

## **A REGIONAL TRADE AGREEMENT FOR CENTRAL ASIA?**

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### **ABSTRACT**

Regionalism in Central Asia has attracted much attention but little action. This paper argues that, as the countries accept WTO trade law as the baseline, the time is ripe for agreeing on trade rules that go beyond the WTO, with focus on areas especially relevant to Central Asia. A modern trade agreement should not follow 20<sup>th</sup> century patterns of aiming for a customs union or free trade area; with low tariffs such preferential tariff arrangements are of little value. More important is to agree on areas where WTO rules are inadequate or non-existent, such as sanitary and phytosanitary measures and digitalization. For the framework for such an agreement, Central Asian countries can benefit from existing best practice, agreements with a chapter structure that permits focus on the most relevant areas while leaving more contentious areas for future negotiations.

**Keywords:** Central Asia, Trade agreements, Digitalization, SPS.

## INTRODUCTION

Regionalism in Central Asia has attracted much attention but limited action. Before 1992 the five Central Asian economies operated in the integrated economic space of the Soviet Union. After the dissolution of the USSR there were many proposals for regional cooperation but, apart from the limitedly effective Commonwealth of Independent States, institutional structure remained undeveloped in the 1990s and 2000s. The main regional institutions involving Central Asian countries had secretariats outside the region.<sup>2</sup> The most serious economic integration arrangement, the customs union established in 2010 that became the Eurasian Economic Union in 2015, includes only two Central Asian countries.<sup>3</sup>

Central Asia Regional Economic Cooperation (CAREC) has provided a forum for regional cooperation among a wider group of countries, including Afghanistan, Azerbaijan, Georgia, Mongolia, Pakistan and two regions of the People's Republic of China. CAREC has provided a useful meeting place for customs officials and has promoted the Corridor Performance Monitoring and Measurement program for collecting data on road and rail travel along major Central Asian corridors. The 2019 *CAREC Integrated Trade Agenda 2030* offered a vision of trade expansion through adoption of more open trade policies, although implementation was disrupted by COVID-19. Post-pandemic is time to take stock, and arguments for a trade agreement apply to either a CAREC agreement or a narrower grouping of the five Central Asian countries.

As the process of WTO accession by Central Asian countries moves closer to completion, countries can negotiate a trade agreement with WTO obligations as a common baseline.<sup>4</sup> WTO membership provides greater certainty about members' tariffs and other policies, while non-membership has been associated with less predictable conditions of market access. A trade agreement can extend the scope of existing WTO commitments (WTO+ topics) and address areas not covered in the WTO (WTO-X topics). Learning from other recent regionalism agreements, the way forward is to adopt a multi-chapter agreement, within which initial negotiations focus on topics where there is ready consensus, while remaining chapters signify a commitment to future negotiations.

This paper examines the background and desirable content for a modern trade agreement among the Central Asian countries. Chapters that could yield an early harvest of specific commitments include: (1) sanitary and phytosanitary measures, because agrifood trade is important for most Central Asian countries, (2) trade in services, focusing on sub-sectors of particular interest to Central Asian countries, and (3) e-commerce and digitalization. The first two are WTO + topics in which there are beyond - WTO aspects, while the last is an area not covered by the WTO because the internet scarcely existed in 1995. Chapters on

2 The secretariat of the Eurasian Economic Community and its successor the EAEU is in Moscow (as is that of the CIS). The secretariat of the Shanghai Cooperation Organization is in Beijing and that of the Economic Cooperation Organization is in Tehran. The CAREC secretariat is in Manila and the UN Special Programme for Central Asia (SPECA) is based in Bangkok and Geneva.

3 The EAEU members are Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, and Russia.

4 The Kyrgyz Republic joined the WTO in 1996, Tajikistan in 2013, and Kazakhstan in 2015. Uzbekistan, whose application for WTO membership had stalled in the 2000s, showed renewed interest after the change of president in 2016 and negotiations are likely to be concluded soon (Pomfret, 2020). Turkmenistan applied for WTO membership in November 2021, and a Working Party was established in February 2022. In addition, all Central Asian countries are members of the World Customs Organization (WCO).

competition policy, intellectual property rights, investment, public procurement, and other topics can be included, with details to be filled in at future dates.

Consistency in WTO+ and WTO-X areas across trade agreements is important in complementing the universality of WTO trade law. It is important to avoid conflicting rules, because inconsistent rules create noodle bowl effects that increase the complexity and cost of international trade. Besides facilitating regional trade and other economic interaction, a trade-facilitating agreement will promote trade not only within Central Asia but will also, and more importantly, improve the global competitiveness of Central Asian producers.

Finally, a trade agreement should be treaty-based. Although this implies longer negotiations to agree on legally precise wording, it reduces future disagreement over what was really agreed and discourages empty declarations such as in the many Central Asian trade agreements of the 1990s and early 2000s.

## THE GLOBAL BACKGROUND

The contents of major trade agreements in the twenty-first century are quite different from the geographically discriminatory tariffs and non-tariff barriers that the WTO charter was designed to regulate (customs unions and free trade areas, or preferential treatment for developing countries' exports) or outlaw (Pomfret, 2021b). Most twenty-first century agreements are aimed at facilitating trade, and measures such as simplified customs procedures or bureaucratic requirements are non-discriminatory. Modern trade agreements focus on international policy coordination to facilitate trade, and no longer emphasize exchange of preferential market access through tariffs or quotas.

### The Diminishing Attractiveness of Preferential Market Access

Classical free trade areas or customs unions have either disappeared or been superseded by deep integration because in most trading nations applied tariffs are low.<sup>5</sup> Deep integration agreements go beyond preferential tariff reduction to include other areas. They include the European Union, Closer Economic Relations between Australia and New Zealand, and the North American trade agreements originally known as NAFTA.<sup>6</sup>

Even when preferential treatment is possible, exporters often do not avail themselves because the administrative costs outweigh the preference margin.<sup>7</sup> At the same time, production has been increasingly fragmented along global value chains (GVCs) in which participation depends on time and money costs of international trade that allow access to the most appropriate inputs and minimization of inventories

5 Absent commitment to deeper integration, arrangements like the East African Community or Central American Common Market were unstable due to trade diversion (Pomfret, 2001).

6 The agreement between Canada, Mexico and the United States in force since July 2020 is called the United States–Mexico–Canada Agreement (USMCA) in the USA, in Canada is officially known as the Canada–United States–Mexico Agreement (CUSMA) in English and the Accord Canada–États-Unis–Mexique (ACEUM) in French, and in Mexico is Tratado entre México, Estados Unidos y Canadá (T-MEC).

7 Estimates of the tariff below which it will not be worth claiming preferential treatment range from 4% (Francois et al., 2005) to 5% (Amiti and Romalis, 2006). Based on analysis of 94 countries from years around 2010, Hayakawa et al. (2018) found that exporters to the ASEAN countries, Australia, China, Japan, Korea, and New Zealand made very little use of preferential tariffs. Studie on Australia (Pomfret et al., 2010), Thailand (Kohpaiboon and Jongwanich, 2015) and ASEAN (Hayakawa et al., 2009) also showed that in the presence of low MFN tariffs preferential treatment has little value.

(Johnson and Noguera, 2017). Regulatory compatibility also facilitates GVC coordination (e.g. rules that simplify cross-border information transfer), and free movement of skilled workers and of capital is complementary to GVC trade. In sum, trade policy increasingly aims to facilitate producers' access to best inputs rather than protecting producers from import competition.

New features of the international trade map since 1995, such as the internet (Freund and Weinhold, 2004) or GVCs, create a need for new trade-related regulations. However, extension of WTO rules is difficult due to the requirement for consensus, which has become more restrictive as WTO membership has become almost universal. A substantial number of WTO members are on the wrong side of the digital divide and many countries do not participate in GVCs; members in these overlapping groups are unconvinced of the need for reform and block change. Thus, although WTO rules are accepted as the foundation for international trade law, the need for new rules is being addressed outside the WTO.

The contents of the major twenty-first century agreements are mostly extensions of WTO rules (WTO+ items) or in areas not covered in the WTO charter (WTO-X). The task of avoiding a noodle bowl of conflicting standards that increase the complexity of international trade would ideally be handled by an agency with global membership. However, updating the WTO rules has been stymied by the consensus requirement, and outside the WTO there is no satisfactory forum for setting common universal standards. Twenty-first century trade agreements are a practical response to the roadblock.

### **Open Regionalism and Megaregional Agreements**

The pioneer of "open regionalism" was Asia Pacific Economic Cooperation (APEC), a forum for like-minded countries to coordinate trade policy reforms. During the early and mid-1990s, members used APEC meetings to announce unilateral tariff reductions or other measures; politically this was attractive in offsetting opposition from import-competing producers by an impression of reciprocal benefits for export producers. A perceived failure of APEC to react to the 1997-8 Asian Crisis and opposition to US pressure to commit to Early Voluntary Sectoral Liberalization led to effective demise of APEC as a force for trade liberalization. Nevertheless, APEC has an important legacy in introducing the concept of open regionalism, i.e. the reduction of barriers to trade and encouragement of cooperation without discrimination against outsiders and openness to any new members who share the ideals.

During the 2002 APEC summit, leaders of New Zealand, Singapore and Chile began negotiations on a forward-looking trade agreement that would set high-quality benchmarks on trade rules. After Brunei joined the talks, they were renamed the Trans-Pacific Strategic Economic Partnership agreement or Pacific-4, and the agreement entered into force in 2006. The P4 agreement was not about tariffs, which were at or close to zero in all four countries. In 2008, Australia, Peru, the USA, and Vietnam opened negotiations to extend the P4 and were joined by Malaysia in 2010, Mexico and Canada in 2012, and Japan in 2013. The twelve countries concluded the Trans-Pacific Partnership (TPP) negotiations in 2016. The negotiations were lengthy because the TPP agreement

was far-reaching. However, the TPP never entered into force because the USA withdrew in January 2017 before ratification.

The eleven remaining TPP countries agreed in May 2017 to renegotiate the agreement and in March 2018 they signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The CPTPP is the same as the TPP apart from a list of twenty-two “suspended provisions”, primarily from chapters on investment, public procurement, and intellectual property rights, that were of primary interest to the USA. After ratification by Australia, Canada, Japan, Mexico, New Zealand, and Singapore, the CPTPP entered into force for those countries on 30 December 2018.<sup>8</sup>

The CPTPP has an accession clause designed to attract new members. In February 2021, the United Kingdom lodged the first formal application to join the CPTPP and on 2 June the CPTPP members agreed that the accession process could begin; the response showed that a country from outside the Asia-Pacific region would not be refused membership for geographical reasons. In September 2021, China applied to join the CPTPP, but may face resistance from CPTPP members doubting market-opening commitments.<sup>9</sup> A week later the Separate Customs Territory of Taiwan Penghu, Kinmen and Matsu lodged an application to join the CPTPP, adding a politically difficult element to evaluation of PRC’s application. Ecuador lodged its application to join the CPTPP in December 2021.<sup>10</sup>

The Regional Comprehensive Economic Partnership (RCEP) is a megaregional agreement appealing to like-minded countries agreeing on terms that go beyond WTO commitments. Negotiations began in 2012 between the ten ASEAN member countries and six partners (Australia, China, India, Japan, Korea and New Zealand). The twenty chapters went beyond pre-existing trade agreements between ASEAN and the individual partners, and covered areas such as investment, intellectual property rights, competition, trade remedies, standards, e-commerce, and dispute settlement. In November 2019 India withdrew from the negotiations, facilitating conclusion of agreement among the more like-minded countries.<sup>11</sup> The other fifteen countries signed the agreement on 15 November 2020.

The RCEP agreement was not as deep as the CPTPP. While CPTPP partners eliminated virtually all tariffs, RCEP covered only about 90% of tariffs, and was less comprehensive than CPTPP on agriculture and services.<sup>12</sup> RCEP is weaker than CPTPP in some chapters; RCEP added little to existing intellectual property rules, did not mention the environment or state-owned enterprises, and said little

8 The CPTPP entered into force for Vietnam on 14 January 2019 and for Peru on 19 September 2021. The CPTPP will enter into force for Brunei Darussalam, Chile, and Malaysia sixty days after they complete their respective ratification processes.

9 The CPTPP has chapters on labour and state-owned enterprises that mandate freedom of association, elimination of all forms of forced labour, and establishing disciplines on the commercial activities of public enterprises.

10 The most widely cited estimates, from computable general equilibrium modelling by Petri and Plummer (2016; 2020), show substantial net benefits to the eleven CPTPP signatories from the deep integration, and to the USA and PRC if they were to join the CPTPP.

11 India’s withdrawal made RCEP more geographically defined as an east Asia organization, although that was not a factor in India’s withdrawal. The Bangladesh Trade and Tariff Commission has been tasked with conducting an in-depth feasibility study on proposed inclusion of Bangladesh in RCEP (*The Financial Express* (Dhaka), 20 September 2021), but a formal application has not yet been made.

12 Because RCEP countries have higher average tariffs than CPTPP countries (Table 1), market access for goods and rules of origin were of greater importance in RCEP negotiations, but these are still only two of the twenty chapters in the final RCEP agreement (Table 2).

about standards or e-commerce and cross-border data flows. However, ASEAN has a history of slow but gradual liberalization of trade arrangements over time; eight years of negotiating the RCEP was typical of the “ASEAN way” which could presage future gradual convergence towards CPTPP rules.

Deep bilateral agreements negotiated by the EU overlap in coverage with the megaregionals. Since the 1990 Montréal ministerial meeting, the EU has shifted away from trade policy based on protecting key domestic producers and offering varying degrees of preferential treatment to imports (Pomfret, 2021a). The emphasis on competitiveness, including easy access to imported inputs, and participation in GVCs is explicit in the 2015 *Trade for All* strategy document. After tentative negotiation of new era trade agreements with countries such as Chile, Mexico, Korea, Colombia, Peru and Ecuador, the EU concluded deeper agreements with Canada (applied since 2017), Japan (in force since 2019), Singapore (in force since 2019) and Vietnam (in force since 2020).<sup>13</sup> The deeper recent agreements with Singapore, Canada and Japan cover similar areas to the CPTPP. Several EU partners are also CPTPP or RCEP signatories, which implies consistency between the agreements. These three sets of agreements cover all major trading nations except for the USA, Russia, India, and Brazil.

### The Structure of Modern Trade Agreements

The TPP was an important blueprint for modern trade agreements in the way that it set out chapters to provide the structure for negotiations. Each chapter could be negotiated in a separate working party, and in the final text the scope of a chapter would be as extensive or as limited as the participants could agree upon. Negotiations were lengthy because they were far-reaching, and the agreement would have treaty status. The chapter structure is replicated in the RCEP agreement, in EU agreements since 2015, and in the December 2021 UK-Australia agreement.

The similarity of the chapter structures of the CPTPP and an EU agreement such as the Comprehensive and Economic Trade Agreement (CETA) with Canada reflects the commitment of the CPTPP countries and of the EU to free trade policies and to moving beyond current WTO obligations. Preferential market access for goods, which dominated twentieth century trade agreements, is no longer a major issue. Average applied tariffs are 1.7% in the EU and below 4% in all CPTPP signatories (Table 1). Producers want access to imported inputs from the best supplier globally and, especially for goods produced along global value chains, importers want minimal trouble at the border.

The CPTPP agreement is itself only nine pages long, describing changes from the already agreed TPP. The TPP/CPTPP structure is like the structure of the RCEP and of deep trade agreements negotiated by the European Union since 2015 (Table 2). RCEP’s twenty chapters have similar coverage to most CPTPP chapters, a single chapter for services, and omission of eight TPP chapters. CETA chapters 11 (mutual recognition of professional qualifications) and 14 (international maritime transport services) did not have separate CPTPP chapters but could be included within the existing CPTPP chapter structure.

<sup>13</sup> Negotiations are under way with Australia, Indonesia, New Zealand, and the Philippines among others. The EU agreement with Kazakhstan will be analyzed below.

**Table 1.** Average Ad Valorem Applied Tariffs Megaregional Signatories and Central Asian Countries, 2020

CPTPP		RCEP		Central Asian Countries			
Canada	1.5%	Australia	0.7%	Cambodia	6.2%	Kazakhstan	2.0%
Chile	0.4%	Brunei	0.0%	PRC	2.5%	Kyrgyz Republic	2.3%
Mexico	1.2%	Japan	2.2%	Indonesia	2.0%	Tajikistan	3.9%
Peru	0.7%	Malaysia	3.6%	Korea	5.5%	Turkmenistan	2.9%
		New Zealand	0.8%	Lao PDR	1.0%	Uzbekistan	2.1%
		Singapore	0.1%	Myanmar	1.8%		
		Vietnam	1.3%	Philippines	1.7%		
				Thailand	3.5%		

Source: World Bank database

Notes: weighted average based on bilateral trade at HS 6-digit level; Mexico 2018, Myanmar 2019, Thailand 2015.

**Table 2.** Chapter Structure of TPP Compared to RCEP and the EU-Canada Agreement

TPP/CPTPP	RCEP	CETA
1. definitions	1	1
2. market access for goods	2	2
3. rules of origin	3	A
4. textiles & apparel		A
5. custom administration	4	6
6. trade remedies (AD&CVD)	7	3&7
7. SPS	5	5
8. TBTs	6	4
9. investment	10	8
10. services	8	9
11. financial services	8	13
12. temporary migration	9	10
13. telecoms	8	15
14. e-commerce	12	16
15. public procurement	16	19
16. competition policy	13	17
17. SOEs & monopolies		18
18. intellectual property	11	20
19. labor		23
20. environment		24
21. cooperation & capacity building	15	25
22. competitiveness & investment facilitation		
23. development		22
24. SMEs	14	
25. regulatory coherence		12&21
26. transparency & corruption		27
27. administration & institution provision	18	26
28. dispute settlement	19	29
29. exceptions & general provisions	17	28
30. final provisions	20	30

Notes: A = included in annexes. CETA also has three protocols (on rules of origin, on mutual acceptance of the results of conformity assessment, and on good manufacturing practices for pharmaceutical products).

The RCEP agreement illustrates the flexibility of the chapter approach. The twenty RCEP chapters go beyond pre-existing trade agreements between ASEAN and the individual partners, but RCEP was less comprehensive than CPTPP in sensitive areas such as trade in agricultural products and in services, and it added little to existing intellectual property rules. Because RCEP countries have higher average tariffs than CPTPP countries (Table 1), market access for goods and rules of origin were of greater importance in RCEP negotiations than in the CPTPP, but these were still only two of the twenty chapters in the final agreement (Table 2). Some CPTPP chapters - environment, labour, state-owned enterprises, competitiveness, development, regulatory coherence, and transparency and corruption - did not feature in RCEP. In sum, RCEP followed the structure of the CPTPP or CETA agreements, while making weaker commitments and ignoring some more controversial areas.

Even if it is less ambitious, the RCEP final text is consistent with the CPTPP. This should not be surprising, given that seven countries (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam) are signatories of both agreements. Consistency is important in preventing noodle-bowl effects of conflicting rules or standards that increase the complexity of trade. Consistency in WTO+ and WTO-X areas across trade agreements is also important in complementing the universality of WTO trade law. Furthermore, weaker RCEP chapters can be strengthened; ASEAN has a history of slow but gradual liberalization of trade arrangements over time, which could presage future convergence towards CPTPP rules. The global relevance of CPTPP rules in beyond-WTO areas is underlined by the UK's 2021 application to become a CPTPP member and by the December 2021 Australia-UK trade agreement which has close concordance with CPTPP apart from two new areas "trade and gender equality" and "innovations".

Central Asia, like RCEP, contains a mixture of countries with differing levels of commitment to deeper involvement in the global economy. Countries that are cautious about such entanglements can delay implementation and claim exemptions if they are not in contradiction to the agreed aims of the agreement, while more ambitious signatories can forge ahead. Singapore, an open economy with virtually tariff-free access for imports, has been a leader in pursuing megaregional agreements and has also been keen to proceed further with like-minded countries. In 2020, Singapore signed the Singapore-Chile-New Zealand Digital Economic Partnership Agreement (DEPA) and the Singapore-Australia Digital Economy Agreement (SADEA), both of which extended coverage to provisions not in the CPTPP (last four lines of Table 3).<sup>14</sup> Such efforts can be testing grounds for further measures, as long as they are consistent with the existing obligations. The drawback of country-specific clauses is that they increase the complexity of trade and, if excessive, could nullify an agreement's impact.

<sup>14</sup> In September 2021, Korea announced that it wished to join DEPA. In December 2021, Singapore and the UK signed a Digital Economy Agreement.



**Table 3.** *Key Digital Trade Provisions in Selected Trade Agreements*

Key issue	CPTPP	DEPA	SADEA
Elimination of customs duties	Y	Y	Y
Non-discriminatory treatment of digital products	Y	Y	Y
Electronic authentication	Y	Y	Y
Paperless trading	Y	Y	Y
Domestic e-transactions	Y	Y	Y
Online consumer protection	Y	Y	Y
Personal information protection	Y	Y	Y
Measures against spam	Y	Y	Y
Cybersecurity	Y	Y	Y
Cross-border transfer of information	Y	Y	Y
Prohibition of data localization	Y	Y	Y
Cross-border transfer & localization for financial services	N	NM	Y
Liability of intermediary service providers	N	NM	NM
Non-disclosure of software source code	P	NM	Y
Open government data	N	Y	Y

Sources: Lovelock (2020, 31-52) and Asian Trade Centre (2020).

Notes: Y = included; P = partially included; N = not included; NM = not mentioned.

## THE REGIONAL BACKGROUND

Before the dissolution of the USSR in December 1991, the Soviet republics of Central Asia shared a common economic space. The Commonwealth of Independent States (CIS) envisaged continuation of free internal trade among the non-Baltic successor states, but the patchwork of bilateral free trade agreements often lapsed. The CIS became split politically between the GUAM (Georgia, Ukraine, Azerbaijan, and Moldova) group, neutral Turkmenistan, and the rest.<sup>15</sup> Several attempts to create Central Asian regional trade arrangements were signed but not implemented (Pomfret, 2006, 183-95).<sup>16</sup>

CAREC has been the most durable Central Asian regional trade institution. In 2001 CAREC was established with seven members (Azerbaijan, Kazakhstan, the Kyrgyz Republic, Mongolia, Tajikistan, Uzbekistan, and Xinjiang Autonomous Region of China), and six multilateral institution partners (the ADB, EBRD, IMF, IsDB, UNDP, and World Bank); a secretariat in the ADB provided technical and administrative support. Membership expanded to include Afghanistan in 2005, PRC's Autonomous Region of Inner Mongolia in 2008, Pakistan and Turkmenistan in 2010, and Georgia in 2016.

In its early years, CAREC was primarily about confidence-building and encouraging communication among officials.<sup>17</sup> Adoption of the Comprehensive Action Plan in 2006 marked transition to a results-oriented program with a focus on four areas of cooperation: transport, trade facilitation, trade policy and energy. Trade facilitation became the centrepiece of CAREC activities in the

<sup>15</sup> Uzbekistan joined GUAM in 1998 but left the group in 2005.

<sup>16</sup> An important distinction is between regionalism, i.e. top-down policies to promote regional integration, and regionalization that involves bottom-up strengthening of regional ties through trade, investment, etc. The CAREC Regional Integration Index shows a flat trend of regionalization (Holzhacker, 2020).

<sup>17</sup> The Customs Cooperation Committee was activated in 2002, the Transport Sector Coordinating Committee and the Trade Policy Coordinating Committee in 2004, and the Energy Sector Coordinating Committee in 2005. In 2009 a Regional Joint Transport and Trade Facilitation Committee was established.

2010s with hands-on cooperation within the Customs Cooperation Committee, infrastructure investment in six CAREC corridors, and consolidation of the Corridor Performance Monitoring and Management (CPMM) data bank.<sup>18</sup> Beyond affirming the desirability of WTO accession for those CAREC countries which were not yet members, CAREC had little to offer in the trade policy area which remained a national competence.

Central Asian countries have accumulated a patchwork of pre-existing agreements, some of which constrain their ability to make new trade-related commitments. The former Soviet republics have signed many agreements within the CIS that aimed to ensure continuation of free trade within the former Soviet space but have generally had little guaranteed foundation. The principal exception is the customs union formed by Belarus, Kazakhstan, and Russia in 2010 which became the Eurasian Economic Union (EAEU) in 2015, with Armenia and the Kyrgyz Republic as new members (Khitakhunov et al., 2017). The EAEU members have a common external trade policy towards non-member countries and cannot negotiate independently on trade measures such as tariffs (Vinokurov, 2018).<sup>19</sup>

The 2016 Enhanced Partnership and Cooperation Agreement (EPCA) between the European Union and Kazakhstan shares some structural characteristics with the RCEP agreement. The trade commitments, which are chapters in the EPCA's Title III *Trade and Business*, are weaker than RCEP and the EPCA places greater emphasis on non-trade matters, especially cooperation in a range of areas. The EPCA contains chapters on the environment, capital movement, transparency and corruption, and state-owned enterprises and monopolies. The EPCA does not affect Kazakhstan's tariffs, which are the EAEU common external tariff. The EU is currently negotiating EPCAs with Uzbekistan and the Kyrgyz Republic; texts are not yet available, but the Kyrgyz agreement, like Kazakhstan's EPCA, cannot change tariff rates which are set by EAEU commitments.

## PRIORITY AREAS

The guiding principle for successful trade agreement negotiations is to have target goals for the long term, and to move forward in areas where there is consensus among members on the desired content. Of the twenty chapters of the RCEP agreement, priority chapters for a Central Asian trade agreement might include chapters 2 (trade in goods), 5 (sanitary and phytosanitary measures), 8 (trade in services), and 12 (e-commerce and digitalization). A trade in goods chapter might also include topics from RCEP chapters 7 on trade remedies, 6 on technical barriers to trade and standards, and 4 on customs procedures and trade facilitation. Lower priority could be given to less urgent or more controversial topics such as competition policy (RCEP chapter 13), intellectual property (chapter 11), investment (chapter 10), public procurement (chapter 16), temporary movement of businesspeople (chapter 9), small and medium-sized enterprises (chapter 14),

<sup>18</sup> The CAREC Institute, which had functioned as a virtual institute between 2009 and 2015, gradually built capacity to promote cooperation by providing evidence-based research after moving to a physical base in Urumqi. Among other functions, the Institute has assumed responsibility for the CPMM program.

<sup>19</sup> The EAEU has had difficulty reaching binding agreements beyond tariffs (Dragneva and Hartwell, 2021). Troitsky (2020) argues that members use SPS and other administrative barriers to protect domestic producers facing competition in the EAEU internal market and that a promised joint body on sanitary and veterinary controls "remains a distant and unclear goal." The lack of EAEU solidarity is explicit in the WTO negotiations on digital trade, where Russia and Kazakhstan are among the 80+ countries signed up to the e-commerce Joint Statement, but the Kyrgyz Republic and Armenia are not (Belarus is not a WTO member).

and economic and technical cooperation (chapter 15). These and other possible chapters (such as the environment or state-owned enterprises chapters in the CPTPP) can be listed for filling in later. The agreement would conclude with chapters on dispute settlement and institutional support.

## Trade in Goods

Trade in goods is generally well covered by WTO trade law. The WTO recognizes the public interest argument for regulations to protect health, safety, the environment, etc. and the need to provide guidelines when countries respond to practices such as dumping or unfair subsidizing of exports by antidumping (AD) or countervailing duties (CVDs). The WTO also has rules for customs administration and trade facilitation. Regional agreement can strengthen the efficiency of trade remedies and reduce harmful consequences for trade from the design or implementation of desirable regulations.

WTO members' obligations with respect to trade in goods provide a benchmark of minimal best practices. The RCEP chapters dealing with trade in goods are exceptionally long as the result of trying to establish preferential tariff treatment for intra-RCEP trade.<sup>20</sup> The Central Asian countries cannot address preferential tariffs as long as Kazakhstan and the Kyrgyz Republic are bound by the EAEU common external tariff, which makes the trade in goods chapter a much simpler exercise in pushing the boundaries of WTO rules. Several features of trade in goods, including trade remedies and technical barriers to trade can be combined into a single chapter, while sanitary and phytosanitary (SPS) measures can be retained as a separate chapter due to the importance of agri-food trade and the opportunities for regional simplification of SPS rules and procedures within Central Asia.

Transparency and non-discrimination are the core principles of the WTO. Although the WTO charter rules out many trade-obstructing practices, protection remains, intentionally or inadvertently, in three areas outside MFN tariffs.

Customs procedures and some behind-the-border factors add to the cost of international trade. The process of reducing trade costs is referred to as trade facilitation and the 2017 Trade Facilitation Agreement set out principles to be followed by WTO members. Bilateral or plurilateral trade agreements have been useful for identifying and implementing targeted trade facilitation measures. Such a function is provided by the CAREC Customs Cooperation Committee, but its decisions have no legal force.

Acceptance of the invoice price of an imported good has been controversial when the importing country perceives cases of unfair competition. The WTO recognizes two such cases and permits members to retaliate through countervailing duties (CVDs) against subsidized imports and through anti-dumping (AD) duties against goods being sold below fair market value, i.e.

<sup>20</sup> The RCEP agreement has over 6,000 pages of text, largely because of the content of Chapter 2, *Trade in Goods*, and Chapter 3 on rules of origin. The length of these two chapters and their annexes is due to inclusion of preferential tariff reductions in the agreement, and the excruciating detail with which signatories carved out exceptions or tailored rules of origin. Chapter 2 is 130KB long, but the schedules of tariff commitments in Annex I take up 720,310 KB. In Chapter 3, the product specific rules of origin in Annex 3A take up roughly ten times more space (1,850 KB) than the text of the chapter (190 KB) Chapters 4-7 on customs procedures, SPS, TBTs and trade remedies, are much shorter.

below cost or below the price in the exporting country. The principles behind utilization and calculation of CVDs and AD duties are clear, but the trade-damaging impact of the permitted remedies can come from non-transparent or drawn-out procedures that discourage imports irrespective of the outcome of the investigation. Trade agreements have been useful in encouraging mutual disarmament, e.g. by clarifying procedures, time limits and the rights of exporting countries.

Thirdly, the WTO recognizes members' right to impose regulations to promote public policies, even if such regulations have a practical consequence of discriminating against imported goods. WTO members commit to imposing technical standards and other regulations in forms that are transparent, evidence-based and with the least impact on trade consistent with achieving the public policy goal. Regional agreements can build on WTO principles to add beneficial measures such as standardizing regulations or mutual recognition of the scientific basis for technical barriers to trade.

The text of the RCEP trade in goods chapters, simplified if the signatories do not seek preferential access to other signatories' markets, provides a useful template for a Central Asian trade agreement. Chapter 4 on customs procedures and trade facilitation covers matters that are already addressed in the CAREC Customs Cooperation Committee. Chapters 5, 6 and 7 essentially restate WTO commitments on SPS, TBTs and trade remedies with some attempts to strengthen transparency or simplify implementation. On antidumping duties, Annex 7A gives the exporter opportunity to remedy or explain deficiency in request for information, requires informing the exporter of a preliminary affirmative finding and providing opportunity for consultation, and sets out obligations to publish the results. However, the chapter on trade remedies is not covered by the dispute settlement process, which weakens any requirements.<sup>21</sup>

### **Sanitary and Phytosanitary Measures**

Although it matters little whether or not trade remedies, SPS or TBTs are in separate chapters because the principles applying on each topic are similar, exception may be made here for SPS because agriculture is an important sector in all Central Asian countries. Moreover, as part of efforts to diversify exports, several Central Asian countries would like to increase the volume and quality of agricultural exports. Key to achieving this goal is ensuring that exports meet SPS standards as governed by three international standard-setting bodies: Codex Alimentarius Commission for food safety, World Organization for Animal Health, and the International Plant Protection Convention. The WTO Agreement on SPS measures is based on the principle that agreeing on and meeting these standards is desirable; countries can restrict imports to protect human, animal or plant life or health, but the justification for application of SPS measures must be based on international standards and SPS measures should be designed to minimize negative effects on trade.

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<sup>21</sup> The last article of RCEP Chapter 7 states that "No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Section or Annex 7A (Practices Relating to Anti-Dumping and Countervailing Duty Proceedings)."

The principal reason for agreements that go beyond the WTO Agreement is to ensure that implementation is transparent and as straightforward as possible. This can include harmonization of rules and mutual recognition of certificates of compliance with international standards or sharing facilities for testing and certifying. It also includes trade facilitation at the border, where delays in accepting and processing SPS certification can be a significant trade cost, especially for perishable agricultural products.

In 2015, CAREC ministers endorsed a Common Agenda for the Modernization of Sanitary and Phytosanitary Measures for Trade. Subsequent actions emphasized information sharing, streamlined procedures and collaboration of agencies at borders. This is consistent with the 2017 WTO *Trade Facilitation Agreement* that provides for use of international standards, Single Windows, and uniform documentation. The 2019 *CAREC Integrated Trade Agenda 2030* included potential mutual recognition of members' SPS certificates. The CAREC SPS Working Group, initiated in Tashkent in June 2019, took up issues including electronic exchange of phytosanitary certificates; a follow-up workshop was organized by the CAREC Institute in February 2021.

The adoption of electronic phytosanitary certificates (e-Phyto) facilitates trade, especially for perishable goods, but runs up against the CAREC countries' varying degrees of digital preparedness. Uzbekistan has been exchanging e-Phytos since October 2020. The benefits to Uzbekistan have been substantial but are constrained because the system has still to be adopted by some of the country's major agricultural trade partners (Russia, Kazakhstan, and China). More generally, implementation of paperless and agriculture-related trade facilitation in Central Asia is poor by global standards (Lazaro et al., 2021, 10, citing a 2021 UN survey on digital and sustainable trade facilitation); the same survey found that testing and laboratory facilities to meet trading partners' SPS requirements were adequate only in the Kyrgyz Republic, and partially available in Kazakhstan, and Uzbekistan. A Central Asian trade agreement could combine these initiatives to clarify what is agreed.

RCEP is a good model for Central Asian countries because it is comprehensive and consistent with other recent agreements, and also recognizes varying degrees of economic development, digital readiness, and willingness to make binding commitments. The objectives of RCEP Chapter 5 are to strengthen implementation of the WTO SPS Agreement, and it specifies agreed best practice in various aspects of SPS administration. Its coverage is consistent with existing CAREC practice in the area, as well as with pre-existing agreements such as the Eurasian Economic Union. Central Asian countries may be willing to push beyond RCEP and make commitments about mutual recognition of certification, addressing equivalence, approval of establishments, certification, import checks and inspection fees. Including such items in a Central Asian agreement, even in annexes, would codify recent Central Asian actions on information sharing, streamlined procedures and collaboration of agencies at borders, and would promote cooperation in sharing scarce resources such as testing laboratories.

## Trade in Services

Services represent a large and growing part of modern economies, although their contribution to both GDP and to international trade is poorly measured.<sup>22</sup> Between 2001 and 2020 services value-added grew faster than GDP in all Central Asian countries (ADB 2021, 13). Services are increasingly traded in their own right, sometimes digitally (e.g. back-office services). In trade statistics based on gross values, services represent no more than 25 per cent of global trade, but these estimates ignore some modes of supply, e.g. services supplied through commercial presence in another country, and services also serve as crucial inputs into the production of traded goods - this is especially true of GVCs, for which services often provide the glue that holds the chains together. When trade is assessed in value-added terms rather than by gross value of the final product, services account for about half of world trade.

The General Agreement on Trade in Services (GATS), in force since establishment of the WTO in January 1995, was the major step in extending trade law to include services as well as goods. The GATS adopted similar principles and objectives to those for merchandise trade: creating a credible and reliable system of international trade rules, based on fair and equitable treatment of all participants through guaranteed policy bindings, to promote trade and development and through progressive liberalization. All WTO members are at the same time signatories of the GATS and, to varying degrees, have assumed commitments in individual service sectors.<sup>23</sup>

While recognizing the right of members to regulate the supply of services in pursuit of their own policy objectives, the GATS contains provisions ensuring that services regulations are administered in a reasonable, objective, and impartial manner. These provisions are categorized into two broad groups: general obligations that apply to all members and services sectors, and obligations that apply only to the sectors inscribed in a member's schedule of commitments, whose scope may vary widely between members.

The GATS requires WTO members to extend immediately and unconditionally to services or services suppliers of all other members "treatment no less favourable than that accorded to like services and services suppliers of any other country", which amounts to a prohibition of preferential arrangements among groups of members in individual sectors. Transparency is fundamental; WTO members are required, among other things, to publish all measures of general application and establish national enquiry points mandated to respond to other members' information requests. Other general obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

Each WTO member's Schedule of Specific Commitments identifies the services for which the member guarantees market access and national treatment, and

<sup>22</sup> Services account for over two-thirds of global production and employment. Many services are under-reported because they are in the informal economy or are part of an integrated production process for which only physical inputs and outputs are reported.

<sup>23</sup> The GATS applies in principle to all service sectors, with two exceptions. First, the GATS excludes "services supplied in the exercise of governmental authority" that are supplied neither on a commercial basis nor in competition with other suppliers, e.g. health, education or social services that are provided under non-market conditions. Second, the Annex on Air Transport Services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of such rights. The wording of this footnote draws heavily on the WTO website at [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm).

any limitations that may be attached. Market access is a negotiated commitment in specified sectors that may be made subject to various types of limitations. Limitations may be imposed, for example, on the number of services suppliers or employees in the sector, on the value of transactions, on the legal form of the service supplier, or on the participation of foreign capital. A commitment to national treatment implies that the member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. All schedules are available on the WTO website.

Members are free to tailor the sector coverage and substantive content of commitments as they see fit. Some WTO members have scheduled less than a handful of services, and others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services. Most schedules consist of both horizontal sections that apply across all sectors listed in the schedule and sectoral sections that apply only to a particular service. Members are free to expand existing commitments at any time and to modify specific commitments subject to certain procedures.<sup>24</sup>

Establishing a global trade regime for services that goes beyond basic principles of transparency and non-discrimination has been difficult. Services are heterogeneous, with subsectors facing different regulations and obstacles to international exchange. The international tourism trade, for example, is almost totally unregulated with little pressure to standardize domestic rules, regulations, or subsidies, while many professional services are protected by powerful associations that obstruct recognition of foreign credentials.

The GATS only addresses regulations that are trade barriers. There are no obligations on WTO members to remove other non-quantitative, non-discriminatory regulations in services sectors. In December 2021, sixty-six WTO members, including Kazakhstan, adopted a Joint Initiative on Services Domestic Regulation (SDR) disciplines that built upon the GATS by providing additional obligations related to domestic regulation of services. The aim is to reduce red tape by easing licensing and qualification requirements and procedures, as well as technical standards that create unnecessary barriers to trade in services.<sup>25</sup> Because the commitments are domestic and apply without discrimination to all foreign suppliers, the Joint Initiative could be adopted without approval of a WTO Ministerial meeting. The joint initiative is a GATS+ agreement and an important step in extending coverage of services trade within the WTO. At the same time, in the absence of WTO action in the quarter century after 1995 and reflecting the heterogeneity of the services sector, and hence differing national and regional priorities, services have featured in all deep trade agreements (Baiker, et al., 2021).<sup>26</sup>

<sup>24</sup> The GATS also permits members in specified circumstances to introduce measures in contravention of their obligations, among other things, for measures necessary to protect public morals or maintain public order, to protect human, animal or plant life or health, or to secure compliance with laws or regulations not inconsistent with the GATS, including measures necessary to prevent deceptive or fraudulent practices. Moreover, the Annex on Financial Services entitles members, regardless of other GATS provisions, to take measures for prudential reasons. Finally, members with serious balance-of-payments difficulties may temporarily restrict trade, on a non-discriminatory basis, despite the existence of specific commitments.

<sup>25</sup> The three main areas covered are: (1) increasing transparency, including publication of all laws and regulations before implementation, and providing opportunities for service providers to comment at draft stage, (2) legal certainty and predictability, including a maximum time for processing applications, and the right to resubmit or appeal decisions, (3) regulatory quality and facilitation, including independence of regulators, acceptance of electronic applications, and transparent reasonable fees.

<sup>26</sup> Although services chapters have become standard content of deep trade agreements, they are often characterized by soft language (Gari, 2020). Such restraint reflects uncertainty of outcomes and anticipated high implementation costs, particularly for countries with unsophisticated domestic legal systems.

Baiker et al. (2021) document the overlap between the Joint Initiative and deep trade agreements. They specifically compare the Joint Initiative with the services provisions in RCEP. Chapter 8 of RCEP builds on the GATS by accepting the principles of non-discrimination and transparency and by adding further commitments for procedural simplification that in many respects resemble the terms of the Joint Initiative.<sup>27</sup> Thus, WTO members accepting the Joint Initiative could easily accept the services commitments included in the RCEP agreement, and this is notwithstanding the various stages of economic development and variations of internal regulatory frameworks among RCEP countries. RCEP builds on GATS commitments on market access and non-discriminatory treatment, and consolidates and improves on benefits from existing bilateral and other agreements involving the partners, allowing for greater transparency and usability for services stakeholders.<sup>28</sup> At the same time, RCEP countries retain the right to regulate for legitimate public policy purposes.

In general, the heterogeneity of services obstructs progress beyond general principles. This is reflected in the three annexes to the RCEP chapter, on financial services, telecommunication services and professional services, which offer varying amounts of detail and commitment. Annex 8A on financial services spends several paragraphs defining the range of insurance, banking, and other financial services to be covered and on consultation and contact points but contains few commitments beyond transparency and information transfer. Annex 8B makes general statements about regulation, access and use, number portability, competition safeguards, and other telecommunication matters; the most detailed treatment is of interconnection (with focus on access to domestic networks and services), co-location, and international mobile roaming, while other substantive articles address spectrum access, submarine cable systems, bundled services, and poles, ducts, and conduits. Finally, the brief Annex 8C (professional services) “encourages” development of mutually acceptable professional standards that are consistent with international frameworks.

Services trade is potentially the most difficult of the priority areas in which CAREC countries can reach early agreement. The sector is heterogeneous both in modes of delivery and in priority sub-sectors for different countries. A minimal outcome would be to mimic the main text of RCEP Chapter 8 which reaffirms GATS principles but is light on further commitment and on enforcement, while deeper commitments on specific sub-sectors could be included as annexes; the three RCEP annexes - financial services, telecommunications, and professional services – are relevant to CAREC members.<sup>29</sup> Simplifying cross-border financial transactions is an important element of trade facilitation. Telecommunication services should be considered in conjunction with the related area of digitalization

27 In this respect RCEP is like the CPTPP, USMCA, and recent EU and UK deep agreements, although the degree of commitment is moderated by softer language in RCEP than in the other agreements.

28 For example, RCEP ‘Domestic Regulation’ provisions are relevant to services suppliers who need to obtain a license and/or registration to deliver services in RCEP markets; the Agreement requires that these processes should be based on objective and transparent criteria. RCEP standards for these processes focus on the ability of services providers to complete examination/assessment, the cost of submitting applications, and the feedback received on these applications. These rules will make registration and qualification processes more navigable for services providers struggling with foreign regulatory environments. Gari (2020) makes a similar point.

29 Chapter 3 of the 2021 ADB report *Developing the Services Sector for Economic Diversification in CAREC Countries* highlighted seven sub-sectors which are critical to economic diversification and sustainable development in CAREC countries: (i) telecommunication and information services, (ii) financial services, (iii) education and research and development services, (iv) tourism-related services including passenger transport, (v) freight transport and storage services, (vi) quality testing and certification services, and (vii) other agriculture-related services. Accompanying data highlighted the large cross-country variance in importance and efficiency of differing sub-sectors.



and e-commerce. Professional services are also related to digitalization, as an increasing number of such services can be provided online. Mutual recognition of qualifications is a potential area for removal of obstacles to services trade, although many professions may obstruct mutual recognition.<sup>30</sup> Service sectors not included in RCEP, e.g. cross-border tourism, could be considered for inclusion in a Central Asian trade agreement.

## Digitalization and E-Commerce

With rapidly increasing e-commerce, use of the internet for trade facilitation, cross-border data flows etc., it has become clear that some international standardization of rules and regulations is desirable. Electronic communications reduce transactions costs but are subject to manipulation and deterioration. Information requires computing devices to display, involving risk of error, and altered states may be hard to distinguish from originals. Traditional laws use words that do not readily apply to information in digital form, e.g. “writing”, “signature”, “original”, and such laws are barriers to use of e-communications. In addition to traditional trade-related concerns of openness and market access, transparency, and trade facilitation, digitalization and e-commerce raise issues of privacy and national security whose importance varies from country to country.

The WTO launched a work program in 1998, which included a temporary moratorium on customs duties on electronic transmission (that has been renewed annually) but had little further impact before the 2010s. Members who have poor internet connectivity and skills and do not participate in GVCs oppose rules that they fear may constrain their future policy space. At the December 2017 WTO Ministerial Meeting, 71 countries, including all the countries involved in the deeper trade agreements described above, adopted a Joint Statement on E-commerce.<sup>31</sup> However, the process of drafting a plurilateral agreement is opposed by some WTO members who consider it to contravene the universality of WTO law. With decision-making by consensus, progress at the WTO cannot be relied upon and countries have included rules for e-commerce and digitalization in bilateral trade agreements (e.g. the 2012 US-Korea agreement or EU deep agreements) and multilateral trade negotiations (e.g. the TPP/CPTPP, RCEP). In sum, although global rules on trade aspects of digitalization would be desirable, current best practice is embodied in bilateral or regional agreements.

All Central Asian countries have laws relevant to electronic communication and trade. Although the coverage is fairly complete (CAREC, 2021, 58), laws on these issues vary in content and are not always consistent with each other or with international practice. The 2017 Trade Facilitation Agreement imposes certain obligations on WTO members to transact public business such as customs processing electronically. Similar obligations are implicit or explicit in other agreements to which the Central Asian countries are parties, such as the International Road Transport (TIR) convention or UN ESCAP agreements to promote paperless trade (Gregory, 2020). The principles set out in international agreements are a useful starting point but recent international trade agreements

30 Caution may be justified, e.g. with respect to automatic recognition of medical qualifications, but it can be an excuse for restricting access in order to maintain market power of incumbents.

31 In January 2019, a second Joint Statement was signed by 76 members. In 2021, the number of participating members stood at 86, or just over half of the WTO membership, and included Kazakhstan from Central Asia.

go further, including privacy, cybercrime, and consumer protection.<sup>32</sup>

Most, but not all, Central Asian countries have some form of privacy legislation based on the principle of informed consent, and on setting limits to how long personal data may be kept and to transfer of data across borders. All have laws about criminal activity by traditional means, but in not all countries are laws on fraud, forgery, pornography, and so forth transferable to digital technology. Other illicit activities, such as unauthorized access to a computer or network or infecting computers with malware, are illegal in some, but not all countries. Few Central Asian countries have explicit consumer protection laws with respect to e-commerce that allow for timely information about e-transactions and the ability to remedy error or wrongdoing; such protection is also relevant to SMEs engaging in B2B e-commerce.

The TPP's chapter 14 on Electronic Commerce has become the benchmark for digital rules in international trade agreements. It was unchanged in the CPTPP, and other deep trade agreements coming into force in 2020 (e.g. EU-Japan, or US-Canada-Mexico) followed the structure of the TPP chapter. The RCEP agreement has a similar chapter but with weaker implementation. Agreements like the Singapore-Chile-New Zealand Digital Economic Partnership Agreement and the Singapore-Australia Digital Economy Agreement have been more ambitious. Despite variations in strength of obligations or extent of coverage, all recent agreements are consistent, hence avoiding problems of conflicting rules in different markets.<sup>33</sup>

RCEP Chapter 12 represents a feasible text for agreement between countries at different stages of digital preparedness and with varying degrees of willingness to agree on a regulatory regime for e-commerce and digitalization. The structure of the RCEP and CPTPP chapters on e-commerce is similar.<sup>34</sup> Among other issues, RCEP includes provisions on paperless trading, electronic certification and signature, online consumer protection, online personal information protection, and network security. Some clauses in the RCEP chapter are less ambitious than CPTPP, e.g. on the location of computing facilities and on cross-border transfer of information by electronic means, and RCEP has no commitments related to source code. RCEP generally imposes weaker standards of enforcement; several RCEP articles permit governments latitude in enforcing parts of the agreement, and footnotes illustrate how implementation can be eased for less well-prepared signatories. The biggest difference between the RCEP and CPTPP chapters is the condition that the RCEP dispute resolution mechanism cannot be applied to disputes related to the e-commerce chapter. In sum, although the structure

32 The principal source of international legislation has been the UN Commission on International Trade Law (UNCITRAL), but none of the Central Asian countries has adopted the UNCITRAL Electronic Communications Convention. UNCITRAL texts are built on four principles: functional equivalence (electronic information should be legally effective if it can perform the same policy function as its paper equivalent), technology neutrality (the law should not specify what technology e-communications must use to serve as functionally equivalent to paper-based information), media neutrality/non-discrimination (the law should give equal effect to information on paper and in electronic form), and minimalism (law reform deals only with the impact of new media and does not otherwise affect substantive legal rules).

33 The similarity of the digital rules and e-commerce provisions in recent agreements was highlighted in a report by the Asian Trade Centre (2020) and in Lovelock (2020), both of which analyzed whether trade agreements had a separate article on key digital provisions (Table 3). However, Lovelock warns that this approach hides differences over language, definitions and content and he emphasizes the difficulty of implementation when many domestic jurisdictions are involved.

34 The titles of the clauses in RCEP Chapter 12 and of the clauses in CPTPP chapter 14 are almost identical and in many cases the text is close to identical. RCEP has articles on Transparency and Dialogue on Electronic Commerce that are absent from the CPTPP but much of the content of those two articles is implicit in the CPTPP.

of RCEP chapter 12 closely follows that of other agreements, the language of RCEP's e-commerce chapter allows signatories greater flexibility.

Current regulatory regimes in Central Asia on e-commerce and digitalization consist of a mixture of often inconsistent national rules and partial implementation of multilateral conventions. Commitments on e-commerce and digitalization are essential if the countries intend to facilitate international trade. The need for common rules has been highlighted in 2020 and 2021 by the greater use of paperless communication during the COVID-19 pandemic and will continue to increase. Building on the principles of transparency, non-discrimination, and functional and technology equivalence that are the foundations of the multilateral conventions, the RCEP chapter structure provides a checklist of topics that can be incorporated in a Central Asian agreement. The RCEP text illustrates how the degree of commitment on any topic can be reduced by less committal language and the universality of rules can be limited by footnotes. The trade-off is, of course, that the more loopholes and exemptions an agreement contains the less useful its commitments are to legitimate traders, who prefer clear rules.

## CONCLUSION

The history of trade agreements in Central Asia, especially in the 1992-2005 period, was of hundreds of agreements signed by presidents taking a photo-op, but the proposed arrangements broke down at the negotiations stage and were rarely implemented. It is important to change that image of words not being matched by deeds. Emphasizing the treaty nature of an agreement would be a major step, especially if supported by a clear dispute resolution process. A treaty-based agreement implies longer negotiations as the wording must be legally precise to reduce future disagreement over what was really agreed. Some flexibility can be retained by adopting soft language where full commitment is unacceptable to all signatories; wording of a treaty-based agreement can distinguish between degrees of obligation (e.g. "must", "should", "make best effort", "acknowledge", etc) while making clear that the agreement's force is beyond a mere paper agreement. However, overuse of soft language will make a treaty less effective.

A feature of world trade law in the twenty-first century has been the difficulty in extending WTO rules due to the consensus requirement. Deep trade agreements including extensions to WTO rules (WTO+ topics) and areas not covered in the WTO (WTO-X topics) have been a response. This paper emphasizes the high degree of compatibility between the CPTPP, RCEP, EU agreements and the US-Mexico-Canada agreement. Such compatibility is important to forestall trade-hampering increases in complexity. Another feature of 21<sup>st</sup> century trade agreements is the diminishing use of preferential tariffs as MFN tariffs have fallen.

The timing is ripe for a Central Asia trade agreement, whether between the five countries or within the broader CAREC. All Central Asian countries are now either in the WTO or seriously negotiating accession. A regional trade agreement can build on WTO foundations and focus on either extending WTO rules, as in SPS, or agreeing on rules to cover new areas such as digitalization and e-commerce.

A Central Asian trade agreement need not start from scratch. Detailed negotiation over wording can be simplified by drawing on existing deep agreements, most notably RCEP, for a template. A successful agreement incorporating commitments on changes in trade policy and practice must acknowledge the caution of Central Asian countries in agreeing to such measures. A gradualist approach could start with commitments already made, most notably in the *CAREC Integrated Trade Agenda 2030*, while postponing negotiation in areas where lack of consensus is likely. At the same time, sub-groups of countries can agree to go further on any specific topic, provided that extensions are consistent with the agreement.

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