

**Guidelines for
Trade with China under the RCEP Agreement**

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Chapter One An Overview of the RCEP and Economic and Trade Opportunities it Delivers

1. An Overview of the RCEP

1.1 The Signing and Implementation of the RCEP

Regional Comprehensive Economic Partnership Agreement (RCEP) was first proposed by the Association of Southeast Asian Nations (ASEAN) in 2012 and finally agreed in November 2020 after eight years of negotiation. Ten member states of the ASEAN and its five partners (Australia, China, Japan, New Zealand and the Republic of Korea) have joined the agreement. Its objective is to achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement, facilitating regional trade and investment growth and contributing to global economic development. RCEP Agreement entered into force for Australia, Brunei Darussalam, Cambodia, China, Japan, Lao PDR, New Zealand, Singapore, Thailand and Viet Nam on January 1, 2022; for the Republic of Korea on February 1; for Malaysia on March 18; and for China and Myanmar on May 1. The entry into force of the RCEP Agreement provides a stabler, opener, more transparent and facilitative environment for investors in the region, encourages foreign investment and accelerates regional economic development. It also marks the creation of the free trade area with the largest population, economy scale, and development potential in the world.

1.2 The Characteristics of RCEP

RCEP has so far formed the world's largest free trade area. In 2020, the agreement, covering 15 countries with a total population of 2.27 billion, contributed USD26 trillion of GDP and registered over USD10 trillion of total imports and exports, both accounting for about 30% of the global value. The statistics of the RCEP are higher than those of mega-regional trade agreements including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the United States-Mexico-Canada Agreement (USMCA) in terms of population, GDP and trade in goods. Covering major economies and emerging markets in East Asia, RCEP will promote the formation of an integrated market accounting for one-third of the global GDP, so as to boost regional and global economic growth.

RCEP integrates regional economic and trade rules. RCEP integrates the existing free trade partnership agreements between Australia, China, Japan, New Zealand and the Republic of Korea with the ASEAN+1 FTAs and builds new partnerships among China, Japan and Korea. The agreement deepens the regional industrial and value chains based on the rules of origin, encourages the development of cross-border logistics by advancing customs clearance facilitation through new technology, and enhances transparency in investment policies by promoting investment liberalization through the negative list, thus helping promote the optimization and

integration of regional economic and trade rules.

RCEP ensures both high-quality and inclusive development. The proportion of zero tariffs in goods trade will eventually be over 90% and the overall openness level in investment and service trade is significantly higher than that of the ASEAN+1 Free Trade Agreement. Intellectual property rights, e-commerce, competition policy, government procurement and other high-level modernization issues are also included in the agreement. Meanwhile, in consideration of the national realities of different countries, RCEP gives special and differential treatment to the least developed countries and meets the real needs of the developing and least developed countries to enhance capacity-building and achieve high-quality development by promoting economic and technology cooperation through regulations. In a word, RCEP has tried its best to balance diverse national interests and imperatives and help speed up the inclusive and balanced development of the region to make sure that its fruits of openness are shared by all parties.

1.3 The Great Significance of the RCEP for Regional Trade and Economy

RCEP will promote the integration of regional supply and value chains. RCEP will promote the integration of regional supply and value chains. Owing to the high degree of complementarity among the member states, production factors including capital, technology and labor are adequate in the region. The RCEP agreement will broaden market access in goods, services, investment and other sectors, set conformity rules of origin, customs procedures, sanitary or phytosanitary measures and technical regulations for all member economies in a bid to facilitate the free flow of economic factors, enhance the regional division of labor and cooperation, expand and upgrade the regional consumption market, as well as further develop the regional industrial, supply and value chains.

The implementation of the RCEP will greatly boost the confidence of all parties in economic growth. The global economic recovery is facing difficulties. In such a context, the RCEP agreement's determination to oppose unilateralism and protectionism, support free trade and uphold the multilateral trading system will definitely boost the confidence of all parties in economic growth. Since its entry into force on January 1, 2022, RCEP has been giving various policy support, providing new momentum to deepen the economic and trade cooperation between ASEAN and China. Based on the data from January to June 2022, the percentage of exports from China to RCEP member states had increased, while that of the exports to non-RCEP ones dropped by 1.11%. According to the calculation of a famous international think tank, by 2025, with the implementation of RCEP, the exports, foreign investment stock and GDP of member states are expected to surge 10.4%, 2.6% and 1.8% respectively compared to the baseline.

RCEP will significantly promote regional economic integration in East Asia. The building of the RCEP free trade zone is another milestone for regional economic integration in East Asia. It will provide a better comprehensive business environment to the region, efficiently reduce the system cost of enterprises in the utilization of the

FTAs, and enlarge the trade creation effect it brings. Also, RCEP will give more economic and technical support to the developing economies to gradually bridge the gap in the level of development among members and promote regional coordinated and balanced development, thus promoting the formulation of a new open development pattern of regional economic integration.

2. The Economic and Trade Opportunities RCEP Delivers to China and Other Contracting Parties

2.1 Cooperation Opportunities for Japan, South Korea and China

RCEP is the first free trade agreement between China and Japan, and it also represents the first time that China, Japan and South Korea have engaged in the same trade rules. The three countries, as the world's second, third and ninth-largest economies, with their total GDP far exceeding the eurozone and equalling the NAFTA in 2021, have truly become a global economic center. Accounting for over 82% of the total GDP, they play an important role in the RCEP. Over the years, China, Japan and South Korea have had strong business ties and converging interests. Under the RCEP framework, their attempts at tariff concession, market access, regional supply chains and other free trade approaches build an integrated mechanism for their cooperation, fill the gap of multilateral FTAs in North-east Asia and provide new opportunities to deepen their cooperation.

As for China-Japan economic and trade relationship, the value of trade between the two countries rose 17.1% to USD371.4 billion in 2021, compared to the corresponding period in 2020. The value of China's exports to Japan stood at USD165.85 billion, up 16.3% year-on-year. The value of China's imports from Japan reached USD205.55 billion, up 17.7% year-on-year.¹ Japan mainly exports electric and chemical products as well as transport equipment to China, While China mainly exports electric products, textiles and raw materials as well as furniture and toy to Japan. The electric products China and Japan exports are quite different. Japan exports more precision ones with high technology and imports low-end ones at cheap prices. In terms of investment, as one of the leading countries in science and technology, Japan remains at the top in industries like high-end manufacturing and artificial intelligence and has great potential to cooperate with China in energy conservation, auto parts, small and medium-sized enterprises, biological medicine, modern agriculture, elderly care and other areas. In recent years, Chinese enterprises' interests in investing in the digital economy in Japan have been increasing. With the global cross-border investment seriously impacted by the COVID-19 pandemic, the investment of Chinese enterprises in Japan has maintained stable growth. The total value of the merger announced by Chinese enterprises in Japan reached USD2.7 billion in 2020 and 2021. The top three most popular industries were technology, media and telecommunications (TMT), medical and life sciences, and advanced manufacturing and transportation. Owing to the RCEP taking effect on January 1, 2022, China has built a bilateral free trade

¹ PRC Ministry of Commerce. <http://data.mofcom.gov.cn>.

relationship with Japan for the first time and the two parties agreed to seek a bilateral tariff concession. According to the agreement, once Japan's tariff commitment is in force, 57% of goods imported from China are tariff-free; the percentage will be promoted to 75% within 11 years of entry into force and to 75% within 16 years; and the number will finally reach 88% within 21 years. China will, accordingly, adjust the percentage of zero-tariff goods imported from Japan to 86%. The implementation of the RCEP will strengthen economic and trade cooperation between China and Japan and deliver more development opportunities to them.

As for the economic and trade relationship between China and South Korea, since the two countries established diplomatic ties 30 years ago, the value of bilateral trade has expanded by over 50 times. China has been the largest trading partner of South Korea for 18 years, with the value of bilateral trade reaching USD362.4 billion in 2021, equivalent to the total value of South Korea's trade with the United States, Europe and Japan. The value of China's exports to South Korea stood at USD148.864 billion, up 32.4% year-on-year. The value of China's imports from South Korea reached USD213.487 billion, up 23.3% year-on-year. South Korea's trade surplus with China was USD64.623 billion. South Korea has competitive advantages in semiconductors, cutting-edge medical technology, precision optical instrument, electronics and telecommunications over China. In 2021, South Korea's investment in China rose 11.9% to USD4.04 billion. Chinese enterprises' non-financial direct investment in South Korea grew by 28.7% to USD340 million compared to the corresponding period in 2020.¹ Since China and South Korea signed a free trade agreement (FTA) in 2015, the two parties have implemented eight rounds of tariff cuts. Over 40% of goods that are in South Korea in origin are tariff-free when imported to China. The implementation of the RCEP agreement will further promote bilateral trade between China and South Korea. China will eliminate the tariff on 86% of Korean products in total, of which 38.6% will be eliminated on the date of entry into force; and South Korea will eliminate the tariff on 86% of Chinese products, of which 50.4% will be eliminated on the date of entry into force. A higher level of tariff concession will be achieved by the RCEP than the FTA of China and South Korea. For example, industrial products such as chemicals, machinery and automobiles are not covered in China's zero-tariff list in the FTA, but in the RCEP, China promises to eliminate the tariff of part of the chemical products on the date of entry into force, eliminate the tariff of machinery in the 10th year and that of auto parts progressively. Korea's RCEP tariff commitment to China also covers more products than in the FTA. Chinese and Korean enterprises can choose freely from FTA or RCEP and find favorable clauses to use.

2.2 Cooperation Opportunities for ASEAN and China

In recent years, China and ASEAN have become the largest trade partner of each other. Since 2009, China has been ASEAN's largest trade partner for 12 years in a row and ASEAN has been China's largest trade partner for two consecutive years since 2020. In 2021, the value of trade in goods between China and ASEAN grew by 28.1% to

USD878.2 billion compared to the corresponding period in 2020. The value of China's exports to ASEAN stood at USD483.69 billion, up 26.1% year-on-year. The value of China's imports from ASEAN reached USD394.51 billion, up 30.8% year-on-year. In terms of investment, in 2021, China's direct investment in ASEAN was USD14.35 billion and the top three investment destinations were Singapore, Indonesia and Malaysia. ASEAN's actual investment in China was USD10.58 billion and the top three investment sources were Singapore, Malaysia and Thailand.¹ There has been strong complementarity in the trade between China and ASEAN. As the structure keeps optimizing, the industrial and supply chains of the two parties have forged a strong link and partnership. The trading products are gradually transferring from traditional agricultural, preliminary processed and low value-added products to manufacturing, high value-added mechanical and electrical products, mechanical appliances and digital mechanical equipment.

Although China had signed the China-ASEAN FTA before, with the implementation of the RCEP, the divided clauses of the ASEAN+1 FTAs are integrated and the regional economic and trade rules are combined, which deepens the common development of regional industrial and supply chains and provides a significant opportunity to promote the business relationship between China and ASEAN. China will eliminate the tariff of 67.9% of goods imported from ASEAN on the date of entry into force and the number will increase to 90.5% with less than 5% of the exceptions. Tariff concession goods that are scheduled in the RCEP but not covered by the China-ASEAN FTA mainly include part of chemical products, chemical fiber and paper products. According to the data released by China's General Administration of Customs, in the first seven months of 2022, the value of China's imports and exports to ASEAN reached USD3.53 trillion, a growth of 13.2% year-on-year, and a rise of 7.5% year-on-year compared to other RCEP members. Both growth rates have increased relative to the level of the first six months of this year. China's import and export scale with ASEAN contributes nearly half of its trade scale with RCEP partners and over a seventh of its total value of foreign trade. Although the COVID-19 pandemic still drags on and the international situation is intricate, the system support of RCEP will not only boost the regional economic recovery, but also provide new drivers to promote the China-ASEAN comprehensive strategic partnership.

2.3 Cooperation Opportunities for Australia, New Zealand and China

In 2021, the economic and trade cooperation between Australia and China achieved stable development. China remained the largest trade partner in the goods, import source and export market of Australia. The data released by China's Ministry of Commerce showed that the value of bilateral trade grew 35.1% year-on-year to hit nearly USD231.2 billion. The value of China's imports from Australia stood at USD164.82 billion, up 40.6% year-on-year. Over the five decades since the two countries established diplomatic ties, economic and trade cooperation has been the most active and important force driving the bilateral relationship. While the investment of

¹ PRC Ministry of Commerce. <http://bn.mofcom.gov.cn>.

China in Australia has dropped in recent years, considering the overall investment in the past five years, industries including mining energy, infrastructure, agriculture and dairy processing remain attractive to Chinese enterprises.

China's economic and trade cooperation with New Zealand has made great achievements in recent years. The bilateral trade value of the two countries grew at an annual rate of 14% from USD4.4 billion in 2008 to USD24.7 billion in 2021. Since 2013, China has become the largest trade partner of New Zealand for several consecutive years. There is a strong complementarity between the economy of China and New Zealand. China is the major import source of New Zealand in mechanical and electrical products, transport equipment and textile. Animal products, agricultural and sideline products, wood and articles of wood and other goods from New Zealand are popular in the Chinese market and meet the increasing consumption needs of the Chinese people for high-quality products. The Chinese market has made great contributions to the economic development, income growth and employment expansion of New Zealand. In 2021, the value of exports of dairy, meat and wood products to China accounted for 42%, 42% and 65%, respectively, of New Zealand's overall export value.¹ The large and increasing middle class in China has provided significant opportunities for the exporters and investors of New Zealand. In April 2022, China and New Zealand signed a protocol on upgrading their free trade agreement, injecting new drivers into the enhancement of the practical cooperation between the two parties.

Though China signed bilateral free trade agreements with Australia and New Zealand separately, the rule of origin is different in the FTAs and the RCEP agreement. Enterprises are free to choose the most favorable rule to get access to the qualification and certificate of origin so as to apply for preferential tariff treatment. For example, according to the rule of the China-New Zealand free trade agreement, only food made from at least 40% of raw materials from New Zealand can be exported to China at the lowest tariff. With the implementation of the RCEP, companies in New Zealand can use raw materials from other RCEP members or ship goods to other countries for further processing and sell them in China. The entry into force sets easier access for member states to the export policy support and enables oversea enterprises to choose the most favorable rule of origin and enjoy the most preferential tariff treatment.

In a word, the RCEP agreement provides excellent opportunities for member states to promote regional and global markets. The RCEP member economies agree to one rule of origin for all goods trade which means that products are allowed to be produced or processed in several member states to satisfy the criteria instead of wholly obtained or produced by a single country. When determining the qualification of origin of goods, the clause of accumulation shall be applied to meet the RCEP regional export value content of 40% and enterprises should have less difficulty getting access to the preferential tariff treatment. It will encourage manufacturers to allocate production resources within the region based on the resource endowment and competitive areas of member states and help to form closer and more resilient industrial and supply chains, ensuring the stable production and operation of enterprises.

¹ PRC Ministry of Commerce. <http://nz.mofcom.gov.cn/article/jmxw/202204/20220403302916.shtml>

Chapter Two Trade in Goods

1. Schedule of Tariff Commitment of China under the RCEP

China's tariff schedules vary according to country. The commitment is separated into five tables for import products from ASEAN, Australia, New Zealand, South Korea and Japan. The tariff reduction consists of four modes: elimination on the date of entry into force, elimination within a specific period, partly cut and exceptions. The period can be ten, fifteen or twenty years. China's trade liberalization rates to the RCEP member states are between 86%-90.5%. Of which, its commitment level to ASEAN reached the highest level of 90.5%, to Australia and New Zealand at 90% and to Japan and South Korea at an average rate of 86%.

Table 2-1 Trade Liberalization Level in Goods for RCEP Member States¹

RCEP Member States	China to Member States (%)	Member States to China (%)
Brunei	90.5	97.9
Cambodia	90.5	87.1
Indonesia	90.5	89.5
Lao PDR	90.5	86.0
Malaysia	90.5	90.0
Myanmar	90.5	86.0
Philippines	90.5	91.3
Singapore	90.5	100
Thailand	90.5	85.2
Vietnam	90.5	86.4
Japan	86.0	88.0
South Korea	86.0	86.0
Australia	90.0	98.3
New Zealand	90.0	91.8

Table 2-2 Schedule of Tariff Commitment of China for Other Member States²

Country	Eventual Zero-tariff Rate			Partly Reduction	Exceptions
	Elimination on the Date of Entry into Force	Elimination within A Specific Period	Total		
Japan	25.0%	61.0%	86.0%	0.4%	13.6%
South Korea	38.6%	47.4%	86.0%	1.0%	13.0%

¹ Regional Comprehensive Economic Partnership Agreement. http://fta.mofcom.gov.cn/rcep/rcep_new.shtml.

² Regional Comprehensive Economic Partnership Agreement. http://fta.mofcom.gov.cn/rcep/rcep_new.shtml.

ASEAN	67.9%	12.6%	90.5%	5.4%	4.1%
Australia	65.8%	24.2%	90.0%	5.5%	4.5%
New Zealand	66.1%	23.9%	90.0%	5.6%	4.4%

1.1 Products China Imports from ASEAN

Based on the ASEAN+1 free trade agreements, China further opened its market for ASEAN goods including agricultural products like pineapple, coconut and pepper, part of chemical products, paper products, diesel engines, vehicle lighting and signaling devices and window lifter and will eventually eliminate the tariff of 80.5% of the ASEAN products. The tariff of 67.9% of the ASEAN goods has been eliminated on the date of entry into force. The major products are: chapter 3 (fish, crustaceans, mollusks and other aquatic invertebrates), chapter 7 (edible vegetables and certain roots and tubers), chapter 12 (oil seeds and oleaginous fruits; miscellaneous grains, seed and fruit; industrial or medicinal plants; straw and fodder), chapter 28 (inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes), chapter 39 (plastics and articles thereof), chapter 55 (man-made staple fibers), chapter 62 (articles of apparel and clothing accessories, not knitted or crocheted), chapter 63 (bed linen, table linen, toilet linen and kitchen linen), chapter 72 (iron and steel), chapter 73 (articles of iron or steel).

1.2 Products China Imports from Australia

China has a high level of opening to Australian industries, with over 40 2-digit HS codes reaching 100% liberalization, and promises to promote the percentage of zero-tariff goods to 90% eventually. The tariff of 65.8% of Australian goods has been eliminated on the date of entry into force. The major products are: chapter 3 (fish, crustaceans, molluscs and other aquatic invertebrates), chapter 7 (edible vegetables and certain roots and tubers), chapter 28 (inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes), chapter 29 (organic chemicals), chapter 61 (articles of apparel and clothing accessories, knitted or crocheted), chapter 62 (articles of apparel and clothing accessories, not knitted or crocheted), chapter 72 (iron and steel), chapter 84 (nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation), chapter 85 (electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles), chapter 90 (optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof).

1.3 Products China Imports from New Zealand

New Zealand shares the same level of opening from China as Australian industries. With over 40 2-digit HS codes reaching 100% liberalization, China also promises to promote the percentage of zero-tariff goods to 90% eventually. The tariff of 66.1% of goods from New Zealand has been eliminated on the date of entry into force. The major products are: chapter 1 (live animals), chapter 3 (fish, crustaceans, mollusks and other aquatic invertebrates), chapter 7 (edible vegetables and certain roots and tubers), chapter 12 (oil seeds and oleaginous fruits; miscellaneous grains, seed and fruit; industrial or medicinal plants; straw and fodder), chapter 28 (inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes), chapter 55 (man-made staple fibers), chapter 62 (articles of apparel and clothing accessories, not knitted or crocheted), chapter 63 (bed linen, table linen, toilet linen and kitchen linen), chapter 72 (iron and steel).

1.4 Products China Imports from South Korea

China enhanced the tariff support for South Korea based on the former FTA. Textile, stainless steel and other goods imported from South Korea are now tariff-free and the tariffs on 16 categories of goods including animal products, plants, food, beverages, tobacco, transportation and textile and clothing are significantly reduced. China will eventually promote the percentage of zero-tariff goods to 86% for South Korea, of which 38.6% has taken effect on the date of entry into force. The major products are: chapter 12 (oil seeds and oleaginous fruits; miscellaneous grains, seed and fruit; industrial or medicinal plants; straw and fodder), chapter 16 (preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates), chapter 26 (ores, slag and ash), chapter 46 (wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork), chapter 50 (silk), chapter 71 (natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metals and articles thereof; imitation jewelry; coin), chapter 73 (articles of iron or steel), chapter 85 (electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles), chapter 90 (optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof), chapter 95 (toys, games, and sports requisites; parts and accessories thereof).

1.5 Products China Imports from Japan

China's tariff commitment to Japan will take effect in the first, eleventh, sixteenth and twenty-first year from the date of entry into force, respectively. In the first year of the implementation of RCEP, the tariffs of 68.7%, 38.1%, 32.8% and 30.8% of mining, chemical, fuel and metal products will be eliminated. In the first eleven years, the tariffs of 83.3%, 82.6%, 75.4%, 74.8% and 72.6% of textile and clothing, chemical, mining, cheap metals and articles thereof and leather products will be dropping progressively

and eventually be eliminated. In a long term, after 21 years of its implementation, 65% of goods of all categories except for wood articles and transportation will be added to the zero-tariff list.

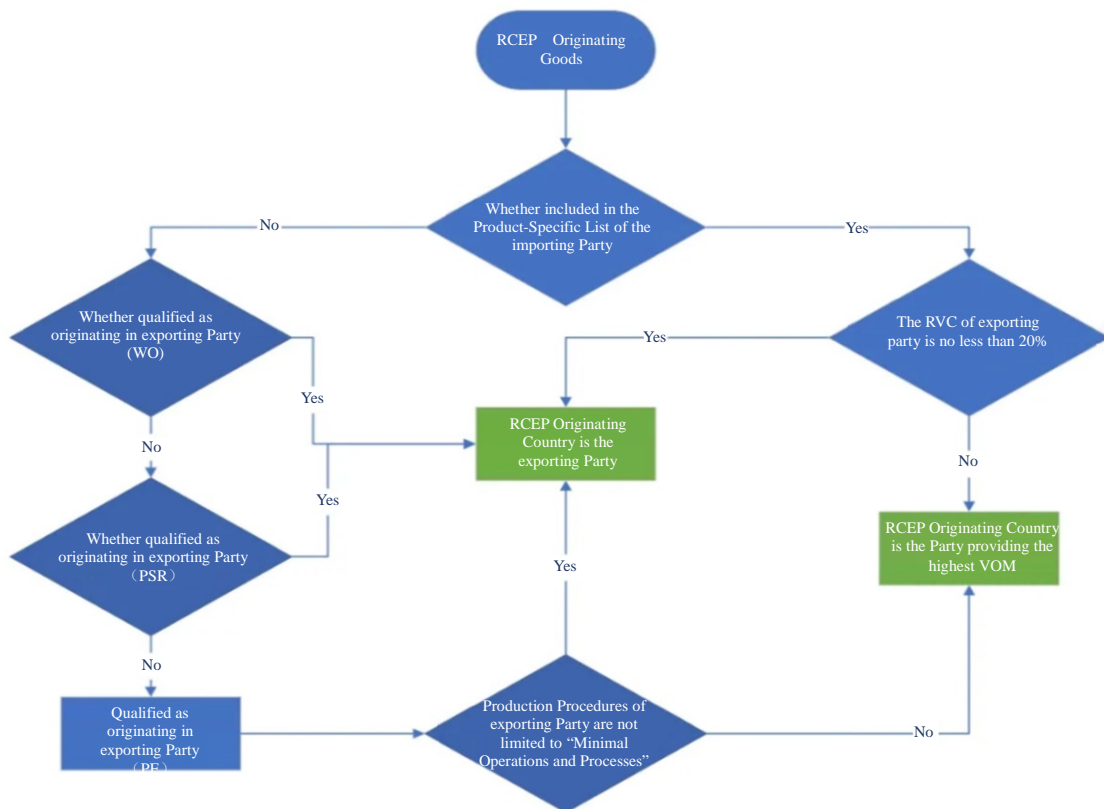
2. The Implementation of Rule of Origin in China

2.1 Trade in Goods Qualifying as Originating

RCEP Provisions on the Rule of Origin

To get access to the preferential tariff treatment of the RCEP, import and export goods must fit the rule of origin. Chapter 3 of the RCEP, the rule of origin, consists of product-specific rules and general rules. The former is the rule of origin for specific goods and the major criteria to determine whether a good is qualified as originating. The latter is a general rule applicable to all goods and is an important complement to the former. According to the RCEP, a good shall be treated as an originating good if it is: (1) wholly obtained or produced in a Party (the specific provisions are the ten cases in Article 3.3); (2) produced in a Party exclusively from originating materials, i.e. in the production of the final product, all raw materials and components used have acquired the qualification of origin; (3) produced in a Party using non-originating materials, provided the good satisfies the applicable requirements set out in Annex 3A. Apart from the above conditions, there are general rules provided in the chapter to help confer on the originating status of a good: Minimal Operations and Processes (Article 3.6), *De Minimis* (Article 3.7), Packing Materials and Containers (Article 3.8), Accessories, Spare Parts, and Tools (Article 3.9), Indirect Materials (Article 3.10), Fungible Goods or Materials (Article 3.11), Materials Used in Production (Article 3.12), Unit of Qualification (Article 3.13), Direct Consignment (Article 3.15). One of the most important roles the general rules play is to lower or raise the limit of the product-specific rules towards originating goods through proper rule arrangements. For example, *De Minimis* can be utilized to relax the rule of origin and lower its influence on determining whether a good is originating; meanwhile, it can also make the rule stricter by introducing Minimal Operations and Processes.

Cumulation, as the biggest highlight of the rule of origin, allows the drawing of the originating materials from across 15 RCEP economies. As the value content from any member will be taken into consideration, the utilization of the agreed tariff benefits will be largely improved. For example, a good that failed to be treated as an originating good according to the former bilateral FTA could be recognized as originating and receive tariff benefits through the application of cumulation. Once the Parties conclude the review within five years, manufacturers and exporters can purchase raw materials and intermediate products from across the RCEP economies and, as long as the value content level reached 40%, the finished product can be treated as an originating good and shipped into all 15 countries with tariff benefits.



Graphic 2-1 RCEP Operational Procedures of Origin

China's Provisions on the Rule of Origin

Measures for the Administration of the Origin of Import and Export Goods under the RCEP of the Customs of the People's Republic of China (hereinafter referred to as *Measures for the Administration of the Origin*) came into effect on January 1, 2022. It is applicable to the administration of the origin of import and export goods of RCEP members. The list of members will be announced through the notice in a dynamic way (Article 2) and chapter 2 is the rule of origin under the RCEP agreement.

Measures for the Administration of Origin set a dual concept of origin. We can first determine whether the good is qualified as originating among the RCEP countries, then the specific country or region of origin; or we can skip the step after determining that the good is originating and the consignee of the imported goods may directly apply for the maximum tariff rate imposed by the importing country on the same goods of other member states (Article 27).

The product-specific rules are mainly stipulated in article 3 and other related provisions of the *Measures for the Administration of Origin*. Referring to the relevant provisions of the RCEP, it is divided into three parts: (1) wholly obtained or produced by a Party (as provided in Article 4); (2) produced in a Party exclusively from originating materials; (3) produced in a Party using non-originating materials, provided the good satisfies the applicable requirements set out in the product-specific rules

including change in tariff classification, regional value content and manufacturing procedures. Apart from the above conditions, there are general rules provided in chapter two of the *Measures for the Administration of Origin* to help confer on the originating status of a good: Minimal Operations and Processes (Article 5), *De Minimis* (Article 8), Packing Materials and Containers (Article 9), Accessories, Spare Parts, and Tools (Article 10), Indirect Materials (Article 11), Fungible Goods or Materials (Article 12), Unit of Qualification (Article 13), Direct Consignment (Article 17).

When a good qualifies as originating, if it is in the list of specific goods, and the regional value content of the good is no less than 20%, then the export member state shall be treated as an originating country; if it is not in the list of specific goods, then the originating country is an export member state if it: (1) is wholly obtained or produced in a Party; (2) is produced in a Party using non-originating materials and satisfies the substantive change of the product-specific rules; (3) is produced in a Party using originating materials and the procedures are not limited to minimal operations and processes.

How to Apply the Rule of Origin of the RCEP

There are three steps for enterprises to determine whether the export good is originating according to the product-specific rules; (1) find the list of the product-specific rules of origin from the RCEP rule of origin in the China Free Trade Zone Service Network or the FTA of the CCPIT; (2) identify the HS Code of the export good; (3) locate the applicable clauses in the product-specific rules according to the HS Code.

Meanwhile, enterprises can also resort to the general rule of origin and choose the preferable measures to meet the requirements by using the following table.

Table 2-3 How Can Enterprises Use the Criteria of the General Rule of Origin

Name of the Rule	Impact on the Qualification of Origin	Friendliness to Enterprises
Cumulation	Lower the limit	Friendly: available for use
<i>De Minimis</i>	Lower the limit	Friendly: available for use if a good does not satisfy a change in tariff classification
Accessories, Spare Parts, and Tools	Only applied to special products and has no effect on other ones	Medium: Available on demand
Minimal Operations and Processes	Raise the limit	Use with caution
Indirect Materials	Only applied to special products and has no effect on other ones	Medium: Available on demand

Direct Consignment	Raise the limit	Use with caution
Packing Materials and Containers	Only applied to special products and has no effect on other ones	Medium: Available on demand
Fungible Goods or Materials	Only applied to special products and has no effect on other ones	Medium: Available on demand
Unit of Qualification	Only applied to special products and has no effect on other ones	Medium: Available on demand

2.2 Provisions on Operational Certificate Procedures

RCEP Provisions on Operational Certificate Procedures

Pursuant to the provisions of the RCEP, to claim the preferential tariff treatment, importers shall: (1) state the preferential tariff on the customs declaration (2) provide the Proof of Origin (2) provide the proof of direct consignment. Both a Certificate of Origin and a Declaration of Origin can be considered Proof of Origin. A Proof of Origin shall be in writing, in the English language, and in a format notified by an importing Party. Firstly, a Proof of Origin shall contain information that meets the minimum information requirements as set out in Annex 3B. Secondly, the Declaration of Origin shall only be completed by the approved exporter. Apart from the minimum information requirements, the Declaration of Origin shall also bear the name and signature of the certifying person and the date on which the Declaration of Origin was completed. Approved Exporter is provided in Article 3.21. Each party can provide for the authorization of an exporter who exports goods as an approved exporter in accordance with its laws and regulations. Please refer to the competent authority of the importing party for specific rules. Once granted as an approved exporter, the enterprise becomes eligible to complete a Declaration of Origin. The approved exporter shall bear the corresponding legal responsibilities to ensure that its Declaration of Origin is legitimate and cooperate with the competent authority to verify the originating status of the good. Attention should be paid to the Back-to-Back Proof of Origin provided in Article 3.19 of the Rule of Origin. For export goods imported with preferential tariff and sold in an intermediate Party, if the total quantity re-exported under the partial shipment does not exceed the total quantity of the original Proof of Origin, then a back-to-back proof of origin can be issued and the re-shipped goods shall be imported again with an agreed tariff provided that the period of validity of the back-to-back Proof of Origin does not exceed the period of validity of the original Proof of Origin, which greatly improves the flexibility of enterprises in marketing strategy making and logistics arrangements.

Besides, the customs of the importing Party may conduct a verification process for the purpose of determining whether the good imported qualifies as originating in accordance with Article 3.24 by means of requesting additional information from the importer, or a verification visit to the premises of the exporter or producer in the

exporting Party, etc. The customs authority of the importing Party may suspend the application of preferential tariff treatment while waiting for the result of verification. The customs authority of the importing Party may determine that a good does not qualify as an originating good and may deny preferential tariff treatment where it has not received sufficient information to determine that the good is originating, or the exporter or importer fails to respond to a written request for information as required or other special conditions as provided in Article 25.

China's Provisions on Operational Certificate Procedures

China's provisions on operational certificate procedures consist of *Measures for the Administration of the Approved Exporters of the Customs of the People's Republic of China* and *Measures for the Administration of the Origin*, which both came into effect on January 1, 2022.

Firstly, according to Chapter Four of the *Measures for the Administration of the Origin*, a good proved to be originating by the RCEP Agreement, when going through import customs clearance procedures in China, may choose to apply the corresponding agreed tariff rate (Article 25) in accordance with the regulations of the competent customs with the following documents: (1) a valid Proof of Origin under the RCEP; (2) the commercial invoice; (3) all the shipping documents in respect of the good (Article 26). Of which, the Proof of Origin consists of the Certificate of Origin and the Declaration of Origin. The *Measures for the Administration of the Origin* explains the criteria that the Certificate of Origin and the Declaration of Origin shall meet (Articles 18 to 21) as well as the applicable scope and the criteria that the back-to-back Proof of Origin shall meet (Articles 22 and 23). The back-to-back Proof of Origin allows the originating good which does not undergo any further processing to be re-shipped or re-exported without losing its originating status, which is essentially an endorsement of the initial certificate of origin by the reshipping or re-exporting member.

Secondly, approved exports may complete the Declaration of Origin as provided in Article 39 of the *Measures for the Administration of the Origin*. As for the management of the approved exporters, please see Article 4 of *Measures for the Administration of the Approved Exporters of the Customs of China*. Specific conditions are listed in the following figure. Once granted as an approved exporter, the enterprise becomes eligible to complete a Declaration of Origin.



Graphic 2-2 Specific conditions for Approved Exporter¹

¹ Measures of the Customs of the People's Republic of China for the Administration of Approved Exporters. http://www.gov.cn/gongbao/content/2022/content_5678088.htm.

3. Customs Procedures and Trade Facilitation

3.1 RCEP Provisions on Customs Procedures and Trade Facilitation

Chapter 4 of the RCEP Agreement is about customer procedures and trade facilitation. It made a higher-level promise than the Trade Facilitation Agreement of the WTO and enhanced the clauses of trade facilitation. The key clauses include: promoting efficient administration of customs procedures, advancing ruling with regard to tariff classification, whether the good is an originating good and customs valuation; simplifying the import, export and cross-border procedures for special operators (authorized operators); and the risk management system for customs control and post-clearance audit and so on.

As for the simplified customs procedures, pursuant to Article 4.11 of the RCEP Agreement, goods shall be cleared from customs, to the extent possible, within 48 hours of the arrival of goods and submission of all the necessary information for customs clearance and perishable goods to the extent possible in less than 6 hours. As provided in Article 4.15, goods entered through air cargo facilities shall be released within six hours when possible, after the arrival of the goods and submission of the information required for the release. To promote the efficient release of goods, according to Article 4.17, each Party is encouraged to measure the time required for the release of goods by its customs authority periodically and in a consistent manner using tools such as the *Guide to Measure the Time Required for the Release of Goods* issued by the World Customs Organization, with a view to assessing its trade facilitation measures and considering opportunities for further improvement of the time required for the release of goods.

In terms of the Authorized Economic Operator (AEO) system, according to Article 4.23, each Party shall provide at least three additional kinds of trade facilitation measures related to the import, export and cross-border procedures to AEO. Enterprises of different levels of AEO enjoy different kinds of treatment. The average inspection rate of import and export goods of enterprises with general AEO certification is less than 50 % of that of enterprises with general credit, and the average inspection rate of import and export goods of enterprises with advanced AEO certification is less than 20% of that of enterprises with general credit. Enterprises with advanced AEO certification can submit the declaration to customs before the arrival of goods to save the time of customs clearance.

As for the advance ruling system, Article 4.10 of the RCEP Agreement requires that each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing the all necessary information, with regard to tariff classification, whether the good is an originating good and the appropriate method or criteria, and the application thereof, to be used for determining the customs value. Besides, each Party shall adopt or maintain procedures for issuing advance rulings, which shall be issued, to the extent possible within 90 days, to the applicant.

In terms of the treatment of goods before arrival, pursuant to Article 4.8 of Pre-shipment Inspection, each Party shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation and is encouraged not to introduce or apply new requirements regarding their use. With regard to pre-arrival processing, pursuant to Article 4.9, each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

The Agreement also aims at promoting cooperation among the customs authorities of the Parties, encouraging them to help each other and share information and experience on customs management and development. China has signed nine bilateral Customs Mutual Assistance Agreements with 14 RCEP member states. Moreover, Article 4.5 of transparency requires that each Party shall publish, promptly on the Internet, laws and regulations relating to import, export and cross-border procedures, and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations.

3.2 China's Provisions on Customs Procedures and Trade Facilitation

In terms of customs procedures and trade facilitation, to keep optimizing customs procedures, promoting its efficiency and lowering its cost, the General Administration of Customs of China will focus on implementing the rules of RCEP trade facilitation from six aspects.

The first is to keep simplifying the documents needed for import and export control. As of the end of 2021, the number of documents required for import and export verification has been reduced from 86 in 2018 to 41, a decrease of 52.3%. In addition to confidentiality and other special circumstances, the remaining 38 documents can all be applied through the international trade 'single window' to achieve online application, network verification and paperless customs clearance. The second is to further clean up and standardize the port charges. The regulatory authorities of local ports will gradually adopt the charging catalog listing system, strengthen the dynamic update of information, improve the transparency and comparability of port charges, and further reduce the compliance costs of import and export. Third, to meet the requirement of the RCEP about simplifying customs procedures for the efficient release of goods in order to facilitate trade, and to promote the reform of paperless clearance, Chinese customs will implement the procedures of "submission of documents in two steps" and "pre-arrival processing", keep optimizing the operation process, standardize and simplify customs control procedures. China will also encourage RCEP member economies to optimize their own operation process, standardize and simplify their customs control procedures, and initiate a joint review of customs procedures. The fourth is to specifically formulate the implementation plan of AEO mutual recognition between China and RCEP member countries, and clarify the specific implementation plans and measures. Among the ten RCEP member states who had established AEO systems, China has, until now, signed AEO mutual recognition arrangements with five members, completed the mutual

recognition negotiation with Malaysia and is actively promoting mutual recognition cooperation with Thailand, Viet Nam, Indonesia and the Philippines. Fifth, to keep in line with the RCEP rules of encouraging each Party to publish the time required for the release of goods, the General Administration of Customs will publish the overall customs clearance time of import and export goods nationwide and provincially to each province (district, city) every quarter, to further enhance the transparency and predictability of import and export customs clearance time. Sixth, actively carry out the pilot test. Conduct relative measures as trials in the comprehensive bonded area in Shanghai, Guangdong, Tianjin, Fujian and other free trade pilot areas, such as determining the acceptable range of “minor errors” under the RCEP Certificate of Origin.¹

4. Animal and Plant Quarantine

4.1 RCEP Provisions on Sanitary and Phytosanitary Measures

The provisions on the sanitary and phytosanitary measures are detailed in Chapter 5 of the RCEP agreement. The objective of the chapter is to protect human, animal or plant life or health in the Parties through the development, adoption, and application of sanitary and phytosanitary measures, while facilitating trade by minimizing the negative effects on trade among the Parties. The chapter consists of equivalence and bilateral recognition arrangements on the equivalence, transparency, adaptation to regional conditions, risk analysis, and a series of procedural provisions including audit, certification, import checks and emergency measures.

Equivalence means that an importing Party shall recognize the equivalence of a sanitary or phytosanitary measure if an exporting Party objectively demonstrates to the importing Party that the exporting Party’s measure achieves the same level of protection as the importing Party’s measure, or that the exporting Party’s measure has the same effect in achieving the objective as the importing Party’s measure. To achieve bilateral recognition arrangements on the equivalence, the exporting Party shall provide the necessary information and access for inspection and testing in order for the importing Party to commence an equivalence assessment, while the importing Party shall, upon request, explain the process and plan for making an equivalence determination.

In terms of transparency, each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 5.15 (Contact Points and Competent Authorities), or already established communication channels of the Parties.

4.2 China’s Provisions on Animal and Plant Quarantine

Law of the Peoples Republic of China on the Entry and Exit Animal and Plant

¹ PRC General Administration of Customs. <http://www.customs.gov.cn>.

Quarantine, adopted on April 1, 1992 and amended in 2009, contains provisions on entry quarantine, exit quarantine, transit quarantine, quarantine of materials carried by passengers or by post, and quarantine of means of transport, etc. *Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine*, which came into effect on January 1, 1997, provides specific provisions for the *Law on the Entry and Exit Animal and Plant Quarantine* formulated by the state council. So far, there haven't been any new or amended laws and regulations on Animal and Plant Quarantine in China. According to the General Administration of Customs, China will, upon the implementation of the RCEP, screen out the access mechanism of entry agricultural products by utilizing the strong complementarity of its cooperation with other RCEP members on Animal and Plant Quarantine. Moreover, we will promote the upgrading of the China-ASEAN Animal and Plant Quarantine and Food Safety Cooperation Information Network to strengthen animal and plant epidemic information sharing and enhance international epidemic monitoring cooperation with RCEP members. China amended the *Law of the People's Republic of China on Import and Export Commodity Inspection* in 2021 and made it clear that customs may adopt the test results of domestic and foreign inspection institutions and implement catalogue management for the adopted institutions, which provided a new approach for the cooperation on conformity assessment procedure with RCEP members.

5. Technical Barriers to Trade (TBT)

5.1 RCEP Provisions on TBT

Chapter 6 of TBT of the RCEP Agreement shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods among the Parties. It not only enhances the implementation of the TBT Agreement of WTO, but also promotes the mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures. Meanwhile, it ensures that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade and strengthens information exchange and cooperation among the Parties in the field of standards, technical regulations, and conformity assessment procedures to fit the TBT agreement of WTO.

With respect to standards, each Party shall ensure that its standardizing body or bodies that prepare, adopt, and apply national standards accept and comply with Annex 3 of the TBT Agreement. In terms of technical regulations, each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Also, each Party shall consider available alternatives, and give positive consideration to accepting as equivalent, technical regulations of another Party. As for the conformity assessment procedures, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures.

5.2 China's Provisions on TBT

In terms of TBT, WTO/TBT-SPS Notification and Enquiry of China, as a contacting point, is responsible for the exchange of information on facilitating standards, technical regulations and conformity assessment procedures.¹ The scope of consultation includes any existing and formulating or revising TBT technical regulations in China; any existing and formulating or revising TBT standards in China; any current conformity assessment procedures in China; China's qualifications or participation in international or regional institutions or systems, and other technical issues.

The procedures of consultation are: (1) Collecting: WTO Members should fill in the TBT consultation form as required when consulting about China's TBT issues. (2) Informing: the consultant will be informed that the consultation has been received within two working days. (3) Responding: replies should be received within 10 working days; if the consultant cannot be responded in time, then he should at least be told the reason. Questions covering several departments shall be answered by these departments separately, then summarized by the contact point before responding to the consultant. For highly professional questions, WTO/TBT-SPS Notification and Enquiry of China will consult the expert team before responding to the consultant. (4) Sending and Receiving: the answer will be sent to the consultant through the mail, fax or post, and the text or draft of TBT technical regulations and standards will be posted as required. (5) Recording: the question and its answer will be put into the record for further reference.

6. Trade Remedies

6.1 RCEP Provisions on Trade Remedies

Chapter 7 of the RCEP Agreement is about trade remedies, which mainly includes Transitional RCEP Safeguard Measure, Anti-dumping and Countervailing Duties and Annex 7A--Practices Relating to Anti-dumping and Countervailing Duty Proceedings.

Transitional RCEP safeguard measure is detailed in Article 7.2, namely, when an originating good of another Party or Parties collectively is being imported into the territory of a Party in substantially increased quantities, and under such conditions as to cause or threaten to cause serious injury to its domestic industry, the importing Party may suspend the further reduction of any rate of customs duty on the originating good, or increase the rate of customs duty on the originating good. The Agreement also listed the investigation procedures (Articles 7.3 and 7.4), scope and duration (Article 7.5), restriction measures (Article 7.6), and compensation (Article 7.7) of transitional RCEP safeguard measures. Compared to the Safeguards Agreement of WTO, the target of transitional RCEP safeguard measures is more obvious, as they focus on providing remedies to Parties who suffered damages from performing the agreed tariff cut.

¹ WTO/TBT-SPS Notification and Enquiry of China. <http://www.tbt-sps.gov.cn/page/cwto/aboutus.action>

In terms of anti-dumping and countervailing duty, the Agreement retains the rights and obligations of the Parties under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement, and details the rules of notification before investigation, the revelation of basic facts, treatment of confidential information and the legal procedures of notification and consultation in Section 2 to improve the transparency of the investigation and the legitimacy of the procedure. The chapter also set regulations on the prohibition of zeroing in written words for the first time.

Annex 7A of the RCEP Agreement gives, with regard to anti-dumping and countervailing duty, the interested Party opportunity to remedy or explain the deficiency in the request for information. Moreover, in accordance with the content of “undertakings” in the annex, when the importing Party’s investigating authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the importing Party affords due consideration, and provides an opportunity for consultations, to exporters of the exporting Party regarding the proposed price undertaking which, if accepted, results in suspension of the investigation without the imposition of anti-dumping duties. At the end of the Annex, it is required that a public notice of final determination shall make available the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities.

6.2 China’s Provisions on Trade Remedies

On May 12, 1994, China published the *Foreign Trade Law of the People's Republic of China*, introducing international anti-dumping and countervailing duty proceedings and safeguard measures to our country for the first time and making principal regulations on them. In 2001, according to the objective needs of China's entry into WTO, the State Council issued the *Anti-Dumping Regulation of the People's Republic of China*, *Countervailing Regulation of the People's Republic of China* and *Regulation of the People's Republic of China on Safeguard Measures*. China's Ministry of Commerce has successively issued 26 departmental regulations including the *Provisions on the Antidumping Investigation of Industry Injury*. In November 2002, the Supreme People's Court reviewed and published two judicial interpretations: *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Hearing of Anti-dumping Administrative Cases* and *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Hearing of Countervailing Administrative Cases*. In 2004, the *Foreign Trade Law of the People's Republic of China* was amended by adding Chapter Seven Foreign Trade Investigation and Chapter Eight Foreign Trade Relief, expanding and improving the legal system for safeguarding industrial security in accordance with the specific rules of WTO. In April 2018, China further improved and amended departmental rules including *Rules on the Mid-Term Review of Dumping and Dumping Margin*, *Rules on the Hearings for Anti-Dumping and Countervailing Investigations* and *Rules on Anti-Dumping Questionnaire Surveys*.

From China’s entry into WTO to November 2021, according to the statistics law of WTO, China had conducted 262 anti-dumping investigations on the import goods

from 28 countries and regions (106 according to the statistics law of China), among which, anti-dumping measures had been adopted to 219 cases (87 according to the statistics law of China) and three cases are still under investigation (3 according to the statistics law of China). Since 2009, we had carried out 17 countervailing investigations (17 according to the statistics law of China), among which, countervailing measures had been adopted for 10 cases (10 according to the statistics law of China), and three cases are still under investigation (3 according to the statistics law of China); also, China has made investigations on two cases of safeguard measures.¹

¹ PRC Ministry of Commerce. <http://lgj.mofcom.gov.cn>.

Chapter Three Trade in Services

1. China's Commitments for Services under the RCEP

1.1 The Main Composition of RCEP Rules of Trade in Services

In accordance with the related rules in Chapter 8 of the RCEP Agreement, the trade in services consists of four modes including cross-border supply, consumption abroad, commercial presence and presence of a natural person. The RCEP rules of trade in services are mainly included in Chapter 8 “Trade in Services” (including three Annexes: Annex of Financial Services, Telecommunications Services and Professional Services), Chapter 9 “Temporary Movement of Natural Persons” and Chapter 10 “Investment”. Of which, Chapter 8 includes rules such as a schedule of commitment of market access, national treatment, most-favored-nation treatment, and other local and domestic regulations and makes specific commitments for the openness of sectors; Chapter 9 details the promises of the temporary entry and temporary stay for the natural person of a Party and sets rules on such entry and stay; and Chapter 10 is about the protection rules of the investments in services. Through the above rules and regulations, the RCEP agreement sets out the obligations and disciplines of the Parties related to trade in services, so as to eliminate restrictive and discriminatory measures, expand the market and promote regional trade growth in services.

1.2 China's Specific Commitments on Trade in Services under the RCEP

In accordance with the RCEP and in terms of the trade in services, China has adopted a positive list approach to make commitments through national treatment, market access, additional commitments, and time limits. It has committed to opening up about 122 sectors, reaching the highest level of the existing free trade agreements, and gradually transitioning to a negative list approach within six years after the entry into force of the agreement.

Market Access

In sectors of business, telecommunications, distribution, financial and transport services, foreign investors are allowed to enter the Chinese market once certain restrictive conditions or requirements are met. As for its sub-sector of professional services, foreign law firms can provide legal services only in the form of representative offices; for medical and dental services, foreign-invested hospitals or clinics with Chinese partners are permitted; for market research services, services related to management consulting, placement services of personnel and printing services, only partly foreign-invested enterprises are permitted and economic needs tests are required; for telecommunications services, foreign investment in the enterprises shall be no more than 50%; for mobile voice and data services, foreign investment in the enterprises shall be no more than 49%; for educational services, partly foreign-invested schools are

permitted; and for CRS and aircraft repair and maintenance services, the Chinese side shall hold controlling shares or be in a dominant position in the enterprises.

Most-Favored-Nation Treatment

China has committed to granting favorable treatment to RCEP member states no less than that to other countries covering a total of 32 sub-sectors. They are: legal services (excluding Chinese law practice), taxation services, scheme design of architectural services and others, scheme design of engineering services and others, scheme design of integrated engineering services and others, scheme design of urban planning services and others, management consulting services, services incidental to forestry, building-cleaning services, packaging services, convention services, translation and interpretation services, courier services, cinema theater services, construction and related engineering services, franchising of distribution services, sewage services, solid waste disposal services, cleaning services of exhaust gases, noise abatement services, sanitation services, nature and landscape protection services, other environmental protection services, hotels (including apartment buildings) and travel related services, rail transport services, freight transportation by road in trucks or cars, interurban regular transportation and freight forwarding agency services.

Ratchet Liability

To promote future liberalization and ensure the achievements of openness, China's future liberalization (FL) commitments cover 24 sub-sectors. They are: legal services (excluding Chinese law practice), taxation services, scheme design of architectural services and others, scheme design of engineering services and others, scheme design of urban planning services and others (except general urban planning), consultancy services related to the installation of computer hardware, maintenance and repair services of office machinery and equipment including computers, management consulting services, technical testing and analysis services, services incidental to forestry, building-cleaning services, packaging services, convention services, translation and interpretation services, courier services (except for those specifically reserved to Chinese accession to WTO on December 11, 2001), cinema theater services, franchising of distribution services, hotels (including apartment buildings) and travel related services, rail transport services, freight transportation by road in trucks or cars, interurban regular transportation and freight inspection covered by CPC 749 (excluding statutory inspection services for freight inspection services).

National Treatment

China is completely open in sectors including consultancy services related to the installation of computer hardware, data processing and tabulation services, time-sharing services, advertising services, franchising, wholesale or retail trade services away from a fixed location, part of the sporting and recreational services, maritime

agency services, professional design services and hairdressing and other beauty services, and gives full national treatment to foreign businessmen of these sectors.

Local Presence

According to the clause, a Party making commitments in accordance with Schedules of Non-Conforming Measures shall not require a service supplier of another Party to establish or maintain a company, representative office, a branch, or any form of a juridical person, or to be resident, in its territory. For now, China is unbound by the clause, as it adopts a positive list approach for trade opening in services.

Transparency

This clause of the RCEP Agreement requires that each transparency list should include a succinct description of the measure, reservations and non-conforming measures for service and investment and commitments for national treatment and market access. A party should forward to the other Parties, and make publicly available on the internet, a nonbinding, complete and accurate transparency list of its existing measures maintained at the central government level, and update the list when necessary.

Domestic Regulation and Procedural Guarantee

This article requests information disclosure and other requirements, including providing opportunities for prior notification and comment before new regulations and measures are introduced, ensuring trade in cultural services are administered in a reasonable, objective, and impartial manner, maintaining suitable procedures so that the service providers can apply for the review of the administrative decisions. It also sets out a reasonable period of time and fees for measures related to qualification requirements and procedures, technical standards and licensing requirements of all Parties. Where a Party requires authorization for the supply of a service, it shall ensure that the procedures and fees are reasonable and transparent. According to the Agreement, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized. Also, each Party shall ensure that any monopoly supplier of a service in its territory does not act in a manner inconsistent with that Party's obligations; and the requested Party shall accord full and sympathetic consideration to cancel business practices that may restrict trade in services.

1.3 Departmental Commitments

Based on the 100 sectors committed to its entry into WTO, in the RCEP Agreement, China added 22 service sectors covering management consulting services, services incidental to manufacturing, professional design services, services for the aged, sporting and recreational services, transportation, market research, placement services

of personnel, hairdressing and other beauty services, building-cleaning, printing and other services; Meanwhile, it also promoted the level of commitment for 37 sectors including legal services, architecture and engineering, environment, insurance, banking, securities, aircraft repair and CRS, real estate, advertising, software implementation, translation and interpretation and other services.

Table 3-1 Highlights of China’s Commitments on Sectors of Trade in Services under the RCEP¹

Departments of Trade in Services	China’s Commitments
Services incidental to manufacturing	Wholly foreign-owned enterprises are allowed.
Services for the aged	Service suppliers of a Party are permitted to establish wholly foreign-owned profit-making institutions for the aged in China.
Hospitals and clinics	Foreign service suppliers are permitted to establish joint venture hospitals or clinics with Chinese partners, with foreign majority ownership permitted.
Banking	The cap on foreign ownership was removed, and the total asset required for establishing foreign-funded subsidiaries were removed.
Insurance	The ceiling on the foreign ownership of life insurance companies was abolished, qualified foreign investors are permitted to engage in the insurance agency business and loss adjustment business, the business scope of foreign insurance brokerage companies will be the same as Chinese insurance brokerage companies, and the requirements such as operating period and total assets for a foreign insurance brokerage company are cancelled.

¹ Summarized from China’s commitments under the RCEP.

Securities	Foreign services suppliers are permitted to hold 100% equity in securities companies, fund management companies and futures companies.
International maritime transport	Requirements of joint venture are abolished. The board of directors and senior executives can be foreigners.
Architecture design and engineering services	Wholly foreign-owned enterprises are allowed.
Environmental services	Wholly foreign-owned enterprises are allowed.

Finance

Annex 8A of Financial Services represents the highest level of commitment China has made in the area. It introduces rules for new financial services, self-regulatory organizations, transfers and processing of financial information and so on for the first time, promises to promote regulatory transparency in financial services and provides a fair, open, stable and transparent competitive environment for service suppliers of all Parties under the premise of reserving regulatory space to maintain the stability of the financial system and prevent financial risks.

Telecommunications

Annex 8B of Telecommunications Services formulated a framework of rules in the area which included number portability and unbundling of network elements for the first time, and improved clauses of regulation and transparency which relies on the role of market forces unless the regulation is necessary. It also requires that each Party shall ensure that when its telecommunications regulatory body seeks input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services of another Party operating in its territory an opportunity to comment. The annex also formulates rules of non-discriminatory treatment for access to telecommunications infrastructures and services, introduces several clauses for the first time to promote fair competition and protects the interests of the customers. It will advance the coordinated development of the regional information and telecommunications industries, transfer the regional investment and developing center to the technological frontier, strengthen industrial innovation and integration and promote the development and reconstruction of industrial and value chains.

Professional Services

The annex of professional services makes a series of arrangements about professional qualifications for all Parties, which include establishing dialogue on issues that relate to the recognition of professional qualifications; encouraging negotiations of professional qualifications, licensing, or a registration in professional services sectors of mutual interest; encouraging relevant bodies to work towards the development of mutually acceptable professional standards and criteria in mutually accepted areas such as education, examinations, experience, conduct and ethics, professional development and re-certification, the scope of practice and consumer protection; and encouraging its relevant bodies to negotiate with relevant bodies of another Party or Parties on any form of arrangements for the mutual recognition of professional qualifications, licensing, or a registration in professional services sectors of mutual interest.

2. China's Pilot programs for Trade in Services

China's State Council allowed Shanghai, Hainan and other 13 provinces or cities (regions) to launch innovative pilot programs for opening up the service sector in 2016 and decided to add more cities to the list in 2018. In August 2020, 28 provinces or cities (regions), including Beijing, Tianjin, Xiamen and Qingdao, were granted to join the comprehensive pilot programs for a period of three years. The point of the measure was to enhance the reform, opening up and innovation of the trade in services. Eight trial tasks and 122 specific measures were proposed to spur market vitality, enhance China's trade in services, and promote the position of 'Chinese services' in the global value chain.¹ On August 26, 2021, *Special Administrative Measures for Cross-Border Service Trade at Hainan Free Trade Port (Negative List) (2021 Edition)* came into effect. It was the first time China adopted a negative list for cross-border trade in services.² The list contains 70 specific management measures of 11 catalogs for foreign service suppliers and details special measures on how service suppliers of other Parties can provide cross-border services including national treatment, market access, local presence and financial services (through cross-border delivery, overseas consumption and presence of natural person).

Table 3-2 Key Sectors for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services³

Provinces or Cities (Areas)	Key Sectors	Related Documents
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¹ *Overall Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services* was approved with 28 cities starting the pilot program. http://www.gov.cn/xinwen/2020-08/12/content_5534228.htm.

² The first negative list for cross-border trade in services were implemented to speed up the systematic opening up in the service sector in a high level. http://www.gov.cn/zhengce/2021-07/27/content_5627597.htm.

³ Summarized from *Overall Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services* and documents listed in "Related Documents" column.

Conducted the Pilot Program		
Beijing	Financial services, internet information services, professional services, educational services, medical services, and cultural and tourism services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Beijing
Shanghai	Cross-border payment services, value-added telecommunications services, communications services, financial services, and tourism services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Shanghai
Tianjin	Financial services, shipping services, trade services, professional services, value-added telecommunications services, and virtual private networks services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Tianjin
Xiong'an New District of Hebei	Financial Technology	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services
Dalian, Liaoning	Financial services, insurance services, medical and health care services, shipping services, business services and Intellectual Property services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of

		Trade in Services in Dalian
Changchun, Jilin	Manufacturing services, digital services, science and technology services, modern agricultural services, cultural services, tourism services, transportation services, educational services, exhibition services, service outsourcing, medical services, and financial services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Changchun
Harbin, Heilongjiang	Transportation services, travel services, cultural services, service outsourcing, technology trade, financial services, Chinese medicine services, exhibition services, and cross-border e-commerce services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Harbin
Nanjing, Jiangsu	Digital trade, technology import and export services, supply chain services, life and health services, cultural and tourism services, international education services, and architecture and engineering services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Nanjing
Suzhou, Jiangsu	Professional services, financial services, transportation services, tourism services, medical services, and educational services	Request of Suzhou Municipal People's Government on the Approval of the Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services
Hangzhou, Zhejiang	Digital services, cultural trade, tourism services, financial services, exhibition	Implementation Plan for Comprehensively

	services, educational services, medical and health services, logistics and transportation services, and Intellectual Property services	Deepening the Pilot Program of the Innovative Development of Trade in Services in Hangzhou
Hefei, Anhui	Digital economy, science and technology finance, cross-border e-commerce, service outsourcing, engineering and technical services, culture and tourism, health, educational and sporting services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Hefei
Xiamen, Fujian	Transportation services, tourism services, exhibition services, aviation maintenance services, telecommunications, computer and information services, cultural services, professional and management consulting services, financial and insurance services, and knowledge services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Xiamen
Qingdao, Shandong	Transportation services, tourism services, cultural services, international education, special medical care, financial services, cross-border e-commerce, and digital trade	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Qingdao
Ji'nan, Shandong	Telecom software and information services, maintenance and repair services, transportation services, insurance services, and financial services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Jinan
Weihai,	Service outsourcing, e-commerce,	Plan for

Shandong	information technology, technology research and development, maritime services, health care services, and financial services	Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Weihai
Wuhan, Hubei	Technical services, financial services, professional management and consulting services, service outsourcing, computer and information services, cultural services, architecture services, transportation services, travel, and Chinese medicine services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Wuhan
Guangzhou, Guangdong	International logistics services, information technology services, digital trade, financial services, cultural trade, Chinese medicine services, cross-border e-commerce services, exhibition services, and tourism services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Guangzhou
Shenzhen, Guangdong	Service outsourcing, professional services, cross-border financial services, recreational and educational services, cross-border travel, architecture services, and logistics services	Several Measures for Accelerating the Promotion of Innovative Development of Trade in Services in Shenzhen
Hainan Province	Technology services, business services, educational services, health care services, electrical services, cultural, sporting and recreational services, transportation services, financial services, and professional services	Working Plan for the Pilot Program of the Innovative Development of Trade in Services in Hainan, General Plan for the Comprehensive Pilot Program for Further Opening up the

		Services Industry in Hainan Province, and Special Administrative Measures for Cross-Border Service Trade at Hainan Free Trade Port (Negative List) (2021 Edition)
Chongqing	Financial services, international logistics, technology R&D and design, cultural and tourism services, digital trade, bonded-related R&D testing and maintenance services and energy conservation and environmental protection services, professional services, and medical health services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Chongqing
Guiyang, Guizhou	Big data + emerging service outsourcing, big data + architecture and engineering services, big data + logistics and transportation services, big data + medical and health care services, big data + tourism services, big data + international exhibition services, and big data + cultural and sporting services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Guiyang
Gui'an New District of Guizhou	Information technology services, health care services, cultural and educational services, financial services, business services, tourism services, architectural design services, and legal services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Gui'an New District
Kunming, Yunnan	Transportation services, financial insurance, greenery services, cultural services, and architecture services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in

		Kunming
Xi'an, Shaanxi	Design services related to heavy equipment, flight training related to aerospace products, financial leasing, repair and maintenance, superconducting and titanium alloy and other new material design, precision machining design, intelligent communication design, integrated circuit and software design and other cutting-edge industrial design services, cultural tourism services, exhibition and logistics services, Chinese medicine services, and international education services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Xi'an
Xixian New District of Shannxi	Airport services, cultural, tourism and sporting services, information technology services of new generation, R&D services, financial services, health care services, educational training and human resources services, advanced manufacturing and technical services	Implementation Plan for Comprehensively Deepening the Pilot Program of the Innovative Development of Trade in Services in Xixian New District

3.Domestic Regulatory Provisions on Key Service Sectors

3.1 Educational Services

According to the *Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021)* and the *Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones (2021)*, a pre-school, a regular senior secondary school or a higher education institution shall be restricted to Chinese-foreign contractual joint venture, under the control of the Chinese party (the principal or the chief executive shall be a Chinese citizen (and settled in China), and the council, board of directors or joint management committee shall consist of members from the Chinese party accounting for not less than a half of the total number of members). A foreign educational institution, organization or individual may, in cooperation with a Chinese educational institution, establish an educational institution with Chinese citizens as major potential students, but may not alone establish a school or any other educational institution with Chinese citizens as major potential students, excluding non-educational-system occupational skill training and educational-system occupational institutions. Except for that, investment in a compulsory education institution or a religious education institution shall be prohibited.

3.2 Telecom, Computer and Information Services

According to the *Special Administrative Measures (Negative List) for the Access of Foreign Investment* (2021) and the *Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones* (2021), the foreign stake in a value-added telecommunications service may not exceed 50%, excluding the e-commerce, domestic conferencing, store-and-forward, and call-center services. The supplier of basic telecommunications services shall be a company engaging in basic telecommunications and established in accordance with the related laws, and the Chinese party shall have a controlling stake. Moreover, foreign investment in Internet news information services, Internet publication services, Internet video and audio program services, Internet cultural business (except music), and Internet social networking services (save the part of services already opening up in the commitments of China upon WTO accession) shall be prohibited.

3.3 Insurance Services

In July 2019, the Office of the Financial Stability and Development Committee under the State Council implemented 11 measures for the opening up of the financial industry. Those concerning the insurance services are: foreign asset management agencies shall establish a financial company together with subsidiaries of Chinese banks or insurers; the transitional period for raising the foreign ownership cap on life insurers from 51 percent to 100 percent will be brought forward to 2020 from 2021; the requirement that the total share of an insurance asset management company held by domestic insurers shall be no less than 75 percent will be removed, and the foreign ownership will be permitted to exceed 25 percent; entry conditions of foreign insurers will be eased by removing the requirement of over-30-year operation. In October 2019, the State Council amended the *Regulation of the People's Republic of China on the Administration of Foreign-Funded Insurance Companies*. The major changes include: for foreign insurers applying to establish a foreign-invested enterprise, remove the requirement of over-30-year operation and having a representative office in China for over two years; allow foreign insurers to establish a foreign-invested enterprise in China or allow foreign financial institutions to invest one. In December 2019, the China Banking and Insurance Regulatory Commission issued the *Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Administration of Foreign-Funded Insurance Companies*.

3.4 Financial Services

Pursuant to the *Administrative Measures for Securities and Futures Investment Made in China by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors* and its supplementary rules implemented on November 1, 2020, QFII and RQFII are allowed to invest in the securities listed on the National Equities

Exchange and Quotations, private investment funds, financial futures, commodity futures and options, and participate in bond repurchase, margin trading and short selling at the stock exchange and margin securities loan. The *Decision on Amending the "Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Administration of Foreign-Funded Insurance Companies"* issued on March 19, 2021 specifies the entry conditions of foreign insurers and financial agencies, improves the requirements of shareholder change and access and removes the restriction on foreign ownership. On December 3, 2021, the China Banking and Insurance Regulatory Commission issued the *Notice of Relevant Measures for Clarifying the Opening up of the Insurance Intermediary Market*, which allows foreign insurance brokerage firms with practical business experience and fitting relevant provisions of the CBIRC to invest or establish an insurance brokerage company, and foreign or domestic foreign-invested insurance groups or enterprises are permitted to invest or establish a professional insurance intermediary institution.

3.5 Legal Services

China's commitments to legal services still exclude Chinese law practice. Foreign law firms can provide legal services only in the form of representative offices and the scope is limited to consultancy on the legislation of the country/region where the lawyers of the law firm are permitted to engage in lawyer's professional work, and on international conventions and practices. According to the related laws, foreign law firms established in Shanghai's free trade pilot zone may sign an agreement with Chinese law firms and exchange lawyers as consultants.

Chapter Four Investment

1. China's Commitments to Investment Opening up under the RCEP

1.1 The Composition of RCEP Investment Rules

The RCEP investment rules consist of text rules and a negative list. Text rules are mainly provided in Chapter 10 “Investment” and its annexes “Customary International Law” and “Expropriation”. In addition to this, there are other clauses in other chapters that are applicable for investment, such as Chapter 1 “Initial Provisions and General Definitions”, Chapter 17 “General Provisions and Definitions”, Chapter 19 “Dispute Settlement” and so on. Except for text rules, Annex Three (Schedule of Reservations and Non-conforming Measures for Services and Investment) of the RCEP Agreement details the negative list of all Parties to investment.

RCEP investment rules focus on liberalization, protection, promotion and facilitation: (I) National treatment including pre-establishment national treatment and most-favored-nation treatment are accorded to investors and investments of the member party; (II) Specific disciplines including the treatment of investment (fair and equitable treatment), expropriation, foreign exchange transfer and compensation for losses are adopted to fully protect investment; (III) Clauses including the senior management and board of directors, and requirements of prohibition of performance stricter than those of the WTO are applied; (IV) More detailed measures for investment promotion and facilitation are implemented and great attentions are paid to settlement of foreign investment dispute; (V) Mechanism such as a negative list (schedules of reservations and non-conforming measures) and security exceptions are built to create reasonable policy space for the government to manage the foreign investment.

1.2 China's Specific Commitments for Investment under the RCEP

In Annex Two and Three of the Agreement, China explains the restriction of foreign investment in services trade and non-services trade in a mode of “positive-and-negative mixed list” through the Schedule of Specific Commitments for Services and Schedule of Reservations and Non-conforming Measures for Investment. The positive list approach is adopted for the investment in services trade while the negative list approach is adopted for non-services sectors including manufacturing, agriculture, forestry, fishing and mining to achieve high-level opening up and future liberalization commitments.

Manufacturing

In the sector of automobile manufacture, investments by foreign investors in the manufacture of complete automobiles, except for special vehicles and new energy automobiles, require that the shareholding percentage of the Chinese party shall not be less than 50%, and one foreign investor may establish up to two equity joint ventures

that manufacture complete automobiles of the same category (passenger cars, commercial cars) within the territory of China.

In the sector of manufacture of communication equipment, investments by foreign investors in the manufacture of ground reception facilities for satellite television and broadcast and key components production thereof are prohibited.¹

In the sector of pharmaceutical manufacture, foreign investors may not invest in the processing of traditional Chinese medicinal material as listed in the *Regulations on the Administration and Protection of Wild Medicinal Resources* and the *List of Precious and Endangered Flora in China*. Also, Foreign investors may not invest in the application of processing techniques of Chinese medicinal decocting pieces including steaming, plain stir-baking, calcining or the manufacture of confidential prescription products of Chinese patent medicine.

In the sector of tobacco manufacture, foreign investors may not invest in the manufacture, wholesale, retail, import or export of leaf tobacco, cigarettes, re-dried leaf tobacco, cigars, cut tobacco and other tobacco products.

Agriculture

Foreign investors may not invest in the research and development, breeding and planting of the precious and fine varieties which are rare and special in China, or the production of the relevant reproductive materials thereof (including high-quality genes in the industries of crop production, the livestock industry and aquaculture). Foreign investors may not invest in the selection and breeding of transgenic varieties of agricultural crops, livestock and breeding poultry and aquatic fry, or the production of their transgenic seeds (sprouts). Investments by foreign investors in the selection and breeding of new varieties of wheat or corn and seed production of wheat or corn require Chinese holding.²

Fishing

Foreign investors may not invest in the fishing of aquatic products within the sea and inland waters under the jurisdiction of China. China reserves the right to adopt or maintain any measure that accords differential treatment to the parties under any bilateral or multinational agreement in force or signed after the date of entry into force of this Agreement.

¹According to the definition in List A, Annex Three of the RCEP Agreement, it means that foreign investor may not directly or indirectly invest, including by holding any shares, stock or other forms of rights or interest, in the territory of China.

²According to the definition in List A, Annex Three of the RCEP Agreement, Chinese holding means the circumstances where the total investment proportion held by foreign investors, whether directly and indirectly, is not greater than 49%.

Forestry and Hunting

China reserves the right to require approval of the research and development activities conducted by foreign investment enterprises utilizing the biological resources (including human, animal, plant, and microorganism resources) which are originated from and are protected by China.

Exploitation and Ore Dressing

Any foreign organization or personnel shall not carry out investigation or exploration work on natural resources within the territory of China without approval. Foreign investors may not invest in the exploration, exploitation or ore dressing of rare earth and tungsten. Foreign investors may not enter the mining area of rare earth mines or obtain mine geological data, ore samples or production processes and technology without approval.

Special Areas

China reserves the complete policy space and the right to adopt or maintain any measure with respect to the following special areas: (1) utilization of atomic energy; processing, utilization and treatment of nuclear fuels; nuclear energy-related services; and design, manufacture, production, transfer, use, import and export related to nuclear technology application; (2) the research and development activities conducted by the foreign investment enterprises utilizing the biological resources which are originated from and protected by China; (3) national traditional craftsmanship; (4) land, state-owned enterprises and governmental agencies; (5) new industries and sectors. Meanwhile, China reserves the right to adopt or maintain any measure that grants rights or preferences to special groups including ethnic minorities, the disabled and aged people; reserves the right to adopt or maintain any measure with respect to non-government organizations; reserves the right to adopt or maintain any measure that accords differential treatment to the parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement; and reserves the right to adopt or maintain any measure with respect to any special arrangement or favorable treatment for any investor from Hong Kong, Macao and Taiwan as well as any investment thereof.

Investment Methods

Foreign investors shall not carry out business operation activities within the territory of China in the form of individual business, sole proprietorship enterprise or member of specialized farmers' cooperative, neither shall they establish a foreign-invested partnership enterprise in industries forbidden to invest by foreign investors or requiring foreign stake proportion in the negative list¹.

¹ Refers to the *Special Administrative Measures (Negative List) for the Access of Foreign Investment* issued by

Apply for A Futures Trading Account and An A-share Securities Account

The following are requirements for foreign investors to apply for a futures trading account: 1) qualify as a qualified foreign institutional investor (including QFII and RQFII); 2) obtain permanent residence in China; 3) may conduct futures trade of specific types.

The following are requirements for foreign investors to apply for an A-share securities account: 1) qualify as a qualified foreign institutional investor (including QFII and RQFII); 2) obtain permanent residence in China; 3) foreign employees of listed A-share companies who currently work in China, as long as participating in the company's equity incentives; 4) foreigners who work in China and the security regulatory institution of their countries have signed regulatory cooperation agreements with the CSRC; 5) foreign investors who make a strategic investment in listed A-share companies; 6) foreign investors of foreign investment enterprises which are going to list on the A-share market.

The Relationship between the Existing Investment Agreement and the RCEP Investment Rules Signed by China and Other Parties

Except for the RCEP rules, the investment agreements that are still valid between China and other Parties are: the investment agreements or chapters China signed under the Free Trade Agreements with ASEAN, Australia, South Korea, New Zealand, Singapore and other countries; the Bilateral Investment Treaties (BITs) China signed with RCEP members; and China-Japan-ROK Free Trade Agreement. These existing investment agreements are as effective as the RCEP investment rules and investors are still under their protection.

2. The Opening Up of the Chinese Investment Industry

In accordance with *the Foreign Investment Law of the People's Republic of China*, the State maintains a system of pre-entry national treatment plus negative list management for foreign investment. The pre-entry national treatment refers to the treatment given to foreign investors and their investment at the stage of investment admission no less than that to domestic investors and their investments. The negative list refers to the special management measures that are adopted for the admission of foreign investment in specific areas. Foreign investors shall not invest in sectors that are prohibited by the foreign investment negative list. Foreign investors shall act in accordance with requirements when investing in sectors restricted by the negative list. Areas apart from the foreign investment negative list will be managed through an identical principal for both domestic and foreign investors. Therefore, there are two types of lists that foreign investors should obey, the first is the foreign investment access

Chinese government and came into force on the date of entry into force of this Agreement.

list and the second is the market access list, which shall be abided by all domestic and foreign-invested enterprises.

For the first type of list, *Special Administrative Measures (Negative List) for the Access of Foreign Investment* (2021) and the *Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones* (2021) came into effect on January 1, 2022. The above two negative lists of the 2021 version were both further amended. The former was cut by 6.1% to 31 and the latter was cut by 10% to 27. The major changes include further deepening the opening up in the manufacturing industry, carrying out pilot programs in services sectors in free trade pilot zones and optimizing management of foreign investment access negative list. Also, the entry of manufacturing has been removed from the negative list of free trade pilot zones. In the *Special Administrative Measures for Foreign Investment Access to Hainan Free Trade Port (Negative List)* (2020 Edition) applicable in the Hainan Free Trade Port, special management measures of foreign investment access including foreign stake and senior administrative requirements are listed and can be applied to the whole Hainan Island. Areas apart from the negative list will be managed through an identical principal for both domestic and foreign investors.

For the second type of list, foreign investors and foreign-invested companies should also obey the *Market Access Negative List* (2022). In the list, the State Council made it clear the industries, sectors and businesses foreign investors are forbidden or restricted to invest in or operate. Governments at all levels shall take corresponding management measures to ensure the implementation of the law. The list consists of prohibited items and items that require government approval. For prohibited items, market players are prohibited to enter and competent authorities are prohibited to approve, authorize or handle relevant procedures; for restricted items, when meeting the qualification, procedures, technical standards and other requirements, market players can apply to enter while competent authorities shall approve based on the law, or they can have access to the market through other conditions or approaches required by the government. For industries, sectors and businesses outside the list, market players can have equal access in accordance with the law.

3. Provisions on Foreign Investment in China

3.1 Introduction of Major Laws and Regulations about Foreign Investment in China

To encourage foreign investors to invest based on the law in China and protect the legal rights of foreign investors and foreign-invested enterprises, China will keep optimizing and improving the laws and regulations about foreign investment. On March 15, 2019, the *Foreign Investment Law of the People's Republic of China* replaced the *Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures* and the *Law of the People's Republic of China on Wholly Foreign-owned Enterprises* and the *Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures* (“Three Laws of Foreign Investment”) and became the new fundamental law in foreign investment in China. The law established the basic framework of China's new foreign

investment legal system and a system of “pre-entry national treatment plus a negative list” management for foreign investment. In December 2019, the State Council promulgated the *Regulation for Implementing the Foreign Investment Law of the People's Republic of China*, and more detailed rules were provided for the legal system established by the Foreign Investment Law. The Foreign Investment Law and its implementing regulations have come into force on January 1, 2020.

Investment Promotion

On December 28, 2020, China issued a *Catalogue of Encouraged Industries for Foreign Investment (2020 Version)*, adding more items to encourage foreign investment, and expanding the encouraged areas to promote more investment flowing into industries like advanced manufacturing and modern services and optimize regional patterns. For encouraged foreign-invested projects in the Catalogue, FIEs that meet the requirements may enjoy policy support in duties and so on; for FIEs in encouraged industries in the west China, the CIT rate can be reduced to 15%; and for encouraged foreign-funded projects with intensive land use, land can be preferentially supplied and the land transfer reserve price can be determined at 70% of the national minimum price for the transfer of industrial land, which yet shall be no less than that of the local land. Moreover, for Chinese policies supporting the development of enterprises including the government fund arrangement, land supply, tax cut and elimination, qualification approval, standard formulation, project application and human resources policies, both foreign-invested and domestic enterprises can enjoy them equally in accordance with the law.

Investment Protection

According to the *Foreign Investment Law of the People's Republic of China* and the *Regulation for Implementing the Foreign Investment Law of the People's Republic of China*, the State is not to expropriate any investment made by foreign investors. Under special circumstances, the State may expropriate or requisition an investment made by foreign investors for public interests in accordance with the law. Such expropriation or requisition shall be made pursuant to statutory procedures and fair and reasonable compensation will be given in a timely manner. Where a foreign investor deems that the act infringes its legitimate rights and interests, it may apply for administrative review, or lodge administrative litigation. Furthermore, foreign investors may apply to the complaint handling agency for coordinating the resolution of disputes based on the *Work Measures for Complaints of Foreign-Funded Enterprises* amended and issued in 2020, since it or he considers that the lawful rights and interests thereof have been infringed upon by an administrative action taken by an administrative authority and its staff members.

Investment Management

Apart from obeying the principal rules in the Foreign Investment Law, foreign-invested companies shall also accept security reviews by competent authorities on investment relating to national security according to the *Measures for the Security Review of Foreign Investment*, and submit the initial, change of information, deregistration and annual report to competent departments of commerce as provided in the *Measures for the Reporting of Foreign Investment Information and the Announcement on Matters Concerning the Reporting of Foreign Investment Information*.

3.2 Foreign Investment Security Review System

China conducts security reviews on foreign investment pursuant to the *Foreign Investment Law* and the *Measures for the Security Review of Foreign Investment*.

Competent Authorities

China established a foreign investment security review system with its office located in the National Development and Reform Commission (NDRC), and the Commission and the Ministry of Commerce are responsible for its daily work. The declaration of the review is received by the Service Center of the Commission.¹

Subject of the Review

China shall conduct a national security review on the direct or indirect investment activities of the following foreign investors in China: foreign investors who invest in a new project or establish a firm in China alone or with other investors; foreign investors obtain the share or assets of a domestic enterprise through merging; and foreign investors who invest in China in other forms.

The Scope of Review

The scope of China's security review falls into two parts, the first is investment relating to national security which requires voluntary application before the investment act; the second is investment irrelevant to national security but relating to key areas of national security which will trigger the requirement of application only when foreign investors gain the controlling of the enterprise.

¹ Address: Floor 1, Xipei Building, National Development and Reform Commission, Nanwu Alley, Sanlihe, Xicheng District, Beijing. TEL: 010-68501622, 68502979.

Table 4-1 The Scope of Foreign Investment Security Review in China¹

	Investment relating to national security	Investment irrelevant to national security
Specific Types	<ul style="list-style-type: none"> • The arms industry and sectors that supply the arms industry • Investments in locations in the periphery of military facilities or arms industry facilities 	<ul style="list-style-type: none"> • Important agricultural products • Important energy sources • Manufacture of major equipment • Important infrastructure facilities • Important transportation services • Important cultural products and services (newly added except for the free trade zone) • Important information technology and Internet products and services (information technology products and services are newly added except for the free trade zone, and Internet products and services are newly added nationally) • Important financial services • Key technologies. • Other important sectors relating to the national security
Triggering Conditions	Foreign investment	Foreign investment who gains actual control of the investee enterprise

Note:

The phrase "actual control of the invested enterprise is acquired" includes the following situations:

¹ Measures for the Security Review of Foreign Investment. http://www.gov.cn/zhengce/zhengceku/2020-12/19/content_5571291.htm.

- (1) the foreign investor's equity interest in the enterprise is not less than 50%;
- (2) the foreign investor's equity interest in the enterprise is less than 50% but its voting rights enable it to exercise major influence over the resolutions of the board of directors, shareholders' meeting or shareholders' general meeting;
- (3) other circumstances that enable the foreign investor to exercise major influence over the business decision-making, human resources, finances, technology, etc., of the enterprise.

Declaration Mechanism

Foreign investors or domestic Parties shall voluntarily declare the foreign investments that fall within the scope prior to the implementation of the investment. If the parties concerned have implemented an investment that falls within the scope of review without filing for review, the working mechanism may order them to make the filing within a specified time limit. A relevant authority, enterprise, association, member of the public, etc., may propose to the office of the Operational Mechanism to conduct a security review. The Party shall submit the following documentation to the Operational Mechanism: (1) declaration; (2) investment proposal; (3) explanation as to whether the Foreign Investment will affect national security; (4) other documents required by the office of the Operational Mechanism. The declaration shall specify the name, domicile and business scope of the foreign investor, basic details of the investment and such other items as the office of the Operational Mechanism may require.

Review Procedures and Timeline

The Operational Mechanism accepts prior negotiation, the Party needs to submit an official negotiation application form during the procedures, with an introduction of the relevant information of the acquirer, the acquiree and the transaction. If the office of the Operational Mechanism decides that the Party needs to complete the security review declaration, the Party shall submit an official declaration.

Security reviews are divided into three steps. The first step is preliminary review. The office of the Operational Mechanism shall decide whether there is a need to conduct a security review of a Foreign Investment declared within 15 working days from the date on which the documentation complying with the requirements is received. The second step is an ordinary review. If the office of the Operational Mechanism decides to conduct a security review of a Foreign Investment declared, it shall complete the ordinary review within 30 working days from the date of the decision or go into the next step according to the procedures. The third step is a special review for 60 working days. It's not a necessary step for every program. Only programs that failed to pass the ordinary review will enter into a special one and the review period may be extended in special circumstances. Specific decisions will be made after the special review is completed. The time used by the Party to submit supplementary documentation shall not be counted toward the review period.

Decisions and its Execution

If the office of the Operational Mechanism decides that the security review of a declared Foreign Investment has been passed, the Party may make the investment. If the office of the Operational Mechanism decides that the security review has been passed conditionally, the Party shall make the investment in accordance with the attached conditions. If the office of the Operational Mechanism decides to prohibit the investment, the Party shall not make the investment.

Table 4-2 Decisions of Security Review and Their Results¹

Foreign investment Situations	Decisions	Results
Foreign investment does not fall into the scope of security review	The office of the Operational Mechanism decides that there is no need for a security review	The Party may make the investment
The Foreign Investment will not affect national security	The office of the Operational Mechanism decides that the security review has been passed	
The foreign investment will affect national security but the attachment of conditions would eliminate the effect on national security and the Party undertakes in writing to accept the attached conditions	The office of the Operational Mechanism decides that the security review has been passed conditionally, in which case the attached conditions shall be specified in the decisions.	The Party shall make the investment in accordance with the attached conditions
Foreign Investment will affect national security	The office of the Operational Mechanism decides to prohibit the investment	The Party shall not make the investment

Note:

If the Party modifies the investment proposal such that national security will or could be affected, a new declaration shall be made.

¹ Measures for the Security Review of Foreign Investment. http://www.gov.cn/zhengce/zhengceku/2020-12/19/content_5571291.htm.

Legal Liabilities

If the Party refuses to make the declaration, provides false documentation or does not make the investment in accordance with the attached conditions, the Party shall be ordered to dispose of the equity interest or the assets, and a negative credit record of such Party shall be entered in the relevant credit information system of the state and the Party shall be subjected to joint penalties in accordance with relevant national regulations.

Table 4-3 The Legal Liabilities of the Security Review¹

No.	The behavior of the Party	Consequences
1	The Party makes the investment without submitting the declaration as required	The office of the Operational Mechanism shall order the Party to make the declaration within a specified time limit
2	The Party provides the office of the Operational Mechanism with false documentation or withholds relevant information	The office of the Operational Mechanism shall order the Party to rectify the situation
3	The Party to a foreign investment that passed the security review conditionally does not make the investment in accordance with the attached conditions	
4	The Party provides the office of the Operational Mechanism with false documentation or withholds relevant information that causes the foreign investment to fraudulently pass the security review	
5	The Party makes the investment without having made a declaration pursuant to these Measures and refuses to make the declaration	The relevant decision shall be revoked
6	The investment is prohibited but has been made	
7	The Party provides the office of the Operational Mechanism with false documentation or withholds relevant information that causes the foreign investment to fraudulently pass the security review and the investment has been made	

¹ Measures for the Security Review of Foreign Investment. http://www.gov.cn/zhengce/zhengceku/2020-12/19/content_5571291.htm.

8	The Party to a foreign investment that passed the security review conditionally does not make the investment in accordance with the attached conditions and refuses to rectify the situation
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3.3 Enterprise Registration

The Organization Form of Foreign-invested Enterprises

There are mainly two forms of foreign-invested enterprises in China: company and partnership.

Company. Foreign investors may establish limited liability companies and joint stock companies in China. The limited liability company may not have more than 50 shareholders and each shareholder has a limited responsibility to the company depending on the capital he or she subscribed to at the time the company was incorporated. The company shall bear limited liability for its debts with all its assets. A joint stock limited company refers to an economic organization in which all the registered capital of the company is composed of equal shares, and the capital is raised through the issuance of shares (or warrants). Each shareholder is responsible for the company to the extent of their subscribed shares, and the company bears a limited liability for the company's debts with all its assets. Both limited liability companies and joint stock companies shall register according to the *Regulation of the People's Republic of China on the Administration of the Registration of Market Entities*.

Partnership. Foreign investors may establish a general or limited partnership in China. A general partnership consists of general partners who bear unlimited joint liability for the debts of the partnership. A limited partnership consists of general partners and limited partners. The general partners shall bear unlimited joint liability for the debts of the partnership, and the limited partners shall bear liability for the debts of the partnership to the extent of their subscribed capital contributions.

Resident Representative Offices of Foreign Enterprises. The resident representative offices of foreign enterprises (hereinafter referred to as representative offices) set in China shall obey the laws and regulations of China (such as *Regulation on the Administration of Registration of Resident Representative Offices of Foreign Enterprises*, etc.). Representative offices refer to working organizations established by foreign enterprises within the territory of China to conduct non-profit activities related to the business of foreign enterprises. They do not have the qualification of a legal person and are prohibited from conducting profit-making activities. The activities they may engage in are market investigation, display, publicity activities and liaison activities in connection with product sales of foreign enterprises, service provision, domestic procurement and domestic investment.

Procedures for Newly Established Foreign-invested Enterprises

Procedures for newly established foreign-invested enterprises are shown as follows.

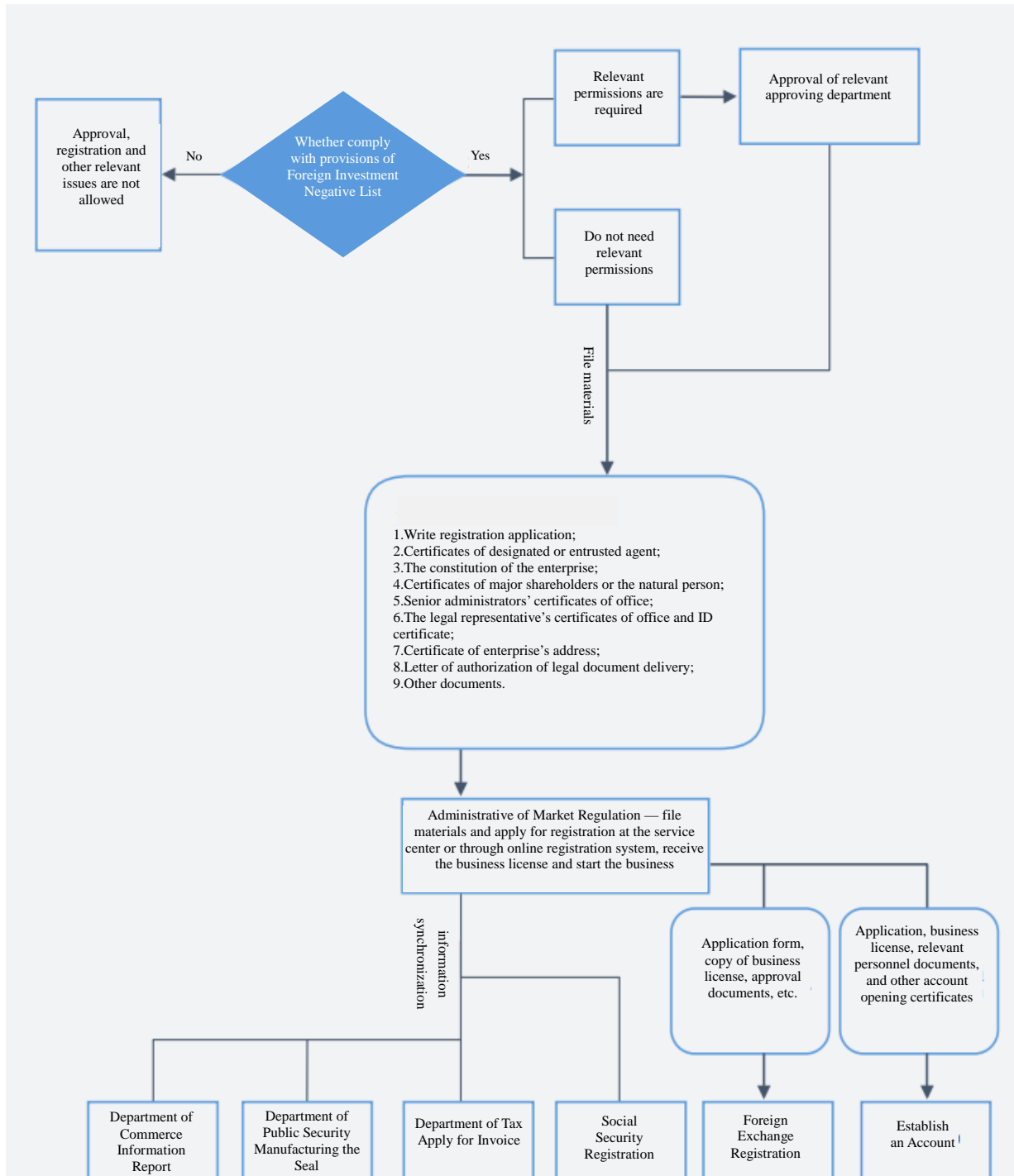
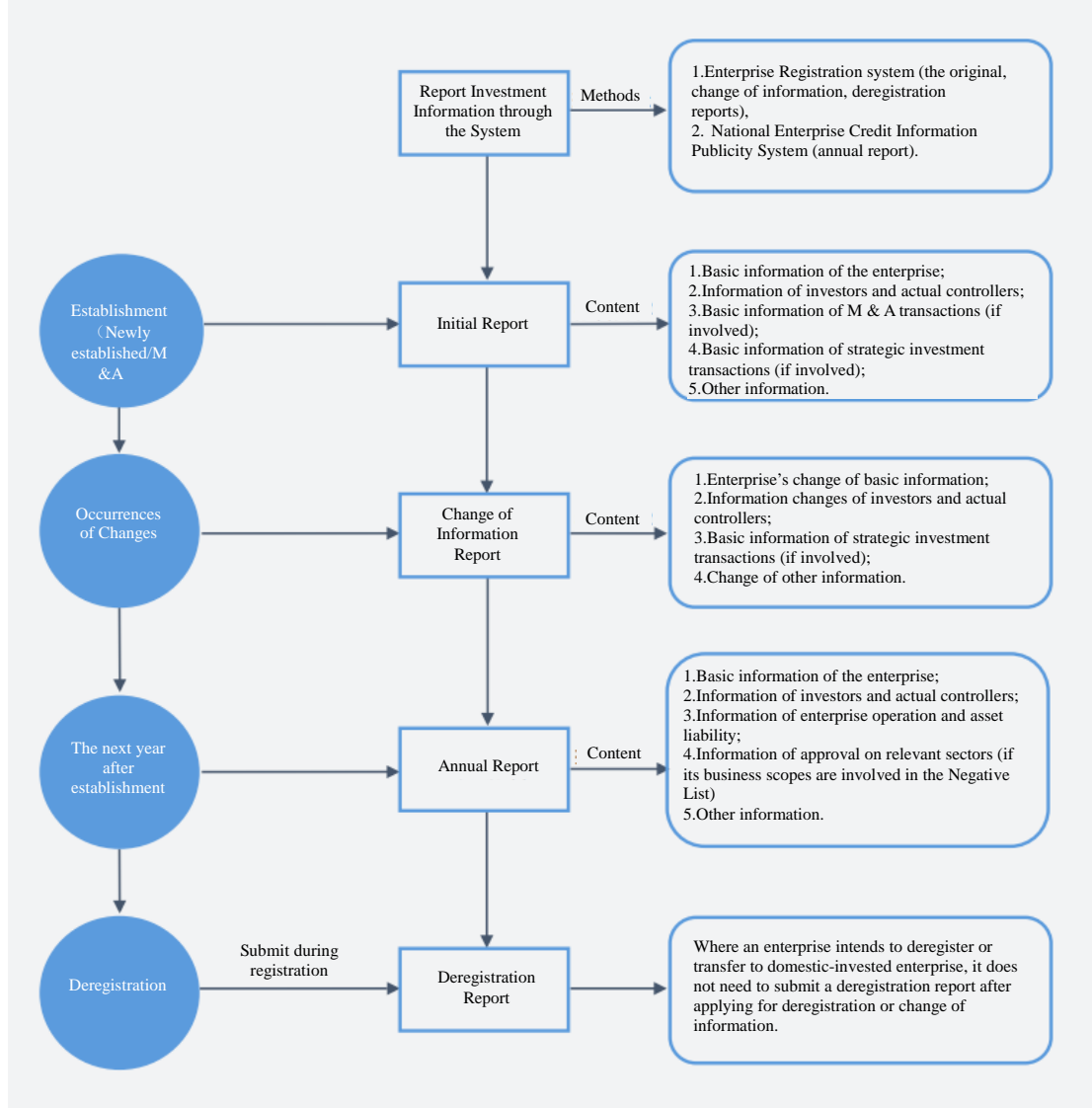


Figure 4-1 Procedures for Newly Established Foreign-invested Enterprise¹

¹ Regulation of the People's Republic of China on the Administration of the Registration of Market Entities. https://gkml.samr.gov.cn/nsjg/bgt/202111/t20211105_336462.html.

Information Report of Foreign-invested Enterprises

The procedures of foreign-invested enterprises submitting the initial, change of information, deregistration and annual report to competent departments of commerce



are shown as follows.

Figure 4-2 Information Report Procedures of Foreign-invested Enterprises¹

¹ Measures for the Reporting of Foreign Investment Information.
https://gkml.samr.gov.cn/nsjg/bgt/202106/t20210628_331635.html.

Chapter Five Intellectual Property

1. Chapter Overview of RCEP Intellectual Property

The chapter on intellectual property included in the RCEP Agreement is the most comprehensive intellectual property chapter China has signed. As the longest chapter in the agreement, it provides a balanced, inclusive plan for the protection and promotion of regional intellectual property. It not only contains the major areas of traditional intellectual property, but also presents the new trend of intellectual property protection development, and further improves the protection level¹ based on the *Trade-Related Aspects of Intellectual Property Rights* (TRIPS) of WTO. The major contents are as follows²:

1.1 Copyright and Related Rights

The section on copyright and related rights forms a framework for major systems of copyright from the following two aspects. On the one hand, it makes the related rights clear which includes the exclusive rights of authors, performers, and producers of phonograms (Article 10), the right to remuneration for broadcasting of performers and producers of phonograms (Article 11), the exclusive right of broadcasting organizations (Article 12), and encourage collective organizations to promote the collective management of copyright and related rights (Article 13); on the other hand, it emphasizes the protection of copyright and related rights in the digital and Internet times, including remedies against the circumvention of effective technological measures (Article 14), protection for electronic rights management information (Article 15) and its limitations and exceptions (Article 16), as well as requires the central government of each Party to use only non-infringing computer software (Article 17).

1.2 Trademarks and Geographical Indications

In fact, to protect the trademarks and geographical indications, RCEP has made the following rules, including defining the objectives of trademark protection (Article 19), and setting out that no Party shall require, as a condition of registration of a trademark, that signs be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound. Besides, where signs are not inherently capable of distinguishing the relevant goods or services, a Party may make registrability depend on distinctiveness acquired through use. There are provisions on the protection of collective marks, certification marks and geographical indications (Article 20, 25 and 29), which allow the geographical indications to be protected through a trademark system, a sui generis system, or other legal means,

¹ Business Reference: Special Issue for RCEP Training (I) sponsored by International Business Newspaper, 2022, Issue 2.

² Zhang Naigen, The RCEP Intellectual Property Rights Provisions and Their Comparison [J]. *Wuhan University International Law Review*, 2021,5(02):1-25. DOI:10.13871/j.cnki.whuilr.2021.02.001.

provided that all requirements under the TRIPS Agreement are fulfilled. The owner of a registered trademark is provided the exclusive right and exceptions (Articles 23 and 24). Special protection of well-known trademarks (Article 26) requires that each Party shall refuse or cancel the registration, and prohibit the use of a trademark that is identical or similar to a well-known trademark. And, protection of geographical indications pursuant to international agreements (Articles 34 and 35). Procedurally, it makes several procedural rules for the protection of trademarks and geographical indications, including a trademarks classification system (Article 21), a system for the application and registration of trademarks (Article 22), measures against bad faith trademarks (Article 27), domestic administrative procedures for the protection of geographical indications (Article 30) and its opposition and cancellation (Article 31) and so on.

1.3 Patent and Industrial Designs

Firstly, relevant provisions on substantive rules include patentable subject matter (Article 36), exclusive rights and exceptions confer on the patent owner (Articles 37 and 38), added public health-related compulsory licensing provisions based on the TRIPS agreements (Article 39), experimental use of a patent (Article 40), the protection of new varieties of plants through an effective sui generis plant variety protection system (Article 48); and the design of the article part of the industrial plan (Paragraph 5 of Article 49). Secondly, relevant provisions on procedural rules include procedural aspects of patent examination and registration (Article 41), electronic patent application system (Article 43), the 18-month publication (Article 44), Information as prior art made available on the Internet (Article 45), expedited examination (Article 46), the introduction of the international patent classification system (Article 47), protection and registration of industrial design (Article 51) and information as prior art for designs on the Internet (Article 50) as well as the introduction of an International classification system for industrial designs (Article 52). Thirdly, the system of grace period for patents has both substantive and procedural properties. The Parties recognize the benefits of patent grace periods to disregard certain public disclosures of inventions when determining whether an invention is a novel in order to support innovation. (Article 42) The Parties can decide whether, under the system of the prior art, to allow the patent applicants to disclose their invention within a certain period (such as 12 months) prior to the date of filing their application.

1.4 Other Intellectual Properties

Each Party may establish appropriate measures to protect genetic resources, traditional knowledge, and folklore (Article 53), including satisfying the disclosure requirements, and when determining prior art, relevant publicly available documented information related to traditional knowledge about genetic resources may be taken into account. Each party shall provide effective protection against unfair competition and include its country code top-level domain (ccTLD) domain names into the scope

(Article 55). Each party shall establish an appropriate procedure for the settlement of disputes, based on the *Uniform Domain-Name Dispute-Resolution Policy*, and provide appropriate remedies for a domain name that is identical or confusingly similar to a trademark, including revocation, cancellation, transfer, damages, or injunctive relief. Each Party shall also provide protection for undisclosed information (Article 56). Each Party shall prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good (Article 57).

1.5 Enforcement of Intellectual Property Rights

The section on the enforcement of intellectual property right is divided into general obligations, civil remedies, border measures, criminal remedies and enforcement in the digital environment. The general obligations require that each Party shall ensure that enforcement procedures as specified in this Section are available under its laws and regulations so as to permit effective action against any act of infringement of intellectual property rights covered by this chapter (Para 1 Article 58), and take into account the need for proportionality between the seriousness of the infringement on the intellectual property right and the applicable remedies and penalties (Para 3 Article 58), and In civil proceedings involving copyright of authors, each Party shall provide on a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner as the author of the work is the author of the work (Para 5 Article 58). Civil remedies emphasize fair and equitable procedures. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter and at the same time, permit the use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights (Article 59). Other clauses include compensation instead of punishment as the way to pay for the damage (Article 60) and protection of confidential information in civil judicial proceedings (Article 63). In terms of border measures, competent authorities may suspend the release of suspected pirated copyright goods or counterfeit trademark goods by right holder's application or by ex officio action (Articles 65 and 69), then make an infringement determination within a reasonable period (Article 71). In terms of criminal remedies, each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful copyright or related rights piracy or trademark counterfeiting on a commercial scale, including appropriate criminal procedures and penalties applicable to "the unauthorized copying of a cinematographic work on a commercial scale from a performance in a movie theatre". In terms of enforcement in the digital environment, each Party confirms that the enforcement procedures set out in Subsection 2 (Civil Remedies) and Subsection 4 (Criminal Remedies) shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks, in the digital environment (Article 75).

1.6 Technical Assistance

The RCEP chapter on Intellectual Property specifies the transitional period for least developed countries, party-specific transition periods and the principle of technical assistance (Articles 78 to 81). Annex 11B is the list of technical assistance provided to Cambodia, Lao PDR, Myanmar and Viet Nam, which includes staff members and experts involved in law amendment processes, information technology experts, examiners and other support in capacity building, as well as operational needs such as the electronic application for processing, registering, and maintenance of trademarks, collective management organizations and the protection of geographical indications. Moreover, Annex 11A sets out the different party-specific transition periods of Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam regarding multilateral agreements, trademarks protection and provisional measures, etc., taking into consideration the development stage and economic needs of all Parties.

2. China's Legal System of Intellectual Property Protection

China has a relatively complete legal system of intellectual property including: *Copyright Law of the People's Republic of China*, *Trademark Law of the People's Republic of China*, *Patent Law of the People's Republic of China*, *Detailed Rules for the Implementation of the Patent Law of the People's Republic of China* and other laws and policies. During the negotiation of the RCEP Agreement, China further amended its laws relating to intellectual property. Also, China is a member of the World Intellectual Property Rights and Madrid Agreement Concerning the International Registration of Marks, and joins in the *Paris Convention for the Protection of Industrial Property*, *Treaty on Intellectual Property in Respect of Integrated Circuits*, *Berne Convention for the Protection of Literary and Artistic Works*, *Agreement between the European Union and the Government of the People's Republic of China on Cooperation on, and Protection of, Geographical Indications* and other intellectual-property-related international conventions.

In the 2022 Global Innovation Index newly issued by WIPO, China moved up to 11th place, a place higher than its 2021 ranking, and remained the top among medium- and-high income economies.

2.1 Copyright Law and Its Regulation for Implementation

Copyright Law

To protect the copyright of literary, artistic and scientific writers and the interests regarding the copyright, encourage the creation and publication of works promoting the construction of socialist spiritual and material civilization, and enhance the development and prosperity of socialist culture and science, China formulated the *Copyright Law of the People's Republic of China*.

The *Law* was issued in 1990 and revised three times in 2001, 2010 and 2020. On June 1, 2021, the amended *Copyright Law of the People's Republic of China* came into effect. The amended copyright law improved the copyright protection level of China and further synergized the law and the RCEP intellectual property rules from the

following aspects:

Firstly, from the aspect of the related rights, the new *Copyright Law* has higher requirements on the collective management organizations of copyright. According to the law, a collective management organization of copyright shall be a non-profit organization and its copyright administration shall not be carried out for the purpose of profiting. The charging standards shall be based on negotiation. Anyone who fails to reach the negotiation may apply for adjudication or litigation.

The second is from the aspect of the protection of copyright and its related rights in the era of the Internet and digitalization. The words “Electrical works” is replaced by audiovisual works, reflecting the challenges the fast-developing industry brought to copyright. For example, the emerging Internet games, game livestreaming, music fountains, lights shows and firework shows of hundreds-of-billions-scale gave birth to the legislation of audiovisual works. The modification of the right to communication through information networks and the right of broadcasting responds to the current prominent webcast copyright infringement. Since then, Internet anchors covering or playing others’ works without permission will be included in infringing on the right of broadcasting of the copyright owners. The courts no longer need to use the original miscellaneous provisions of remedies to handle non-interactive cases of copyright infringement disputes such as livestreaming and video-playing, etc.

The third is about legal liabilities. The damages system of punishment is strengthened by improving the amount of the upper limit to RMB 5 million and setting the lower limit to RMB 500. The enhanced punishment for actions of copyright infringement can help create a social environment of respecting copyright and innovation.

The fourth is about other aspects. The definition of works is changed to make the objective type of work more open. Though the definition of works is an overall description, it is not closed. Specify the copyright of works created jointly by two or more authors. Where a work is created jointly by two or more authors, the copyright in the work shall be enjoyed jointly by the co-authors and the copyright of a cooperative work shall be exercised by co-authors upon consensus; and where no consensus has been reached and there is no justified reason, no party shall prevent another party from exercising rights other than transferring and permitting others' exclusive use, and pledging, but the proceeds obtained shall be reasonably distributed to all co-authors. Highlight the care for people with reading disabilities. Add “providing published works to people with reading disabilities in a way that they can perceive” into the law as a reasonable condition of use, thus highlighting the care for people with disabilities and reflecting the humanistic care of the amended version.

Regulation for the Implementation of the Copyright Law

The Regulation for the Implementation of the Copyright Law of the People's Republic of China is formulated according to the *Copyright Law of the People's Republic of China*. It made further provisions on the applicable scope of the *Copyright Law of the People's Republic of China*, such as the performances and sound recordings

produced and distributed by foreigners or stateless persons in the territory of China shall be protected by the Copyright Law. The rights enjoyed by foreigners or stateless persons in their performances and the sound recordings produced and distributed by them under the international treaties to which China has already acceded shall be protected by the Copyright Law.

Provisions on the Implementation of the International Copyright Treaties

To enforce international copyright treaties and protect the legal rights of the copyright owner of foreign works, China formulated *Provisions on the Implementation of the International Copyright Treaties*, detailing the protection scope and period of foreign works. For example, in the case of foreign works of applied art, the term of protection shall be twenty-five years commencing from the creation of the works; foreign video recordings shall be protected as cinematographic works to the extent that international copyright treaties treat them as such works, etc.

2.2 Trademark Law and Its Regulation for Implementation

Trademark Law

To strengthen trademarks management, protect the exclusive right of trademarks, promote producers and businessmen to ensure the quality of goods and services, safeguard the credit of trademarks to protect the interests of customers, producers and businessmen and improve the development of a socialist market economy, China formulated the *Trademark Law of the People's Republic of China*.

As the first intellectual property law since the reform and opening up of China, the *Trademark Law of the People's Republic of China* was issued in 1982 and has a significant meaning in the history of the intellectual property system in China. The Law was later amended in 1993, 2001, 2013 and 2019, respectively.

Among these, the 2013 amendment improved the level of intellectual property in the following aspects: Firstly, the matters concerning trademark registration are set out. Secondly, the scope of trademark registration is enlarged, which deletes the requirements of visibility and adds that sounds and other elements may serve as a trademark for registration application; it also specifies that a sign only bearing the generic name or only directly indicating the quality, main raw materials, functions, uses, weight, quantity, or other features of goods is a sign lacking distinctiveness. Thirdly, the trademark registration procedures are optimized. Fourthly, the trademark use obligations are strengthened. Fifthly, the protection scope is made clear. Introduce standards for the determination of infringements easy to be confused, complete provisions on other specific infringements which covering new industrial forms such as e-commerce platforms, complete relevant damages rules including the order of claim calculation methods, specify responsibilities for obstruction of the burden of the proof and lift the upper limit of legal damages.

The newly amended *Trademarks Law* in 2019 made changes in the following places: first, strengthen provisions on registration in bad faith and trademark

registration hoarding and require that a bad faith application for trademark registration for a purpose other than use shall be rejected, which further enhanced the obligation of use of trademark registration applicants. Second, increase the punishment of infringements on trademark exclusive rights, and lift the multiple and cap of the amount of damages.

Regulation for Implementation of Trademarks Law

The Regulation for the Implementation of the Trademarks Law of the People's Republic of China is formulated according to the *Trademarks Law of the People's Republic of China*. The Law describes the details of the application of trademark registration, the review of the trademark registration, the change, transfer, and renewal of registered trademarks, international registration of trademarks and trademark review. For example, according to the law, a foreigner or foreign enterprise refers to a foreigner or foreign enterprise having no habitual residence or place of business in China.

2.3 Patent Law and its Regulation for Implementation

The Patent Law

To protect the legal right of patent owners, encourage invention and creation, advance the application of invention and creation, develop innovative ability and promote the progress of science and technology and economic and social development, China formulated the *Patent Law of the People's Republic of China*.

First issued in 1984, the law was then amended in 1992, 2000, 2008 and 2020, respectively. The 2020 amendment improved the level of intellectual property in the following aspects:

First of all, it enhances the protection of the legal right of patent owners. Firstly, add a punitive damages system and increase the amount of damages. Secondly, add the patent term compensation system. The patent administration department of the State Council shall, at the request of the patentee, provide patent term compensation for the unreasonable delay of the invention patent in the process of granting the patent right. Thirdly, complete provisions on the burden of proof of the right holder. Fourthly, provide more administrative protection for the patent. The patent owners may choose from administrative or judicial protection to solve patent infringement disputes according to their needs. Fifthly, clarify the scope of pre-litigation preservation. Sixth, add the principle of good faith to prevent the application in a bad faith or unfair behaviors in the process of the application, safeguarding the economic order.

The law promotes the enforcement and application of the patent. Firstly, improve the system of service invention. Secondly, enhance the patent information public service. Thirdly, add the patent open licensing system.

The amended law also improves the patent-granting procedures. Firstly, it completes the system relating to design protection. Partial design protection is added to the law and the term of protection of design patents is extended to 15 years to satisfy the needs of enterprises to apply outward and the needs of innovative subjects for all

kinds of terms of protection. Secondly, it provides new situations that are applicable for a grace period. Thirdly, it adds domestic priority for design patents application to lower the cost of application and give an opportunity for applicants of the design patent to further improve their design and adjust the scope of protection. Fourthly, it completes the evaluation report system of the patent right. Both the patentee and the alleged infringer can take the initiative to issue the evaluation report, which makes the patent evaluation report system completer and more neutral in the procedure, and also gives the alleged infringer a new channel to confront the patentee.

The law adds provisions relating to pharmaceutical patent protection. Firstly, a compensation period for the duration of the pharmaceutical patent right is granted. Secondly, the addition of early resolution procedures for pharmaceutical patent disputes and the establishment of a pharmaceutical patent linkage system with both judicial and administrative procedures will help resolve patent infringement disputes before drug approval and reduce the risk of delisting of generic drugs due to patent infringement.

Detailed Rules for the Implementation of the Patent Law

The Detailed Rules for the Implementation of the Patent Law of the People's Republic of China are formulated according to the *Patent Law of the People's Republic of China*. The Detailed Rules stipulate the application of patents, the examination and approval of the patent application, the reexamination of the application, invalidation of the patent right, compulsory licenses for patent enforcement, rewards and remuneration for inventors and creators of service invention-creation, protection of patent right and so on, such as particulars that shall be indicated in the request of application for a patent for invention, utility model or design: and requirements of the request for reexamination, etc.

2.4 Geographical Indications

As an important type of intellectual property, geographical indication effectively boosts economic development with regional features, vigorously supports rural revitalization, and plays a crucial role in promoting foreign trade and foreign affairs. It not only serves to protect and carry forward traditional cultural essence, but also provides valuable resources for enterprises to participate in market competition.¹

As the Regulation on the implementation of the Trademark Law points out: where a geographical indication is registered as a certification mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is used may request the use of the certification mark, and the organization in control of such certification mark shall permit the use.

To protect the geographical indications, enhance the administration, standardize the use of geographical indication product names and geographical indication special

¹ *Guiding Opinions of the China National Intellectual Property Administration and the State Administration for Market Regulation on Further Strengthening the Protection of Geographical Indications*, came into effect on May 21, 2021.

marks and ensure the quality and characteristics of geographical indication products, China is stepping up efforts to complete related laws and regulations. On September 24, 2020, China National Intellectual Property Administration released A Draft of Provisions on Geographical Indication Protection for public opinion, marking another significant step we took in the legislation of geographical indications. China will continue to strictly fulfill its obligations under international agreements including the *Agreement between the European Union and the Government of the People's Republic of China on Cooperation, and Protection of Geographical Indications, Economic and Trade Agreement Between the Government of the People's Republic of China and the Government of the United States* and the *RCEP Agreement*, strengthening its communication and cooperation on geographical indication examination and approval with foreign authorities. It also encourages Chinese dealers of foreign geographical indication products under protection in China to use China's official geographical indication marks and guides Chinese products in mutual recognition lists to use foreign official geographical indication marks in overseas markets.

2.5 Industrial Designs

With regard to industrial designs, the *Hague Agreement Concerning the International Registration of Industrial Designs*, as one of the major agreements of intellectual property that all RCEP Parties shall commit to and seek to join, came into effect in China in May 2022. The agreement provides a simple and efficient procedure of appearance design international registration for innovative subjects which are able to be protected by various Parties by filing an international application in one language and paying the fees with one currency. The international registration is valid in the first period of five years and can be renewed twice in five years. In each contacting Party that is bound by the 1999 Act of the Hague Agreement, the international registration is protected for a minimum period of 15 years.

3. China's Judicial System of Intellectual Property

3.1 Intellectual Property Court

For now, China has formed a professional trial pattern, with the intellectual property trial department of the Supreme People's Court as the leading, four intellectual property courts as the demonstration, 27 intellectual property courts of local intermediate people's courts as the focus, and the intellectual property courts of local people's courts at all levels as the support. The appeal and hearing mechanism for handling intellectual property cases at the national level has been further improved, and the trial function of the intellectual property court has been continuously strengthened.

3.2 Trial of Intellectual Property Disputes

The trial of intellectual property is an important part of the intellectual property protection system. It covers civil, administrative and criminal areas with cases relating

to the patent, trademarks, copyright, trade secrets, integrated circuit layout design, new plant varieties, geographical indications, unfair competition, and monopolies. China will keep improving the professional intellectual property trial system, integrating the trial of civil, administrative, criminal cases, and implementing the punitive compensation system of infringement to safeguard fair competition in the market and protect the legal right of both foreign and domestic parties equally.

3.3 Procuratorial Supervision

As the national legitimate supervision authority, the People's Procuratorate has significant duties of prosecuting intellectual property crimes and supervising the unified and correct implementation of intellectual property laws. In recent years, procuratorial organs at all levels have earnestly implemented the decision-making arrangements of the CPC Central Committee, focused on key areas and prominent problems of intellectual property protection, and continuously strengthened judicial protection of intellectual property, making positive contributions to promoting economic and social development.

The Supreme People's Procuratorate has been promoting the system of notice of litigation of rights and obligations in intellectual property criminal cases, improving the centralized and unified performance mechanism of intellectual property procuratorial function, building a legal defense line of "no infringement" by prosecuting an increasing number of criminal cases.

4. China's Administrative Enforcement System of Intellectual Property

The efforts of the Chinese government made in protecting intellectual property right and combating infringement and counterfeiting played a positive role in building China into an innovative country, improving high-quality development and boosting global economic recovery. According to the "European Business in China Business Confidence Survey 2021" released by the European Union Chamber of Commerce in China, more than half of the companies surveyed thought that China's IP enforcement was "good enough" or "very good". The administrative enforcement of intellectual property in China mainly consists of customs enforcement, copyright enforcement, trademark enforcement and patent enforcement.

4.1 Customs Enforcement

Customs enforcement mainly aims at the import and export of goods that infringe intellectual property rights. Measures include confiscation and fines. The General Administration of Customs, to build the "smart customs", applied intellectual property trademark intelligent identification technology and developed a new generation of inspection management mobile system to improve the efficiency of enforcement. Guangzhou Customs developed a special analysis model of a convenient clearance three-dimensional supervision system to fight against import and export infringement in a small amount.

The specific actions taken by Chinese customs include: focusing on cracking down on infringing goods that threaten life, health and public security, strictly supervising infringement goods through cross-border mails and expresses, and actively carrying out preparation works for the implementation of RCEP intellectual property relating to customs protection to synergize with international high standards. Moreover, China has intensified its fight against infringement on goods such as high-risk pandemic-control materials and medicines.

Cases¹

During the special operation of “Longteng” in 2021, Ningbo Customs found a batch of goods named “plastic brushes” with brand cosmetics hidden among them during the inspection, which had the suspicion of infringement. After searching them through, 288 bottles of creams, 1,080 bottles of foundation, 3,600 mascara, and 53,300 lip glosses with trademarks of “L’OREAL” and “DIOR” in them were discovered. After contacting the intellectual property owners, these make-up products were confirmed as infringing goods.

4.2 Copyright Enforcement

Copyright enforcement in China mainly focuses on cracking down on infringement and piracy. The competent authorities are the National Copyright Administration, Ministry of Industry and Information Technology, Ministry of Public Security and Cyberspace Administration of China. The four institutions are responsible for fighting against Internet infringement and piracy and safeguarding the copyright order.

From 2021 to 2022, China focused on the copyright order rectification in five areas: first, intensified fight against short video copyright infringement, preventing account operators from cutting clips of film, TV series and other audiovisual works without authorization, adapting short video collections, and unauthorizedly copying plagiarism short videos and uploading them to Internet platforms; second, rectified the chaos of network live broadcast copyright, cracking down on unauthorized copying, performing and dissemination of other people's films and television works, music, games and audio and video products through the network; third, regulated the copyright order of sports events, cracking down on unauthorized public accounts which uploaded and disseminated large-scale sports events on the network platform; fourth, intensified supervisions of online education copyright, cracking down on unauthorized production of electronic teaching materials, audio-visual products and dissemination of pirate education works through public accounts, APPs and other channels; fifth, consolidated the achievements of enforcement in key areas, further strengthening the copyright supervision of e-commerce platforms, social platforms, and knowledge sharing platforms, and paying more attention to regulating the copyright orders of online news, online music, and computer software.

¹ New Progress Report on IP Protection and Business Environment in China (2021)

4.3 Trademark Enforcement

Trademark enforcement in China mainly regards trademark infringement, counterfeit patents, geographical indication infringement, and application of trademark registration in a bad faith, etc. The competent authority is State Administration for Market Regulation. In 2021, the State Administration for Market Regulation strengthened the work in key areas including trademark registration in a bad faith, geographical indication infringement and counterfeiting to protect the equal legal right of both foreign and domestic enterprises in accordance with the law. During the enforcement works, domestic and overseas enterprises receive the same intellectual property protection. In May 2021, the State Administration for Market Regulation together with the National Copyright Administration issued *Guiding Opinions on Further Strengthening the Protection of Geographical Indications*, aiming at improving geographical indications protection system and foreign geographical indications protection mechanism and enhancing connectivity of illegal leads, supervision standards and protection information.

4.4 Patent Enforcement

In the 2018 government institution reform, China established the State Administration for Market Regulation and reorganized the National Copyright Administration, realizing comprehensive enforcement of patents, greatly improving the management efficiency and increasing the coordination among intellectual property, quality management and standardization.

The *National Work Plan for the Administrative Protection of Intellectual Property Rights* in 2021 issued by the National Copyright Administration showed that the work of the institution in 2021 focused on key areas including e-commerce.

5. Basic Rules of the Related Intellectual Property Application in China

5.1 Copyright Law

Competent Authorities

Copyright Protection Center of China is the only comprehensive national copyright public service institution in China. It is responsible for the copyright registration of inland and foreign works as well as works from Hong Kong, Macao and Taiwan, namely, authors and other copyright owners of all provinces, municipalities, autonomous regions and from abroad can apply for the copyright registration in the Copyright Protection Center of China.

Processing Time limit

It will be completed after 30 days of the application. The applicant shall submit supplementary documentation as noticed within 60 days. The registration institution

will complete it in 30 days after receiving the right supplementary documentation.

Table 5-1: Basic Procedures of Copyright Application in China¹

Registration	Log in to the website, and sign up with a real ID to gain the user name and passport of the website.	
Register online	Choose the type of registration, and fill in the form online; print the registration form, sign and stamp; send the documentation through mail or go to the Registration Hall.	
Application	Materials that An Applicant Must Submit	
	A. Copyright of Works (1) Registration application form of copyright of works; (2) Applicant's identification document; (3) Certificate of ownership of the right (personal works do not need this) (4) When entrusting others to apply, the agent should submit the applicant's power of attorney (proxy statement) and the agent's identity certificate; (5) Sample of works.	B. Copyright of Software: (1) Registration application form of copyright of software; (2) Software identification materials; (3) Applicant's identification document; (4) Identification and related supporting documents of the contact person.
Application Processing	Check registration materials, supplementary documentation may be required; the applicant will be notified to pay fees once the examination is passed; the applicant will receive the payment certificate after paying fees.	
Notice of acceptance	The applicant receives the notice of acceptance	
Examination	The application materials will be checked first, and entered into the re-examination if the materials are complete. If materials are not complete, supplementary documentation will be required before the re-examination.	
Issue the certificate	Manufacture and issue the certificate, and put the notice on the website.	

5.2 Patent

Pursuant to the *Patent Law of the People's Republic of China*, where a foreigner, foreign enterprise or any other foreign organization that has no habitual abode or business office in China intends to apply for a patent or handle other patent-related matters in China, he or it shall authorize a legitimately formed patent agency to act on his or its behalf.

¹ <https://register.ccopyright.com.cn/registration.html#/registerOpus> Copyright Registration Entrance of Copyright Protection Center of China

Competent Authorities

The Patent Office of the National Intellectual Property Administration is the application acceptance and decision-making agency of patents. Any enterprise or person intending to apply for a patent for an invention or creation shall, according to the Patent Law and its Regulation for Implementation, file an application by submitting materials and paying the fees required.

Application Materials

The application for a patent in written form shall be submitted to the Patent Office of the National Intellectual Property Administration in duplicate. The application documents are: for invention, the request, the claims, the description, the abstract, and the drawing accompanying the description if appropriate; for utility model, the request, the claims, the description, the abstract, and the drawing accompanying the description; for design, the request, the pictures or photographs of the design, and brief explanation of the design.

The application for a patent in the digital form shall be submitted through the patent digital application system (digital application apps or online business platform)¹. The digital files shall abide by the requirements of *Description on the Format of Digital Application Documents* and *Precautions for Submission of Digital Application for Design Patent*.

Application Procedures

According to the Patent Law, the reviewing procedures of a patent application include five steps: acceptance, preliminary examination, publishing, substantive examination and granting. There are no publishing and substantive examination for the utility model or design, only acceptance, preliminary examination and granting will be carried out.

5.3 Trademark

In accordance with the *Trademark Law of the People's Republic of China*, where a foreign national or a foreign enterprise applies for trademark registration in China, it shall be handled in accordance with an agreement concluded between the applicant's country and the People's Republic of China or an international treaty acceded to by both countries or according to the principle of reciprocity.

Foreigners with regular residence in China may apply on their own. A foreign national or a foreign enterprise intending to apply for trademark registration and handle other trademark-related matters but having no business office in China shall authorize

¹ Patent digital application system of the National Intellectual Property Administration
<http://cponline.cnipa.gov.cn/>

a legally formed trademark agency to do so. Notice: The wholly-owned branches established by foreign enterprises in China are Chinese enterprises, not their business offices in China.

Competent Authorities

The Trademark Office of the National Intellectual Property Administration is responsible for specific works including trademark examination and registration and administrative decision-making.

Application Materials

Table 5-2 Required Documents of Trademark Application in China¹

Type of Applicant	Required Documents
A domestic natural person	(1) Trademark registration application with the signature of the applicant; (2) Picture of the trademark; (3) Copy of individual business license and copy of identity card.
A domestic legal person or other organization	(1) Trademark registration application with the seal of the applicant; (2) Picture of the trademark; (3) Copy of the applicant's identification document. Notice: The application can be submitted through the Online Application System after signing up on the website.
A foreign national	(1) Trademark registration application with the signature of the applicant; (2) Picture of the trademark; (3) Copy of the applicant's identification document; (4) Foreign Permanent Resident ID Card or copy of Foreigner's Residence Permit which is valid for more than a year issued by the public security department.

Application Procedures

Exam whether the trademark has been registered and the class of the trademark → File trademark registration applications and other relevant documents → The Trademark Office accepts the application → The Trademark Office carries out the preliminary and substantive examination (within nine to 12 months from the date of application) → The Trademark Office makes a publication of preliminary examination

¹ The Trademark Office of the National Intellectual Property Administration Trademark Application Guide <https://sbj.cnipa.gov.cn/sbj/sbsq/>

(any oppositions will be taken into consideration in the following three months) → The Trademark Office issues a certificate of trademark registration, and publishes the registered trademark.

Chapter Six Electronic Commerce

1. An Overview of the Chapter of Electronic Commerce under the RCEP Agreement

The Chapter on Electronic Commerce of the RCEP Agreement becomes the most comprehensive E-commerce international rules of the highest level covering the widest areas. It provides rules and guarantees for the promotion of digital economic development and cooperation of all Parties, contributes to enhancing mutual trust in policies, mutual recognition of rules and enterprise connectivity, and advances the healthy development of regional e-commerce¹. The key points of the chapter are as follows.

1.1 Promote the Level of Trade Facilitation

Paperless Trading

To promote the use of paperless trading, each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents and make documents available to the public in electronic form to improve efficiency and lower the cost.

The Validity of Electronic Authentication

To ensure the validity of electronic authentication and signature, participants are permitted to determine appropriate electronic authentication technologies and implementation models for their electronic transactions, and the use of interoperable electronic authentication is encouraged to provide more convenience and security for enterprises engaging in cross-border e-commerce.

1.2 Create A Conductive Environment for Electronic Commerce

Online Consumer Protection

Adopt or maintain laws or regulations to provide protection for consumers against fraudulent and misleading practices, enhance cooperation between competent authorities of all Parties, and publish related information on how consumers can pursue remedies and how businesses can comply with any legal requirements.

Information Protection

Adopt or maintain a legal framework that ensures the protection of personal

¹Business Reference: Special Issue for RCEP Training (I) sponsored by International Business Newspaper, 2021, Issue 2.

information of the users of electronic commerce, publish information on the personal information protection it provides to users and provide protection for personal information transferred from a Party. Require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages, require the consent of recipients to receive commercial electronic messages or otherwise provide for the minimization of unsolicited commercial electronic messages, provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented, and enhance regulation and cooperation in appropriate cases of mutual concern.

Electronic Transaction Regulation

Build a legal framework governing electronic transactions, endeavor to avoid any unnecessary regulatory burden, and build the capabilities of their respective competent authorities responsible for computer security incident responses, including conducting the exchange of best practices, and using the existing collaboration mechanisms to cooperate on matters related to cyber security. Publish as promptly as possible all relevant measures through various means, and respond as promptly as possible to a relevant request from another Party.

1.3 Promote the Development and Cooperation of Cross-border Electronic Commerce

Cross-border Data Flow

No Party shall require localization of computing facilities and each Party shall respect the requirements that seek to ensure the security and confidentiality of communications. No party shall set unreasonable conditions for conducting business or prevent a Party from adopting or maintaining any legal and non-discriminatory measures to protect its essential security interests. Each Party shall allow the cross-border transfer of information by electronic means and respect regulatory requirements concerning the transfer of information by electronic means of other Parties, and shall not prevent the cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person. Each party shall have the right to adopt or maintain measures to facilitate the transfer of information and safeguard data and information security.

Cooperation

The Agreement promotes the cooperation among Parties in assisting small and medium enterprises to overcome obstacles in the use of electronic commerce and building electronic commerce legal framework, endeavoring to undertake forms of cooperation that build on the existing cooperation initiatives such as the international fora. Meanwhile, the e-commerce dialogue and dispute settlement mechanism are established to first engage concerned Parties in consultations in good faith and reach a mutually satisfactory solution. In the event that the consultations fail to resolve the

differences, any Party engaged in the consultations may refer the matter to the RCEP Joint Committee.

2. China's E-commerce Legal System

China further deepens reforms to streamline administration and delegate power, improve regulation and upgrade services to improve its e-commerce legal and political system and spur market vitality. With the implementation of the *Cybersecurity Law* and *E-Commerce Law of the People's Republic of China*, the building of the e-commerce legal system has kept improving and made great achievements.

2.1 Cybersecurity Law

To ensure cyber security, safeguard cyberspace sovereignty, national security and social public interest, protect the legal right of Chinese citizens, legal persons and other organizations and promote the healthy development of economic and social informatization, the *Cybersecurity Law of the People's Republic of China* was issued on November 7, 2016 and came into force on June 1, 2017.

Obligations of Operators

When conducting operation and service activities, Internet operators shall comply with the laws and administrative regulations, respect social morality, abide by business ethics, behave with honesty and credit, fulfill the obligation of network security protection, accept the supervision of the government and society, and assume social responsibility.

Information Security

Internet operators shall ensure the confidentiality of the users' information they collect and build a mature users' information protection system. When collecting and using personal information, Internet operators shall comply with the principle of legality, justice and necessity, publish the rule, goal, method and scope of information collection and utilization and ask for the consent of users.

Liabilities of Operators

Network operators and network product or service providers infringing on personal information that is protected in accordance with law shall be ordered to make corrections by the relevant competent department, and may, either independently or concurrently, be given warnings, be subject to confiscation of unlawful gains, and/or be fined between 1 to 10 times the amount of unlawful gains; where there are no unlawful gains, the fine shall be up to RMB 1,000,000, and a fine between RMB 10,000 and 100,000 shall be given to persons who are directly in charge and other directly

responsible personnel; where the circumstances are serious, the relevant competent department may order a temporary suspension of operations, a suspension of business for corrections, closing down of websites, cancellation of relevant operations permits, or cancellation of business licenses.

2.2 E-commerce Law

For the purposes of safeguarding the lawful rights and interests of all parties to e-commerce, regulating e-commerce conduct, maintaining the market order, and promoting the sustainable and sound development of e-commerce, the *E-Commerce Law of the People's Republic of China* was issued on August 31, 2018 and came into force on January 1, 2019. There are 89 articles of 7 chapters in the Law, which include the applicable scope and general rules of the e-commerce law, e-commerce operator, formation and performance of e-commerce contracts, settlement of e-commerce disputes, promotion of e-commerce, etc.

Trade Facilitation

The “E-Commerce Contract” invented by the *E-Commerce Law* of China breaks through the limit of traditional contracts and offline rule of law and improves the facilitation of e-commerce. First of all, for the subject matter of the contract, in e-commerce law, a Party shall be presumed to have the corresponding capacity for civil conduct, and the validity of the electronic signature is recognized. Secondly, as for the signing of the contract, the Law recognizes the validity of an electronic contract and stipulates that the contract is signed once the order is confirmed on the Internet, breaking the complicated rules of the offer, commitment, anti-invitation, re-commitment and contract forms in the traditional civil law. Thirdly, in terms of the performance of the contract, the law integrates the delivery of the contract into the fast performance state of e-commerce, setting the time of signature by the consignee as the delivery time of goods or services. Fourthly, regarding dispute settlement, apart from the traditional court and arbitral institution, an online dispute settlement mechanism is established to develop and publish dispute settlement rules, and equitably and impartially settle the disputes between parties according to the principle of voluntariness.

Obligations of E-Commerce Operators

The *E-Commerce Law* urges the e-commerce platform operators to fulfill their obligations of protecting online consumers and the personal information of users and other requirements provided in the RCEP. To safeguard consumers' right to know and right of choice, an e-commerce operator is required to collect or use the individual information of its users in accordance with the law and is prohibited from performing unfair competition which may infringe upon the interests of consumers, or it shall bear civil or administrative responsibilities such as being ordered to make corrections by the

relevant competent department, being fined or being subject to confiscation of unlawful gains, etc.

Obligations of E-Commerce Operators

In accordance with the *E-Commerce Law*, an e-commerce business shall take special obligations, including protection of consumer rights and interests, intellectual property, cyber security and transparency. Moreover, an e-commerce business shall not conduct trading, by call auction, market maker, or any other means of centralized trading to destroy competition order and infringe on the interests of customers. In terms of intellectual property protection, an e-commerce business has the obligation to convey the notice of infringement, take necessary measures and publish the results. In terms of cyber security, an e-commerce business is required to take technical and other measures to ensure cyber security and stable operation, prevent network criminal activities, effectively respond to network security incidents, and protect the security of e-commerce transactions. As for transparency, an e-commerce business shall make publication of transaction rules, illegal behaviors and credit evaluation rules. In violation of the above obligations, it will be ordered to make corrections, fined or subject to confiscation of unlawful gains. Please note that an e-commerce platform business failing to prevent its operators from infringing on intellectual property rights will be ordered to make corrections by the intellectual property administrative department and be fined.

Promotion of Cross-border E-Commerce

The E-Commerce Law has made the following rules for the promotion of cross-border e-commerce: first, further improve the management system of customs, taxation, payment and settlement to fit the characteristics of cross-border e-commerce and increase its facilitation level, thus supporting cross-border e-commerce platform business by providing them with services including warehousing logistics, customs declaration and inspection; second, support small-and-micro sized enterprises to engage in cross-border e-commerce; third, facilitate information share, mutual-recognition of regulation and mutual-support of enforcement to improve the efficiency of the service and regulation for cross-border e-commerce; fourth, participate in the formulation of international rules, thus promoting mutual-recognition of the validity of electronic signature and ID; fifth, facilitate the building of a dispute settlement mechanism among different countries and regions.

2.3 Personal Information Protection Law

For the purposes of protecting rights and interests relating to personal information, regulating personal information processing activities, and promoting the reasonable use of personal information, the *Personal Information Protection Law of the People's Republic of China* was issued on August 20, 2021 and came into force on November 1,

2021. The Law also contains relevant regulations on the cross-border data flow in the RCEP Agreement, such as where a personal information processor provides personal information of an individual to a party outside the territory of the People's Republic of China, it shall inform the individual of such matters as the name of the overseas recipient, contact information, purpose, and method of processing, type of personal information and the way and procedure for the individual to exercise the rights prescribed herein against the overseas recipient, and shall obtain the individual's separate consent. For any overseas organization or individual whose personal information processing activities damage the personal information rights and interests of citizens of the People's Republic of China, or endanger the national security or public interests of the People's Republic of China, the State cyberspace administration may include such overseas organization or individual in the list of restricted or prohibited provision of personal information, announce the same, and take measures such as restricting or prohibiting the provision of personal information to such overseas organization or individual.

2.4 Data Security Law

Approved on June 10, 2021 and coming into force on September 1, 2021, the *Data Security Law of the People's Republic of China* is enacted for the purposes of regulating data processing activities, safeguarding data security, promoting data development and utilization, protecting the lawful rights and interests of individuals and organizations, and maintaining national sovereignty, security, and development interests.

It set out basic systems including data classification management, data security review, data security risk assessment, monitoring and early warning, and emergency response.

2.5 E-commerce Standard

The *Specification of E-Commerce Logistics Services* issued on November 16, 2015 stipulates the service ability, service requirements and operation requirements of e-commerce logistics service. The *Specification of E-commerce Commodity Acceptance* which came into force on October 1, 2017, stipulates terms and definitions of e-commerce commodity acceptance, technical requirements for commodity inspection management of online sellers, and requirements for commodity inspection management of platform service providers.

In recent years, with the rapid development of Chinese e-commerce, new industrial forms and modes have been emerging, the scale of market entities continues to expand and the types become increasingly complex. At the same time, the scattering of credit information and asymmetric information among market entities has increased the transaction cost and restricted the development of the industry in a high-quality way. The industrial standard of the *Evaluation Standard of Credibility Archives of E-commerce Enterprises* (SB/T 11227—2021) was issued by the Ministry of Commerce

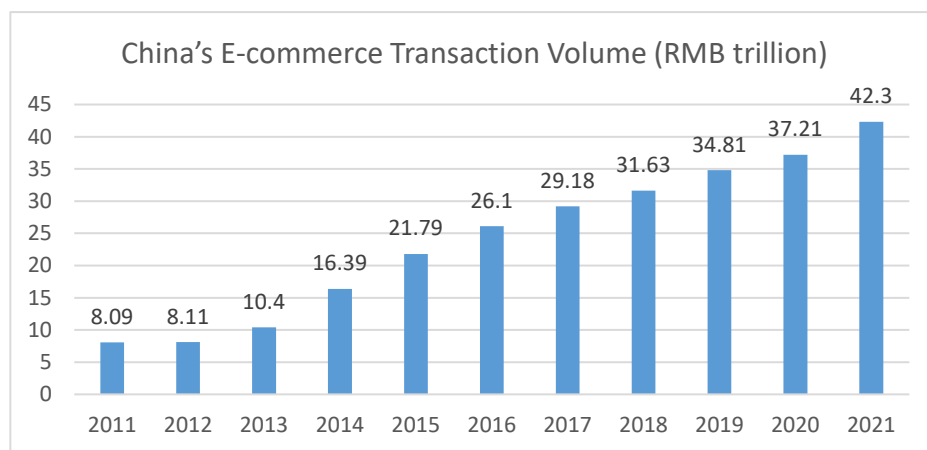
and came into force on May 1, 2021.¹ The standard offers the information source and content and evaluation indicators and methods of the credibility archives of e-commerce enterprises, guides enterprises and credit service institutions, professional associations and relevant social organizations to adopt a unified standard and build, assess and improve the credibility archives, thus encouraging all parties to endeavor to build an honest system for e-commerce and provide technical support for credit information sharing and application.

From August 18 to September 2, 2021, the Ministry of Commerce put a notice on its official website, requesting public comments on the industrial standard of the *Specification of Livestreaming E-Commerce Platform Management and Services* drafted by the China National Institute of Standardization. No comments were received during the period.

3. An Overview of the Electronic Commerce of China

3.1 Basic Information

According to the data by Cyberspace Administration of China, China has established bilateral cooperation mechanism of e-commerce with 24 countries on five continents to enhance cooperation on plan connectivity since 2016, industrial promotion, and capacity building. As the new modes and elements including livestreaming marketing, content e-commerce and community group purchasing keep developing and being regulated, the payment amount of cross-border e-commerce, rural online retail, national online retail, and online banking payments have been increasing year by year.



Graphic 6-1 2011-2021 Transaction Volume of E-Commerce in China²

According to the *Report on Development of the Internet in China (2021)*, in 2021, the transaction volume of national e-commerce grew to RMB 42.3 trillion, up 19.6% year on year. The transaction value of goods reached RMB 31.3 trillion and that of

¹ The industrial standard of the *Evaluation Standard of Credibility Archives of E-commerce Enterprises* issued by the Ministry of Commerce, <http://www.mofcom.gov.cn/article/zcjd/jdzhsw/202102/20210203038264.shtml>

² *Report on Development of the Internet in China (2022)*

services reached RMB 11 trillion; and the online retail sales hit RMB 13.09 trillion, up 14.1% year on year, of which RMB 10.8 trillion was the sales of goods, accounting for 24.5% of the total retail sales of consumer goods. The rural retail sales online went up 11.3% year on year to RMB 2.05 trillion and the retail sales of agricultural products online grew 2.8% year on year to RMB 422.1 billion.

3.2 E-Commerce Development Plan

The Department of Electronic Commerce and Information were established under the Ministry of Commerce to promote international cooperation in e-commerce. On October 9, 2021, the Ministry of Commerce, the Central Cyberspace Administration of China, and the National Development and Reform Commission enacted the *E-Commerce Development Plan for the “14th Five-Year Plan” Period*¹. By 2025, the high-quality development of e-commerce will have made significant progress in China. Riding the new forms and modes of the e-commerce boom, the core competitiveness of enterprises has been greatly enhanced, online retail continues to lead consumption growth, and a high-quality digital lifestyle has been basically formed. With e-commerce deeply connecting the domestic and international markets, enterprises have become more international and more capable of balancing global resources. The E-commerce Silk Road has kept adding more substance to international cooperation. The governance ability of e-commerce based on law, details and intelligence has also improved greatly.

The country will steadily advance the building of cross-border e-commerce comprehensive pilot zone, thus improving the political system and developing an environment and taking creative measures on public services. Promote enterprises to adopt various ways of e-commerce including livestreaming marketing, social e-commerce, product crowdfunding and big-data marketing, thus building a cross-border marketing system integrating online and offline and domestic and foreign markets and increasing brand value with digital means. Advance the building of new foreign trade infrastructure and support the building of internet platforms and online comprehensive service platforms. Establish industrial parks for cross-border e-commerce with gathered elements, multiple entities and professional services. Strengthen the building of the international mail exchange office and international express processing center to meet the needs of logistics development. Consolidate and foster a number of leading enterprises and industrial clusters with international competitiveness.

Expand the cooperation fields of the “E-Commerce Silk Road” and improve the e-commerce cooperation and development level together with other countries through the Belt and Road Initiative. Facilitate the connectivity of policies and regulations among “E-Commerce Silk Road” partners, guarantee the legal rights and interests of enterprises of all Parties and create a cooperation environment with connected rules. Further encourage e-commerce enterprises to enhance the building of an overseas marketing network, support the creation of local cooperation brands and deepen the industrial connectivity and local cooperation of e-commerce.

¹ *E-Commerce Development Plan for the “14th Five-Year Plan” Period*.
<http://images.mofcom.gov.cn/dzsws/202110/20211026104704129.pdf>

3.3 National E-Commerce Demonstration Base

To fully play the role of e-commerce enterprises in pooling resources and boosting development in surrounding areas and promote the healthy, rapid and coordinated development of e-commerce during the “12th Five-Year Plan” period and the forwarding days, the Ministry of Commerce decided to start the construction of national e-commerce demonstration base. As of August 31, 2022, there are a total of 155 national e-commerce demonstration bases in China.

Table 6-1 National E-Commerce Demonstration Bases with Outstanding Results in Comprehensive Evaluation in 2022¹

No.	Administrative Area	Name
1.	Beijing	ZPARK in Haidian District
2.	Shanghai	Jiading E-Commerce Industrial Park
3.	Jiangsu Province	Wuxi Shanshuicheng E-Commerce Industrial Park
4.	Zhejiang Province	Online Business Service Area of Yiwu Commodity City
5.	Jiangxi Province	Nankang Furniture Market
6.	Hubei Province	Gedian Central E-Commerce Demonstration Base
7.	Guangdong Province	Pazhou Artificial Intelligence and Digital Economy Pilot Zone
8.	Sichuan Province	Chengdu Cosmetology Valley
9.	Qingdao	Laoshan E-Commerce Demonstration Base
10.	Shenzhen	SCS E-Commerce Industrial Park

3.4 Cross-border E-Commerce

As the new industrial form of international trade, cross-border electronic commerce has shown strong development vitality in recent years. In 2021, China’s import and export value of cross-border e-commerce hit RMB 1.92 trillion, up 18.6% year on year and accounting for 4.9% of the total value of import and export, of which the value of export reached RMB 1.39 trillion while that of import reached RMB 0.53 trillion.

Meanwhile, to promote the healthy development of cross-border e-commerce retail imports and meet people’s needs of leading a beautiful life, the Ministry of Commerce adjusted the *List of Cross-Border E-commerce Retail Imports* (2019 version), which came into force on March 1, 2022. The list added 29 items including other scallops, other cotton bedding fabric products, and other seats with wood frames;

¹ National E-Commerce Public Service. <https://dzswgf.mofcom.gov.cn/ecps/sfjd/index>.

and deleted items including other swords and scimitars; it also adjusts the tariff line and remarks of the commodity according to the tariff transfer and adjustment in recent years.¹

The cross-border e-commerce comprehensive pilot zone is the trial field for cross-border e-commerce in China, which carries out pilot programs on technical standards, business processes, regulatory models and information construction for the transactions, payment, logistics, customs clearance, tax refund and foreign exchange settlement of cross-border e-commerce through the system, management and service innovation to realize the liberalized, facilitated and standardized development of cross-border e-commerce.

In March 2022, the State Council added a number of cross-border e-commerce comprehensive pilot zones to the list, with Ordos, Yangzhou, Zhenjiang, Jinhua, Ma'anshan, Kashgar and other 21 cities and regions joining the pilot program, marking the 6th expansion of the list in nearly seven years. After the expansion, the number of cross-border e-commerce comprehensive pilot zones reached 132², covering 30 provinces and cities.

¹ Adjustment of the List of Cross-Border E-commerce Retail Imports, <http://www.gov.cn/zhengce/zhengceku/2022-02/21/5674854/files/3d3263c5ea0f4795b9864165b78af2c0.pdf>

²The number of the cross-border e-commerce comprehensive pilot zone reached 132, http://www.gov.cn/xinwen/2022-03/02/content_5676381.htm

Chapter Seven Government Procurement

1. Content of the Chapter of Government Procurement Under the RCEP Agreement

Chapter 16 of the RCEP Agreement is government procurement, which contains eight articles and one annex. The eight articles include the objectives of the Agreement, the scope of bonded entities, principals, transparency, cooperation, review, contact points and non-application of dispute settlement, while the annex lists the paper or electronic means utilized by Parties for the publication of transparency information. The key points of the chapter are as follows:

Article two of “Scope” explains that this chapter shall apply to the laws, regulations, and procedures of a Party regarding government procurement implemented by its central government entities.

Article four of “Transparency” is the core of rules for government procurement. Consisting of four sub-articles, the article stipulates that each Party shall make available its laws and regulations and related procedures, update the information, specify the means utilized to publish transparency information and make the information available in the English Language. The specific obligations of the central government of all Parties include: first, make publicly available its laws and regulations; second, endeavor to make publicly available and update the information regarding government procurement through electronic means; third, specify the paper or electronic means utilized by that Party to publish the information regarding government procurement; fourth, endeavor to make the information regarding government procurement available in the English language.

Article five of “Cooperation” gives four approaches of cooperation for Parties include: exchanging information on Parties’ laws, regulations, and procedures, and any modifications thereof, providing training, technical assistance, or capacity building to Parties, sharing information, where possible, on best practices, including those in relation to small and medium enterprises; and sharing information on electronic procurement systems.

2. The Basic Legal System of Government Procurement in China

To build a unified, open market system of fair competition for government procurement, China treats domestic and foreign-invested enterprises within its territory equally during government procurement. Implement the requirements of treating domestic and foreign-invested enterprises on an equal basis during government procurement activities, safeguard the equal rights of domestic and foreign-invested enterprises to participate in government procurement, prevent differential or discriminatory treatments towards domestic or foreign-invested enterprises in terms of the information publication, supplier qualification requirements and exam and review standards, and prevent restrictions on suppliers regarding forms of ownership and organization, the structure of ownership, nationality of investors, product brand and other unreasonable conditions. For now, China has formed a complete legal system of government procurement which consists of laws, administrative and local regulations, provisions and rules, and normative documents covering mechanisms, enforcement, supervision, management and other aspects.

2.1 The Basic Legal System of Government Procurement in China¹

The legal system of government procurement in our country is led by the *Government Procurement Law* and the *Regulation on the Implementation of the Government Procurement Law of the People's Republic of China* and supported by departmental regulations and normative documents, covering various aspects including mechanisms, enforcement, basic management, regulation and decision-making.

The *Government Procurement Law* and the *Regulation on the Implementation of the Government Procurement Law* stipulate the information publication, transparency of procedures, standards under the supervision and other rules that are helpful in enhancing fund management, improving regulatory management of government procurement, promoting the efficiency of fund utilization and regulating the development of the market economy.

The currently effective departmental regulations of government procurement include: ① *Measures for the Administration of Government Procurement by No-Bid Procurement Methods* (No.74 Order by the Ministry of Finance). It stipulates that purchasers and procurement agencies shall adopt no-bid procurement methods such as negotiation, single-source procurement and inquiry procurement to purchase goods, projects and services. ② *Measures for the Administration of Bidding for the Government Procurement of Goods and Services* (No.87 Order by the Ministry of Finance). It aims at regulating the procurement activity of government staff, enhance the supervision and management of bidding in purchasing goods and services, and protecting national interests, public interests and the legal rights and interests of the persons involved in the bidding activity. ③ *Measures for Challenges and Complaints against Government Procurement* (No.94 Order by the Ministry of Finance). It is enacted for the purposes of regulating challenges and complaints against government procurement and protecting the lawful rights and interests of the parties participating in government procurement activities. ④ *Measures for the Administration of Government Procurement Information Release* (No.101 Order by the Ministry of Finance). It stipulates that government procurement information is required to be published in accordance with relevant laws and regulations including public bidding announcements, qualification review announcements, single source procurement announcements, bid (transaction) result announcements, government procurement contract announcements as well as administrative information including results of complaint handling, supervision and inspection, and assessment results of centralized procurement organization should be published in designated media in time. ⑤ *Measures for the Administration of Government Procurement of Services* (No.102 Order by the Ministry of Finance). It specifies the purchasing and undertaking subject of government procurement of services, implements guiding catalog management on the specific scope and content of government procurement of services and opens the guiding catalog in accordance with the law.

The currently effective normative documents include: ① *Interim Measures for the Administration of Competitive Negotiation Procurement Methods for Government Procurement* (No. 214 [2014] of the Ministry of Finance). It clarifies the conditions available for competitive negotiation procurement, procedures of negotiation and so on. ② *Notice by the Ministry of Finance of Effectively Conducting Public Disclosure of Government Procurement Information* (No. 135 [2015] of the Ministry of Finance). It clarifies the channel of public disclosure, and the scope and entity of government

¹ CCGP. www.ccgp.gov.cn/zcfg

procurement information. ③ *Interim Measures for the Administration of Government Procurement Agencies* (No. 2 [2018] of the Ministry of Finance). It aims at strengthening the regulation and administration of government procurement agencies and promoting the regulative development of these agencies. The currently effective normative documents also include: *Notice of the General Office of the Ministry of Finance of Effectively Registering the Government Procurement Agencies* (No. 28 [2018] of the Ministry of Finance), *Notice by the Ministry of Finance of Promoting Fair Competition in Public Procurement and Optimizing Business Environment* (No. 38 [2019] of the Ministry of Finance), and *Notice by the Ministry of Finance of the Public Disclosure of Government Procurement Intentions* (No. 10 [2020] of the Ministry of Finance).

2.2 Scope and Methods of Government Procurement

According to the *Government Procurement Law*, "Government Procurement" refers to the purchasing activities conducted with fiscal funds by government departments, institutions and public organizations at all levels, where the goods, construction and services concerned are in the centralized procurement catalog complied in accordance with law or the value of the goods, construction or services exceeds the respective prescribed procurement thresholds. From the above definition, we could know that there are four indicators to tell if it falls into the scope of government procurement: ① Procuring entities: the procuring entities should be government departments, institutions and public organizations. ② Source of Funds: fiscal funds, on the one hand refer to the funds incorporated into budget management: all funds incorporated into the department budget management, regardless of the source, including part of the business income, operating income and other self-owned income, are regarded as the fiscal funds in the *Government Procurement Law*; on the other hand, they refer to the loan funds as a source of repayment: namely, the loan funds included in budget management as a source of repayment are also regarded as the fiscal funds in the *Government Procurement Law*. ③ Procurement Catalogue and Quota: Containing in the centralized procurement catalog or exceeding the quotas for government procurement. ④ Procurement Targets: contract form, compensated commodities, engineering works and related services, including purchase, lease, consignment, employment, etc.

According to the currently effective regulations, public bidding should be taken as the main form of government procurement in principle. For government procurement to meet special conditions, forms other than public bidding have to be adopted with the approval of the Department of the Finance of people's government at the municipal level or above with administrative districts. There are seven methods of government procurement: public invitation, invited bidding, competitive negotiation, competitive consultation, single-source procurement, inquiry about quotations and framework agreement. For specific applicable situations, please see Table 7-1.

Table 7-1 Applicable Situations of Different Government Procurement Methods¹

Procurement Methods		Applicable Situations
Procurement Methods of Bidding	Public Bidding	Where the amount of single procurement of goods and services exceeds the limit of public bidding, the procurement shall be conducted through public bidding. In special cases where forms other than public bidding have to be adopted, approval should, before the start of the procurement activity, be obtained from the procurement supervisory and administrative department of the people's government of the city or autonomous prefecture with administrative districts.
	Invited Bidding	(I) they are of special nature and can only be procured from a limited number of suppliers; (II) The percentage of expenses in the total value of government procurement is too large if they are procured by public bidding.
Non-bid Procurement Methods	Competitive Negotiation	(I) after public bidding, there is no supplier tender or qualified tender or re-bidding is not possible; (II) specific descriptions or requirements cannot be determined for the sake of complex technology or special nature; (III) the time limit cannot be met the demand of users if public bidding is adopted; (IV) the total price of the commodities or services cannot be worked out beforehand.
	Competitive Consultation	(I) services procured by the government; (II) specific descriptions or requirements cannot be determined for the sake of complex technology or special nature; (III) the total price of the commodities or services cannot be worked out beforehand because the time and quantity of artworks, patents, know-how or services cannot be determined in advance; (IV) scientific research projects with insufficient market competition and research finding application projects that require support; (V) engineering projects other than those must be subject to bidding in accordance with the Bidding Law and its Regulation on Implementation.
	Single Source	(I) they can only be procured from a sole supplier; (II) procurement from other suppliers is impossible due to the occurrence of an unexpected critical situation; (III) additional procurement should be made from the original suppliers in order to keep consistency with the previous procurement or meet the needs of supportive services, and the total amount of additional procurement does not exceed 10% of the original contract value of procurement.

¹ National Database of Laws and Regulations. <https://flk.npc.gov.cn>

	Inquiry about Quotations	The description and standard of commodities to be procured are unified, and commodities on hand are sufficient with a small margin of change in price.
	Framework Agreement	(I) small sporadic procurement of items included in the centralized procurement catalog and necessary consumables and accessories thereof; (II) small sporadic procurement of legal, assessment, accounting, auditing and other consulting services required for the administration of the department and the system that are not included in the centralized procurement catalog and exceed the quotas for government procurement; (III) service projects, not included in the centralized procurement catalog and exceed the quotas for government procurement, purchased by the government that provide services to objects outside the department and the system and requirements to determine more than two suppliers for service objects to choose from.

2.3 Government Procurement Suppliers

Pursuant to the *Government Procurement Law*, government procurement shall target domestic commodities, engineering works and services, except in special cases. In accordance with the law and regulation of our country, foreign-invested enterprises producing and providing commodities, engineering works and services within the territory of China shall enjoy national treatment on an equal base. Suppliers participating in government procurement activities shall meet the following requirements: ① have the capability of undertaking civil liability; ② have a fine business reputation and a sound financial accounting system; ③ have the necessary equipment and professional skills to perform contracts; ④ have a fine record of paying taxes and surcharges and social security funds according to law; ⑤ have no record of material malpractice in its business operation during the three years before participation in the government procurement activity.

2.4 Methods of Remedy for Government Procurement Suppliers

In accordance with the *Measures for Challenges and Complaints against Government Procurement*, where a supplier alleges that the procurement documents, process, bid and transaction results have caused any damage to its (his) legal rights and interests, it (he) may initially challenge the purchaser or procurement agency within seven workdays from the date it (he) knows or should know that its (his) legal rights and interests suffered damage; if the purchaser or procurement agency fails to give a satisfactory response or respond within the prescribed time limit, the supplier may lodge a complaint to the financial department at the same level within 15 working days after the expiry of the time limit for response.

3. Information often Utilized in Government Procurement of the RCEP

Agreement

3.1 Government Procurement Information Release¹

As provided by the *Measures for the Administration of Government Procurement Information Release*, the government procurement information announcements shall follow the principles of standard and uniform content, relatively central channels and convenience in obtaining and searching. The website of CCGP (China Central Government Purchase) and its provincial sub-web are designated as the platforms for collecting information, all the government procurement information shall be released through them. Our country has made the following achievements in government information release by now:

Multiple channels for information announcement. Most of the information about government procurement can be found in the CCGP (Chinese Government Procurement Service Information Platform). The provincial sub-web of CCGP is designated by the local Department of Finance as one of the official media for releasing government procurement information. Currently, 37 local sub-webs are able to be searched from CCGP which covers a majority of areas in the country. The Ministry of Finance also designates *China Financial and Economic News*, *China Government Procurement News*, *China Government Procurement Magazine* and *China State Finance* as the media for releasing government procurement information.

Transparency of Procurement keeps improving. Since 2017, the Ministry of Finance has carried out the government procurement transparency evaluation for four years in a row. The evaluation adopts a quantitative method to comprehensively evaluate the construction and supervision of the government procurement information disclosure system, the construction of the information release platform and procurement project information disclosure. Taking the result of the evaluation in 2019 as an example, the average score of all regions is 88.4, turning out a good result. The number of regions getting a score over 90 increased from eight in 2018 to eleven in 2019, while the number of regions getting a score less than 80 cuts from eight in 2018 to three in 2019, and it was the first time that no region got a score less than 70.

Strict supervision on government procurement information disclosure. The major approaches of supervision include: creating a list of misconduct records of government procurement agencies and a list of records of serious violations of the law and dishonesty and building an information statistical management system and a transaction management system for local government procurement.

3.2 Common Situations for Suppliers Unable to Participate in Government Procurement

Fail to respond within a specified time limit or location. Government procurement projects have a specific time limit and address for the acquirement and submission of documents. Suppliers missing the time of response and failing to file the documents to the designated location or mail address will be unable to participate in

¹CCGP. www.ccgp.gov.cn

government procurement.

Fail to seal the responding documents as required. Procurement projects often have specific requirements on the sealing of responding documents, including but limited to the number of copies, whether it is sealed separately, if the digital version is needed, the content of the seal, whether the signature and stamp are required on the sticker of the bag, the location of signature and stamp, etc. Suppliers failing to seal the responding documents as required or failing the examination will be unable to participate in government procurement.

3.3 Common Risk of Government Procurement Suppliers Violating the Law and Regulation

Different suppliers who are under the charge of the same person or have direct holdings or administrative relationships cannot participate in government procurement activities under the same contract together. To guarantee fair competition in government procurement, the *Regulation on the Implementation of the Government Procurement Law* prohibits associated suppliers from participating in government procurement activities under the same contract.

Collusive Bidding. According to the *Government Procurement Law*, suppliers winning a bid through colluding, in bad faith, with a supplier or a procuring agency, shall undertake relevant legal liabilities. As provided in the *Measures for the Administration of Bidding for the Government Procurement of Goods and Services*, the following circumstances shall be deemed that a bidder colludes in bidding and its bid is invalid and has the risk of being investigated for legal responsibility: the bids of different bidders are developed by a same entity or individual; different bidders entrust a same entity or individual to handle the bidding matter; the project management member or contact person specified in the bids of different bidders is the same person; the bids of different bidders are abnormally consistent or there are regular differences in the bidding prices; the bids of different bidders are mingled with each other; the bid bond of different bidders are transferred from the account of a same entity or individual.

The government procurement contract fails to be signed in accordance with bid invitation documents. The signing of the government procurement contract shall be based on the requirements in the bid invitation documents and response to the bids. No substantive modifications are allowed to the bid invitation documents and bids. Where there are changes in reality, the contract shall be signed within the scope of the bid invitation documents. Meanwhile, a supplementary contract adjusted according to the reality shall be signed by guaranteeing that the amount does not exceed 10% of the original contract purchase amount.

The time limit of the contract performance is too long. The performance period of a contract or a project is normally a year; for a government procurement project of services with stable contents, strong continuity, stable funding source and little price change, where the budget is adequate, a procurement contract of a time limit for less than three years may be signed.

Chapter Eight Competition Laws

1. Content of the Chapter on Competition under the RCEP Agreement

Chapter 13 of Competition in the RCEP Agreement consists of nine articles, including objectives, basic principles, appropriate measures against anti-competitive activities, cooperation, confidentiality of information, technical cooperation and capacity building, consumer protection, consultation, and non-application of dispute settlement, specifying the development and enforcement of competition laws, cooperation of law enforcement, the confidentiality of information and capacity building. The four annexes in this chapter detail the special regulations of the development, enforcement and application of competition law in Brunei, Cambodia, Lao PDR and Myanmar.

Parties cooperating on competition law enforcement shall comply with obligations of non-discrimination, procedural fairness and transparency. First, according to Paragraphs 4 and 5 of Article 13.3, the obligation of non-discrimination stipulates that each Party shall apply and enforce its competition laws and regulations in a manner that does not discriminate on the basis of nationality, each Party shall apply its competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership, and any exclusion or exemption from the application of each Party's competition laws and regulations shall be transparent and based on grounds of public policy or public. Next, Paragraphs 8 to 11 of Article 13.3 ensure that the procedures are fair and legal by requiring, before a sanction or remedy, that the person breaching the law is given the reasons for the allegations, and a fair opportunity to be heard and presence of evidence. At last, Paragraphs 6 and 7 of Article 13.3 require the transparency of enforcement. Each Party shall make publicly available its competition laws and regulations, any guidelines issued in relation to the administration of such laws and regulations, any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom.

Confidentiality of Information. Article 13.4 stipulates that cooperation is important for promoting effective competition law enforcement, such as the exchange of information to foster understanding or to facilitate effective competition law enforcement. Article 13.5 sets out rules for the exchange of confidential information. First of all, information that is contrary to that Party's laws, regulations, and important interests, is not included in the scope of sharing. Next, where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of: the purpose of the request, the intended use of the requested information and any laws or regulations of the requesting Party that may affect the confidentiality of information. Besides, the Agreement sets out rules for sharing of confidential information, including the sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned as well as using the information received in accordance with required purposes and methods, etc.

Technical Cooperation and Capacity Building. The RCEP Agreement inherits the principle of special and differential treatments in the multilateral trade system and provides such treatments to the developing and least-developed members. The treatments include: providing a transitional period and technical support and postponing obligations. As provided in the four annexes of Chapter 13, a transitional period for the development and enforcement of competition laws is given to Brunei, Lao PDR and

Myanmar (three years) as well as Cambodia (five years). According to Article 13.6, the Parties agree to provide support to the developing and least-developed countries in terms of technical cooperation and capacity building.

Consumer Protection. Article 13.7 of “Consumer Protection” encourages cooperation related to consumer protection among Parties. The Agreement requires Parties not only to cooperate on cross-border consumer protection but also to adopt or maintain laws or regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.

2. The Legal System of Competition Laws in China

To promote fair market competition, encourage innovation, improve economic efficiency and protect the interests of consumers and the public interest, China implemented *Anti-monopoly Law* and *Anti-Unfair Competition Law* as well as a series of supporting rules, regulations and measures to regulate monopoly and unfair competition.

2.1 Anti-monopoly Law

The *Anti-monopoly Law* of the People's Republic of China was issued on August 30, 2007 and came into force on August 1, 2008. After the amendment, the new *Anti-monopoly Law* took effect on August 1, 2022. The adjustment of the new *Anti-monopoly Law* includes: the legal relationship among undertakings in a competition, and their relationships between related administrative institutions and organizations of public practical functions. Applicable areas: monopolistic conducts within the territory of China; monopolistic conducts outside the territory of China but has an eliminative or restrictive effect on domestic market competition. Monopolistic conducts which require regulation include: monopoly agreements reached between undertakings, abuse of dominant market position by undertakings and concentration of undertakings that lead, or may lead to elimination or restriction of competition.

To implement the amended *Anti-monopoly Law*, set clearer rules for the operational activities of market entities and prevent concentration that may hinder fair market competition from the source, the State Administration for Market Regulation drafted five departmental regulations including *Provisions on Prohibiting Monopoly Agreements* (Exposure Draft), *Provisions on Prohibiting Abuse of Dominant Market Positions* (Exposure Draft), *Provisions on Prohibiting the Abuse of Intellectual Property Rights to Preclude or Restrict Competition* (Exposure Draft), *Provisions on Prohibiting the Acts of Eliminating or Restricting Competition by Abuse of Administrative Power* (Exposure Draft), and *Provisions on Review of Concentration of Undertakings* (Exposure Draft); and an administrative regulation: *Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators* (Exposure Draft), which were open for public comments. The key points are as follows:

Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators (Exposure Draft) consists of seven articles, and the amended parts include: increasing the standard of turnover, in principle, business operators not reaching the standard do not need to declare; optimize the declaration standard, a concentration of undertakings with turnover exceeding RMB 100 billion within the territory of China shall be included in the scope of review if they meet the specific conditions; and set rules on a concentration of undertakings does not reach any of the declaration standards but complies with the circumstances of the *Anti-monopoly Law*.

Provisions on Prohibiting Monopoly Agreements (Exposure Draft) contains 47 articles. Firstly, add the definition of “undertakings in a competition” in horizontal monopoly agreements, making it clear that actual and potential competitors can both become the subject of a horizontal monopoly agreement. Secondly, give undertakings the right of being heard about the vertical price agreement they reached. Thirdly, add the conduct of reaching a monopoly agreement through digital economic means. Fourthly, add the safety harbor system and specify its standards and procedures. Fifthly, add the legal liability of undertakings who organize and help to reach monopoly agreements and give definitions to “organization” and “substantive help”. Sixth, further regulate the procedures of suspension of an investigation, clarify leniency application and recognition procedures, straighten out the exemption identification procedure, add the interview system, etc. Lastly, adjust the legal liabilities in certain circumstances in accordance with the *Anti-monopoly Law*.

The *Provisions on Prohibiting Abuse of Dominant Market Positions* (Exposure Draft) consists of 42 articles. Firstly, specify the rules relevant to anti-monopoly systems which are applicable in the platform economy, and require that undertakings shall not abuse their dominant market positions through data, algorithms, technology or platform rules, including “Amount of transaction” and “Ability to control flow” into the indicators to determine whether a business operator has a dominant market position, and add the behavior and legitimate reason of platform operators with dominant market positions conducting “self-preferential treatment”. Secondly, when determining whether a business operator has a dominant market position, include “the degree of concentration of market” into factors for analyzing the competition status of related markets. Thirdly, when determining whether a business operator abuses its dominant market positions, add more factors such as the conduct of unfair prices. Fourthly, further regulate the procedures of suspension of an investigation and the report and record of monopoly cases and add the interview system. Fifthly, adjust the legal liabilities and add the handling of the staff of anti-monopoly enforcement institutions breaching the laws in accordance with the amendment of the *Anti-monopoly Law*.

The *Provisions on Prohibiting the Abuse of Intellectual Property Rights to Preclude or Restrict Competition* (Exposure Draft) consists of 28 articles. First, according to the amendment of the *Anti-monopoly Law*, the Provisions add the rule that business operators shall not organize other operators to reach a monopoly agreement or give substantive support to other operators and help them reach a monopoly agreement by exploiting their intellectual property rights. Second, specify the monopolistic conducts concerning intellectual property rights which include monopoly agreements reached between undertakings, abuse of dominant market position and concentration of undertakings that lead, or may lead to elimination or restriction of competition. Third, improve anti-monopoly rules in key areas such as standard essential patents and copyright collective management organizations.

The amended parts of the *Provisions on Prohibiting the Acts of Eliminating or Restricting Competition by Abuse of Administrative Power* (Exposure Draft) include: improving related rules, detailing the acts of restricting transactions, obstructing the free circulation of goods and other conducts of eliminating or restricting competition, add enforcement requirements of entities or individuals cooperating with investigations as well as contents of fair competition review and encouraged competition according to the amendment of the *Anti-monopoly Law*.

The *Provisions on Review of Concentration of Undertakings* (Exposure Draft) contains 76 articles. First, specify the system of stopping the clock during the examination of the concentration of business operators. Second, improve regulations

on the examination and investigation of concentration of business operators not reaching the declaration standards. Third, clarify the concept of “carrying out concentration” and improve regulations on investigations of business operators illegally carrying out concentration. Fourth, specify the standards and procedures of entities. Fifth, improve the examination system for the concentration of business operators based on a categorization and classification method. Sixth, clarify the legal liabilities of declaration agents, increase the amount of fines for illegally carrying out concentration and rejecting or obscuring enforcement of the law, and enhance the legal liabilities of the trustee and the purchaser of the divested business for failing to perform their obligations as required.

2.2 Anti-Unfair Competition Law

The *Anti-Unfair Competition Law* of the People's Republic of China was issued in 1993 and amended in 2017 and 2019 respectively. The acts of unfair competition regulated by the Law include behaviors of misleading customers, seeking transaction opportunities or competitive edges by bribing, false or misleading commercial publicity, infringing upon trade secrets, premium campaigns with certain conditions and damaging the goodwill or product reputation of a competitor.

The articles of the *Anti-Unfair Competition Law* reflect the fairness of procedures, transparency of enforcement, the confidentiality of the information and other requirements. First of all, in terms of the fairness of procedures, it provides self-remedy approaches for consumers and operators. Entities and individuals being harmed by unfair competition have the right to report it to the supervisory inspection departments. A business whose lawful rights and interests are damaged by any act of unfair competition may institute an action in a people’s court. Where a business is unsatisfied with the decisions of the supervisory inspection departments, it may apply for administrative review, or lodge administrative litigation in accordance with the law. Next, in terms of transparency of enforcement, when investigating suspected acts of unfair competition, the supervisory inspection departments shall comply with the laws and regulations and disclose the investigation and disposition results to the public in a timely manner. Where a business receives any administrative punishment for engaging in unfair competition in violation of this Law, the supervisory inspection department shall enter it into the credit record of the business, and publish it according to the provisions of the relevant laws and administrative regulations. Lastly, as for the confidentiality of information, the supervisory inspection departments and their employees shall have an obligation to keep the trade secrets known in their investigations confidential and keep informants confidential.

3. Enforcement of Anti-monopoly Law

3.1 The Enforcement Institution of Anti-monopoly Law

Before the institutional reform of the State Council in 2018, the Anti-monopoly Bureau of the Ministry of Commerce, the Price Supervision and Anti-monopoly Bureau of the National Development and Reform Commission and the Anti-monopoly and Anti-unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce undertake the enforcement work respectively. To unify the enforcement strength of anti-monopoly, after the institutional reform of the State Council, the three institutions were integrated, with the State Administration for Market Regulation

undertaking the unified enforcement function of anti-monopoly.

According to the jurisdiction of legal cases, the institutions of anti-monopoly enforcement are classified into two levels: the central anti-monopoly enforcement institution and the local ones. The central anti-monopoly enforcement institution refers to the State Administration for Market Regulation while the local ones refer to the local Administrations for Market Regulation. The State Administration of Market Supervision is responsible for the unified anti-monopoly enforcement, directly governing or authorizing the relevant provincial market supervision departments to handle the following cases: ① cases of monopoly agreements or abuse of dominant market position and administrative power that lead to elimination or restriction of competition across provinces, autonomous regions and municipalities, and abuse of administrative power that lead to elimination or restriction of competition enforced by provincial governments; ② cases of monopoly agreements or abuse of dominant market position and administrative power that lead to elimination or restriction of competition which are complicate or have major influence across the country; ③ cases of monopoly agreements or abuse of dominant market position and administrative power that lead to elimination or restriction of competition which the State Administration of Market Supervision deems necessary for direct jurisdiction. The local market supervision departments are responsible for dealing with cases of monopoly agreement, abuse of dominant market position and administrative power that lead to elimination or restriction of competition and other anti-monopoly enforcement works within their administrative districts.

The powers of the law enforcement institutions are as follows: ① the power of investigation. The staff may enter the premise of the business operator, make inquiries about relevant organizations or individuals, check relevant documents and data, seal and detain relevant evidence and inquiry about the operators' bank account. To adopt measures specified in the preceding paragraph, a written report shall be submitted to the law enforcement institution for approval. The business operators under investigation shall cooperate with the law enforcement institution and shall not refuse or obstruct the investigation. ② the power of examination and approval. The anti-monopoly law enforcement institution has the responsibility to investigate the concentration of operators and monopoly agreements that are required for examination and approval and has to make the decision of approving or not approving. ③ the power to authorize enforcement. The anti-monopoly law enforcement institution of the State Council can, according to the needs, authorize the corresponding institutions of the people's governments of provinces, autonomous regions and municipalities to do enforcement works in accordance with the provisions in the *Anti-monopoly Law*. ④ the power of administrative sanction. After the investigation and review, the anti-monopoly law enforcement institution has the right to conduct administrative sanction on illegal acts of the business operator which include ordering to stop illegal acts, confiscating illegal gains, imposing a fine, ordering to restore the status prior to the concentration of operators, and disposing of the equity interest or the assets.

3.2 Characteristics of Anti-monopoly Law Enforcement Procedures

Enforcement. Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to eliminate or restrict competition, including require, or require in disguised form, units or individuals to deal in, purchase or use only the

commodities supplied by the undertakings designated by them; exclude other undertakings from entering relevant markets or treat them unequally; impede the free flow of commodities between different regions; exclude undertakings from participating, or restrict their participation, in local invitation and tendering; and exclude non-local undertakings from making an investment or restrict their investment locally or exclude them from establishing branch offices locally or restrict their establishment of such offices by treating them unequally.

Fairness of procedures and confidentiality of information. The authority for enforcement of the Anti-monopoly Law and its staff members are obligated to keep confidential the commercial secrets, personal privacy and information as well as the information of the informants they come to have access to in the course of law enforcement. During the investigation, to adopt measures including examining, inquiring, checking and reproducing, sealing and detaining as well as inquiring accounts, a written report shall be submitted for approval to the principal leading person of the authority for enforcement of the Anti-monopoly Law. During the investigation, there shall be at least two law-enforcement officers, who shall produce their law enforcement papers. The law-enforcement officers shall make written records when conducting inquiries and investigations, which shall be signed by the persons after being inquired or investigated. During the investigation, the undertakings under investigation and the interested parties shall have the right to make statements.

Transparency of enforcement. The authority for enforcement of the Anti-monopoly Law shall give the reason for whether to prohibit the undertakings from concentrating and publicize such decisions in a timely manner. Where the authority for enforcement of the Anti-monopoly Law under the State Council decides to conduct further review, it shall, within 90 days from the date of the decision, complete such review, decide whether to prohibit the undertakings from concentrating, and notify them of such decision in writing.

Approaches of remedy. Where a business is unsatisfied with the decisions of the law enforcement institution, it may apply for administrative review, or lodge administrative litigation. On top of that, pursuant to the *Anti-monopoly law*, if the undertakings under investigation commit themselves to adopt specific measures to eliminate the consequences of their conduct within a certain period of time which is accepted by the said authority, the authority for enforcement of the Anti-monopoly Law may decide to suspend the investigation. Where the undertaking fulfills its commitments, the authority for enforcement of the Anti-monopoly Law may decide to terminate the investigation.

3.3 Key Sectors

The public data showed that the major acts of a monopoly include the conclusion of monopoly agreements, abuse of market dominant position, the concentration of operators and abuse of administrative power to eliminate or restrict competition; and the key areas anti-monopoly cases cover include the Internet, pharmaceutical, public utilities (water and gas supply), building material, transportation and petrochemical industry.

3.4 Legal Liabilities

A business conducting monopoly acts may undertake administrative, civil or criminal liabilities. The first type: an operator or administrative development or an

organization authorized by laws or regulations to perform the function of administering public affairs abusing its administrative power to conduct monopoly shall undertake administrative responsibility, ①Where an undertaking concludes and implements a monopoly agreement, the authority for enforcement of the Anti-monopoly Law shall instruct it to discontinue the violation, confiscate its unlawful gains and impose a fine on it; ②Where the undertakings implement concentration, the authority shall instruct them to discontinue such concentration, and within a specified time limit to return to the state prior to the concentration, and it may impose on them a fine of not more than RMB 5,000,000; ③ Where an administrative development or an organization authorized by laws or regulations to perform the function of administering public affairs abuses its administrative power to eliminate or restrict competition, the department at a higher level shall instruct it to rectify. The second type: where the monopolistic conduct of an undertaking has caused losses to another person, it shall bear civil liabilities according to law. The third type: if the act violates the rules of the *Anti-monopoly Law* and constitutes a crime, criminal liability shall be investigated in accordance with the law.

4. The Enforcement of the Anti-Unfair Competition Law

4.1 The Enforcement Institution of Anti-Unfair Competition Law

In accordance with the *Anti-Unfair Competition Law*, the departments performing the functions of industry and commerce administration of the people's governments at and above the county level shall be responsible for the enforcement of the law. In practice, the enforcement institution of the Anti-Unfair Competition Law is the State Administration for Market Regulation.

In addition, other departments authorized by laws or administrative regulations to perform the function of supervision and examination are included in the enforcement institutions of the Anti-Unfair Competition Law. For example, the Ministry of Commerce has the right to supervise unfair competition acts in domestic and foreign trades; the National Intellectual Property Administration has the right to supervise the unfair competition relating to patents and the publishing industry; and departments such as the Ministry of Housing and Urban-Rural Development and Ministry of Culture and Tourism also have the right to supervise the unfair competition of relevant industries and authorities.

4.2 Characteristics of the Enforcement of the Anti-Unfair Competition Law

Fairness of procedures and confidentiality of information. The *Anti-Unfair Competition Law* details the measures of investigation, which include examining, inquiring, checking and reproducing, sealing and detaining as well as inquiring accounts. Before the investigation measures were taken, a written report shall be filed with the primary person in charge of the supervisory inspection department for approval; to take measures of sealing, detaining and inquiring about accounts, a report shall be filed with the primary person in charge of the supervisory inspection department of the people's government at or above the level of a districted city for approval. The supervisory inspection departments and their employees shall have an obligation to keep the trade secrets and relevant information of informants known in their investigations confidential.

Safeguard the right of the relevant party. A business whose lawful rights and

interests are damaged by any act of unfair competition may institute an action in a people's court. Meanwhile, a party may, according to the law, apply for administrative reconsideration or file an administrative lawsuit against a decision of the supervisory inspection department.

Disclosure of results. The results of the investigation shall be disclosed to the public, and the supervisory inspection department shall enter it into the credit record of the business, and publish it according to the provisions of the relevant laws and administrative regulations.

4.3 The focus of enforcement of the Anti-Unfair Competition Law

The acts of unfair competition include: ① acts of confusion to mislead a person into believing that a commodity is one of another person or has a particular connection with another person, such as registering trademarks and enterprise by using a label or name of another person without permission, counterfeiting national famous logo, using without permission the name, packaging or decoration of a famous commodity, and forging the name of origin, etc. ② acts of bribing an entity or an individual that uses power or influence to affect a transaction with property or by any other means. ③ acts of false or misleading commercial publicity, which refers to a business conducting false or misleading publicity in respect of the performance, functions, quality, usage and origin through advertising or other means. ④ acts of infringing upon trade secrets. ⑤ acts of dumping at low prices. A virulent price war or dumping at low prices refers to a business selling goods at a price lower than the cost in order to exclude its competitors.

The focus of the enforcement of the Anti-Unfair Competition Law is on areas including online transactions, rural markets, medicine and education, fighting against significant issues such as market misleading, commercial bribing, false publicity and other unfair competition acts concerning the Internet that is popular in the society to safeguard fair competition, market order as well as the legal rights and interests of business operators and consumers.

Table 8-1 The Focus of Enforcement of the Anti-Unfair Competition Law¹

Key Sectors	Major Acts of Investigation
Commercial bribing in medicine and educational industries	The acts of bribing with properties or by other means the employee of the other party to a transaction, the entity or individual authorized by the other party to a transaction to handle relevant affairs, or the entity or individual that uses power or influence to affect a transaction with property or by any other means so as to seek transaction opportunities or competitive edges.
False or misleading commercial publicity on the Internet	A business conducts any false or misleading commercial publicity in respect of the performance, functions, quality, sales, user reviews, and honors received of its commodities, in order to defraud or mislead consumers; or helps another business conduct any false or misleading commercial publicity by organizing false transactions or any other means.
Protection of intellectual property and	Acts of using without permission a label identical or similar to the name, packaging or decoration, among others, of another person's commodity with certain influence; using without permission

¹ State Administration for Market Regulation. <https://www.samr.gov.cn>

other trade secrets of leading and technology-intensive enterprises, well-known trademarks and brands with certain influence	another person's name with certain influence, such as the name (including abbreviations and trade names) of an enterprise; misleading the public by using the registered trademark of other people as the trade name of the enterprise and constituting unfair competition.
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4.4 Legal Liabilities

According to the *Anti-Unfair Competition Law*, a business that conducts any unfair competition acts or illegal acts relevant to the unfair competition shall undertake the corresponding legal liabilities, including civil, administrative and criminal liabilities.

Civil liabilities: pursuant to the *Anti-Unfair Competition Law*, a business causing any damage to another person in violation of the Law shall assume the responsibility of compensation; if it is difficult to calculate the actual loss, the amount shall be determined as per the benefits acquired by the tortfeasor from the infringement; and the amount shall also include reasonable disbursements made by the business to prevent the infringement.

Administrative liabilities: as provided in the *Anti-Unfair Competition Law*, administrative liabilities are imposed by the supervisory inspection department after the investigation of unfair competition acts. The forms mainly include imposing a fine, ordering them to cease the illegal act, eliminating adverse effects and rectifying the situation and revoking the business license.

Criminal liabilities: applied to unfair competition acts of a business that caused serious damages to other operators, customers and social and economic order and the circumstances are severe. The *Anti-Unfair Competition Law* only sets out principal regulations on the criminal liabilities a business shall assume. For specific criminal liabilities, please refer to the corresponding regulations in the *Criminal Law of the People's Republic of China*.

Chapter Nine Personnel Exchange in the Trade with China under the RCEP Agreement

1. China's Commitments to Temporary Movement of Natural Persons under the RCEP Agreement

1.1 Main Contents of the Article of Temporary Movement of Personnels in the RCEP Agreement

Rules about the temporary movement of natural persons are provided in Chapter 8 “Trade in Services” (including Annex 8C “Professional Services”) and Chapter 9 “Temporary Movement of Natural Persons” as well as the general provisions in Chapter 17 of the RCEP Agreement. The relevant commitments of all Parties are listed in Annex IV “Schedule of Specific Commitments on Temporary Movement of Natural Persons”. The specific rules cover the scope of entry, more positive arrangements on the power of regulation, implementation of certain measures and cooperation to promote the free flow of natural persons within the regions.

Scope of Entry of Natural Persons

According to Article 9.2, the natural persons referred to in this chapter shall be engaged in trade in goods, the supply of services, or the conduct of investment, including business visitors, intra-corporate transferees, and other categories as may be specified in each Party's Schedule. Each Party may, as provided in Article 9.3, make commitments on spouses or dependents in its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

In addition, Article 9.1 requires that the temporary entry of natural persons means “entry by a natural person of a Party as covered by this Chapter without the intent to establish permanent residence”.

The Power of Regulation and its Enforcement of all Parties

Paragraphs 2, 3 and 4 of Article 9.2 set out regulations on the power of regulation of all Parties on the movement of natural persons. Compared with the positive definition of natural persons in Article 9.1, the three paragraphs adopt the excluding method to make rules, which reflects respect for the sovereignty of the parties and extends the space of regulations as much as possible. As for domestic regulation, requirements of temporary entry application and approval as well as transparency are presented in these paragraphs.

First, in terms of temporary entry application and approval, as provided in Article 9.4 of the Agreement, each Party shall, in accordance with its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), grant temporary entry or extension of temporary stay to natural persons of another Party, provided that those natural persons follow prescribed application procedures for the

immigration formality sought and meet all relevant eligibility requirements for temporary entry. A Party may deny temporary entry or extension of temporary stay to any natural person of another Party who does not comply with the above regulations. Pursuant to the provisions in RCEP Agreement, immigration formality means a visa, permit, pass, or other documents, or electronic authority, granting temporary entry.¹

Next, Article 9.6 stipulates the specific procedural measures for the processing of applications, including application, the receipt of the application, notifying the applicant of the status of the application, applications in electronic format, charging and authentication of documentation.

Again, as provided in Article 17.5 of “General Provisions and Exceptions”, where handling the application of temporary entry or extension of temporary stay of another Party, each Party shall recognize and safeguard the right of natural persons of providing a supplementary specification for the application after filing relevant procedures. Moreover, according to Article 17.6, “Review and Appeal”, with regard to the movement of natural persons, each Party shall establish or maintain fair and independent judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of prompt review and, where warranted, correction of relevant final administrative actions.

Second, as for transparency, Chapter 17 of the RCEP Agreement sets out relevant obligations for all Parties. Pursuant to Article 17.3, each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are disclosed to the public. Article 9.7, “Transparency”, of the Agreement details the obligations of all Parties regarding the movement of natural persons. Each Party shall provide explanatory material, requirements of temporary entry, explanatory materials, and relevant forms and documents on all relevant immigration formalities; modify or amend any immigration measure, ensure that the information is published or otherwise made publicly available; meanwhile, maintain mechanisms to respond to inquiries from interested persons (Article 9.7). Compare with the relevant articles in Chapter 17, this article provides supplementary regulations on the information of immigration procedures for allowing temporary entry or stay of natural persons and the content all Parties are required to publish. Please note that all articles on obligations of transparency have additional conditions such as “to the extent practicable” or “where appropriate”, so all Parties do not have to comply with them immediately; also, Article 17.7 sets out the behavior boundaries that shall not be disclosed.

Cooperation Arrangements among Parties

Article 8.16 of the Agreement makes special provisions on the content of mutual recognition and specifies that each Party has the right to decide the standards for recognizing the education, licenses or certificates of foreign service providers. The specific methods of recognition include harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned, or may be accorded

¹ Paragraph 1 of Article 9.4 of RCEP Agreement

autonomously. Annex 8C of the Agreement provides multiple methods of certificate mutual recognition for all Parties as follows: enhance dialogues or consultations among relevant bodies; and encourage each Party to recognize a foreign service supplier’s professional body membership, without the need for further written examination. Meanwhile, as emphasized in Annex 8C, “that temporary or limited license regime should not operate to prevent a foreign service supplier from gaining a local license once that service supplier satisfies the applicable local licensing requirements.”

In accordance with Article 9.8, to further facilitate the temporary entry and temporary stay of natural persons of the other Parties, the Parties may discuss mutually agreed areas of cooperation.

1.2 China’s Commitments to Temporary Movement of Natural Persons under the RECP Agreement

Although the 15 Parties have similar structures on the categories of natural persons, because of the differences in the specific immigration policy and spirit, what they promised in the Schedule of Specific Commitments to Temporary Movement of Natural Persons (Annex IV) varies from each other. China’s commitments are of the highest level, no matter among the Parties of the RCEP Agreement or other signed FTAs.

China makes commitments to granting temporary entry and stays to the following persons: business visitors, intra-corporate transferees, contract service suppliers, and installation and service staff. As for the spouses or dependents of the persons mentioned above, China makes commitments to granting temporary entry and stay on an equal basis.

Table 9-1 China’s Commitments to the Movement of Natural Persons¹

Categories	Period of Stay
Business visitors	90 days at most
Intra-corporate transferees	Consistent with the period in the contract/ three years, subject to the shorter time
Contract service suppliers	Period in the contract, no longer than one year
Installation and service staff	Period in the contract, no longer than three months
Spouses or dependents of managers and senior administrators	No longer than 12 months, and shall not exceed the period of stay of entrants

¹ Regional Comprehensive Economic Partnership Agreement. http://fta.mofcom.gov.cn/rcep/rcep_new.shtml.

2. Procedures and Relevant Information of Chinese Visa Application

2.1 Application Materials¹

Basic Application Materials

1) Passport: original passport with at least six months of remaining validity and blank visa pages, and a photocopy of the passport's data page and the photo page if it is separate.

2) Visa application form and photo: one completed Visa Application Form with a recently-taken color passport photo (bare-head, full face) against a light background attached.

3) Proof of legal stay or residence status (applicable to those not applying for the visa in their country of citizenship): if you are not applying for the visa in the country of your citizenship, you must provide the original and photocopy of your valid certificates or visa of stay, residence, employment or student status, or other valid certificates of legal staying provided by the relevant authorities of the country where you are currently staying.

4) Previous Chinese passports or previous Chinese visas (applicable to foreign citizens who were Chinese citizens and have obtained foreign citizenship): if you are applying for a Chinese visa for the first time, you should provide your previous Chinese passport held and a photocopy of its data page; if you have obtained Chinese visas before and want to apply for a Chinese visa with a renewed foreign passport that does not contain any Chinese visa, you should present the photocopy of the previous passport's data page and the photo page if it is separate, as well as the previous Chinese visa page. (If your name on the current passport differs from that on the previous one, you must provide an official document of the name change.)

Other Supporting Documents

Applicants shall provide different supporting documents for different types of visas according to different application reasons.

2.2 Application Procedures²

Preparing Application Materials

Application Materials consist of basic materials and other documents. Basic materials include a passport, visa application form, uploaded scanned photo, proof of legal stay or residence status, and previous Chinese passports or previous Chinese visas (if available). Other documents include travel materials such as round-trip air/train ticket bookings and hotel bookings entering and exiting China, or round-trip air/train tickets entering and exiting China and a travel invitation letter issued by an individual.

¹ PRC Central Government. http://www.gov.cn/fuwu/2014-02/11/content_2588509.htm.

Submitting the Application

An appointment should be made online in advance. Applicants shall go to the Visa Application Service Center according to the appointed date and time. Normally, the application should be submitted one to three months in advance.

Charging and Receiving the Visa

After submitting the application and paying fees at the Visa Application Service Center, your passport and receipt will be mailed back to you once the procedures are completed.

Verifying the Information

Please check the information (passport no., name, date of birth, period of stay and validity) carefully after receiving your visa. Please contact the Visa Application Service Center as soon as possible if there is any question.

- This Guideline is only for reference for trade and economic exchanges with China under the RCEP Agreement, and enterprises should make decision carefully and bear your own risks. The research team does not responsible for any enterprise's business behavior.
- If you have any questions about this Guideline, or need Legal Service on International Trade-related, Outbound Investment and Dispute Resolution, Please contact us:

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