

The Honourable Gregory So
Secretary for Commerce and Economic Development
Hong Kong, China

September 7th, 2012

Dear Secretary,

I have the honour to refer to the signature on this date of the *Chile – Hong Kong, China Free Trade Agreement* (“the FTA”) and in that context to confirm the following agreement reached by the Governments of Chile and Hong Kong, China (“the Parties”) during the course of the negotiations of the FTA on the negotiation of a comprehensive agreement concerning investment (“Investment Agreement”):

1. As part of a wider process of economic integration and trade liberalisation between their two economies, and in accordance with Article 19.6 (Future Work Programmes) of Chapter 19 (Final Provisions) of the FTA, the Parties agree to enter into negotiations on the Investment Agreement. The Parties will endeavour to conclude the negotiations as soon as practicable.

2. The negotiation on the Investment Agreement shall cover, *inter alia*, the following elements governing investment between the Parties:

- (a) robust and comprehensive most favoured nation treatment and national treatment for different phases of an investment;
- (b) according investments a minimum standard of treatment in accordance with customary international law;
- (c) appropriately prohibiting performance requirements;
- (d) appropriately restricting the imposition of nationality requirements for senior managers, and nationality or residency requirements for the majority of the board of directors;
- (e) allowing appropriate rules for the free transfer of funds related to an investment;

- (f) protecting investments from unlawful expropriation while also affirming the right of each Party to regulate in the public interest;
- (g) affirming the right of each Party to regulate, consistent with other provisions, to ensure investment activities are carried out in a manner with due regard to the environment;
- (h) clarifying that only those investors with substantive business operations in the Areas of the Parties are able to benefit from the investment provisions; and
- (i) the treatment of non-conforming measures.

3. The Parties shall also discuss how the Investment Agreement should:

- (a) replicate those provisions of the FTA that have general application, as appropriate;
- (b) include appropriate investor-Party dispute settlement procedures; and
- (c) ensure that investors in the supply of a service through commercial presence (“Mode 3”) are treated no less favourably than other investors.

4. In light of the provisions in the Investment Agreement, the Parties shall review Chapter 10 (Establishment) and their related Schedules in the FTA, and where appropriate shall enter into, contemporaneously with the signing of the Investment Agreement, a supplementary agreement to the FTA to provide for such amendments to the FTA as are appropriate.

If the above is acceptable to the Government of Hong Kong, China, I have the honour to propose that this letter and your letter of confirmation in reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date on which the FTA enters into force.

Alfredo Moreno Charme
Minister of Foreign Affairs

7 September 2012

The Honourable Alfredo Moreno Charme

Minister of Foreign Affairs

Chile

Dear Minister,

I have the honour to acknowledge receipt of your letter of this date, which reads as follows:

“I have the honour to refer to the signature on this date of the Chile – Hong Kong, China Free Trade Agreement (“the FTA”) and in that context to confirm the following agreement reached by the Governments of Chile and Hong Kong, China (“the Parties”) during the course of the negotiations of the FTA on the negotiation of a comprehensive agreement concerning investment (“Investment Agreement”):

1. As part of a wider process of economic integration and trade liberalisation between their two economies, and in accordance with Article 19.6 (Future Work Programmes) of Chapter 19 (Final Provisions) of the FTA, the Parties agree to enter into negotiations on the Investment Agreement. The Parties will endeavour to conclude the negotiations as soon as practicable.

2. The negotiation on the Investment Agreement shall cover, inter alia, the following elements governing investment between the Parties:

(a) robust and comprehensive most favoured nation treatment and national treatment for different phases of an investment;

(b) according investments a minimum standard of treatment in accordance with customary international law;

(c) appropriately prohibiting performance requirements;

(d) appropriately restricting the imposition of nationality requirements for senior managers, and nationality or residency requirements for the majority of the board of directors;

(e) allowing appropriate rules for the free transfer of funds related to an investment;

(f) *protecting investments from unlawful expropriation while also affirming the right of each Party to regulate in the public interest;*

(g) *affirming the right of each Party to regulate, consistent with other provisions, to ensure investment activities are carried out in a manner with due regard to the environment;*

(h) *clarifying that only those investors with substantive business operations in the Areas of the Parties are able to benefit from the investment provisions; and*

(i) *the treatment of non-conforming measures.*

3. *The Parties shall also discuss how the Investment Agreement should:*

(a) *replicate those provisions of the FTA that have general application, as appropriate;*

(b) *include appropriate investor-Party dispute settlement procedures; and*

(c) *ensure that investors in the supply of a service through commercial presence ("Mode 3") are treated no less favourably than other investors.*

4. *In light of the provisions in the Investment Agreement, the Parties shall review Chapter 10 (Establishment) and their related Schedules in the FTA, and where appropriate shall enter into, contemporaneously with the signing of the Investment Agreement, a supplementary agreement to the FTA to provide for such amendments to the FTA as are appropriate.*

If the above is acceptable to the Government of Hong Kong, China, I have the honour to propose that this letter and your letter of confirmation in reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date on which the FTA enters into force."

I have the further honour to confirm that this understanding is shared by my Government and shall constitute an agreement between our two Governments which shall enter into force on the date on which the FTA enters into force.

Yours sincerely,

Gregory So
Secretary for Commerce and Economic Development