

**For discussion
on 16 April 2019**

**LEGISLATIVE COUNCIL
PANEL ON COMMERCE AND INDUSTRY**

Hong Kong's Free Trade Agreements

Introduction

In accordance with Articles 116 and 151 of the Basic Law, the Hong Kong Special Administrative Region, as a separate customs territory, may, using the name “Hong Kong, China”, signs and implements agreements with its trading partners in fields including the economic, trade, etc. In this connection, Hong Kong and Australia signed a free trade agreement (FTA) and an Investment Agreement on 26 March 2019. This paper briefs Members on the main features of the two agreements and the Government’s plan on expanding the FTA network.

Key Features of FTA and Investment Agreement with Australia

2. So far, Hong Kong signed eight FTAs with 20 economies⁽¹⁾. The FTA with Australia is the fourth one signed after this term of the Government took office in July 2017. Hong Kong also signed 20 investment agreements with 29 economies⁽²⁾, including the Investment Promotion and Protection Agreement (IPPA) with Australia signed in 1993.

3. The FTA and Investment Agreement with Australia are comprehensive in scope, covering trade in goods, trade in services, investment, intellectual property, government procurement, competition and other related areas; and are modern and of high standard. The overall commitments go beyond those undertaken by Hong Kong and Australia respectively under the World Trade Organization (WTO), providing legal certainty to more favourable market

⁽¹⁾ The 20 economies are Mainland China, New Zealand, the four member states of the European Free Trade Association (i.e. Iceland, Lichtenstein, Norway and Switzerland), Chile, Macao, the ten member states of the Association of Southeast Asian Nations (ASEAN) (i.e. Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam), Georgia, and Australia.

⁽²⁾ The 29 economies are the Netherlands, Australia, Denmark, Sweden, Switzerland, New Zealand, Italy, France, Germany, Belgo-Luxembourg Economic Union, Austria, Japan, Republic of Korea, the United Kingdom, Finland, Kuwait, Canada, Chile and the ten member states of ASEAN.

access and treatment to one another. Key features of the agreements are summarised in paragraphs 4 to 17 below.

Trade in Services

4. Hong Kong and Australia have achieved a high quality and balanced outcome on trade in services, building on both sides' commitments under the WTO General Agreement on Trade in Services. Respective commitments are generally on a par with Hong Kong's and Australia's best FTA level of commitments. Hong Kong service providers will enjoy legal certainty in market access and national treatment (NT) for a comprehensive range of services in the Australian market under the four modes of supply, namely cross-border supply, consumption abroad, commercial presence, and movement of natural persons.

5. Australia made various improvements over its commitments under the WTO (WTO-plus). They encompass sectors where Hong Kong has traditional strengths or has potential for development. These include professional services, transport services, financial services, telecommunications services, and various business services. In particular, Australia is committed under the FTA to the liberalisation of the full range of arbitration, conciliation and mediation services and certain rail transport services. Hong Kong's commitments to Australia likewise cover a wide range of services, with WTO-plus commitments in various sectors.

6. In line with the practice of modern and high quality FTAs, the two sides have also agreed on a non-discriminatory provision which enables services and service suppliers of one side to enjoy the other side's additional service commitments, if any, in their future FTAs. The obligation is not applicable though to the measures or sectors specifically reserved by Hong Kong or Australia and listed in their schedules.

7. In respect of the movement of natural persons, the commitments of Australia and Hong Kong are generally balanced. Both include WTO-plus commitments for the categories of business visitors and intra-corporate transferees (ICT) in a wide range of sectors. In addition, Australia's commitments cover independent executives whereas Hong Kong's commitments include installers or servicers. Commitments for dependants (limited to ICTs') are made by Hong Kong to reciprocate the corresponding undertaking of Australia. Our commitments in this area by and large reflect Hong Kong's existing liberal regime on temporary entry and stay of business persons.

8. Apart from market access commitments, the two sides have agreed on other obligations to facilitate trade in services. They include tariff-free undertaking for all electronic transmissions and other facilitation measures for e-commerce; improvement of transparency of domestic regulations and streamlining of application procedures for authorisation; provision of dedicated disciplines on financial services and telecommunications; and implementation of future work programmes on educational services, professional services and legal services.

Trade in Goods

9. Hong Kong and Australia have committed to eliminating all tariffs on goods originating from each other immediately upon the entry into force of the FTA. Australia's commitment to Hong Kong is the best treatment it has extended to its other FTA partners. Australia's commitments will roughly result in an annual tariff savings for Hong Kong of about HK\$16 million⁽³⁾.

10. For the purpose of Australia affording preferential tariff treatment to goods of Hong Kong origin, the two sides have formulated a set of preferential rules of origin which include "value-based" rules⁽⁴⁾ for certain goods as well as more flexible origin rules for certain products of Hong Kong's trade interest. The set of rules allows exporters or producers to make a self-declaration of origin. To enable Hong Kong exporters 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 this amendment at the Legislative Council as soon as possible.

11. Hong Kong and Australia will strengthen co-operation and enhance transparency in the areas of sanitary and phytosanitary measures⁽⁵⁾ as well as technical barriers to trade⁽⁶⁾, with the objective of facilitating trade as far as

⁽³⁾ The estimated tariff savings are calculated on the basis of Hong Kong's domestic exports (excluding gold) to Australia and the average applied tariff rates of Australia in 2017.

⁽⁴⁾ 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.

⁽⁵⁾ Sanitary and phytosanitary measures are any measures applied to (a) protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; (b) protect human life or health from plant- or animal-carried diseases or pests; (c) protect animal or plant life or health from pests, diseases, disease-carrying organisms or disease-causing organisms; or (d) prevent or limit other damage from the entry, establishment or spread of pests.

⁽⁶⁾ Technical barriers to trade include technical regulations, standards and conformity assessment procedures that may directly or indirectly affect trade in goods.

possible. The two sides will also simplify customs procedures, promote co-operation between their customs administrations, and strengthen the notification and consultation requirements on the use of countervailing measures.

Investment

12. The Investment Agreement provides comprehensive protection of investments, including commitments on fair and equitable treatment; physical protection and security; compensation for expropriation; compensation for losses owing to armed conflict or civil strife; free transfers of investments and returns; and dispute settlement mechanisms. Other than these protections, the Investment Agreement has the following improvements or additional features, as compared with the existing IPPA between Hong Kong and Australia:

- (a) it provides NT with respect to investments;
- (b) it provides extra policy flexibility through the inclusion of certain exceptions to obligations, e.g. measures for essential security, and measures for safeguarding the balance of payments in specified situations;
- (c) it includes certain procedural improvements for investor-Party arbitration, to deal with abusive claims by investors, and to enhance transparency and efficiency of dispute settlement; and
- (d) it excludes certain measures from investor-Party arbitration, e.g. measures under specific public health programmes of Australia.

The two sides agreed that upon the entry into force of the Investment Agreement, the existing Hong Kong-Australia IPPA shall cease to have effect.

13. Overall speaking, the Investment Agreement strikes a balance between investment protection and the exercise of legitimate regulatory power, in line with international trend and Hong Kong's recent investment agreements with other economies.

14. Under the FTA, Australia improves investment market access for Hong Kong by raising the monetary thresholds for investment screening applicable to investments by Hong Kong investors. Broadly speaking, Australia extends to Hong Kong its best commitments on investment screening for its other FTA partners, except in respect of its most sensitive areas.

Other Areas

15. The FTA contains provisions to facilitate access to each other's government procurement markets. The two sides' commitments are in line with the WTO Agreement on Government Procurement. Hong Kong's commitments are compatible with our domestic regime.

16. The FTA also includes commitments to ensure effective protection of intellectual property rights and promote competition. In addition, it provides for principles that enhance regulatory coherence and a transparent mechanism for consultations and settlement of possible disputes arising under the FTA. The two sides have also concluded five side instruments on legal services, professional services, scope of application, government-owned enterprises and government procurement respectively.

17. Following the signing of the two agreements, the Government issued a Legislative Council brief on 26 March 2019, and published the two agreements, together with relevant background information, at the website of the Trade and Industry Department (TID) (www.tid.gov.hk). The Commerce and Economic Development Bureau, TID, Invest Hong Kong, the Hong Kong Trade Development Council and the overseas Economic and Trade Offices will actively conduct a series of publicity and promotion activities, including conducting briefings for chambers of commerce and other trade and industry organisations, to promote the benefits of the agreements to the business community and other stakeholders and encourage Hong Kong enterprises and investors to capitalise on the new opportunities.

Expansion of Hong Kong's FTA Network

18. In selecting and determining our target FTA partners and their relative priorities, we take into account the unique characteristics of Hong Kong's economy and devise a strategy that is in the best interest of Hong Kong, including through the signing of FTAs with economies that have strong economic and trade connections with Hong Kong, markets with development potential or at strategic locations, as well as like-minded trading partners, with a view to expanding our global economic and trade network.

19. In the Policy Address announced in October 2018, the Chief Executive set out the Government's priorities in signing FTAs in future. Hong Kong is exploring an FTA with the Pacific Alliance and plans to seek accession to the Regional Comprehensive Economic Partnership (RCEP) after its negotiations

have been completed. We are also exploring with the United Kingdom (UK) options for furthering our economic ties, including the possibility of an FTA in future. Our considerations for the setting the priority are set out in the ensuing paragraphs.

(a) Pacific Alliance

20. The four members of the Pacific Alliance, namely Chile, Columbia, Mexico and Peru, account for nearly 40% of the gross domestic product (GDP) of Latin America. They are also Hong Kong's major trading partners in that part of the world. Signing an FTA with the Pacific Alliance will help deepen our economic and trade cooperation with Latin America and bring new opportunities to Hong Kong businesses.

(b) RCEP

21. RCEP participating economies are the ten member states of ASEAN and its six FTA partners, i.e. Australia, Mainland China, India, Japan, Korea and New Zealand. All of them are Hong Kong's important trading partners. Their combined GDP represents nearly one third of the world's total. In 2018, Hong Kong's total trade with the RCEP economies was US\$836.9 billion, accounting for 74% of our total trade. Joining RCEP will enable Hong Kong's entry into the largest FTA in the Pan-Asia region and help strengthen Hong Kong's role as a trading and investment hub in the region.

(c) UK

22. The UK and Hong Kong have deep and long economic and trade relations. With the launch of the Strategic Dialogue on Trade Partnership, Hong Kong and the UK are exploring the possibility of signing a bilateral FTA after Brexit which will be vital to consolidating and further promoting bilateral trade relations.

23. We are making every effort to follow up on the initiatives mentioned above.

24. In the meantime, we have been monitoring the bilateral and plurilateral FTA initiatives of other economies, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)⁽⁷⁾. CPTPP entered into force for some of the member economies just end of last year.

⁽⁷⁾ CPTPP participating economies are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam.

Broadly speaking, the relaxation of trade restrictions among members of the CPTPP would improve the resources allocation efficiency in member economies, thereby improving their income and production capacity as well. This would in turn lead to strengthening of import demand in those economies and hence boosting worldwide trade flows as well as the global economy. We note that, unlike WTO agreements and traditional FTAs, CPTPP has a very extensive coverage, including a number of policy areas beyond core trade issues. We have an open mind on accession to CPTPP and will continue to assess the situation.

ADVICE SOUGHT

25. Members are invited to note this paper.

**Commerce and Economic Development Bureau
Trade and Industry Department
9 April 2019**