

For discussion

on 19 December 2017

**LEGISLATIVE COUNCIL
PANEL ON COMMERCE AND INDUSTRY**

**Free Trade Agreement Between Hong Kong and
the Association of Southeast Asian Nations**

INTRODUCTION

Hong Kong forged a Free Trade Agreement (FTA) and a related Investment Agreement with the Association of Southeast Asian Nations (ASEAN) ⁽¹⁾ in late 2017. This paper briefs Members on the significance of the two agreements for Hong Kong's economic development and their main features.

Enhanced Economic and Trade Relations between Hong Kong and ASEAN

2. ASEAN is a very important trading partner of Hong Kong. It was Hong Kong's second⁽²⁾ largest trading partner in merchandise trade in 2016 and the fourth largest in services trade in 2015. Many of the individual ASEAN Member States (AMS) are key trading partners of Hong Kong.

3. Specifically on trade in goods, among the ten AMS, four were Hong Kong's top ten destinations for domestic exports in 2016. They were Singapore (the third), Viet Nam (the fourth), Malaysia (the seventh) and Thailand (the tenth).

4. The FTA and the Investment Agreement will bring about legal certainty and better market access for the trade in goods and services as well as investment protection to Hong Kong investors. They will also help reduce restrictions in doing business in ASEAN and offer significantly more business opportunities for Hong Kong enterprises and

⁽¹⁾ ASEAN comprises Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

⁽²⁾ Both ASEAN and the European Union are counted as single entities in the rankings in this paragraph.

service providers, thus boosting trade and economic activities and creating a more conducive environment for the development of Hong Kong's economy.

5. All AMS are also economies along the Belt and Road. The agreements will extend Hong Kong's FTA and Investment Agreement network to cover all major economies in Southeast Asia. The closer ties forged by the agreements will enhance Hong Kong's role as a trading and investment hub and also cater for our strategy to tap the business opportunities offered by the Belt and Road Initiative.

KEY FEATURES OF THE AGREEMENTS

6. The FTA and the Investment Agreement are comprehensive in scope, encompassing trade in goods, trade in services, investment, economic and technical co-operation, dispute settlement mechanism and other related areas.

7. Overall speaking, on trade in goods, AMS have agreed to eliminate or reduce their customs duties on goods originating from Hong Kong. It is envisaged that Hong Kong enterprises in export trade can benefit from the progressive reduction of duties. This in turn will result in lower operation cost and increased market competitiveness.

8. As regards trade in services, the FTA opens the doors of markets for Hong Kong's competitive services sectors. Sectors to benefit include professional services, business services, telecommunications services, construction and related engineering services, educational services, financial services, tourism and travel related services, transport services, and arbitration services, etc.

9. On investment protection, the Investment Agreement provides Hong Kong enterprises investing in the ASEAN market with fair and equitable treatment, as well as compensation according to agreed standard in case of expropriation of investment or investment losses owing to war, armed conflict or similar events.

10. The FTA also provides for Hong Kong enterprises and service providers facilitating arrangements in respect of the entry into AMS for business purposes.

11. The two agreements are expected to come into force on 1 January 2019 the earliest, subject to completion of the necessary procedures. Key features of the agreements are summarised in paragraphs 12 to 25 below.

(A) Trade in Services

12. Services and service providers of the two sides will enjoy the following benefits in each other's market, subject to listed specific exceptions:

- ✧ in similar circumstances, service providers of the two sides will enjoy national treatment, i.e. being treated equally with local service providers of the other Party; and
- ✧ the two sides commit to removing or reducing various restrictions, including on types of legal entity, foreign capital participation, the number of service providers or operations, the value of service transactions, and the number of persons employed, etc. For example, Thailand, the Philippines and Viet Nam allow Hong Kong enterprises to have foreign capital participation of up to 50% or even full ownership in many sectors.

13. In respect of arrangements for temporary stay and entry for business purposes, AMS will provide facilitation to various extent to Hong Kong service providers. For example, there are commitments of temporary stay of up to 90 days in general for Hong Kong business visitors, as well as a stay of no more than two years (and extendable for another two years) in general for intra-corporate transferees (ICT). In addition, the commitments of Malaysia and Viet Nam also extend to other categories, i.e. independent specialists/experts/professionals and contractual services suppliers.

14. Besides, similar to what we have committed under the World Trade Organization (WTO) and the FTAs with New Zealand, the Member States of the European Free Trade Association (i.e. Iceland, Liechtenstein, Norway and Switzerland) and Chile, Hong Kong will waive the economic needs test (ENT)⁽³⁾ for entry into Hong Kong in respect of ICT from AMS in specified sectors. Such commitments on ICT are confined to senior

⁽³⁾ The test comprises the economic benefits test (i.e. whether the person can make a substantial contribution to Hong Kong's economy) and labour market test (i.e. whether the person possesses a skill, knowledge or expertise that is not readily available locally).

and high-skilled positions (i.e. Senior Managers and Specialists)⁽⁴⁾ only.

15. AMS have made commitments in sectors where Hong Kong has strengths for further developments, such as professional services, business services, telecommunications services, construction and related engineering services, educational services, financial services, tourism and travel related services, transport services and arbitration services.

16. Besides, the sectors open to us by individual AMS include those that they have not yet committed under the multilateral agreement of the WTO. For example, Malaysia will open urban planning and landscape architectural services and maritime freight forwarding services; Thailand will open arbitration services and electronic mail services; Indonesia will open restaurant services and energy related analysis services; and Singapore will open technical testing and analysis services, and adult education services.

17. Hong Kong also makes commitments to AMS on a wide range of service sectors, such as architectural services, engineering services, urban planning and landscape architectural services, audiovisual services, distribution services, educational services, environmental services, tourism and travel related services, recreational, cultural and sporting services (other than audiovisual services), and transport services.

18. Apart from market access commitments, the two sides have also reached consensus on other general obligations to facilitate trade in services, including formulation of rules to ensure that domestic regulations are transparent and fair. The FTA also provides for a regular review mechanism which paves the way for future negotiations of improvements to the commitments and progressive liberalisation.

(B) Trade in Goods

19. Hong Kong commits to binding its existing regime of zero customs duties for all goods originating from AMS when the FTA takes effect. AMS have also agreed to reduce their customs duties on goods originating from Hong Kong. For example, Singapore commits to binding all its customs duties at zero; Thailand, Malaysia and the Philippines will remove customs duties for around 65% of their tariff lines within three years and another 20% within ten years. In total,

⁽⁴⁾ Given that the commitments are confined to senior and high-skilled positions, we do not envisage the waiving of the ENT will have significant impact on Hong Kong's employment market, in particular the low-skilled sector.

about 95% of their tariff lines will be eliminated or reduced within 14 years. Details of the tariff reduction guidelines are at **Annex A**.

20. For the purpose of AMS affording preferential tariff treatment to goods of Hong Kong origin, the two sides have formulated a set of preferential rules of origin which include certain “value-based” rules⁽⁵⁾ for most goods. In general, goods made with not less than 40% of materials sourced or value added in Hong Kong or ASEAN or a combination of these places can be eligible for preferential tariff treatment (i.e. the general rule). Hong Kong has also secured ASEAN’s agreement on more flexible rules for some of Hong Kong’s interested products. For products which require more time to deliberate, the two sides will continue the negotiations on their origin rules after the entry into force of the FTA. For these products, the general rule will apply in the period before an agreement is reached. To enable Hong Kong traders to apply the rules of origin agreed in the FTA, the Secretary for Commerce and Economic Development will add the FTA to Schedule 1 of the Trade Descriptions Ordinance (Cap. 362) by notice published in gazette. The Government will table the subsidiary legislation for making this technical amendment at the Legislative Council soon.

21. Hong Kong and ASEAN will also strengthen co-operation in sanitary and phytosanitary measures⁽⁶⁾, technical barriers to trade⁽⁷⁾ and customs matters.

(C) Investment

22. Apart from investment promotion and facilitation, the Investment Agreement commits each Party to (a) accord national treatment and most-favoured-nation treatment to investments in non-services sectors made by other Parties’ investors, and (b) protect investments in all sectors made by other Parties’ investors. Such protection includes commitments on fair and equitable treatment; physical protection and security; compensation according to agreed

⁽⁵⁾ Under “value-based” rules, goods may claim Hong Kong origin on the basis of the proportion (which may be different for different categories of goods) of either the value added to the goods in Hong Kong or the value of non-originating materials used in their manufacture, to the total value of the goods.

⁽⁶⁾ Sanitary and phytosanitary measures are any measures applied (a) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; (b) to protect human life or health from plant- or animal-carried diseases or pests; (c) to protect animal or plant life or health from pests, diseases, disease-carrying organisms or disease-causing organisms; and (d) to prevent or limit other damage from the entry, establishment or spread of pests.

⁽⁷⁾ Technical barriers to trade include technical regulations, standards and conformity assessment procedures that may directly or indirectly affect trade in goods.

standard in case of expropriation; non-discriminatory treatment in compensation for investment losses or damages owing to war, armed conflict, civil strife, or similar events; and free transfers of investments and returns.

23. The Investment Agreement also includes a Work Programme for further discussion of several issues, including the mechanism for settling investment disputes between an investor and the host Party. Hong Kong and ASEAN target to conclude the discussion within one year of the entry into force of the Investment Agreement, unless otherwise agreed later.

(D) Other Areas

24. The FTA comprises a chapter on Economic and Technical Co-operation (ECOTECH) which aims to enhance the benefits of the FTA through capacity building and technical assistance. Both sides agreed to conduct ECOTECH activities in five priority areas, viz. customs co-operation, professional services, small and medium enterprises co-operation, trade facilitation/logistics and e-commerce co-operation. These are areas where Hong Kong possesses competitive edge and is keen to contribute positively. The continued co-operation between ASEAN and Hong Kong on ECOTECH will serve to reinforce our close and amicable trade and economic co-operation in the long run.

25. In addition, the FTA contains provisions to promote and strengthen co-operation in the area of intellectual property rights. The two sides have also agreed to establish a transparent mechanism for consultations and settlement of possible disputes.

PROACTIVE ENGAGEMENT WITH LOCAL ORGANISATIONS AND ASEAN

26. Following the forging of the FTA and the Investment Agreement with ASEAN, the Government has conducted a number of briefings to chambers of commerce and other trade and industry organisations in Hong Kong. It also planned a series of work to further promote economic and trade co-operation between Hong Kong and ASEAN, including:

- ✧ the Secretary for Commerce and Economic Development will enhance the engagement with AMS when attending

meetings of different international trade fora or organisations including those in the Asia-Pacific Economic Cooperation and the WTO;

- ✧ the Commerce and Economic Development Bureau will collaborate with the Hong Kong Trade Development Council (TDC), major chambers of commerce and professional bodies to organise more business and trade missions to AMS in future;
- ✧ planning to set up an Economic and Trade office in Thailand, which will be our third one in ASEAN, after Singapore and Indonesia, to foster our commercial and trade relations with ASEAN;
- ✧ reaching out extensively to government officials, the business sector, other sectors and organisations of AMS, to promote Hong Kong's advantages and to keep them abreast of Hong Kong's latest situation and economic development;
- ✧ collaborating with chambers of commerce of AMS in Hong Kong, and inviting officials of AMS to visit Hong Kong in order to strengthen liaison; and
- ✧ working closely with TDC and the Hong Kong Tourism Board to step up promotion of Hong Kong in ASEAN.

FURTHER INFORMATION AND ENQUIRIES

— 27. A summary of the FTA and the Investment Agreement is at **Annex B**. Further details of the two agreements, including the full texts, are available at the Trade and Industry Department's website (www.tid.gov.hk).

ADVICE SOUGHT

28. Members are invited to note this paper.

AN OVERVIEW OF TARIFF COMMITMENTS OF AMS

Nine AMS have agreed to reduce/eliminate their customs duties under the FTA with reference to the following general guidelines. The percentage is based on the total number of tariff lines of the individual AMS. The schedules of commitments of AMS are annexed to the FTA.

Category		Tariff rate at the end of the transitional period	ASEAN 6				Cambodia/ Laos/ Myanmar	
			Brunei Darussalam/ Thailand/ Malaysia/The Philippines		Indonesia/ Viet Nam			
Normal Track	Normal Track1	0%	85%	65% within 3 years	75%	50% within 3 years	65%	50% within 8 years
	Normal Track 2	0%		20% within 10 years		25% within 10 years		15% within 15 years
Sensitive Track	Sensitive List	0-5%	10%	5% within 12 years	10%	5% within 12 years	20%	10% within 17 years
	Highly Sensitive List	≤50%		5% within 14 years		5% within 14 years		10% within 20 years
Exclusion List		no tariff commitments	5%	15%		15%		

2. Singapore will eliminate its customs duties on all originating goods of Hong Kong and the other Parties under the FTA, with effect from the date on which the FTA enters into force for Singapore.

Summary of the Hong Kong-ASEAN Free Trade Agreement

Trade in Goods

- AMS have agreed to progressively eliminate or reduce their customs duties on goods originating from Hong Kong. Individual AMS has made the following commitments:
 - * Singapore commits to binding all its customs duties at zero, with effect from the date on which the FTA enters into force for Singapore;
 - * Brunei Darussalam, Malaysia, the Philippines and Thailand will eliminate customs duties of about 85 per cent of their tariff lines within 10 years and reduce customs duties of about another 10 per cent of their tariff lines within 14 years;
 - * Indonesia and Viet Nam will eliminate customs duties of about 75 per cent of their tariff lines within 10 years and reduce customs duties of about another 10 per cent of their tariff lines within 14 years; and
 - * Cambodia, Laos and Myanmar will eliminate customs duties of about 65 per cent of their tariff lines within 15 years and reduce customs duties of about another 20 per cent of their tariff lines within 20 years.
- The tariff reduction commitments cover different kinds of commodities, including jewellery, articles of apparel and clothing accessories, watches and clocks, toys, etc. For instance, Brunei Darussalam will grant tariff free access to articles of apparel and clothing accessories originating from Hong Kong within three years, while Thailand will eliminate custom duties of watches and clocks and their accessories originating from Hong Kong within three years.

- Hong Kong exporters who comply with the relevant preferential origin rules and fulfil the relevant requirements can benefit from the preferential tariff treatment for exports to AMS.
- Hong Kong commits to granting tariff free access to all products originating from AMS when the FTA takes effect.
- Hong Kong and ASEAN will also strengthen co-operation in sanitary and phytosanitary measures, technical barriers to trade and customs matters.

Trade in Services

- Services and service providers of the two sides will enjoy the following benefits in each other's market, subject to listed specific exceptions:
 - * In similar circumstances, service providers of both sides will enjoy national treatment i.e. being treated equally with local service providers of the other party; and
 - * The two sides commit to removing or reducing various restrictions, including on types of legal entity, foreign capital participation, number of service providers or operations, value of service transactions, and number of persons employed, etc. For example, Thailand, the Philippines and Viet Nam allow Hong Kong enterprises to have foreign capital participation of up to 50 per cent or even full ownership in many sectors.
- In respect of arrangements for temporary stay and entry for business purposes, AMS will provide facilitation to various extent to Hong Kong service providers. For instance, there are commitments of temporary stay of up to 90 days in general for Hong Kong business visitors, as well as a stay of no more than two years (and extendable for another two years) in general for intra-corporate transferees. In addition, the commitments of Malaysia and Viet Nam also extend to

other categories, i.e. independent specialists/experts/professionals and contractual services suppliers.

- Besides, the sectors liberalised for Hong Kong by individual AMS include those that they have not yet committed under the multilateral agreement of the World Trade Organization. For example, Malaysia will open urban planning and landscape architectural services and maritime freight forwarding services; Thailand will open arbitration services and electronic mail services; Indonesia will open restaurant services and energy related analysis services; and Singapore will open technical testing and analysis services and adult education services.
- Hong Kong also makes commitments to AMS on a wide range of service sectors.
- The FTA covers other general obligations to facilitate trade in services, including formulation of rules to ensure that domestic regulations are transparent and fair. The FTA also provides for a regular review mechanism which paves the way for future negotiations of improvements to market access commitments and further liberalisation.

Other Areas

- The FTA comprises a chapter on Economic and Technical Co-operation (ECOTECH). Both sides have agreed to conduct ECOTECH activities in five priority areas, namely customs co-operation, professional services, small and medium enterprises co-operation, trade facilitation/logistics, and e-commerce co-operation.
- In addition, the FTA and the Investment Agreement provide for a regular review mechanism which paves the way for future negotiations to broaden the scope of liberalisation, and further strengthen and enhance the trade, investment and economic ties between Hong Kong and ASEAN.

- To ensure that all parties will implement their commitments under the FTA and the Investment Agreement, a dispute settlement mechanism is established for consultations and settlement of possible disputes.

Summary of the Hong Kong-ASEAN Investment Agreement

- The Investment Agreement complements the FTA by providing Hong Kong and ASEAN investors with non-discriminatory treatment of investments in non-services sectors and protection of investments in all sectors, in respect of their investments in the other party's area. Such protection includes requiring each party to:
 - * provide fair and equitable treatment of investments;
 - * provide physical protection and security of investments;
 - * provide compensation according to the agreed standard in case of expropriation of investments and in a freely usable currency as determined by the International Monetary Fund;
 - * provide non-discriminatory treatment in compensation for investment losses or damages owing to war, armed conflict, civil strife, or similar events; and
 - * permit free transfer of investments and returns.