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Panel on Commerce and Industry

Meeting on 16 April 2019

**Background brief on
Hong Kong's Free Trade Agreements and Investment Agreements and
the Comprehensive and Progressive Agreement for Trans-Pacific Partnership**

Purpose

This paper provides background information and a summary of views and concerns expressed by members of the Panel on Commerce and Industry ("the Panel") on the following subjects: (a) the free trade agreements ("FTAs") and investment agreements reached by Hong Kong with its trading partners (paragraphs 4 to 17); and (b) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") (paragraphs 18 to 27).

Background

Trade policy of Hong Kong

2. As a free port, Hong Kong pursues a free trade policy and does not maintain barriers on trade. No tariff is charged on import or export of goods. Although licensing is required for the import and export of some goods, this is only to fulfill obligations undertaken by Hong Kong to its trading partners, or to meet public health, safety or internal security needs. Through participating in multilateral, regional, plurilateral and bilateral trade agreements, Hong Kong secures, maintains and improves access to foreign markets for its goods and services.

3. The Hong Kong Special Administrative Region Government ("HKSARG") adopts a multipronged strategy to leverage the advantages under "one country, two systems" and the unique status on external, economic and trade relations conferred

on Hong Kong by the Basic Law ("BL"),¹ thereby further strengthening Hong Kong's economic and trade position. HKSARG continues to establish stronger bilateral ties with like-minded trading partners and deepen Hong Kong's economic integration with different parts of the world through negotiating and forging FTAs and investment agreements.

Free trade agreements

4. The signing of FTAs with trading partners helps secure favourable conditions for exports of goods and services from Hong Kong to the Mainland and international markets. Taking the FTA between Hong Kong and the Association of Southeast Asian Nations ("ASEAN") as an example, on trade in goods, it benefits Hong Kong enterprises in export trade from the elimination/reduction of customs duties on goods originating from Hong Kong. As regards trade in services, the FTA opens the doors of markets for Hong Kong's services sectors by removing/reducing various restrictions, including on types of legal entity, foreign capital participation, etc.

5. With globalization of the world economy, it has become a major trend for trading partners to enter into FTAs and regional economic cooperation arrangements. According to the Administration, in selecting and determining Hong Kong's target FTA partners and their relative priorities, HKSARG takes 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 Hong Kong's global economic and trade network. Once the priority targets are identified, HKSARG will explore with the concerned economies the possibility of an FTA initiative and ascertain whether the two sides would like to strengthen bilateral economic ties through FTA.

¹ Pursuant to Article 116 of the Basic Law ("BL"), the Hong Kong Special Administrative Region ("HKSAR") may, using the name "Hong Kong, China", participate in relevant international organizations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements, which are obtained or made by HKSAR or which were obtained or made and remain valid, shall be enjoyed exclusively by the Region.

Pursuant to BL 151, HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

6. Following the signing of the FTA between Hong Kong and Australia on 26 March 2019, Hong Kong has forged a total of eight FTAs with 20 economies.² HKSARG has also concluded the FTA negotiation with Maldives. In addition to exploring to forge an FTA with the four members of the Pacific Alliance, namely Chile, Colombia, Mexico and Peru,³ HKSARG plans to seek accession to the Regional Comprehensive Economic Partnership ("RCEP")⁴ after completion of negotiations by ASEAN with relevant economies, in accordance with the terms on accession of new members therein. With the launch of the Strategic Dialogue on Trade Partnership, Hong Kong and the United Kingdom ("the UK") are exploring the possibility of signing a bilateral FTA after Brexit.

Investment agreements

7. Investment agreements give additional assurance to overseas investors that their investments in Hong Kong are protected, and enable Hong Kong investors to enjoy similar protection in respect of their investments overseas. A typical investment agreement provides for:

- (a) fair and equitable treatment of investments;
- (b) full protection and security of investments;
- (c) non-discriminatory treatment of investments;
- (d) non-discriminatory treatment in compensation for losses owing to, among others, war or other armed conflict;
- (e) compensation for expropriation of investments;
- (f) free transfer abroad of investments and returns;
- (g) settlement of investment disputes between a contracting party and an investor of another contracting party; and
- (h) settlement of disputes between the contracting parties on interpretation or application of the agreement, etc.

² The 20 economies included Mainland China, New Zealand, the four member states of the European Free Trade Association (i.e. Iceland, Liechtenstein, Norway and Switzerland), Chile, Macao, the ten member states of the Association of Southeast Asian Nations ("ASEAN"), Georgia and Australia.

³ The four members of the Pacific Alliance 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. According to the Administration, signing an free trade agreement ("FTA") with the Pacific Alliance will help deepen Hong Kong's economic and trade cooperation with Latin America and bring new opportunities to Hong Kong businesses.

⁴ All the 16 Regional Comprehensive Economic Partnership ("RCEP") participating economies (including the 10 members states of ASEAN, Australia, India, Japan, Korea, the Mainland and New Zealand) 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 accounts for 74% of Hong Kong's total trade. Joining RCEP will enable Hong Kong to become a part of the largest FTA in the Pan-Asia region.

8. Hong Kong has so far signed 20 investment agreements with foreign economies.⁵ HKSARG has also completed negotiations with Bahrain, Maldives, Mexico, Myanmar and United Arab Emirates respectively and will arrange for signing the investment agreements after completion of the required internal procedures by both sides. Currently, negotiations with Iran, Russia and Turkey are underway.

Previous discussions on free trade agreements and investment agreements

Panel on Commerce and Industry

9. The Administration briefed the Panel on the discussions at multilateral and regional fora on trade facilitation initiatives at the meeting on 15 January 2019. The Panel discussed related issues at the meetings on 21 November and 19 December 2017 and the policy briefing-cum-meeting on 16 October 2018. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

Implementation of signed Free Trade Agreements

10. At the meeting on 15 January 2019, members sought details of the Administration's work plan to implement the FTAs which Hong Kong had signed with other economies, the problems encountered in this respect and the assistance which could be rendered by Members of the Legislative Council ("LegCo").

11. The Administration advised that many of the FTAs which Hong Kong had signed with other economies were already in force. After the signing of new FTAs, subsidiary legislation would be made to update the list of scheduled trade arrangements in Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) to enable Hong Kong traders to apply the preferential rules of origin specified under the FTA. LegCo Members might assist in lobbying the governments or parliaments of the relevant overseas economies for expediting their respective internal procedures to implement the FTAs concerned.

Expansion of the network of free trade agreements and investment agreements

12. At the meeting on 16 October 2018, members enquired about the

⁵ Partners to the 18 investment agreements in force include Australia (the newly signed Investment Agreement between Hong Kong and Australia in 2019 will, upon its entry into force, replace the existing agreement), Austria, Belgo-Luxembourg Economic Union, Canada, Denmark, Finland, France, Germany, Italy, Japan, Republic of Korea, Kuwait, Netherlands, New Zealand, Sweden, Switzerland, Thailand, and United Kingdom. Besides, investment agreements with ASEAN and Chile have been signed respectively.

Administration's strategy in choosing which countries to forge strategic alliances, and whether regional trade partners would be given priority in this respect.

13. The Administration advised that, in identifying potential FTA partners, it had taken into account factors such as the economies' existing trade relations with Hong Kong and the potential for deepening Hong Kong's regional economic integration. The Administration observed that the rise of protectionism had also reinforced the resolve of the international community to pursue further trade liberalization by forging bilateral or plurilateral trade agreements that were built on commitments made in the World Trade Organization ("WTO"). The negotiations of RCEP among 10 ASEAN Member States ("AMS") and ASEAN's six FTA partners, and negotiations of CPTPP among 11 economies in the Asia-Pacific region were two salient examples of such plurilateral negotiations.

14. At the meeting on 15 January 2019, in response to members' enquiry about the progress of negotiating an investment agreement with the European Union ("EU"), the Administration advised that Hong Kong had signed investment agreements with some individual EU member states, and was striving for the negotiation of a pan-EU Investment Agreement, which would offer comprehensive investment protection to both Hong Kong and EU investors. The progress in this respect would depend on EU's priorities of work and its obtaining mandate from individual EU member states.

15. At the meeting on 21 November 2017, members sought details of the progress of the strategic dialogue with the UK Government in preparation for Brexit. The Administration advised that Hong Kong's strategic dialogue with the UK Government would cover as many aspects as possible, and would adopt an open attitude towards the possibility of signing other regional or plurilateral trade agreements on the condition that they were consistent with WTO rules.

16. At the meeting on 19 December 2017, members sought clarification on whether FTA and other trade agreements signed by the Mainland with other countries would automatically apply to Hong Kong Special Administrative Region ("HKSAR"). The Administration advised that pursuant to BL 151, HKSAR could negotiate and forge agreements with foreign states and regions and relevant international organizations in the appropriate fields on its own right, the terms and conditions of which would suit Hong Kong's unique needs and circumstances and would not be the same as those of the Mainland.

Council question

17. At the Council meeting of 28 February 2018, Hon Jeffrey LAM asked a written question about the details and implementation timetable for the economic and technical ("ecotech") cooperation activities stated in the FTA between Hong

Kong and ASEAN.⁶ The Administration advised that the ecotech projects included capacity building or technical assistance programmes for an initial period of five years, which might be conducted in the form of experience sharing seminars, thematic symposiums, exhibitions and networking events, etc. The Administration would work out details of the projects with AMS upon the entry into force of that FTA.⁷

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

18. After more than five years of negotiations, 12 economies including Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States ("the US") and Vietnam signed the Trans-Pacific Partnership Agreement ("TPP") in February 2016.

19. TPP is an FTA that will liberalize trade and investment between the above 12 participating economies. TPP deepens economic ties between its members by opening up trade in goods and services, boosting investment flows, and promoting closer links across a range of economic policy and regulatory issues. Enhanced coherence in processes and regulations that govern global supply chains helps streamline international trade, providing benefits for businesses and consumers. TPP helps remove unnecessary duplication, reduce costs, and foster greater business opportunities.

20. New Zealand and Japan have ratified TPP in 2017. However, TPP cannot enter into force until it is also ratified by four other signatories including the US which stated in January 2017 its intention not to become a party to TPP.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

21. Following the withdrawal of the US from TPP, the remaining 11 participating economies to TPP (representing 14% of the global economy

⁶ Under the FTA between Hong Kong and ASEAN, both sides agreed to conduct economic and technical cooperation activities in five priority areas, namely, customs cooperation, professional services, small and medium enterprises cooperation, trade facilitation/logistics and e-commerce cooperation.

⁷ At the Panel meeting on 15 January 2019, the Administration advised that it would strive for bringing the FTA between Hong Kong and ASEAN into force within 2019.

collectively) signed CPTPP⁸ in March 2018 which entered into force on 30 December 2018.⁹ CPTPP is intended to be an inclusive agreement, open to those willing and able to meet its high standards. The expansion of CPTPP would deepen regional economic integration of the Asia-Pacific region.

22. CPTPP incorporates, by reference, the provisions of TPP with the exception of a limited set of suspended provisions. It retains the high standards of TPP and remains an ambitious regional trade agreement. Apart from offering market access for goods and services producers exporting to and investing in CPTPP markets, CPTPP also reinforces the region's commitment to a rules-based trading system by updating international rules that apply to cross-border trade and investment. CPTPP updates rules in traditional areas, such as technical standards, sanitary and phytosanitary measures, services and investment. It addresses emerging business challenges in the 21st century economy by establishing enforceable disciplines to help the digital economy, innovative industries, companies and workers to compete fairly in the global marketplace. CPTPP also contains new elements to encourage the participation of small- and medium-sized enterprises in trade.

23. In addition to core trade issues, CPTPP reaffirms the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving the right to regulate in the public interest.

Council question

24. At the Council meeting of 27 February 2019, Hon Kenneth LEUNG asked a written question on Hong Kong's accession to CPTPP. As quite a number of countries around the Pacific Rim were going through the procedures for accession to CPTPP, he also enquired about the impact of those countries' accession to CPTPP on Hong Kong's economic and trade competitiveness in the coming three years under the circumstances that Hong Kong had yet to accede to CPTPP.

⁸ See the text of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") (<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text/>) (English version only) and the text of the Trans-Pacific Partnership Agreement (<http://tpp.mfat.govt.nz/text>) (English version only).

⁹ CPTPP entered into force on 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore; and on 14 January 2019 for Vietnam. CPTPP will enter into force for Brunei Darussalam, Chile, Malaysia and Peru 60 days after they complete their respective ratification processes.

25. The Administration advised that it had all along been monitoring the bilateral and plurilateral FTA negotiations of other economies, including CPTPP, and actively seeking to forge FTAs with Hong Kong's trading partners. With an open mind on accession to CPTPP, the Administration noted that, unlike WTO agreements and traditional FTAs, CPTPP had a very extensive coverage, including a number of policy areas beyond core trade issues. The Administration would continue to assess the situation.

26. The Administration further advised that the relaxation of trade restrictions among members of CPTPP would generally 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 and the global economy. Such spill-over effect of CPTPP would benefit both member and non-member economies. Given Hong Kong's close economic relationships with many of the CPTPP members, and that Hong Kong had reached agreement with many of them on FTAs, Hong Kong could potentially benefit from the more active regional economic and trade activities arising from CPTPP.

27. CPTPP entered into force for some of the member economies at the end of 2018. The impact of CPTPP on the global and regional economy would depend on a complex array of factors, including the flexibility of the global supply chain and the businesses' reactions to the new trade terms. Under the current dynamic and fast-evolving global trade and investment landscape, the Administration was of the view that it would take time for the impact to surface.

Latest position

28. The Administration will brief the Panel on 16 April 2019 on the latest development of FTAs reached by Hong Kong and trading partners, and on the issue relating to Hong Kong's accession to CPTPP.

Relevant papers

29. A list of relevant papers is in the **Appendix**.

List of relevant papers

Date of meeting	Meeting	Paper
28/2/2018	Council	Question No. 2 on "Free Trade Agreement between Hong Kong and the Association of Southeast Asian Nations" raised by Hon Jeffrey LAM (Hansard) (page 7101 – 7105)
15/1/2019	Panel on Commerce and Industry	Administration's paper on "Discussion at multilateral and regional fora on trade facilitation initiatives" (LC Paper No. CB(1)406/18-19(05)) Background brief on Hong Kong's participation in the World Trade Organization and other international and regional fora prepared by the Legislative Council Secretariat (LC Paper No. CB(1)406/18-19(06)) Minutes of meeting (LC Paper No. CB(1)699/18-19)
27/2/2019	Council	Question No. 22 on "Hong Kong's participation in affairs of international organizations" raised by Hon Kenneth LEUNG (Government press release)