

## ASEAN-Hong Kong Free Trade Agreement

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On 12<sup>th</sup> November 2017, Hong Kong and the Association of Southeast Asian Nations (hereinafter "ASEAN") signed the ASEAN-Hong Kong Free Trade Agreement (hereinafter "AHKFTA") and the "Investment Agreement". The agreements are expected to come into effect on January 1, 2019 at the earliest, upon the completion of necessary internal procedures by Hong Kong and the ASEAN member states (hereinafter "AMS"). Regarding benefits, the agreements will bring about tariff reduction and exemption, allow better market access for goods and services trade as well as a better business environment for Hong Kong and ASEAN market participants. It is expected that mutual trading and investment will be encouraged and further broadened along with the implementation of the agreements.

### BACKGROUND

ASEAN has long been an important trading partner of Hong Kong. According to the statistics released by Hong Kong government, ASEAN was Hong Kong's second largest trading partner in merchandise trade in 2016, amounted to HK\$ 8,330 billion, and also the fourth largest in services trade in 2015, amounted to HK\$ 1,210 billion. Besides, the rapid growth of gross domestic product (GDP) in ASEAN, which is contributed by its positive economic development, also helps remain ASEAN as an important business partner of Hong Kong.

Furthermore, as all AMS are participants of the "Belt and Road Initiative" proposed by China, the AHKFTA is expected to help tighten economic ties between Hong Kong and ASEAN, and support enterprises from both sides to tap business opportunities offered by the initiative. Also, Hong Kong has all along been utilized as a trading and investment intermediary connecting China to the rest of the world, coupled with the "Belt and Road Initiative", the newly signed agreements will not only be beneficial to Hong Kong but also facilitate the possibility of expanding the investment from China through Hong Kong to ASEAN.

Although the ASEAN-China Free Trade Agreement (hereinafter "ACFTA") which was signed between China and ASEAN in 2010, Hong Kong is excluded due to a number of reasons. While Hong Kong has continued to be a separate jurisdiction from China under "one country, two systems", the ASEAN also specifically required a framework which is different from ACFTA. Therefore, separated FTA negotiations between Hong Kong and ASEAN commenced in 2013 and were completed in July 2017, after the culmination of more than three years of negotiation.

### HIGHLIGHTS

The agreements not only address barriers that impede the flow of goods and services between contracting parties, but also encourage a variety aspects including investment, government procurement, intellectual property, the mobility of natural person and business environment. With the wide range of support and enhancements, trading and investment activities are expected to develop smoothly.

## (1) AHKFTA

### ➤ Trade in goods

With the aim to further enhance the ties between Hong Kong and ASEAN, Hong Kong exporters which fulfil the requirements set out in the AHKFTA can enjoy tariff-free or preferential tariff treatment for exporting products of contracting parties. Although the tariff rate for each item varies across parties, all AMS have committed to eliminating their tariff on goods originating from Hong Kong. From the schedule below, the tariffs on qualifying Hong Kong exports into ASEAN will be progressively eliminated over a period of 10 years. For example, import duty will be eliminated by Brunei Darussalam and Malaysia on 98% of the apparel, by Laos and Philippines on jewellery, by Philippines on all toys, games and sports products, and by Vietnam on kitchenware and household articles.

Singapore is a free port as most of the imported goods can enter the country duty-free. Currently, only 6 alcoholic items classified as different HS Codes are subject to customs duties in Singapore. Under the agreements, Singapore has committed to remove all customs duties when it comes into force.

		Implementation	'19	'22	'27	'29	'31	'33	'34	'36	'39	
A S E A N 6	Thailand	Normal Track										
		NT1	65% of tariff lines shall cut to 0%									
	Philippines	NT2	20% of tariff lines shall cut to 0%									
		Sensitive Track										
	Malaysia	SL	5% of tariff lines shall cut to 0-5%									
		HSL	5% of tariff lines shall cut to ≤ 50%									
	Brunei	Normal Track										
		NT1	50% of tariff lines shall cut to 0%									
	Indonesia	NT2	25% of tariff lines shall cut to 0%									
		Sensitive Track										
	Vietnam	SL	5% of tariff lines shall cut to 0-5%									
		HSL	5% of tariff lines shall cut to ≤ 50%									
Cambodia Laos Myanmar	Normal Track											
	NT1	50% of tariff lines shall cut to 0%										
	NT2	15% of tariff lines shall cut to 0%										
	Sensitive Track											
Laos	SL	10% of tariff lines shall cut to 0-5%										
	HSL	10% of tariff lines shall cut to ≤ 50%										

### ➤ Rules of Origin

To enjoy the tariff concessions or preferential treatments set out in the agreements, Hong Kong exporters are required to apply a certificate of origin (hereinafter "CO") from Hong Kong government and submit to customs when exporting goods to ASEAN. CO is a document to certify that the goods mentioned is considered as an originating goods of the exporting party, and it will only be given if the goods conforms to "Origin Criteria".

"Origin Criteria" stipulated in the FTA is a set of rules for determining the country of origin of goods, under AHKFTA, any goods satisfies one of the following criteria may apply a CO and enjoy the tariff elimination and reduction to goods.

Origin Criteria in AHKFTA	
Wholly Obtained or Produced Goods	<p>A good shall be considered as “wholly obtained or produced” if it is produced completely in the exporting party and conforms to one of the following requirements:</p> <ul style="list-style-type: none"> <li>a) plants and plant products grown, harvested, picked or gathered in a Party<sup>1</sup>, including plants, algae and fungi;</li> <li>b) live animals born and raised in a Party;</li> <li>c) goods obtained from live animals in a Party;</li> <li>d) animals obtained from hunting, trapping, fishing, gathering or capturing conducted in a Party;</li> <li>e) minerals and other naturally occurring substances extracted or taken from a Party (goods mentioned in subparagraphs (a) to (d) are excluded),;</li> <li>f) products of sea-fishing extracted or taken by vessels registered with the exporting Party and entitled to fly the flag of that Party;</li> <li>g) products of sea-fishing and other marine products taken from the high seas by vessels registered with a Party and entitled to fly the flag of that Party;</li> </ul>
Goods of originating materials	A good produced in the exporting Party exclusively from originating materials from one or more of the Parties
Not Wholly Obtained or Produced Goods	<p>A good shall be treated as an originating good if the good has a regional value content (hereinafter “RVC”) of not less than 40% calculated by one of the following formulas.</p> <p>Formula of RVC:</p> <ul style="list-style-type: none"> <li>a) Direct /Build-up Method  <math display="block">RVC = (\text{Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Costs} + \text{Profit}) / \text{FOB Price} \times 100\%</math> </li> <li>b) Indirect /Build-down Method  <math display="block">RVC = (\text{FOB Price} - \text{Value of Non-Originating Materials}) / \text{FOB Cost} \times 100\%</math> </li> </ul>

### ➤ Trade in services

Under the agreements, Hong Kong investors and service providers are allowed to enter the ASEAN market with preferential treatments. Compared with the conditions stipulated in the WTO agreements offered by ASEAN, the AHKFTA have set out a higher level of commitments in different modes of supply including “commercial presence” and “presence of natural persons”, which create a more conducive business environment for investors and service providers from Hong Kong.

Despite the openness and concessions in each service sector vary across the AMS, the AHKFTA provide better business opportunities in sectors where Hong Kong has competitive advantages, such as: professional services, telecommunications services, construction and related engineering services, educational services, financial services, tourism and travel related services, transport services and arbitration services.

As regards to the restrictiveness in foreign ownership and market access, the limitations in many countries such as Malaysia, the Philippines and Vietnam, have been reduced or even removed for Hong Kong enterprises under the agreements. For instance, the current 30% cap on foreign investment in database services will be removed in Malaysia, while foreign ownership in prohibited mining industry and water facilities construction will be raised to 70% in Thailand.

In addition to the liberalizations of trade in services, the “movement of natural persons” also plays an important role in enhancing bilateral economic development. After the AHKFTA comes into force, the duration of stay in AMS will be lengthened from 7-14 days to 90 days for short-term Hong Kong business visitors. Moreover, such commitments will be further extended and applied to the categories of independent specialists and professionals. Due to such relaxation, temporary entry access for business purposes will be improved between the contracting parties.

## (2) Investment Agreement

The Investment Agreement will provide Hong Kong investors with legal certainty and investment protection in ASEAN markets. Apart from investment promotion and facilitation, the agreement also covers the provision of non-discriminatory treatment of investments in non-services sectors, fair and equitable treatment of investments, compensation for expropriation of investments and permission of free transfer of investments and returns, as well as dispute settlement mechanisms.

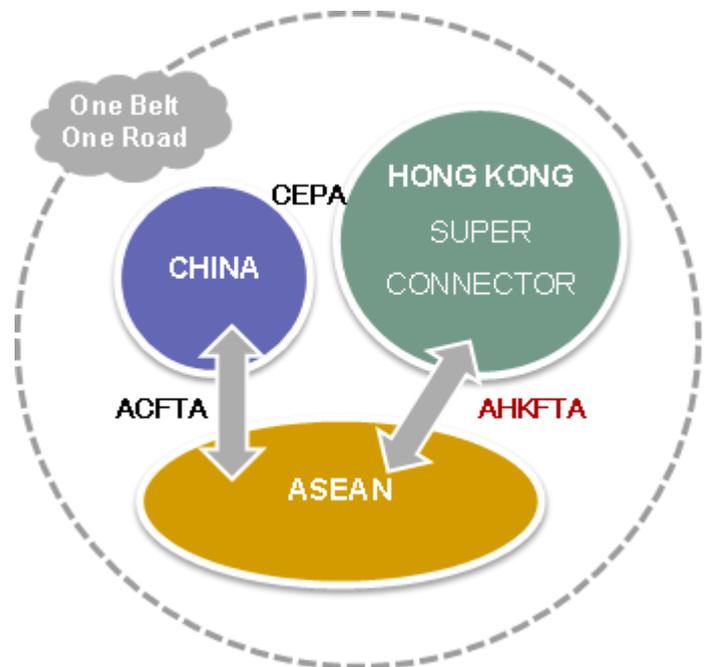
Furthermore, the protective measures in respect of investments stated in the agreement will help reduce the investment risk when Hong Kong investors do business in AMS. The agreement is regarded as an important element to attract further investment and stimulate more Hong Kong investment to the shores of AMS.

## COMMENTS

The agreements encompass a variety of scope, from tariff reduction and exemption, liberalisation of trade in services to investment protection, among which are more competitive than those set out by AMS in WTO. Such comprehensive supportive measures are expected to help tighten the business ties between Hong Kong and AMS and create a better investment environment as a whole.

Since most of the manufacturing bases are located in China, even given its unique geographical advantages, Hong Kong does not enjoy many competitive edges in cargo trade. However, the agreements will not only enhance and strengthen the trade and export in those traditional industries of which Hong Kong has high competitiveness, such as jewellery and apparel, but also boost business opportunities for Hong Kong enterprises in ASEAN markets.

As mentioned above, AHKFTA has eased foreign ownership requirement for Hong Kong investors in many aspects. Under such framework, Hong Kong can act as an investment hub for multi-national corporates to enter ASEAN markets and optimize their production network. Since all ASEAN member states are economies along the "Belt and Road Initiative" proposed by China, the agreements not only further consolidate the role of Hong Kong as a super-connector to promote regional trade and investment linkages, but also gives Hong Kong the privileged position to further boost the integrated economic development in the region by providing valued legal and financial services.



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