Free Trade Agreement (FTA) and Investment Agreement between Hong Kong (HK) and Australia

Frequently Asked Questions

I. General

Q1. When did the FTA and the Investment Agreement enter into force?

A1. The FTA and the Investment Agreement entered into force on 17 January 2020.

Q2. Are there any legislative procedures that HK has to complete before the FTA and the Investment Agreement enter into force?

A2. The Secretary for Commerce and Economic Development has published a notice in the gazette to amend Schedule 1 of the Trade Descriptions Ordinance (TDO) (Cap. 362), so that the FTA becomes a scheduled trade agreement which enables HK traders to mark or label relevant goods as HK origin in accordance with the rules of origin (ROOs) under the FTA. The Notice came into force on 1 July 2019.

For the entry into force of the Investment Agreement, no legislative procedure is needed.

II. Trade in Goods

Q1. What is Australia's tariff commitment on HK's originating products?

A1. Upon the entry into force of the FTA, Australia will eliminate all its import tariffs on HK's originating products.

Q2. Are HK exporters required to follow any specific procedures to claim tariff-free treatment under the FTA?

A2. In order to enjoy the tariff-free entry to the Australian market, HK exporters will need to comply with the relevant preferential origin rules and fulfil the relevant requirements. To claim the tariff-free treatment for goods exported to Australia, HK producers, HK exporters, Australian importers or their authorised representatives will only need to complete a declaration of origin.

III. Trade in Services

Q1. Can you briefly introduce the services commitments under the FTA?

A1. We have achieved high quality and balanced outcomes on trade in services, building on both sides' commitments under the World Trade Organization

(WTO).

Australia's commitments encompass sectors where HK has strengths for further development, such as:

(a) professional services (including arbitration, conciliation and mediation services);

(b) business services;

(c) transport services;

(d) financial services; and

(e) telecommunications services.

In line with our open trade policy, HK has also made comparable services commitments under the FTA.

Q2. How are Australia's commitments to HK compared with its other FTAs?

A2. Australia made various improvements over its commitments under the WTO and are generally on a par with those in its best FTAs. 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, which Australia has not offered to its other FTA partners, except New Zealand.

Q3. What are the respective commitments of HK and Australia in respect of movement of natural persons under the FTA?

A3. In respect of movement of natural persons, the commitments of Australia and HK are generally balanced and include WTO-plus commitments. The commitments of the two Parties cover the temporary entry and stay of business visitors and intra-corporate transferees (and their dependants) in a wide range of sectors. In addition, Australia's commitments cover independent executives (and their dependants) whereas those of HK include installers or servicers.

Q4. The scheduling approach of the Parties' specific commitments under this FTA appear to be quite different from HK's other FTAs. Can you provide a brief explanation?

A4. Most of the Parties' specific commitments (except financial services and movement of natural persons) are scheduled negatively, i.e. all services will be covered unless specifically carved out through a Party's schedules of non-conforming measures or reservations. This negative-listing approach is a more forward looking approach which helps ensure comprehensiveness of the FTA because new services that may emerge in the future will be automatically covered by the FTA and deemed to be open. This will minimise the need for frequent reviews of the FTA later on and provides a higher degree of transparency while maximising market access opportunities enjoyed by FTA

parties. It is also the same approach adopted under HK's FTAs with New Zealand and the Member States of the European Free Trade Association.

On the other hand, commitments on movement of natural persons are scheduled positively in line with the past approach of the two Parties in their other respective FTAs. Commitments on financial services are scheduled under a hybrid approach (i.e. market access commitments are positively scheduled while other commitments are negatively scheduled) as agreed by the two Parties.

Q5. What are the scope and application of the Chapters on Cross-Border Trade in Services and Financial Services?

A5. The scope and application of the Chapters on Cross-Border Trade in Services and Financial Services are generally in line with those under the WTO. They apply to measures affecting trade in services taken by:

- central, regional or local governments and authorities; and

- non-governmental bodies in the exercise of powers delegated by governments or authorities;

but does NOT apply to:

- services supplied in the exercise of governmental authority, i.e. any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

- measures affecting natural persons seeking access to the employment market of HK or Australia;

- measures regarding citizenship, residence or employment on a permanent basis;

- measures affecting air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than measures affecting:

  (i) aircraft repair and maintenance services;

  (ii) selling and marketing of air transport services;

  (iii) computer reservation system services;

  (iv) specialty air services;

  (v) airport operation services;

  (vi) ground handling services;

- government procurement; and

- subsidies or grants.

Q6. What are the disciplines on domestic regulation (DR) agreed in the Cross-Border Trade in Services Chapter?

A6. Building on the General Agreement on Trade in Services provisions on DR, the DR disciplines in the Cross-Border Trade in Services Chapter (i.e. Article 7.8) require a Party to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures are based on objective and transparent criteria, and in the case of licensing procedures, not in themselves a restriction on the supply of the services. Each Party shall also endeavor to ensure the measures that it adopts or maintains are not more burdensome than necessary to ensure the quality of the service.

Q7. What is the Most-Favoured-Nation Treatment (MFN) obligation under this FTA? What are its implications?

A7. The type of obligation of MFN treatment under this FTA is commonly termed as forward MFN treatment which enables service suppliers of each side to enjoy the other side's additional service commitments in its future FTAs. The MFN treatment obligation is however not applicable to their existing FTAs and certain services specified in their respective lists of reservations under this FTA. In this connection, commitments under the Mainland and HK Closer Economic Partnership Arrangement (CEPA) and its existing and future Supplements are not subject to this provision on MFN treatment.

Q8. Can you briefly highlight the obligations under the Chapter on Financial Services?

A8. Apart from commitments on market access and non-discriminatory treatment, the two sides agreed to a set of modern and facilitating provisions, covering electronic payment services, transparency in regulation, and the supply of new financial services, while maintaining the rights of a Party to take prudential measures where necessary.

Q9. Can you briefly highlight the obligations under the Chapter on Telecommunications?

A9. The two sides agreed to a set of regulatory principles which enhance transparency in licensing process, safeguard the access to and use of public telecommunications services and facilities, ensure the independence and impartiality of telecommunications regulatory bodies, and prevent anti-competitive practices.

Q10. Can you briefly highlight the obligations under the Chapter on Electronic Commerce?

A10. The two sides agreed not to impose customs duties on electronic transmissions, including content transmitted electronically. There are also provisions to facilitate electronic commerce, including electronic signatures and paperless trading, protection of personal information, and freedom in the location of computing facilities.

Q11. What are the future work programmes?

A11. The two sides have agreed to future work programmes on respectively educational services, professional services and legal services. Details are set out in the respective annexes or side instruments to the FTA.

IV. Investment

Q1. What are the commitments under the Establishment and Related Provisions Chapter of the FTA?

A1. Under the Establishment and Related Provisions Chapter, HK investors' investments in Australia with values below specified monetary thresholds are exempted from investment screening by Australia. The Chapter also commits HK and Australia to treat each other's investors and their investments in a non-discriminatory manner. Besides, the Chapter provides safeguards against a Party imposing specified restrictions on (a) the operation of investments made by investors of the other Party, and (b) the appointment of senior management and directors of enterprises held by investors of the other Party. There are specified exceptions to the obligations in order to provide the two Parties with required policy flexibility.

Q2. What are the commitments under the Investment Agreement?

A2. The Investment Agreement contains modern provisions on (a) the non-discriminatory treatment of investments made by investors of the other Party, and (b) the following comprehensive protection of investments made by investors of the other Party:

(a) fair and equitable treatment of investments;

(b) physical protection and security of investments;

(c) compensation for expropriation of investments;

(d) compensation for investment losses owing to armed conflict or civil strife;

(e) free transfers of investments and returns;

(f) investor-Party dispute settlement mechanism; and

(g) Party-Party dispute settlement mechanism.

There are specified exceptions to the obligations in order to provide the two Parties with required policy flexibility.

The Investment Agreement will replace the existing one signed in 1993.

Q3. Why do HK and Australia sign a new Investment Agreement to replace the existing one?

A3. The new Investment Agreement contains modern provisions on the treatment and protection of investments, having regard to international development in these areas in recent years. In particular, as compared with the existing agreement signed in 1993, the new Investment Agreement provides what is commonly called "national treatment" of investments, and its investor-Party dispute settlement mechanism is more efficient and transparent.

Q4. Will the new Investment Agreement protect investments made before its entry into force?

A4. Yes, the Investment Agreement will protect investments made before or after its entry into force.

V. <u>Other Areas</u>

(a) Intellectual Property

Q1. What are the key outcomes of the Intellectual Property (IP) Chapter? Is there any implication on HK's IP regulatory regime?

A1. Under the IP Chapter, apart from affirming the rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, the two sides would strengthen co-operation in intellectual property with a view to enhancing their economic and trade relations. The obligations are compatible with HK's IP regime and will not require any change to our IP legislation and enforcement work.

(b) Competition

Q1. What are the key outcomes of the Competition Policy Chapter? Is there any implication on HK's competition policy?

A1. Under the Competition Policy Chapter, the two sides agreed to promote competition, and to encourage cooperation and information exchange between their competition authorities. The principles and obligations provided in the Chapter are in line with HK's prevailing competition regime and the Competition Ordinance.