

立法會
Legislative Council

LC Paper No. CB(1)340/17-18(04)

Ref : CB1/PL/CI

Panel on Commerce and Industry

Meeting on 19 December 2017

**Background brief on the Free Trade Agreement between Hong Kong and
the Association of Southeast Asian Nations**

Purpose

This paper provides background information on the Free Trade Agreement ("FTA") and a related Investment Agreement between Hong Kong and the Association of Southeast Asian Nations ("ASEAN").¹ It also summarizes the views expressed by members during previous discussions on relevant issues.

Background

2. With a view to enabling Hong Kong's goods, services and investments to access the ASEAN market under more favourable conditions, Hong Kong put forward a formal request to ASEAN in November 2011 to join the China-ASEAN Free Trade Area.² At a meeting of ASEAN Economic Ministers held in March 2013, the Ministers reached a consensus to pursue a bilateral FTA with Hong Kong instead.

3. With the endorsement of the Executive Council on 16 April 2013, the Administration responded positively to ASEAN. At their meeting on 24 to 25 April 2013, ASEAN Leaders endorsed the proposal to engage Hong Kong

¹ The Association of Southeast Asian Nations ("ASEAN") comprises Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

² In 2002, China and ASEAN agreed to establish the China-ASEAN Free Trade Area ("CAFTA"). CAFTA encompasses a number of agreements between China and ASEAN covering trade in goods, trade in services, investment, intellectual property, dispute settlement and standards, technical regulations and conformity assessment.

bilaterally for a Hong Kong-ASEAN FTA ("HK-ASEAN FTA"). Hong Kong and ASEAN commenced negotiations on HK-ASEAN FTA and a related Investment Agreement in July 2014.

Free Trade Agreement and Investment Agreement between Hong Kong and the Association of Southeast Asian Nations

4. Hong Kong and ASEAN jointly announced the conclusion of the negotiations of the HK-ASEAN FTA and a related Investment Agreement on 9 September 2017, and signed the two agreements on 12 November 2017. The HK-ASEAN FTA and Investment Agreement are comprehensive in scope, encompassing trade in goods, trade in services, investment, economic and technical ("ecotech") co-operation, dispute settlement mechanisms and other related areas. The agreements are expected to come into force on 1 January 2019 the earliest, subject to completion of the necessary procedures. Key features of the HK-ASEAN FTA and Investment Agreement are summarized in **Appendix I**.

Trade in goods

5. On trade in goods, ASEAN Member States ("AMS") have agreed to eliminate or reduce their customs duties on goods originating from Hong Kong. Hong Kong exporters who comply with the relevant preferential origin rules and fulfill the relevant requirements can benefit from the preferential tariff treatment for exports to AMS. Hong Kong also commits to granting tariff free access to all products originating from AMS when the HK-ASEAN FTA takes effect. It is envisaged that Hong Kong enterprises in export trade can benefit from the progressive reduction of duties. Such in turn will result in lower operation cost and increased market competitiveness.

Trade in services

6. The HK-ASEAN FTA opens the doors of markets for Hong Kong's competitive services sectors. AMS' commitments encompass sectors where Hong Kong has strengths for further development, 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. Hong Kong also makes commitments to AMS on a wide range of service sectors. The HK-ASEAN FTA also provides a regular review mechanism which paves the way for future negotiations of improvements to market access commitments and progressive liberalization.

Investment

7. On investment protection, the Investment Agreement provides Hong Kong enterprises 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. Such protection includes requiring each party to: (a) provide fair and equitable treatment of investments; (b) provide protection and security of investments; (c) provide compensation according to agreed standard in case of expropriation of investments and in a freely usable currency as determined by the International Monetary Fund; (d) provide non-discriminatory treatment in compensation for investment losses or damages owing to war, armed conflict, civil strife, or similar events; and (e) permit free transfer of investments and returns.

Other areas

8. The HK-ASEAN FTA comprises a chapter on ecotech co-operation, aiming to enhance the benefits of the HK-ASEAN FTA through capacity building programmes and technical assistance. 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. The two sides have also agreed to establish a transparent mechanism for consultations and settlement of possible disputes.

Latest trade relations between Hong Kong and the Association of Southeast Asian Nations

9. All AMS are economies along the Belt and Road. According to the Administration, 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.

10. Moreover, ASEAN is a very important trading partner of Hong Kong. It was Hong Kong's second largest trading partner in merchandise trade in 2016 and the fourth largest in services trade in 2015.³ Many of the individual AMS are key trading partners of Hong Kong.⁴

³ Both ASEAN and the European Union are counted as a single entities in the rankings in this paragraph.

⁴ On trade in goods, among the 10 ASEAN Member States, 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).

Briefings for the Panel on Commerce and Industry

11. The Panel on Commerce and Industry ("the Panel") was briefed by the Administration that on the issues relating to the commencement of the formal negotiation on the HK-ASEAN FTA at the meetings on 22 October 2013 and 21 October 2014 respectively. Since then, the Panel was briefed on the progress of the negotiations of the FTA at the meetings on 20 January and 20 October 2015 and on 21 November 2017 during the discussion of the work of the overseas Hong Kong Economic and Trade Offices ("ETOs") and Hong Kong Special Administrative Region Government's Offices in the Mainland and Taiwan, and via an information paper issued in November 2016. Members also raised related questions at the policy briefing-cum-meeting of the Panel on 20 January 2015. Members' major views and concerns are summarized in the ensuing paragraphs.

12. Noting that the formal negotiations on the FTA between Hong Kong and ASEAN would commence in early 2014, some members asked whether the negotiation work could be made with individual AMS instead of ASEAN en bloc so as to expedite the process at the meeting on 22 October 2013. Other members expressed that Hong Kong's presence in ASEAN should be strengthened.

13. The Administration advised that negotiations on the framework agreement were required to be done with ASEAN as a bloc rather than with individual AMS. Separate bilateral trade liberalization negotiations with individual AMS could proceed upon finalization of the framework agreement on FTA with ASEAN as a bloc. Meanwhile, the Administration had been pursuing an Investment Promotion and Protection Agreement with Myanmar.

14. Noting that the Mainland had signed FTAs with South Korea and Australia respectively, some members enquired whether the Administration would initiate negotiation of FTAs with other countries on top of ASEAN at the meeting on 20 January 2015. The Administration advised that the FTA negotiation between and the 10 AMS had commenced in July 2014. The Administration would primarily focus on the FTA negotiations with ASEAN in view of the considerable time and effort required to conclude the relevant negotiations. Meanwhile, the Administration would continue to reach out to other economies, particularly the major trade partners of Hong Kong to expand the FTA network.

Council question

15. At the Council meeting of 22 November 2017, Mr Holden CHOW asked a written question about the economic activities between Hong Kong and AMS, including the FTA and investment promotion and protection agreement signed in November 2017 between Hong Kong and ASEAN. Mr CHOW enquired about

the details of the projects on which agreements reached with the local government, by the ETO in Singapore in the previous three years and by the ETO in Jakarta since its establishment.

16. The Administration advised that from time to time, various government departments would discuss the possibility of co-operation and signing of agreements with their partners in ASEAN. The Jakarta and Singapore ETOs would provide assistance and support as necessary. For example, the ETOs supported the negotiation of the HK-ASEAN FTA, advocated and promoted it actively on various occasions. The HK-ASEAN FTA was signed on 12 November 2017. The ETOs would continue to support the implementation of the FTA.

Latest position

17. The Administration will brief the Panel on the details of HK-ASEAN FTA and the related Investment Agreement on 19 December 2017.

Relevant papers

18. A list of relevant papers is in the **Appendix II**.

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.

List of relevant papers

Date of meeting	Meeting	Minutes/Paper
26/4/2013 (Paper date)	Panel on Commerce and Industry	Administration's paper on "Proposed free trade agreement between Hong Kong and the Association of Southeast Asian Nations" (Legislative Council Brief) (File Ref: CR WT 324/9/12)
22/10/2013	Panel on Commerce and Industry	Administration's paper on "Reports on the work of the overseas Hong Kong Economic and Trade Offices" (LC Paper No. CB(1)72/13-14(03)) Updated background brief on the work of the Hong Kong Economic and Trade Offices, the Office of the Government of the HKSAR in Beijing, and the Hong Kong Economic, Trade and Cultural Office (Taiwan) prepared by the Legislative Council Secretariat (LC Paper No. CB(1)72/13-14(05)) Minutes of meeting (LC Paper No. CB(1)514/13-14)
21/10/2014	Panel on Commerce and Industry	Administration's paper on "Reports on the work of the overseas Hong Kong Economic and Trade Offices" (LC Paper No. CB(1)53/14-15(03)) Updated background brief on the work of the Hong Kong Economic and Trade Offices, the Office of the Government of the HKSAR in Beijing, and the Hong Kong Economic, Trade and Cultural Office (Taiwan) prepared by the Legislative Council Secretariat (LC Paper No. CB(1)53/14-15(05)) Minutes of meeting (LC Paper No. CB(1)212/14-15)

Date of meeting	Meeting	Minutes/Paper
20/1/2015	Panel on Commerce and Industry	<p>Administration's paper on "2015 Policy Address - Policy Initiatives of Commerce, Industry and Tourism Branch and Innovation and Technology Commission, Commerce and Economic Development Bureau" (LC Paper No. CB(1)438/14-15(03))</p> <p>Administration's paper on "2015 Policy Address - Policy Initiatives of Constitutional and Mainland Affairs Bureau in relation to Mainland and Taiwan co-operation" (LC Paper No. CB(1)438/14-15(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)582/14-15)</p>
20/10/2015	Panel on Commerce and Industry	<p>Administration's paper on "Reports on the work of the overseas Hong Kong Economic and Trade Offices" (LC Paper No. CB(1)15/15-16(03))</p> <p>Updated background brief on the work of the overseas Hong Kong Economic and Trade Offices and the Offices of the Government of the HKSAR in the Mainland and Taiwan prepared by the Legislative Council Secretariat (LC Paper No. CB(1)15/15-16(05))</p> <p>Minutes of meeting (LC Paper No. CB(1)264/15-16)</p>
11/11/2016 (Paper date)	Panel on Commerce and Industry	<p>Administration's paper on "Reports on the work of the overseas Hong Kong Economic and Trade Offices" (LC Paper No. CB(1)115/16-17(02))</p>
9/9/2017 (Paper date)	Panel on Commerce and Industry	<p>Administration's paper on "Free trade agreement between Hong Kong and the Association of Southeast Asian Nations" (Legislative Council Brief) (File Ref: CR WT324/9/12)</p>

Date of meeting	Meeting	Minutes/Paper
12/11/2017 (Paper date)	Panel on Commerce and Industry	Administration's paper on "Signing of the free trade agreement between Hong Kong and the Association of Southeast Asian Nations" (Legislative Council Brief) (File Ref: CR WT 324/9/12)
22/11/2017	Council meeting	Question No. 16 on "Economic activities between Hong Kong and member countries of Association of Southeast Asian Nations" raised by Hon Holden CHOW (Government press release)
11/2017 (Issue date)		Trade and Industry Department's leaflet on "The Free Trade Agreement between Hong Kong, China and the Association of Southeast Asian Nations" (Leaflet)