

### 3.1 Sino-Swiss FTA: Chinese Comparative Perspective [Online Appendix]

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#### **WTO-plus Areas**

##### **1. Trade in Goods**

###### **Market access of goods**

Sino-Swiss FTA, Sino-Korean FTA, Sino-Australian FTA and CPTPP have different levels of tariff concession on the basis of WTO's MFN tariff rate. Sino-Australian FTA and CPTPP have relatively higher ratios of tariff free trade and shorter transition periods.

###### **SPS (Sanitary and phytosanitary measures)**

SPS provisions in Sino-Swiss FTA, Sino-Korean FTA, and Sino-Australian FTA basically reaffirmed relevant provisions of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures. CPTPP has included a series of commitments on trade facilitation, transparency, risk analysis, cooperation, information exchange etc., beyond and in accordance with the commitments in the WTO Agreement.

###### **TBT (Technical barriers to trade)**

TBT provisions in Sino-Swiss FTA, Sino-Korean FTA, and Sino-Australian FTA basically reaffirmed the relevant provisions of the WTO's Agreement on Technical Barriers to Trade. CPTPP sets higher standards and requirements for its members in the implementation of technical measures to trade.

###### **Trade Remedies**

Sino-Swiss FTA, Sino-Korean FTA, and Sino-Australian FTA basically reaffirmed the provisions of the WTO's Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures. In addition, Sino-Korean FTA specifically stipulates that the contracting parties do not apply the surrogate country approach and the zeroing method in the calculation of the dumping margin in anti-dumping investigations. CPTPP enhances the transparency and due process in anti-dumping and countervailing investigations.

In addition to the global safeguard measures set out in the WTO's Agreement on Safeguards, the Sino-Swiss FTA, Sino-Korean FTA and Sino-Australian FTA also specify bilateral safeguard measures applicable to members of the FTA. However, the transition period, implementation period, and other conditions and limitations for the application of the bilateral safeguards measures are different.

##### **2. Trade in Services**

###### **Cross-border trade in service**

The Sino-Swiss FTA, Sino-Korean FTA and Sino-Australian FTA have commitments on cross-border trade in service beyond those in General Agreement on Trade and Service (GATS). China adopts a positive list approach in all of its FTAs (Australia applies a negative list approach in the Sino-Australian FTA), while in

contrast, CPTPP members commit full market access on the “negative list” basis. Parties commit to provide market access except in areas where restrictions are specified in individual Parties’ services and investment schedules.

### **Financial Services**

In the area of financial services, the Sino-Korean FTA has a separate chapter on financial services, including provisions on financial institutions' market access, payment and clearing systems, and committee on financial services, while relevant commitments in the Sino-Swiss FTA and Sino-Australian FTA are specified in the annex. China's commitment level still has a large gap with that in the CPTPP. CPTPP adopts a negative list approach and pre-entry national treatment.

### **Natural Person Movement**

Compared with GATS, the provisions in CPTPP on natural person movement are more concrete and specific. For example, CPTPP Parties distinguish between different types of temporary entry for business persons and specify detailed entry time limits for each category. The Sino-Korean FTA sets up a separate chapter on natural person movement, and the level of commitments of its members is nearly the same as that of the CPTPP.

### **3. Intellectual Property Rights**

CPTPP sets a high standard for intellectual property rights. For example, besides civil procedures, provisional measures and border measures, each Party

shall provide for criminal procedures and penalties with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment. For the three FTAs signed by China, the FTA Parties' commitments on intellectual property are similar to that under TRIPS, but they contain a few TRIPS-plus provisions. For example, Sino-Swiss FTA extends the protection for broadcasters to 50 years to raise the protection standards for broadcasters and it sets longer protection for industrial designs; the Sino-Korean FTA and Sino-Australian FTA Parties also agree to cooperate on the means to protect types of signs as trademarks.

## **4. Public Procurement**

CPTPP Parties' commitment on government procurement is only slightly higher than that in the Government Procurement Agreement (GPA). In all of the three FTAs, China has promised to start government procurement negotiation as soon as China enters the GPA.

### **WTO-X Areas**

#### **1. Investment**

##### **Market access of investment**

The Sino-Swiss FTA and Sino-Korean FTA adopt a positive list approach for investment. In the Sino-Australian FTA, China uses a positive list approach while Australia adopts a negative list approach regarding investment. In CPTPP, all of its members adopt a negative list approach.

## **Treatment of investment**

The Sino-Swiss FTA, Sino-Korean FTA, Sino-Australian FTA and CPTPP all stipulate national treatment, most-favored-nation treatment, and minimum standard treatment. However, in terms of national treatment, Sino-Swiss FTA and Sino-Korean FTA only implement post-entry national treatment. In the Sino-Australian FTA, the Chinese side implements post-entry national treatment, while the Australian side implements pre-entry national treatment and post-entry national treatment. In CPTPP, each member implements pre-entry and post-entry national treatment.

## **Protection of investment**

The Sino-Swiss FTA, Sino-Korean FTA, Sino-Australian FTA and CPTPP all stipulate relevant provisions on expropriation and nationalization, compensation, and investment transfer, while Sino-Korean FTA and CPTPP have further rules in terms of prohibited performance requirements and transparency.

## **Investment and environment, health or other regulatory objectives**

The Sino-Korean FTA and CPTPP have general rules on investment and environmental measures.

## **Corporate social responsibility**

CPTPP also specifically mentions corporate social responsibility, which has not been included in the FTA signed by China.

## **Investor-State dispute settlement**

The Sino-Korean FTA, Sino-Swiss FTA, Sino-Australian FTA and CPTPP have all established investor-state dispute settlement mechanisms. CPTPP has the most detailed rules on investor-state dispute settlement.

## **2. Competition**

The Sino-Swiss FTA has a competition policy chapter (Chapter 10) but is only one-page long, specifying that nothing in this Chapter creates any legally binding obligations for the undertakings or intervenes with the independence of the competition authorities in enforcing their respective competition laws, and that the competition authorities of the Parties shall cooperate with regard to anticompetitive practices. The competition policy chapter (Chapter 14) in the Sino-Korean FTA is more detailed than that in the Sino-Swiss FTA, but there is no significant difference in its content, which contains provisions on principles in law enforcement, transparency, application of competition laws, cooperation in law enforcement, notification, consultation, exchange of information, etc. The competition policy provisions in CPTPP is more specific and detailed than the provisions in the FTA signed by China and are mainly related to antitrust laws and measures.

## **3. Labor Standards**

The Sino-Korean FTA and Sino-Australian FTA do not have provisions related to labor. The Sino-Swiss FTA specifies in Chapter 13 on economic and technical cooperation that the Parties shall enhance their

cooperation on labor and employment according to the existing agreements signed between the two countries (Article 13.5). The CPTPP has detailed regulations on labor, requiring parties to protect core labor rights, eliminate forced labor, abolish child labor, eliminate discrimination in respect of employment and occupation, not to encourage trade or investment by weakening or reducing the protections afforded in each Party's labor laws, etc.

#### **4. Environmental Policy**

CPTPP has established detailed rules and obligations on environment, such as preventing pollution, prohibiting illegal wildlife trafficking, illegal logging and illegal fishing, protecting special nature reserves, the marine environment and the ozone layer, and prohibiting harmful environmental subsidies. Environmental disputes have also been incorporated into the dispute settlement mechanism. The Sino-Swiss FTA and Sino-Korean FTA have separate chapters on environmental protection regulations, including provisions on promoting environmental protection, strengthening cooperation in environmental protection, establishing contact points and establishing joint committees. But most of the provisions are still in general terms, with very few specific or operational rules.

#### **5. E-Commerce**

In spite of the Sino-Swiss FTA, the Sino-Korean and the Sino-Australian FTA both contain electronic commerce chapters, which mainly stipulate that each Party shall maintain its practice of not imposing customs duties on

electronic transmissions between the Parties, keeping consistency with the WTO Ministerial Decision. Other provisions included are on electronic authentication and digital certificates, protecting personal information of users of e-commerce, promoting paperless trading and cooperation on e-commerce, etc. The requirements on e-commerce in CPTPP are much higher than those in the Sino-Korean FTA and Sino-Australian FTA, including several mandatory provisions, such as emphasizing non-discriminatory treatment on electronic products, prohibiting mandatory localization of server and data storage, committing online consumer protection and personal information protection, as well as some new e-commerce provisions such as cross-border transfer of information by electronic means, location of computing facilities, unsolicited commercial electronic messages, cooperation on cybersecurity matters and source code.

#### **6. Telecommunication**

The Sino-Swiss FTA and the Sino-Australian FTA have the same provisions on telecommunications in the annex on Schedule of Specific Commitment on Services. The Sino-Korean FTA is the first FTA signed by China that has telecommunication as a separate chapter, which includes provisions on access and use of public telecommunications network or services, interconnection, submarine cable systems, competition safeguards, reduction of international mobile roaming rates, ensuring transparency, etc. The provisions are relatively more detailed and specific compared with the Sino-Australian FTA and Sino-Swiss FTA. In contrast, CPTPP has even more specific and detailed regulations

in the area of telecommunications. Compared with the only six clauses on telecommunications in GATS, CPTPP has 26 clauses and two annexes. It not only adopts the negative list approach, but also has more abundant contents and more specific regulatory measures.

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### 3.1 中国-瑞士 FTA：基于中国的比较视角（网上附录）

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#### WTO+ 领域

##### 1. 货物贸易

###### 市场准入

中瑞 FTA、中韩 FTA、中澳 FTA 和 CPTPP 都在 WTO 最惠国进口关税税率的基础上，进行了不同程度的关税减让。中澳和 CPTPP 相较之下有更高的最终零关税比例和更短的过渡期。

###### SPS（卫生与植物卫生措施）

中瑞 FTA、中韩 FTA、中澳 FTA 基本重申了 WTO 《卫生与植物卫生措施协定》的相关规定。CPTPP 则在遵循 WTO 《卫生与植物卫生措施协定》的基础上，纳入了一系列关于便利贸易、透明度、风险分析、合作、信息交换等承诺，可操作性更强。

###### TBT（技术贸易壁垒）

中瑞 FTA、中韩 FTA、中澳 FTA 基本重申了 WTO 《技术性贸易壁垒协定》的相关规定。CPTPP 则对缔约方实施技术性贸易措施设置了更高的标准和要求。

###### 贸易救济

中瑞 FTA、中韩 FTA、中澳 FTA 基本重申了 WTO 《反倾销协定》和《补贴与反补贴措施协定》中的规定。此外，中韩 FTA 特别规定了缔约双方在反倾销调查计算倾销幅度时不使用替代国方法和“归零法”。CPTPP 则强化了反倾销和反补贴调查的透明度

和程序正当性。

除 WTO 《保障措施协定》所规定的全球性保障措施之外，中瑞 FTA、中韩 FTA、中澳 FTA 还规定了适用于缔约方的双边保障措施，但对双边保障措施适用的过渡期、实施的期限等限制条件规定不同。

##### 2. 服务贸易

###### 跨境服务贸易

中瑞、中韩和中澳 FTA 在跨境服务贸易方面，都具有超出 GATS 的承诺。中国在其 FTA 中都采用了正面清单的方式（中澳 FTA 中澳大利亚采用了负面清单方式），相较而言，CPTPP 采用了“全面市场准入、负面清单”的准入标准。除明确不开放领域外，全部服务贸易领域均对其他成员方开放。

###### 金融服务

在金融服务领域，中韩 FTA 将金融服务独立成章，涉及金融机构的市场准入、支付和清算系统、金融服务委员会。而中瑞和中澳 FTA 的相关承诺则位于附件中。中国的相关承诺水平与 CPTPP 有较大差距。CPTPP 采用了负面清单及准入前国民待遇原则。

###### 自然人移动

相比于 GATS，CPTPP 协定的自然人移动的承诺更明确清晰，如成员国对不同类型的“商务短期”入境行为进行了区分，根据不同类别进行了详细的准入时间限定。中韩 FTA 专门设立了自然人移动章节，其承诺水平已与 CPTPP 的谈判水平基本相当。

### 3. 知识产权

CPTPP 有较高标准的知识产权条款。例如，除民事程序、临时措施，边境措施外，缔约方还应对电子环境下的商标假冒、侵犯版权行为进行刑事处罚。中国的三个 FTA 中，知识产权方面的承诺与 TRIPS 相似，但包含了少量 TRIPS-plus 条款，如中瑞 FTA 延长了对广播机构的保护期限至 50 年，提升了对广播机构的保护标准；增加了工业品外观设计的保护期限；中韩 FTA 和中澳 FTA 还包含了视觉和声音标识可注册为商标方面的规定。

### 4. 政府采购

CPTPP 在政府采购方面的承诺仅略高于《政府采购协定（GPA）》。中国在这三个 FTA 中均承诺了在中国加入 GPA 后尽快启动政府采购谈判。

## WTO-X 领域

### 1. 投资

#### 投资的市场准入

中瑞 FTA 和中韩 FTA 采用了投资正面清单的形式。中澳 FTA 中，中方仍然采用投资正面清单，但澳方采用了投资负面清单。CPTPP 中，各成员方均采用了投资负面清单形式。

#### 投资待遇

中瑞 FTA、中韩 FTA、中澳 FTA 和 CPTPP 均规定了国民待遇、最惠国待遇、最低标准待遇。但在国民待遇上，中瑞 FTA 和中韩 FTA 仅实行准入后国民待遇。中澳 FTA 中，中方实行准入后国民待遇，而澳方实行准入前和准入后国民待遇。CPTPP 中，各成员方均实行准入前和准入后国民待遇。

### 投资保护

中瑞 FTA、中韩 FTA、中澳 FTA 和 CPTPP 均规定了征收及国有化、损失补偿、投资自由转移的相关条款，但中韩 FTA 和 CPTPP 在禁止性业绩要求和透明度方面进一步进行了规定。

### 投资与环境、健康或其他监管目标

中韩 FTA 和 CPTPP 对投资与环境措施进行了原则性规定。

### 企业社会责任

CPTPP 还特别提到了企业社会责任，这在中国签署的 FTA 中还未有相关规定。

### 投资者-国家争端解决

中韩 FTA、中瑞 FTA、中澳 FTA 和 CPTPP 均设立了投资者-东道国争端解决机制。CPTPP 对于投资者-东道国争端解决机制的规定最为详尽。

### 2. 竞争

中瑞 FTA 中，竞争政策为第十章，但仅一页内容。包括不对缔约双方的经营者创设任何具有法律约束力的义务，反竞争行为适用各自竞争法律，不干预双方竞争执法独立性；双方执法机构在反竞争行为方面应开展合作。中韩 FTA 中的竞争政策位于第十四章，较中瑞 FTA 详细一些，但本质内容没有较大差异，包括执法原则、透明度、竞争法的适用、执法合作、通报、磋商、信息交换等方面的规定。CPTPP 中的竞争政策较中国 FTA 中的规定更为具体详细，主要涉及反垄断法律与措施方面的规定。

### 3. 劳工

中韩和中澳 FTA 均未涉及劳工方面的条款。中瑞 FTA 在经济技术合作章节提及缔约双方应根据双方已有协议，加强劳工和就业方面的合作（第 13.5 条）。而 CPTPP 则对劳工方面进行了详细的规定，要求缔约方保护核心劳工权利，消除强迫劳动，废除童工，消除就业和职业歧视，不为贸易、投资减损法律实施等。

#### 4. 环境

CPTPP 在环境方面设立了详细的规则及义务，如防止及减少污染、禁止野生动植物非法交易、非法采伐、非法捕捞、保护特别自然保护区、海洋环境以及臭氧层，禁止有害环境的补贴等。环境争议也被纳入争端解决机制。中瑞 FTA、中韩 FTA 都有单独章节涉及关于环境保护的规定，包括双方促进环境保护，加强环保方面合作，建立联络点并成立联合委员会等。但大多数仍为原则性条款，较少具体的可操作规定。

#### 5. 电子商务

除了中瑞 FTA 外，中韩和中澳 FTA 均包含了电子商务的章节，主要规定了依照 WTO 部长决定，不对双方之间电子交易征收关税征收关税，此外包括电子认证和数字证书、电子商务中的个人信息保护、无纸贸易、电子商务合作等方面的条款。而 CPTPP 中电子商务方面的要求远高于中韩和中澳 FTA，包含多个强制性条款，如强调电子产品的非歧视待遇、禁止强制性的服务器和数据存储的本地化、承诺消费者保护和个人隐私保护等，以及如电子形式的信息跨境传输、计算机设施位置、垃圾电子商业信息、网络安全合作、源代码等一些电子商务新条款。

#### 6. 电信

中瑞 FTA 中和中澳 FTA 中的电信相关内容相同，均位于服务贸易具体承诺表的附件中。中韩 FTA 则是中国首次将通信作为单独章节，内容包括接入和使用公共电信网络或服务、互联互通、海底光缆系统、保护竞争、降低国际漫游资费水平、确保透明度等。与中澳和中瑞 FTA 相比较为细致具体。相比之下，CPTPP 在电信领域有更为具体详细的规定。相较于 GATS 中仅包含的 6 个条款，CPTPP 的条款增至 26 条及两个附件。不仅采用了负面清单模式，而且内容更为丰富，监管措施更加具体。

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