming authorized to operate APEC Engineer and APEC Architect Registers”, while Paragraph 7 of Annex 10-A of the CPTPP stipulates: “A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers”. In Annex 8C of the RCEP, the institutions for mutual recognition of professional qualifications, as well as specific industries and occupations are unclear, and the terms are insufficiently indicative.⁴²

In terms of the dispute settlement mechanism, the CPTPP adopts the method of establishing a special committee to strengthen implementation, while the RCEP still lacks this aspect.⁴³

Additionally, to support the implementation of professional service terms, the CPTPP requires the contracting parties to set up a “Professional Services Working Group” to monitor implementation, report the progress of professional services and future work focuses, while the RCEP does not set up a specialized agency.

To sum up, an analysis of financial, telecommunications, and professional services in terms of transparency and dispute settlement shows that the CPTPP has more detailed requirements for transparency, and supports maximally implementing the marketization of trade in services. In addition, it actively facilitates the formation of an internal dispute settlement committee for the contracting parties to accelerate the settlement of regional disputes and track the agreement’s implementation. However, the RCEP is lacking in the above three levels, leaving more room for government supervision, and the absence of specific committee may not guarantee the agreement’s effective promotion.⁴⁴

D. The RCEP Creates More Obstacles for Cross-border Data Flow

Cross-border data flow is a popular academic and practical topic, and the 14th

⁴² *Supra* n. 38.

⁴³ In Chapter 10 of CPTPP: “... including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-conforming Measures Ratchet Mechanism), is subject to Investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment)”.

⁴⁴ *Supra* n. 25.

Five-year Plan requires the Chinese government to actively formulate international rules and standards for digital technology. However, the RCEP and CPTPP have different permissions for service suppliers to access public telecommunications networks for the sake of providing services. Article 13.1 of the CPTPP allows service suppliers to obtain information contained in databases within the territory of any contracting party, or use information stored in a readable form, while Annex 8B of the RCEP adjusts “obtain” to “access” (Paragraph (d) of Article 1),⁴⁵ that is, it emphasizes the construction of this pathway, but does not promise the availability of specific data.

On one hand, in the financial services chapter, the difference in the freedom of cross-border data flow between the RCEP and CPTPP is reflected in the types of data allowed. Chapter 11 of the CPTPP does not impose special restrictions on cross-border data flow, while Annex 8A of the RCEP cautiously opens the types of data that can flow across borders, adopting a positive list model. However, it has no clear statement on consumer privacy and cross-border personal data. Even though Annex 8A of the RCEP has added a separate clause named “Transfers of Information and Processing of Information” (Article 9), it enables domestic regulators to implement supervision. Article 9 of Annex 8A of the RCEP stipulates that the contracting parties shall not take measures that prevent transfers and processing of information necessary for financial service suppliers, while it also mentions that “Nothing in paragraph 2 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records, provided that such requirements shall not be used as a means of avoiding the Party’s commitments or obligations under this Agreement”.

On the other hand, the differences in the degree of freedom of cross-border data flow between the RCEP and CPTPP in the telecommunications services chapters mainly focus on access diversification. The CPTPP not only allows the provision of services “through access to public telecommunications

45 Paragraph (d) of Article 1 of Annex 8B of RCEP: “... interconnection means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier”.

network”, but also “through private or free lines” to a single or multiple end-users, and “Each Party shall ensure that any service supplier of another Party is permitted to perform switching, signalling, processing and conversion functions” (Article 13.4). In Annex 8B of the RCEP, service suppliers are only allowed to provide services through the single medium of public telecommunications networks, and the specific service content of service providers is not listed in detail. That is, to control cross-border data flow, the RCEP only allows the use of public telecommunications networks for data transmission and service provision.

III. STATUS QUO OF CHINA’S TRADE IN SERVICES OPENING AFTER ENTRY INTO THE WTO

A. China Has Increased Its Opening-up in the RCEP Commitments

Compared with its WTO commitments, China’s improvement in its openness to trade in services in the RCEP is mainly reflected in two aspects:⁴⁶ one is that the number of sectors covered by the commitments to openness to trade in services has increased. There were about 100 sectors at the time of its accession to the WTO (2001), and 22 sectors were added on this basis for the RCEP. The other one is that the content of specific commitments in trade in services has been further expanded and restrictions on national treatment have been reduced. The specific amount of commitments of China’s services in the RCEP is higher than that of the General Agreement on Trade in Service (GATS), which is mainly reflected in the Commercial Presence (Model 3).⁴⁷ The improvement of the commitment level of the Commercial Presence (Model 3) is mainly reflected in the loosening of restrictions on foreign shareholding in market access, which further reduces the restrictions on foreign investors’ entry

⁴⁶ Ministry of Commerce of the People’s Republic of China, Schedule of Specific Commitments for Service (RCEP), <http://fta.mofcom.gov.cn/rcep/rceppdf/01%20CN's%20Annex%20II.pdf> (Last Visited on March 27, 2022).

⁴⁷ Paragraph (b) of Article 8.1 of RCEP (Definition): “... commercial presence means any type of business or professional establishment, including through: (i) the constitution, acquisition, or maintenance of a juridical person; or (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service”.

into China. For example, in communications services, China's GATS commitments clarified that foreign investors could establish joint ventures in designated cities within 3 years after China's accession, its capital ratio shall not exceed 25%, and it shall be adjusted to 49% within 6 years after accession. In the RCEP commitments, China removed geographical restrictions, and its capital ratio shall not exceed 49% without a time limit. In the RCEP commitments, the sectors in which China's trade in services opening has improved significantly are mainly concentrated in the fields of advertising, communications, financial, and transportation services. Applying shipping services in transportation as an example, in its GATS commitments, China restricts the proportion of foreign investors' shares in international transportation services to 49% as well as the qualifications of the chairman for its joint venture board of directors, but there is no restriction in the RCEP commitments.⁴⁸

Compared with other free trade agreements, the RCEP undoubtedly represents China's highest level of openness, considering its scope of sectors covered by trade in services, as well as the level of commitments. Firstly, the content related to trade in services gradually appears as independent chapter with a specific commitment table, and the content of its trade in services rules are continually enriched. Secondly, China's commitments in the RCEP have been increased, and restrictions on many services sectors have been loosened compared with other free trade agreements. For example, in terms of Cross-border Supply (Model 1), Consumption Abroad (Model 2), and Presence of Natural Persons (Model 4) for commitments of trade in services, the environmental services sector is divided into more detailed aspects for the sake of the specificity of commitments. The financial services commitments in the RCEP are higher than in other trade agreements, and the RCEP has no advertising service restrictions in commercial services. Thirdly, the restrictions on Commercial Presence (Model 3) have been gradually cancelled.⁴⁹ Given that China is more open in

⁴⁸ Chen Wanling and Feng Zheng, Evaluation of China's Service Trade Opening Level and Evolution of Opening Pattern Based on the Comparison of China's Free Trade Agreements, *Asia-Pacific Economic Review*, Vol. 37, No. 5, 2020, pp. 80-95; Zhang Juan, Li Jun and Li Jiguang, From RCEP, Pilot Free Trade Zone to CPTPP: Path and Suggestions for the Opening and Upgrading of China's Service Trade, *Intertrade*, Vol. 40, No. 8, 2021, pp. 62-69.

⁴⁹ *Ibid.*

the Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (effective on December 20, 2015) than in other free trade agreements,⁵⁰ in the RCEP, the level of China's commitments in many sectors is higher than that of the Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China, with further removal of national treatment restrictions for foreign investors, especially in Commercial Presence (Model 3), such as architectural design and advertising services as part of commercial services.

B. The Gap between China's Trade in Services Opening under the RCEP and CPTPP Frameworks

The 14th Five-year Plan requires the Chinese government to actively participate in bilateral and multilateral regional investment and trade cooperation mechanisms. However, compared to the RCEP, the CPTPP's rules on trade in services require its members to meet higher standards, while its disciplinary constraints are more stringent and specific. Firstly, the RCEP uses expressions such as “efforts”, “as soon as practicable”, and “as promptly as possible” rather than strict requirements and also uses “efforts” to encourage its contracting parties to demonstrate certain behavior. This is more evident in the terms of Chapter 12 of the RCEP (Electronic Commerce). In contrast, the CPTPP tends to use words such as “shall” and “shall not”.

Secondly, in terms of trade in services, the RCEP follows the example of GATS. On one hand, trade in services is divided into four modes, i.e., Cross-border Supply (Model 1), Consumption Abroad (Model 2), Commercial Presence (Model 3), and Presence of Natural Persons (Model 4), of which Commercial Presence (Model 3) is closely related to foreign direct investment and subject to trade rules rather than investment rules. At the same time, commitments to open services sectors can follow either a positive or negative list approach. However, in the TPP and the US-Mexico-Canada Agreement (USMCA), Commercial Presence (Model 3) of trade in services is subject to investment rules, while the opening of the services sector follows a negative list.⁵¹

50 Ministry of Commerce of the People's Republic of China, Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China Text, http://fta.mofcom.gov.cn/Australia/australia_agreementText.shtml (Last Visited on March 27, 2022).

51 He Xiaoyong, Take the Lead in Establishing an Institutional System for the Shanghai Pilot Free Trade Zone that Is Linked to International Operating Rules, *Scientific Development*, Vol. 13, No. 3, 2020, pp. 44-52.

Thirdly, in the application of the rules of the chapter on trade in services, the CPTPP's regulations are universal and with high standards, while the RCEP's designation is unclear. In terms of the "definition and scope" stipulated in the chapter on trade in services, the CPTPP clarifies the specific measures that the chapter applies to, but the RCEP only broadly proposes relevant provisions, that is, "each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory (Paragraph 2 of Article 8.2)". Although the RCEP and CPTPP are consistent in their traditional core obligations, namely national treatment, MFN, and market access. Although both are based on the GATS framework, the CPTPP's requirements are more stringent. As discussed in Part II, the general provisions of trade in services in the CPTPP are applicable to all services sectors provided. For example, in terms of market access and national treatment rules, the obligations stipulated in the CPTPP generally cover all services sectors provided, and most of the provisions are listed under the general rules. The form of enumeration sets out specific measures. This approach makes the CPTPP discreet, clear, and efficient, while there are certain exceptions in the RCEP for its members.⁵²

Fourthly, from the perspective of the specific field of trade in services, as discussed in Part II, the CPTPP's high standards and strict requirements are more apparent. In terms of financial service rules, the CPTPP is more specific and detailed than the RCEP by distinguishing specific situations and putting its service types in a negative list, making them more transparent. In terms of telecommunications service rules, the most different clauses between the two are mainly reflected in international submarine cable systems (Article 13.15 of the CPTPP), resolution of telecommunications disputes (Article 13.21 of the CPTPP), transparency (Article 13.22 of the CPTPP), and the committee on telecommunications (Article 13.26 of the CPTPP). The CPTPP's standard is higher. For instance, in terms of professional service rules, the RCEP lacks specific regulations for a certain professional field, and its terms are broad, while Annex 10A of the CPTPP provides engineering and architectural services, temporary licensing or registration of engineers, legal services, and professional

⁵² *Supra* n. 48, Zhang Juan, Li Jun and Li Jiguang (2021).

service working groups related to specific provisions.⁵³

Fifthly, in terms of Electronic Commerce, Article 12.2 of the RCEP (Principles and Objectives) values “consumer confidence in electronic commerce, and the importance of facilitating the development and use of electronic commerce”. Article 12.3 (Scope) excludes government procurement, government holdings, and government-collected information from prohibitive norms. Article 12.3 also provides for “non-conforming measures” and exceptions. Articles 12.7 (Online Consumer Protection) and Article 12.8 (Online Personal Information Protection) are both exclusionary norms. In the RCEP, prohibitive norms of data localization are mainly embodied in Articles 12.14 and 12.15. Article 12.14 prohibits the localization of computing facilities, such as computers, servers, and other physical computing entities that parties require to have their location within their national territory, that is, a contracting party may not require a “covered person” to apply a computing facility within the territory of that contracting party or to locate it within their territory, and it is a prerequisite for business. Article 12.15 guarantees cross-border data transfer, that is, “A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person”. Then, the RCEP lacks rules for digital products and other issues, while the CPTPP is detailed and conceptually defined, which highlights rules related to digital products, personal information, and telecommunications transmission.⁵⁴

C. Specific Commitment Level of China’s Trade in Services under the RCEP Is Lower than That of the CPTPP

Firstly, China still adopts the positive list model in its specific commitment for the RCEP’s trade in services, and the level of openness of China’s commitments is lower than the negative list of the CPTPP. Under the positive list model, the level of opening of China’s trade in services is limited. This model uses enumeration to specify the economic activities that market entities can conduct. However, its legal enumeration is limited, which strictly limits the freedom of market entities’ activities. In the case of imperfect laws and regulations, the

⁵³ *Ibid.*

⁵⁴ Huang Gui, Prohibitive Norms and Exception Clauses of the Data Localization in RCEP, *Foundation for Law and International Affairs Review*, Vol. 3, No. 1, 2022, p. 92.

positive list has more apparent disadvantages. On the contrary, the openness model of negative list has a higher degree of liberalization, and the management method of negative list increases the market's role in resource allocation. Under this model, government behavior is more open and transparent, helping to reduce investment cost for foreign investors and improve the efficiency of foreign investment access.

Secondly, in China's specific commitment table for trade in services under the RCEP, although there are fewer restrictions on market access and national treatment in Cross-border Supply (Model 1) and Consumption Abroad (Model 2), there are more restrictions on Commercial Presence (Model 3). Moreover, some services sectors are not undertaken due to lack of a relevant legal basis. From the perspective of specific commitments, there are market access restrictions such as the form, share ratio, and sole proprietorship of foreign capital in commercial, communication, construction, distribution, and financial services as well as other sectors. Although these restrictions have been further relaxed, relative to the short negative list of CPTPP members, China's openness is still low. There are more restrictions on Presence of Natural Persons (Model 4). For example, in the RCEP, China's period of temporary entry and stay of contract service providers shall be subject to the period stipulated in the contract, but shall not exceed one year, while most CPTPP members allow temporary entry for a period not exceeding five years, which may be extended (Annex 10A).⁵⁵

Finally, compared with the negative list of cross-border trade in services for the major CPTPP members, the legal basis for China's trade in services supervision is lacking, which largely limits the degree and scope of its trade in services. In the CPTPP's trade in services negative list, its members are mostly based on a comprehensive legal system and a high level of supervision. Their opening has the following three characteristics: First, they adopted targeted restrictive measures on major sectors of trade in services, and their negative list is short; second, their formulation and implementation of restrictive measures

55 Yu Miaojie and Jiang Haiwei, From RCEP to CPTPP: Differences, Challenges and Solutions, *International Economic Review*, Vol. 29, No. 2, 2021, pp. 129-144; Zhang Jianping and Dong Liang, Regional Comprehensive Partnership and Asia-Pacific Regional Economic Cooperation, *Contemporary World*, Vol. 41, No. 1, 2021, pp. 36-43; Wang Siyu and Zhang Kaiyi, Research on the Opening Path of China's Service Industry under the Agreement of RCEP and CPTPP, *Asia-Pacific Economic Review*, Vol. 38, No. 6, 2021, pp. 108-118.

are based on laws, and are specific to the laws and regulations of local governments or a particular region; third, their restrictive measures are concentrated on local presence and national treatment restrictions, making the supervision of trade in services more concrete and convenient. For example, Singapore has restrictions on patent agency services, as well as personnel placement and the location of service suppliers. The United States mainly imposes restrictions on different models of trade in services, which should be cancelled once the licensing conditions are met, most of which are related to acquiring the United States citizenship.⁵⁶

D. China's Management of the Negative List for Trade in Services Ranks Lower than That of the CPTPP

China has currently established a total of 21 pilot free trade zones. The 14th Five-year Plan encourages and improves the layout of pilot free trade zones, grants them greater autonomy in reform, steadily promotes the construction of the Hainan Free Trade Port, and builds a new way of opening to the outside world. The 14th Five-year Plan requires the Chinese government to improve its pre-entry national treatment and negative list management system for foreign investment, reasonably expand its opening up of the service industry, as well as protect the legitimate rights and interests of its foreign-funded enterprises in accordance with the law. This article refers to China's first pilot free trade zone (the Shanghai Zone) to analyze the gap between its opening of trade in services and the CPTPP requirements.⁵⁷

As a region with a high openness to trade in services, the Shanghai Zone is a vital place for China to expand its opening up. In 2018, Shanghai took the lead in piloting its negative list management for cross-border trade in services. Compared with the CPTPP's negative list for cross-border trade in services, the Shanghai Zone's negative list has more restrictive measures, complex content, and less openness, while the negative list of the CPTPP's cross-border trade in services has less content and clear classifications.⁵⁸

⁵⁶ *Ibid.*

⁵⁷ China (Shanghai) Pilot Free Trade Zone Administration, 2018 Edition of the Negative List for Cross-border Trade in Services, <http://www.china-shftz.gov.cn/Homepage.aspx> (Last Visited on March 28, 2022).

⁵⁸ *Supra* n. 52.

From the perspective of the length of the negative list for cross-border trade in services intended for the Shanghai Zone, its 2018 edition had a total of 159 restrictive measures, which is about 3 times that of Japan, 7 times that of Australia, and 12 times that of the United States. In terms of sectoral classification, the 2018 edition has more restrictions in the fields of transportation, warehousing, postal services, finance, culture, sports, and entertainment. Among these, financial services have the largest amount of restrictions, with a total of 31 issues. In comparison, Japan, Australia, and the United States maintain single-digit restrictions in most sectors. Finally, compared with the negative lists of the CPTPP members, on the basis of future revision, this 2018 edition can be clearer on the direction and interpretation of measures, more transparent, and its coverage can be more broad, thus making it easier for foreign investors to understand its content and regulations for their projects. In order to improve its implementation efficiency, the discretion room of this system can be properly narrowed.⁵⁹

The opening measures can be more focused and systematic, which will help increase the degree of openness. The trade in services opening in the Shanghai Zone's measures involves many fields, and its opening efficacy can be more apparent. Since 2013, China has issued several opening plans, and various sectors have opened to the outside world. On the basis of future revision, the specific task arrangements of the 2018 edition can involve more specific implementation standards and measures.⁶⁰ In August 2020, the Ministry of Commerce of the People's Republic of China released the *Overall Plan for Comprehensively Deepening the Pilot Program for Innovative Development of Trade in Services* which will last for 3 years and has arranged tasks and specific measures for opening in 28 areas.⁶¹ In the future, these measures could cover

59 *Supra* n. 51, He Xiaoyong (2020); Zhang Lei and Xu Lin, Enlightenment of Higher Standard Economic and Trade Rules to Shanghai's Exploration and Construction of Freeport, *International Business Research*, Vol. 41, No. 5, 2020, pp. 86-95.

60 Liao Li and Li Xiaofu, Review and Suggestions on Legal Service in Trade under the Belt and Road Initiative, *Journal of WTO and China*, Vol. 9, No. 2, 2019, pp. 84-105; Li Xiaofu, *Research on the Rule of Legal Service Opening*, Peking University Press, 2019, pp. 191-199.

61 Ministry of Commerce of the People's Republic of China, Overall Plan for Comprehensively Deepening the Pilot Program for Innovative Development of Trade in Services, <http://tradeinservices.mofcom.gov.cn/article/yanjiu/hangyezhi/202008/108358.html> (Last Visited on March 28, 2022).

a broader scope for further opening up.⁶²

IV. PATHS TO IMPROVE OPENING UP OF CHINA'S SERVICES IN TRADE

A. The Importance and Particularity of Joining the CPTPP

Compared with TPP that includes the United States, the CPTPP is incomparable in terms of economic and trade scale as well as international investment. Without the United States, the world's largest economy, the CPTPP's influence on the global economy is less than in previous years. However, the CPTPP follows the example of the TPP's high-quality "next-generation trade rules", retains most of its original text, and remains a high-standard regional trade agreement.⁶³

Economic and trade cooperation in the Asia-Pacific region is very active, and the free trade area's development momentum is comparable to that of the North America and Western Europe. For example, the current mega-regional trade agreements include ASEAN, the TPP/CPTTP and the RCEP. In addition, the Asia-Pacific region has a cooperation mechanism that is not a free trade agreement — the Asia-Pacific Economic Cooperation (APEC). Established in November 1989, the APEC includes a total of 21 economies, covering population, gross domestic product, and trade volume that account for about half or more of the world's total, and plays a pivotal role in global economic activities. However, under the APEC framework, the Asia-Pacific region still faces many obstacles to achieve its high-level economic and trade cooperation goals in a similar way to the North American Free Trade Agreement (NAFTA) and the European Union. There have been two paths in the construction and development of free trade areas in the Asia-Pacific region: one is the Trans-Pacific path that the United States dominates, the other is the Asian path that China is trying to dominate. The former was developed based on TPP after the United States joined, and it gradually expanded. The latter was developed based on

⁶² *Supra* n. 52.

⁶³ Fan Ying, Characteristics, Influence of CPTPP and China's Countermeasures, *Contemporary World*, Vol. 38, No. 9, 2018, pp. 8-12; Hong Xiaodong, WTO Electronic Commerce Plurilateral Negotiations — Balancing and Gaming between Opening-up and Regulation, *Journal of WTO and China*, Vol. 11, No. 2, 2021, pp. 29-31.

the proposed China-Japan-South Korea Free Trade Agreement and further expanded.⁶⁴ The 14th Five-year Plan took note of this and proposed to “implement the strategy of upgrading free trade areas and build a global network of high-standard free trade areas”. Although both paths may eventually lead to a larger free trade area of the 21 economies in the APEC, the competition between the two paths is self-evident.⁶⁵

The achievement of the RCEP means that important progress has been made on the Asian path, although this progress has not been along the original Asian path. At the same time, this development does not mean that China has gained a dominant position in developing the Asia-Pacific free trade area, but shows that the United States’ withdrawal from the TPP was not a wise decision. Therefore, it is in the strategic interest of the United States to return to the TPP/CPTPP. Once the United States returns to the CPTPP, the Asia-Pacific region will reproduce the competition between these two paths of the free trade area. Therefore, it may be a strategic move for China to join the CPTPP before the United States returns, but this depends on the extent to which China accepts and enforces the requirements of the CPTPP and the willingness of CPTPP members to do so, as the CPTPP is more liberalized than the RCEP.⁶⁶

Compared with other mega-regional trade agreements, the RCEP is not a high-level free trade agreement. Its advantage lies in integrating the bilateral free trade agreements signed by the ASEAN and five other countries into a unified regional trade agreement covering a wider range. From the perspective of reducing non-tariff barriers in areas such as investment and service trade, after joining the RCEP, China still has a long way to go before it joins the CPTPP.⁶⁷ Moreover, some Chinese scholars have calculated that, in general, China’s bilateral value chain relationship is clearly asymmetrical: China is highly dependent on the value chain of developed economies, while low-income developing economies are more dependent on China’s value chain. For example, value

64 Ministry of Commerce of the People’s Republic of China, China-Japan-South Korea Free Trade Agreement, http://fta.mofcom.gov.cn/enarticle/chinarihen/chinarihennews/201912/42098_1.html (Last Visited on March 29, 2022).

65 Cheng Dazhong, Wang Ning and Zhen Yang, China’s Participation in the RCEP: Basis, Rules, Prospects, *Academic Monthly*, Vol. 53, No. 3, 2021, p. 47.

66 *Ibid.*

67 *Ibid.*

added from the top 20 economies accounted for more than 80 percent of the foreign value added to China's final goods (including domestic use and exports). Therefore, it has a strong representation. Since 2015, the four economies that China has needed most for its value chain have been the United States, Japan, Germany, and South Korea. The countries with the highest dependence on China's value chain among the top 20 RCEP economies are Indonesia, Malaysia, Thailand, and Singapore.⁶⁸

B. Actively Reform the Domestic Legal System for Trade in Services

Not only has the Chinese government declared its intention to join the CPTPP, but also the 14th Five-year Plan requires the government to improve its legal, policy, and service system to promote and protect its overseas investment opening policy of trade in services. China lacks laws and regulations in some fields of trade in services, while some of its domestic laws and regulations impose more constraints on opening, which makes it difficult for China to meet and adapt to the needs of modern trade in services. Therefore, promoting the reform of China's legal system has become the primary task of opening trade in services.

On one hand, China can benchmark the CPTPP's trade in services rules. In particular, the scope of application of trade rules, local presence, payment and transfer, transparency, and domestic regulations along with other terms should be carefully arranged with relevant laws, regulations, and departmental rules to improve the applicability to the CPTPP rules. For example, China can update and expand the *Foreign Trade Law of the People's Republic of China*, the *Foreign Investment Law of the People's Republic of China*, and their implementing regulations to centrally integrate the relevant rules of the Commercial Presence (Model 3) and distinguish them from the other three models of trade in services in the GATS. In addition, China can align them with the definition of Article 10.1 of the CPTPP (Definition) and Article 10.2 of the CPTPP (Scope). Moreover, it can promote the laws and legislation related to cross-border and digital trade in services as well as supplement and improve the guiding laws and regulations to apply Article 10.8 of the CPTPP (Domestic Regulations), Article 10.11 of the CPTPP (Transparency), and Article 10.12 of the CPTPP (Payments and

⁶⁸ *Ibid.*

Transfers).⁶⁹

On the other hand, the laws and regulations of various sectors and industries could be carefully arranged to benchmark the CPTPP's negative list for trade in services. Furthermore, it is necessary to learn from international society's classification method to improve the laws and regulations of domestic departments, clarify legislative subjects and powers, reduce opportunities for arbitrary interpretation, and not rely too much on administrative approval. The regulation procedures could be simplified in existing legislation, and pre-entry supervision can be changed to post-entry supervision.⁷⁰

C. Increase Transparency of Trade in Services Rules

The transparency of a country's service industry policy can help the market to form correct expectations, thereby avoiding market speculation and confusion, and establish a good reputation for the government, which can give enterprises investment confidence. However, it is challenging for China to simultaneously achieve policy transparency in all sectors and at all levels. Therefore, it is more feasible to introduce "transparency" based on types and levels.

First of all, to develop relevant rules and supervision systems in the service industry, proposals that do not involve national security or people's basic living needs can consider public suggestions. When formulating policies, the government can inspect and listen to opinions from a wide range of people and try to consider their proposals. This process could be open to the public or any interested parties. In addition, it is necessary to actively change policy formulation from a positive list to a negative list, simplify the policy system, and minimize the usage of vague terms. After the formulation of relevant regulations and related documents, the official website or online bulletin could be prioritized.⁷¹

Secondly, the specific administrative examination and approval could be simplified and made more transparent. From a process perspective, administrative approval involves disclosing approval procedures and policies, making application documents available and process transparent, providing feedback on

⁶⁹ *Supra* n. 52.

⁷⁰ *Ibid.*

⁷¹ *Supra* n. 25.

the approval results, and creating the post-approval service mechanism. In response, a digital platform can be built to link approvals to a package of websites, which would simplify enterprises' administrative approval process. At the same time, the differences in each province's approval procedures can be reduced, while the basic national-level procedures and local targeted procedures can be separated to reduce instances of filling in duplicate applications, thereby improving approval efficiency.

Thirdly, the administrative examinations that have been ruled can be promptly and fully informed to interested parties. In addition, the final examination results and the comments that enterprises and the public provided during the review period could also be disclosed on the official website. Other suggestions are to rapidly establish a post-approval service mechanism system, summarize special and typical events requiring approval that result from further opening the service industry, as well as promptly classify and systematically publicize the approved events and results.⁷²

D. Use Pilot Free Trade Zones to Expand Relevant Projects and Strengthen the Pressure Test

Unlike free trade zones outside China, institutional innovation is not only China's core driving force for constructing its pilot free trade zones or the Hainan Free Trade Port, but also its main task. Judging from the content of the overall plans, the task of "accelerating the transformation of government functions/deepening the reform of the administrative management system" has always been the first priority for the "main tasks and measures" of pilot free trade zones, and has been more important than "deepening investment field reform", "promoting trade transformation and upgrading", "deepening opening and innovation in the financial sector" and other economic tasks.⁷³

Therefore, it is time to increase the testing of the negative list management system. This system can promote the additional decentralization and transfer of some government administrative functions. In terms of text format,

⁷² *Ibid.*

⁷³ Li Xiaofu, Rethinking and Suggestions on the Practice of Statutory Board in Chinese Mainland, *China Legal Science*, Vol. 6, No. 5, 2018, pp. 94-96; Xu Hao and Li Xiaofu, Legal Conflict and Solve Path on the Management System in the Pilot Free Trade Zone, *Jiangnan Luntan*, Vol. 64, No. 11, 2021, pp. 111-113.

the Chinese government can learn from the statistics, classification, and compilation methods of developed countries. It can also try its best to conform to international format standards to achieve a clear context, provide detailed and specific regulations, as well as increase the list's transparency and understandability. Moreover, it can simplify its restriction methods and reduce its restrictions on qualification requirements. Most of the members' restriction methods in the CPTPP negative list for trade in services focus on local presence and national treatment. The Chinese government can choose its main restriction methods by considering its own characteristics. In addition, it can effectively classify its services sectors and further expand the opening of various departments. For example, it can carefully classify sensitive sectors such as finance, education, and culture. In terms of its sectors or departments that are more sensitive or insufficiently developed, it can use the second class of negative list (permission class, not forbidden class) to make reasonable reservations. As for sectors that are not particularly sensitive, it can further liberalize them by improving relevant laws and regulations. For example, vocational training in the education sector offers numerous opportunities based on improving laws and regulations.⁷⁴

Meanwhile, the Chinese government can test the relevant rules of trade in services in the CPTPP; increase pilot projects for telecommunications service rules, especially the alignment of rules such as transparency and international submarine cables; reasonably promote the opening of telecommunications services; accelerate the formation of e-commerce rules, especially cross-border data free flow rules, by rules prohibiting data localization and building data centers. It is important that pilot projects for the CPTPP's digital trade rules include aspects such as the localization of computing facilities, formulation of source code rules, and assessment of data export security. The Chinese government could actively benchmark the CPTPP's financial service clauses, such as national treatment and MFN, to promote the opening of the financial sector, diversification of financial market players, and marketization of factors, as well as further support the banking and securities industries. Last but not least, it is time to accelerate the introduction of rules for mutual recognition of qualifications in professional services, as well as reduce the cross-border mutual recognition of professional qualifications and the conditions and length of temporary

⁷⁴ *Supra* n. 52.

entry and temporary stay restrictions.⁷⁵

E. Introduce or Establish an Internationally Recognized Dispute Settlement Mechanism

The deepening of regional integration will greatly enhance regional economic activity. However, differences in economic systems, management methods, and enterprise development goals between countries mean that the opening up of the service industry will inevitably involve more frequent trade disputes. At present, the global service trade rules have not been fully established. Therefore, relying solely on the existing dispute settlement mechanisms may lead to unresolved disputes and reduce the enthusiasm of service enterprises. As a result, the Chinese government can introduce an internationally recognized dispute settlement body as soon as possible, or prioritize establishing cooperative supervisory bodies and committees within the contracting parties.⁷⁶

Actively introducing international dispute settlement institutions with the help of their systematic adjudication mechanism and discourse power is an ideal way to achieve several goals. It can ensure that professional institutions adjudicate regional disputes, accelerate dispute settlement, support impartial adjudication results between contracting parties, and increase multinational enterprises' investment confidence. Furthermore, it is capable of accelerating the establishment of internal regulatory cooperation agencies or committees of the contracting parties to centrally handle disputes within the regional trade agreement countries while supervising the implementation of the contracting parties' terms to realistically achieve the treaty's goals. By making rulings, accelerating case processing as well as analyzing and summarizing accumulated cases, it is possible for internal regulatory agencies or committees to more accurately find gaps in free trade agreements. This also increases the convenience of offering services that align more closely with the interests of regional countries and enterprises while the agreement is upgraded. Improving the ability to resolve regional disputes can also further enhance China's right to speak on

⁷⁵ *Ibid.*

⁷⁶ *Supra* n. 26, Todd Allee and Manfred Elsig (2016); Li Mingqian, Rethinking and Reforming the Investor-State Dispute Settlement Mechanism in the Context of Global Governance, *The Foundation for Law and International Affairs Review*, Vol. 1, No. 2, 2020, p. 21.

global economic issues. The COVID-19 pandemic has led to economic contraction in various countries, and has caused trade protectionism to further strengthen. The global economy has gradually developed from an open and win-win strategy to a beggar-thy-neighbor strategy. Therefore, gaining the right to speak during international governance has become a conflict for the next stage of economic development, and it is imperative to develop regional regulatory agencies and committees.⁷⁷

F. Further Enhance the Freedom of Cross-border Data Flow

The opening of the service industry is inseparable from improving the freedom of cross-border data. The restrictions on cross-border data in the RCEP mainly include classification of confidential information and customer information, processing of specific information, and the participation of public telecommunications networks in cross-border data channels. The essence of these is to take very strict control measures for cross-border data, and only provide positive permission for enterprise operation data. At the same time, localized data storage is internalized into foreign companies' compliance requirement, which inevitably leads to greater hindrances for foreign investment.

Articles 37 and 50 of the *Cybersecurity Law of the People's Republic of China* impose clear restrictions on the free flow of cross-border data and the localization of data storage. These requirements are further strengthened by extending security assessments to all subjects. The emphasis on censorship as well as regulation of data flow and storage has limited China's ability to reduce its digital trade barriers, which contradicts the claims of developed countries such as the United States, European Union members, and Japan. Information security affects the vital interests of citizens and is the basic requirement for the digital economy's sustainable development. The Snowden incident was an urgent reminder about the importance of global information security. In recent years, information leakage incidents caused by express delivery companies, job search platforms, and mobile applications have occurred frequently in China, exposing the existing laws' shortcomings in personal privacy protection and safe use. For example, the provisions on the right to delete and correct personal information in the *Cybersecurity Law of the People's Republic of China*

⁷⁷ *Supra* n. 25.

contradict users' actual operation requirements. Establishing a legal system that considers domestic needs and the development of international digital trade will be a major task for China.⁷⁸

As China's current data processing and analysis capabilities are still limited, and data differs from physical goods, and once it is lost, it cannot be recovered. As a resource with far-reaching development possibilities and losses without compensation, adopting a one-size-fits-all model can be somewhat successful and have a protective role, but protection is not the same as conservation. Therefore, first, more detailed and targeted classification measures can be adopted for Chinese data, while confidential, commercial user, and commercial operation data are more clearly defined. Secondly, in terms of localized storage of key data, a data island could be established in pilot free trade zones or data ports could be used to more securely store and operate foreign business data to reduce investment risks during foreign business services. Thirdly, the scope of public telecommunications network management could be narrowed. On the physical channel of data flow, the pilot will open up dedicated transmission channels for telecommunications data, and increase two-way channels for cross-border data flow.⁷⁹

V. CONCLUSION

It has been more than 20 years since China joined the WTO, and the 14th Five-year Plan is being implemented. The Chinese government's established policy is to commit to the opening of its service industry. However, there are still many differences in the details of the terms of the CPTPP and RCEP related to trade in services. In particular, the CPTPP insists that market orientation and weakening the awareness of government participation cannot be achieved in the RCEP. As a large developing country, if China wants to rapidly catch up with the development of the international service industry and increase the opening of the service industry, it should first identify its weaknesses, clarify the differences between the current international advanced standard systems,

⁷⁸ Hong Junjie and Chen Ming, Challenges and Countermeasures of Digital Trade Rules to China under the Framework of Mega Free Trade Agreement, *Intertrade*, Vol. 40, No. 5, 2021, pp. 4-11.

⁷⁹ *Ibid.*

and classify these according to their degree of implementation. Adjusting from easy to difficult, China has continuously stimulated the market's vitality and imagination on key issues such as policy formulation, regulatory transparency, service industry market openness, and data cross-border convenience while continually increasing the pace of opening its service industry.