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Panel on Commerce and Industry

Meeting on 19 February 2021

**Updated background brief on the Implementation of
the Free Trade Agreement and Investment Agreement
between Hong Kong, China and the Association of Southeast Asian Nations**

Purpose

This paper provides updated background information on the implementation of the Free Trade Agreement ("FTA") and Investment Agreement between Hong Kong, China and the Association of Southeast Asian Nations ("ASEAN").¹ It also summarizes the views expressed by members of the Panel on Commerce and Industry ("the Panel") during previous discussions on the subject.

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

2. According to the Administration, ASEAN is a very important trading partner of Hong Kong, and was Hong Kong's fourth largest trading partner in services trade in 2018 and the second largest in merchandise trade in 2019.²

3. On 12 November 2017, Hong Kong and ASEAN signed the FTA and the Investment Agreement. The two agreements are comprehensive in scope, encompassing trade in goods, trade in services, investment, economic and technical cooperation, dispute settlement mechanism and other related areas. Key features of the FTA and the Investment Agreement are in

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.

Appendices I and II respectively. The FTA and the Investment Agreement have come into full effect on 12 February 2021.

4. Overall speaking, on trade in goods, ASEAN Member States ("AMS") have agreed to eliminate or reduce their customs duties on goods originating from Hong Kong. As regards trade in services, the FTA opens the doors of markets for Hong Kong's competitive services sectors, including 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.

5. 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.

6. The FTA also comprises a chapter on economic and technical cooperation which aims to enhance the benefits of the FTA through capacity building and technical assistance. Both sides agreed to conduct economic and technical cooperation activities in five priority areas, viz. customs cooperation, professional services, small and medium enterprises cooperation, trade facilitation/logistics and e-commerce cooperation.

Previous discussions

7. The Administration briefed the Panel on the significance of the FTA and the Investment Agreement at the meeting on 19 December 2017. Members also discussed related issues at the meeting on 16 April 2019. Members' major views and concerns on the subject are set out in the ensuing paragraphs.

Trade in goods

8. Members enquired whether the preferential tariff treatment under the FTA had put in place a mechanism similar to the Outward Processing Arrangement ("OPA").

9. The Administration advised that for the purpose of AMS affording preferential tariff treatment to goods of Hong Kong origin, Hong Kong and ASEAN had formulated a set of preferential rules of origin which included certain "value-based" rules for most goods. Under the rules, goods might claim Hong Kong origin on the basis of the proportion (which might 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. In general, goods made with not less than 40% of materials sourced or value added in Hong Kong or AMS or a combination of these places would be eligible for preferential tariff treatment. Hong Kong exporters could claim preferential tariff treatment from AMS by applying for a certificate of origin ("CO") to be issued by the Trade and Industry Department or by a Government Approved Certification Organization ("GACO") of Hong Kong.

10. The Administration also advised that the OPA for the garment industry was more applicable for Hong Kong manufacturers to subcontract some processes across the border than for them to subcontract such processes to AMS.

11. Members enquired how the Administration would ensure that the CO issued by GACO would not be subject to challenge in AMS. The Administration advised that the "value-based" approach for determination of origin for the purpose of affording preferential tariff treatment was a flexible and widely accepted approach. The method of calculation of regional value content of goods was also detailed in Article 6 of Chapter 3 (Rules of Origin) of the FTA.

Trade in services

12. Members enquired about the Administration's facilitation measures for various sectors of professional services to assist them to go global by taking advantage of the business opportunities provided by the FTA, in particular the measures to promote Hong Kong as an international dispute resolution centre.

13. The Administration advised that Hong Kong's professional services, including financial services, business services and legal services, were in great demand by AMS. The two agreements would serve as a platform to develop and facilitate trade in services for the service sectors concerned in Hong Kong with AMS. With the lower threshold for market access provided by the FTA, there was great potential for various service sectors in Hong Kong to expand their businesses in AMS. The Administration would take this opportunity to strengthen its promotion work in economic and trade cooperation between Hong Kong and ASEAN. As a case in point, the market access commitments offered by the Thai Government to Hong Kong were more favourable than those offered to members of the World Trade Organization ("WTO"). Moreover, the Administration would invite local professional organizations to join its future business and trade missions to AMS to further promote their professional services.

14. Noting that Hong Kong had made commitments to AMS in a wide range of service sectors including tourism and travel related services, members

enquired about the areas of tourism and travel related services in which AMS had strong interest, and the assistance which the Administration would provide to facilitate AMS's trade in services in Hong Kong.

15. The Administration advised that a number of tourism service sectors, including the services relating to hotels, catering, travel agencies and tourist guides, would be committed under the FTA. AMS including Malaysia, Singapore and the Philippines had made market access commitments to Hong Kong in these areas, and some of these commitments compared favorably with what such AMS had committed under WTO. The Hong Kong Trade Development Council and the Hong Kong Tourism Board would step up promotion of Hong Kong in ASEAN to foster commercial and trade relations with AMS.

Investment

16. Noting that Hong Kong's trade relations remained relatively alienated with certain AMS such as Myanmar and Indonesia, members enquired whether the Administration would strive for closer trade relations with Myanmar, and for the relaxation of Indonesia's limitations that top management posts could only be assumed by locals, so that Hong Kong enterprises would be more willing to invest in these countries.

17. The Administration advised that due to the different stages of economic development of the 10 AMS, some of the countries might open up their markets at a slower pace to protect their local businesses. With the two agreements between Hong Kong and ASEAN, Hong Kong enterprises' investment in these countries would be subject to local statutory protection as well as protection under the Investment Agreement. After all, the market access treatment applied by AMS to Hong Kong would not be less favorable than that applied by AMS to other non-AMS.

Establishment of additional Hong Kong Economic and Trade Offices in the Association of Southeast Asian Nations

18. Members pointed out that the industry had started relocating their manufacturing lines to Viet Nam and other AMS due to the trade conflicts between China and the United States. They asked whether the Administration had any plans to study the trend and destinations for relocation and accordingly set up additional Hong Kong Economic and Trade Offices ("ETOs") in other parts of ASEAN so as to better assist Hong Kong enterprises operating in ASEAN.

19. The Administration advised that Hong Kong had established up to three ETOs in each of the regions where Hong Kong's trading partners located,

including three ETOs each in the United States and the European region respectively. It was considered appropriate to have three ETOs in ASEAN serving the 10 AMS.³

Latest position

20. The Administration will brief the Panel on 19 February 2021 on the implementation of the FTA and the Investment Agreement.

Relevant papers

21. A list of relevant papers is in **Appendix III**.

Council Business Division 1
Legislative Council Secretariat
9 February 2021

³ The three ETOs are located in Bangkok, Jakarta and Singapore.

Key Features of the Hong Kong - ASEAN Free Trade Agreement (FTA)

The dates of entry into force of the FTA for the following Parties are as follows:

- **11 June 2019:** Hong Kong, Laos, Myanmar, Singapore, Thailand and Viet Nam
- **13 October 2019:** Malaysia
- **12 May 2020:** The Philippines
- **4 July 2020:** Indonesia
- **20 October 2020:** Brunei Darussalam
- **12 February 2021:** Cambodia

Trade in Goods

- The ASEAN Member States (AMS) have agreed to progressively eliminate or reduce their customs duties on goods originating from Hong Kong. The following commitments are made:
 - * Singapore commits to binding all its customs duties at zero, with effect from the date on which the FTA enters into force;
 - * Brunei Darussalam, Malaysia, the Philippines and Thailand commit to eliminating 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 commit to eliminating 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 commit to eliminating 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 Hong Kong

commodities, including jewellery, articles of apparel and clothing accessories, watches and clocks, toys, etc. For instance,

- * Thailand, Viet Nam and Myanmar commit to eliminating customs duties of watches and clocks and their accessories originating from Hong Kong within 3 years, 10 years and 15 years respectively;
 - * Brunei Darussalam and Malaysia commit to eliminating customs duties of articles of apparel and clothing accessories originating from Hong Kong within 3 years and 10 years respectively;
 - * The Philippines commits to eliminating customs duties of precious metal and jewellery as well as toys, games and sport requisites within 10 years; and
 - * Laos commits to eliminating customs duties of precious metal and jewellery originating from Hong Kong within 8 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 the AMS.
 - Hong Kong commits to granting tariff free access to all products originating from the AMS when the FTA takes effect.
 - Hong Kong and the AMS also commit to strengthening co-operation in sanitary and phytosanitary measures, technical barriers to trade and customs matters.

Trade in Services

- Services and service providers of Hong Kong and the AMS can enjoy the following benefits in each other's market, subject to listed specific exceptions:
 - * In similar circumstances, service providers of both sides can 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, Indonesia, Thailand, Viet Nam and the Philippines 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, the AMS commit to providing facilitation to various extent to Hong Kong service providers. For instance, Thailand makes commitments of temporary stay of up to 90 days for Hong Kong business visitors, as well as a stay of no more than one year (and extendable for up to another three years) for intra-corporate transferees; and Viet Nam's commitments are extended to independent specialists/experts/professionals and contractual services suppliers.
- Besides, the sectors liberalised for Hong Kong by the AMS include commitments exceeding those made under the multilateral agreement of the World Trade Organization. For example, Brunei Darussalam opens construction and related engineering services; Thailand opens arbitration services and electronic mail services; Singapore opens technical testing and analysis services and adult education services; Malaysia opens urban planning and landscape architectural services and maritime freight forwarding services; the Philippines opens construction services for mining and manufacturing; Laos opens specialty design services, retailing services, and certain services of trading for own account or for account of customers under financial services; Indonesia opens restaurant services; and Myanmar opens a significant number and wide range of services sectors.
- Hong Kong also makes commitments to the AMS on a wide range of service sectors, such as computer and related services, specialty design services, and spa services.
- 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 implement their commitments under the FTA and the Investment Agreement, a dispute settlement mechanism is established for consultations and settlement of possible disputes.

Ends

Key Features of the Hong Kong – ASEAN Investment Agreement

The dates of entry into force of the Investment Agreement for the following Parties are as follows:

- **17 June 2019:** Hong Kong, Laos, Myanmar, the Philippines^[Note], Singapore, Thailand and Viet Nam
- **13 October 2019:** Malaysia
- **4 July 2020:** Indonesia
- **20 October 2020:** Brunei Darussalam
- **12 February 2021:** Cambodia

Note: The part relating to the Philippines took effect from 12 May 2020 onwards.

- The Investment Agreement complements the Free Trade Agreement by providing investors of Hong Kong and the ASEAN Member States 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.

Ends

Appendix III

List of relevant papers

Date of meeting	Meeting	Papers
19/12/2017	Panel on Commerce and Industry	<p>Administration's paper on "Free Trade Agreement between Hong Kong and the Association of Southeast Asian Nations" <u>(LC Paper No. CB(1)340/17-18(03))</u></p> <p>Background brief on the Free Trade Agreement between Hong Kong and the Association of Southeast Asian Nations prepared by the Legislative Council Secretariat <u>(LC Paper No. CB(1)340/17-18(04))</u></p> <p>Minutes of meeting <u>(LC Paper No. CB(1)605/17-18)</u></p>
25/4/2018 (issue date)	Legislative Council Brief	Legislative Council Brief on "Trade Descriptions Ordinance (Amendment of Schedule 1) Notice 2018" issued by Commerce and Economic Development Bureau and Trade and Industry Department <u>(File Ref.: TRA CR 1327/1/14)</u>