

LEGISLATIVE COUNCIL BRIEF

SIGNING OF THE FREE TRADE AGREEMENT BETWEEN HONG KONG AND THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

INTRODUCTION

The Association of Southeast Asian Nations (ASEAN)⁽¹⁾ is a very important trading partner of Hong Kong. It was Hong Kong's second⁽²⁾ largest trading partner in merchandise trade in 2016 and the fourth largest in services trade in 2015. Many of the individual ASEAN Member States (AMS) are key trading partners of Hong Kong.

2. Specifically on trade in goods, among the ten AMS, 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).

3. Hong Kong and ASEAN commenced negotiations on a Free Trade Agreement (FTA) and a related Investment Agreement in July 2014. The two sides jointly announced the conclusion of the negotiations on 9 September 2017, and signed the two agreements on 12 November 2017.

4. The agreements will bring about legal certainty and better market access for the trade in goods and services as well as investment protection to Hong Kong investors. They will also help reduce restrictions in doing business in ASEAN and offer significantly more business opportunities for Hong Kong enterprises and service providers, thus boosting trade and economic activities and creating a more conducive environment for the development of Hong Kong's economy.

5. All AMS are also economies along the Belt and Road. The

⁽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.

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.

6. Overall speaking, on trade in goods, AMS have agreed to eliminate or reduce their customs duties on goods originating from Hong Kong. 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.

7. As regards trade in services, the FTA opens the doors of markets for Hong Kong's competitive services sectors. Sectors to benefit include 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.

8. 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.

9. Besides, the FTA provides for Hong Kong enterprises and service providers facilitating arrangements in respect of the entry into AMS for business purposes.

KEY FEATURES OF THE AGREEMENTS

10. The FTA and the Investment Agreement are comprehensive in scope, encompassing trade in goods, trade in services, investment, economic and technical co-operation, dispute settlement mechanism 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 agreements are summarised in paragraphs 11 to 24 below.

(A) Trade in Services

11. 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 the two 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, the number of service providers or operations, the value of service transactions, and the 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% or even full ownership in many sectors.

12. In respect of arrangements for temporary stay and entry for business purposes, AMS will provide facilitation to various extent to Hong Kong services providers. For example, 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 (ICT). In addition, the commitments of Malaysia and Viet Nam also extend to other categories, i.e. independent specialists/experts/professionals and contractual services suppliers.

13. Besides, similar to what we have committed under the World Trade Organization (WTO) and the FTAs with New Zealand, the Member States of the European Free Trade Association (i.e. Iceland, Liechtenstein, Norway and Switzerland) and Chile, Hong Kong will waive the economic needs test (ENT)⁽³⁾ for entry into Hong Kong in respect of ICT from AMS in specified sectors. Such commitments on ICT are confined to senior and high-skilled positions (i.e. Senior Managers and Specialists)⁽⁴⁾ only.

14. AMS have made commitments in sectors where Hong Kong has strengths for further developments, such as professional services, business services, telecommunications services, construction and related engineering services, educational services, financial services, tourism and

⁽³⁾ The test comprises the economic benefits test (i.e. whether the person can make a substantial contribution to Hong Kong's economy) and labour market test (i.e. whether the person possesses a skill, knowledge or expertise that is not readily available locally).

⁽⁴⁾ Given that the commitments are confined to senior and high-skilled positions, we do not envisage the waiving of the ENT will have significant impact on Hong Kong's employment market, in particular the low-skilled sector.

travel related services, transport services and arbitration services.

15. Besides, the sectors open to us by individual AMS include those that they have not yet committed under the multilateral agreement of the WTO. 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.

16. Hong Kong also makes commitments to AMS on a wide range of service sectors, such as architectural services, engineering services, urban planning and landscape architectural services, audiovisual services, distribution services, educational services, environmental services, tourism and travel related services, recreational, cultural and sporting services (other than audiovisual services), and transport services.

17. Apart from market access commitments, the two sides have also reached consensus on 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 the commitments and progressive liberalisation.

(B) Trade in Goods

18. Hong Kong commits to binding its existing regime of zero customs duties for all goods originating from AMS when the FTA takes effect. AMS have also agreed to reduce their customs duties on goods originating from Hong Kong. Singapore commits to binding all its customs duties at zero. Thailand, Malaysia and the Philippines will remove customs duties for around 65% of their tariff lines within three years and another 20% within ten years. In total, about 95% of their tariff lines will be eliminated or reduced within 14 years. Details of the tariff reduction guidelines are at **Annex**.

19. For the purpose of AMS affording preferential tariff treatment to goods of Hong Kong origin, the two sides have formulated a set of

preferential rules of origin which include certain “value-based” rules⁽⁵⁾ for most goods. In general, goods made with not less than 40% of materials sourced or value added in Hong Kong or ASEAN or a combination of these places can be eligible for preferential tariff treatment (i.e. the general rule). We have also secured ASEAN’s agreement on more flexible rules for some of Hong Kong’s interested products. For products which require more time to deliberate, the two sides will continue the negotiations on their origin rules after the entry into force of the FTA. For these products, the general rule will apply in the period before an agreement is reached. To enable Hong Kong traders 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.

20. Hong Kong and ASEAN will also strengthen co-operation in sanitary and phytosanitary measures⁽⁶⁾, technical barriers to trade⁽⁷⁾ and customs matters.

(C) Investment

21. Apart from investment promotion and facilitation, the Investment Agreement commits each Party to (a) accord national treatment and most-favoured-nation treatment to investments in non-services sectors made by other Parties’ investors, and (b) protect investments in all sectors made by other Parties’ investors. Such protection includes commitments on fair and equitable treatment; physical protection and security; compensation according to agreed standard in case of expropriation; non-discriminatory treatment in compensation for investment losses or damages owing to war, armed conflict, civil strife, or similar events; and free transfers of investments and returns.

22. The Investment Agreement also includes a Work Programme for further discussion of several issues, including the mechanism for settling

⁽⁵⁾ 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.

⁽⁶⁾ Sanitary and phytosanitary measures are any measures applied (a) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; (b) to protect human life or health from plant- or animal-carried diseases or pests; (c) to protect animal or plant life or health from pests, diseases, disease-carrying organisms or disease-causing organisms; and (d) to prevent or limit other damage from the entry, establishment or spread of pests.

⁽⁷⁾ Technical barriers to trade include technical regulations, standards and conformity assessment procedures that may directly or indirectly affect trade in goods.

investment disputes between an investor and the host Party. Hong Kong and ASEAN target to conclude the discussion within one year of the entry into force of the Investment Agreement, unless otherwise agreed later.

(D) Other Areas

23. The FTA comprises a chapter on Economic and Technical Co-operation (ECOTECH) which aims to enhance the benefits of the FTA through capacity building and technical assistance. Both sides agreed to conduct ECOTECH activities in five priority areas, viz. customs co-operation, professional services, small and medium enterprises co-operation, trade facilitation/logistics and e-commerce co-operation. These are areas where Hong Kong possesses competitive edge and is keen to contribute positively. We believe the continued co-operation between ASEAN and Hong Kong on ECOTECH will serve to reinforce our close and amicable trade and economic co-operation in the long run.

24. In addition, the FTA contains provisions to promote and strengthen co-operation in the area of intellectual property rights. The two sides have also agreed to establish a transparent mechanism for consultations and settlement of possible disputes.

PUBLICITY

25. Details of the FTA and the Investment Agreement, including the full texts, will be uploaded onto the Trade and Industry Department's website (www.tid.gov.hk). A press release will be issued and a spokesperson will be available to answer media enquiries.

ENQUIRIES

26. For enquiries, please contact Mr Owin Fung, Assistant Director-General of Trade and Industry, at 2398 5309.

Trade and Industry Department

12 November 2017

AN OVERVIEW OF TARIFF COMMITMENTS OF AMS

Nine AMS have agreed to reduce/eliminate their customs duties under the FTA with reference to the following general guidelines. The percentage is based on the total number of tariff lines of the individual AMS. The schedules of commitments of AMS will be annexed to the FTA.

Category		Tariff rate at the end of the transitional period	ASEAN 6			Cambodia/ Laos/ Myanmar	
			Brunei Darussalam/ Thailand/ Malaysia/The Philippines	Indonesia/ Viet Nam			
Normal Track	Normal Track1	0%	85%	65% within 3 years	75%	50% within 3 years	65%
	Normal Track 2	0%		20% within 10 years		25% within 10 years	
Sensitive Track	Sensitive List	0-5%	10%	5% within 12 years	10%	5% within 12 years	20%
	Highly Sensitive List	≤50%		5% within 14 years		5% within 14 years	
Exclusion List		no tariff commitments	5%		15%		15%

2. Singapore will eliminate its customs duties on all originating goods of Hong Kong and the other Parties under the FTA, with effect from the date on which the FTA enters into force for Singapore.