



Hong Kong General Chamber of Commerce
香港總商會1861

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8 August, 2013
Our Ref: CC95

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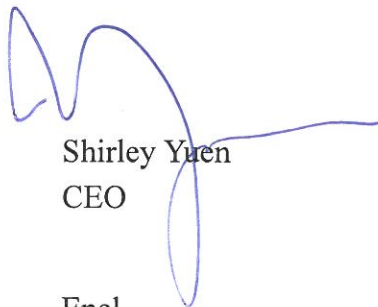
Dear Kenneth

Negotiations on Trade in Services Agreement

The Hong Kong General Chamber of Commerce welcomes the Government's participation in the negotiations on Trade in Services Agreement. We are encouraged that Hong Kong is playing an active role in facilitating the negotiations.

As the service industries account for over 90% of our GDP, we would like to see that the Agreement could provide a level playing field for Hong Kong in terms of market access and other related aspects. Our suggestions on specific areas are enclosed.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Shirley Yuen', is written over the typed name and title. The signature is fluid and extends to the right.

Shirley Yuen
CEO

Encl.

Hong Kong General Chamber of Commerce
Submission on Negotiations on Trade in Services Agreement
8 August, 2013

Hong Kong is the most service-oriented economy in the world. As the service industries account for over 90% of our GDP, the Hong Kong General Chamber of Commerce would like to see that the current negotiations under the Trade in Services Agreement (“TISA”) could provide a level playing field for Hong Kong in terms of market access and other related aspects. Our suggestions on specific areas are as follows.

1) Market Access

1.1 Financial Services

Harmonization of domestic regulation and regulatory consistency where possible is desirable, especially for cross-border direct investment. Some WTO members (such as India, the USA, Europe and China) make changes when necessary while others (e.g. Australia) make retrospective changes. Investors need regulatory certainty to ensure that the correct capital allocations are made as they are typically making investments that run up to a decade. Frequent regulatory changes and uncertainty would be very disruptive for their operations.

For transaction services – treasury centers and trade financing, withholding tax applies when overseas entities are involved in some places, e.g. Chinese Taipei. There are also sometimes restrictions on trade financing from overseas banks and liquidity structure with overseas entities (e.g. Pakistan). It would be useful if such requirements or restrictions could be relaxed or modified.

On securities and fund services, extending / establishing income tax treaty to cover incomes from interest, dividends and capital gains on US investment is desirable. This would help Hong Kong-based entities who invest in US securities to be taxed at a reduced rate instead of the full 30%.

1.2 Professional Services

Some of Hong Kong’s services such as contract management, skilled professionals and supporting services of the construction industry have been refined over the years and can be exported to regional cities. Many urban cities are in desperate need for infrastructures like roads, water, and energy, but the licensing and tendering requirements in many economies often favour local companies. It would be helpful if relaxation of this requirement could be included under TISA. Businesses would also favour an environment with consistent applications of ethics and anti-corruption practices and standards so that companies can compete on an even footing.

Protectionism is one area that has to be addressed and managed properly. For example, in Malaysia (which is not involved in the TISA negotiations at present), projects requiring professional services of consulting engineers, quantity surveyors and architects must be undertaken by locally owned and licensed practices. As a result, international companies tend to partner with local companies or establish a local entity with local directors and shareholders who can then obtain the necessary registrations to bid on projects.

1.3 Telecommunications Services

Economy	Restrictions
Mainland China (not yet involved in TISA)	<p>The biggest benefit for Hong Kong would be the further liberalisation of the Mainland China market even if it is restricted to Guangdong Province initially. The liberalisation could be on the services level, i.e. services obtained from one of the three main network-based providers and then resold with some value added. This would not touch upon the more sensitive issue of network ownership / construction. Of course, opening the market for network competition as in most other markets would be preferred. Resold services could be fixed or mobile, voice or data, and local or international.</p> <p>Mainland China has recently allowed very limited further entry into the mobile market via 'virtual mobile network operators'. This is a resale type entry but limited to a very small number of selected Mainland companies.</p>
Chinese Taipei	<p>Total direct and indirect foreign ownership of a Type I (facilities-based) licensee is limited to 60%, of which foreign direct investment ("FDI") is limited to 49%. Indirect foreign ownership is defined as foreign ownership in a domestic corporation that is a shareholder of a Type I licensee. These restrictions do not apply to Type II (non-facilities-based) licensees.</p> <p>Request removal of FDI restrictions.</p>
Columbia	<p>Only companies legally constituted in Columbia may be granted concessions to provide telecommunications services in Columbia (Law 671 of 2001, Decree 1616 of 2003, articles 13 and 16; Decree 2542 of 1997, article 2; Decree 2926 of 2005, article 2). Columbia currently permits 100 percent foreign ownership of telecommunications service providers. However, in WTO negotiations, Columbia has specifically prohibited "callback" services. Barriers to entry in telecommunications services include high licence fees (US \$150 million for a long distance licence), commercial presence requirements, and economic needs tests.</p>

Economy	Restrictions
	<p>Columbia's Ministry of Communications may require an economic needs test for the approval of licences in voice, facsimile, e-mail, and other value-added services. The parameters that determine "an economic needs test" are not clearly established in Columbian legislation. Columbia also maintains a system of subsidies where, for example, long-distance telephone service subsidizes local telephone service. Low (subsidized) prices of local telephony and high restrictive costs in the provision of long-distance service limit the entry of new competitors.</p> <p>The US-CTPA liberalizes the sector by prohibiting anti-competitive cross-subsidies, requiring transparent licensing procedures, ensuring interconnection at reasonable rates, and protecting the confidentiality of commercially sensitive information obtained as a result of interconnection arrangements. Under the US-CTPA, US firms are able to lease lines from Columbian networks on non-discriminatory terms and re-sell telecommunications services of Columbian suppliers to build a customer base.</p> <p>Request minimum of US-CTPA equivalence.</p>
Korea	<p>Pursuant to Annex I (Schedule of Korea) of Korea-US ("KORUS") FTA, foreign investment into the provider of facility-based service will be restricted in the same way as before the effective date of KORUS FTA for 2 years from the effective date of KORUS FTA – 15 March, 2012. In other words, Korea may not lift 49% restriction on foreign investment for 2 years from the effective date without violation of KORUS FTA.</p> <p>After 2 years from the effective date, Korea shall allow (i) indirect investment of foreign entities (i.e., investment through deemed foreign entities established in Korea) into facility-based service providers and (ii) granting approval to deemed foreign entities established in Korea as facility-based service providers. Under the Telecommunication Business Act of Korea, a Korean company shall be deemed a foreign entity when foreign entity (including foreign individual, foreign company and foreign government) is the largest shareholder of the Korean company and holds 15% or more of equity of the Korean company.</p> <p>Request minimum of KORUS FTA equivalence.</p>
Mexico	<p>Most telecommunications services can only be provided by Mexican individuals or entities, and foreign investment may not exceed 49%, except for cellular telephone services subject to the Foreign Investment National Commission's approval.</p> <p>Request removal of FDI restrictions.</p>

1.4 Maritime Services

The maritime services sector is generally happy with the 'model maritime schedule' which has been agreed and to which the 50 nations that belong to the WTO 'Friends of Maritime Group', including China, are broadly committed. As maritime services are not covered by GATS, the sector would like the existing free trade practices codified, which should be covered by the TISA negotiations.

1.5 Environmental Services

In view of the environmental pressures facing Asia and the global challenges of climate change, we would like to see the environmental profession accredited and recognized, much like accounting, law, engineering, etc. The so-called 'green economy' will inevitably develop further and Hong Kong is well positioned to take advantage of this trend if individuals are encouraged to obtain environmental professional qualifications which are becoming widely recognized as a pre-requisite when bidding for overseas contracts.

1.6 Others

Other sectors which Hong Kong has the competitive advantage or is interested in are information and communications technology, education services, and certification services.

2) Movement of Natural Persons

Even where there is consistency in professional standards or mutual recognition across jurisdictions, protectionism is unfortunately inevitable. Businesses would like to ensure that appropriately qualified personnel could be located in the needed location on a timely manner.

3) Other areas of interest

3.1 Corporate Social Responsibility and Sustainability

Adherence to international standards in respect of corporate social responsibility, trading ethics and social development amongst members should be encouraged where possible. Otherwise, there should be consistency in disclosure to enable easier assessment of trade opportunities.

3.2 Data Protection

The processing of personal data and the transfer of such data across borders is increasingly a key aspect of regional and global businesses. Any measures to harmonise data protection laws to facilitate cross-border trade in services while balancing the rights of data subjects would be welcomed.

3.3 Others

The APEC travel card has been a recognized success and every effort to protect/expand this facility should be made. Extending this border-crossing facility to customs and immigration would be desirable. This is important for travelling personnel as well as for short-term stay postings in a host country.