

**Free Trade Agreement between Australia and Hong Kong, China
Investment Agreement between the Government of Australia
and the Government of the Hong Kong,
Special Administrative Region of the People’s Republic of China**

ANALYSIS OF REGULATORY IMPACT ON AUSTRALIA

19 March 2019

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PART 1: INTRODUCTION

1. This Analysis of Regulatory Impact on Australia (ARIA) relates to the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) and the Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (Investment Agreement), both of which will be signed on 26 March 2019 in Sydney.
2. Negotiations on these two agreements commenced on 16 May 2017. Trade, Tourism and Investment Minister Simon Birmingham and Hong Kong's Secretary for Commerce and Economic Development Edward Yau issued a joint statement announcing the conclusion of the negotiations on 15 November 2018.
3. The FTA is accompanied by an Investment Agreement. This agreement terminates the existing *Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments*, which has been in place since 1993, replacing it with more modern investment protections. Hong Kong's status as a Special Administrative Region of the People's Republic of China means that the Hong Kong Government is required to consult with the Central People's Government on investment protections, which touch on sovereignty issues. For this reason, Hong Kong negotiates investment protection matters in a separate legal instrument alongside its FTAs.

PART 2: PROBLEM IDENTIFICATION

Hong Kong's economic outlook and Australia's economic relationship with Hong Kong

4. Like Australia, Hong Kong is a sophisticated services-oriented economy and a consumer market with a solid growth rate. Trade is of central importance to the Hong Kong economy: in 2017, goods and services trade in Hong Kong was worth US\$1.3 trillion, about four times Hong Kong's GDP.¹ The services sector accounted for 92.4 per cent of Hong Kong's GDP in 2017, providing 88.2 per cent of its total employment in the first three quarters of 2018.²

¹ Source: World Trade Organization (WTO) Trade Profile, Hong Kong, China (http://stat.wto.org/CountryProfiles/HK_e.htm)

² Government of the Hong Kong SAR *2018 Economic Background and 2019 Prospects* 27 February 2019 https://www.hkeconomy.gov.hk/en/pdf/er_18q4.pdf accessed 6 March 2019.

Table 1: Economic indicators, Hong Kong, 2018			
GDP	US\$360.3 billion	GDP per capita	US\$48,231.3
Real GDP Growth	3.8 per cent	Population (2017)	7.4 million

Source: DFAT Country Fact Sheet, Hong Kong – Special Administrative Region of the People’s Republic of China

5. Hong Kong’s “business friendly” regulatory framework, high-quality infrastructure and stable macroeconomic environment have underpinned the city’s success as an international commercial hub. Hong Kong’s economic outlook remains strong: the IMF has forecast solid growth of 2.9 per cent in 2019. Projected consumption and investment in Hong Kong are expected to remain robust, despite near-term global uncertainties including ongoing US-China trade tensions and the pace of growth in China.³
6. Australia supports the “one country two systems” framework, with Hong Kong enjoying a high degree of autonomy, including the right to enter into its own trade agreements. The rule of law, independent judiciary and freedoms that Hong Kong enjoys under the Basic Law are the foundations of its success. This is one reason why Hong Kong has the second largest concentration of Australians overseas after London (around 100,000) and Australia’s largest commercial presence in Asia.
7. Hong Kong is a major export destination for Australian goods and services. In 2017-18, Hong Kong was Australia’s sixth largest export market for goods and seventh largest export market for services.
8. Hong Kong is also a crucial investment partner for Australia. At the end of 2017, Hong Kong was the fifth largest source of foreign investment in Australia, and tenth largest destination for Australian investment abroad.⁴ Table 2 illustrates the substantial value of Australia’s trade and economic relationship with Hong Kong.

³ International Monetary Fund, *People’s Republic of China—Hong Kong Special Administrative Region: Staff Concluding Statement of the 2018 Article IV Consultation Discussions*, 2018 (available <https://www.imf.org/en/News/Articles/2018/12/11/ms121218-prc-hong-kong-staff-concluding-statement-of-the-2018-article-iv-consultation-discussions>)

⁴ Source: Department of Foreign Affairs and Trade (DFAT) data based on ABS catalogue 5368.0.55.003.

Table 2: Trade and Investment Relationship – Australia and Hong Kong, 2017-18			
Two-way trade volume	\$18.8 billion	Two-way trade rank	12 th
Total exports to Hong Kong	\$14.5 billion	Total exports rank	6 th
Goods exports to Hong Kong	\$11.4 billion	Goods imports from Hong Kong	\$1.1 billion
Services exports to Hong Kong	\$3.1 billion	Services imports from Hong Kong	\$3.2 billion
Growth trend - exports (2013-2018)	6.5%	Growth trend - imports (2013-2018)	3.0%
Total Hong Kong investment in Australia (2017)	\$116.6 billion	Total Australian investment in Hong Kong (2017)	\$47.4 billion

Source: Australian Bureau of Statistics (ABS) catalogue 5368.0.55.003 and unpublished ABS data. Year 2017-18 figures unless specified otherwise. All currencies AUD unless specified otherwise.

9. Hong Kong’s stable legal and regulatory environment, liberal policy settings, sophisticated financial markets and well-connected location in Asia have made it an established hub for Australian business seeking to capitalise on Asia’s growth in the past decades. The Australian Chamber of Commerce in Hong Kong represents the largest business community outside Australia and is the second largest international chamber of commerce in Hong Kong.
10. Many Australian companies are present in Hong Kong, across a wide range of industry sectors including banking and finance, construction and engineering, food and beverage, education, consumer and retail, logistics and transport, and professional services. According to Australia’s International Business Survey 2018, which captured responses from 629 firms representing a wide range of industry sectors, Hong Kong was ranked fourth in the list of most common first markets in East Asia and Southeast Asia for Australian businesses beginning on the path to internationalisation.⁵
11. Despite the current strength of the bilateral trade and investment relationship, not having an FTA and updated investment agreement with Hong Kong poses the following problems for Australia:
 - Australian goods exporters cannot be legally guaranteed zero-tariff treatment on their goods entering Hong Kong;

⁵ *Australia’s International Business Survey 2018*, commissioned by the Export Council of Australia, available <https://www.austrade.gov.au/news/economic-analysis/key-publications/australias-international-business-survey-2018>

- Australian services exporters and investors remain exposed to risk, should any policy settings currently applied in Hong Kong be changed in the future, and with no opportunity to secure better access;
- Australian businesses are not best placed to take advantage of Hong Kong's status as a key e-commerce hub into mainland China and the wider Asia region for consumer goods and services;
- Australia's investment relationship is governed by outdated international investment protection rules, increasing the risk of further investor-state dispute settlement claims against the Commonwealth; and
- Australia is deprived of an opportunity to bolster existing FTA networks across the region to deepen liberalisation and economic integration over the long term.

Lack of legal guarantee for Australian merchandise exporters

12. Hong Kong's trade relationship with Australia is governed by its obligations under the World Trade Organization (WTO). While Hong Kong currently imposes no tariffs on imported goods, its WTO market access commitments on industrial and resources products are far less liberal than its applied zero-tariff settings. Hong Kong has left unbound 52.3 per cent of tariff lines under WTO rules.⁶ This means that Hong Kong could legally impose a tariff of any rate on these goods, which include key Australian exports, such as gold.

Table 3: Hong Kong's unbound tariff lines on top Australian goods exports in 2017-18			
Goods (ranked)		Value of exports	Unbound tariffs
1	Gold	\$8 billion	Unbound
2	Edible products and preparations	\$382 million	<i>Bound at zero</i>
3	Telecommunication equipment and parts	\$303 million	Majority <i>bound at zero</i> / some unbound
4	Fruits and nuts	\$162 million	<i>Bound at zero</i>
5	Meat (excl beef)	\$159 million	<i>Bound at zero</i>
6	Alcoholic beverages	\$142 million	<i>Bound at zero</i>
7	Pearls and gems	\$130 million	Some <i>bound at zero</i> / some unbound Cultured pearls (unworked) <i>bound at zero</i> ; natural pearls unbound ; cultured pearls (worked) unbound ; gems unbound
8	Perfumery and cosmetics excluding soap	\$114 million	Perfumes unbound ; most cosmetics and soaps unbound

⁶ Source: WTO, *Tariffs and imports: Summary and duty ranges, Hong Kong, China* (available https://www.wto.org/english/res_e/statis_e/daily_update_e/tariff_profiles/HK_E.pdf)

9	Zinc	\$110 million	Some <i>bound at zero</i> / some unbound . Zinc ores and concentrates unbound ; unwrought zinc (containing $\geq 99.9\%$ zinc by weight) <i>bound at zero</i> ; unwrought zinc ($< 99.9\%$ by weight) unbound ; unwrought zinc allows unbound ; zinc powders, dust, bars, rods, plates etc. <i>bound at zero</i> .
10	Optical goods	\$110 million	Some <i>bound at zero</i> / some unbound

Source: ABS catalogue 5368.0.55.003 and the WTO tariff database
(<http://tariffdata.wto.org/ReportersAndProducts.aspx>)

Note: the goods in above categories above are spread across numerous tariff lines. Table indicates “Some *bound at zero* / some **unbound**” where some of the applicable tariff lines are bound and others unbound.

Risk for Australian services providers

13. Australia’s services trade with Hong Kong is currently governed by the WTO General Agreement on Trade in Services (GATS) regime. It is relatively unhindered, in keeping with Hong Kong’s open policy settings that also apply to foreign business operators, including clear and standardised registration, business licensing and operational procedures. As shown in Table 4, the trade in services between Australia and Hong Kong has steadily grown and diversified.

Table 4: Trade in services – Australia and Hong Kong, 2017-18			
Services exports	\$3.1 billion	Services imports	\$3.2 billion
% share of total	3.5%	% share of total	3.5%
Rank	7 th	Rank	8 th
Growth trend (2013-2018)	9.4%	Growth trend (2013-2018)	6.5%
Top 5 services exports		Top 5 services imports	
1	Personal travel (excl. education-related)	\$820 million	Transport (incl. passenger, courier and freight)
			\$1.4 billion
2	Education-related travel	\$798 million	Professional services
			\$772 million
3	Transport services (incl. passenger and courier)	\$613 million	Personal travel (excl. education-related)
			\$728 million
4	Professional services	\$390 million	Financial services
			\$162 million
5	Financial services	\$280 million	Business travel
			\$106 million

Source: ABS catalogue 5368.0.55.003 and unpublished ABS data. Year 2017-18 figures unless specified otherwise. All currencies AUD.

14. As highlighted in the submission by the Australian Chamber of Commerce in Hong Kong, there is significant scope to expand Australia’s services trade with Hong Kong. Foreseeing a long-term growth trajectory for economies in Asia,

the Hong Kong Government is actively seeking to position the city at the centre of value chains for high-quality goods and services supply in the region. Engaging in services trade through the Hong Kong market has the potential to deliver substantial future gains for Australian business.

15. Currently, Hong Kong's market access commitments in relation to services are as agreed in its accession to the WTO in 2000, where it has made only modest undertakings on removing barriers to new entrants. For example, a number of Hong Kong's market access commitments on financial services in the WTO are undermined by the retention of broad National Treatment limitations, allowing Hong Kong to adopt or maintain measures that discriminate against foreign suppliers. By retaining these limitations, Hong Kong could implement legislation restricting the supply or access of Australian financial service providers, preventing ongoing access to this valuable market.
16. The rules in the WTO GATS reflect the nature of doing business in 2000. There is a risk that without an FTA securing modern forms of market access across a comprehensive range of services, Australian providers may increasingly face barriers in accessing Hong Kong. For instance, Australian businesses seeking to provide service virtually, without establishing a physical presence in Hong Kong, need modern rules that facilitate seamless cross-border transfers of data. Such businesses would otherwise increasingly face additional costs in complying with burdensome establishment requirements, such as setting up local computing and storage facilities. This would have especially disproportionate impacts on small and medium enterprises (SMEs) without access to the capital to set up an overseas presence, and place Australian service providers at a disadvantage in Hong Kong's highly competitive and cutting-edge market environment.

Outdated investment rules

17. Hong Kong is a significant investor with a steadily growing investment stock in Australia, as shown in Table 5. With a stock of \$13.8 billion in new direct investments alone in 2017, Hong Kong was the second largest source of new foreign direct investment in Australia of any single economy worldwide, behind the US (at \$17.8 billion).⁷ Hong Kong's investment interests in Australia are diverse: utilities, infrastructure, transport, telecommunications, resources, clean energy and hotels, and increasingly agri-food, major infrastructure and health services.

⁷ Source: DFAT, *International Investment in Australia 2017* (available <https://dfat.gov.au/about-us/publications/Pages/international-investment-australia.aspx>)

Table 5: Hong Kong's investment stock in Australia in \$ million

2012	2013	2014	2015	2016	2017	% of total in 2017	2017 rank	5-year trend growth
53.2	63.6	73.1	86.3	102.2	116.6	3.6 %	5	17.0%

Source: ABS catalogue 5352.0. All currencies AUD.

18. The investment relationship between Australia and Hong Kong is currently governed by the 1993 *Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments* (the 1993 Investment Agreement). The investor protection mechanism contained in this Agreement was used, unsuccessfully, by Philip Morris Asia to bring an investor-state dispute against Australia's tobacco plain packaging measure. The updated investment rules reflect contemporary investment policy, including explicit safeguards to protect governments' ability to regulate in the public interest and pursue national security and policy objectives such as public health and safety.

Australia's ability to take up emerging opportunities in Hong Kong

19. Australian businesses trading with Hong Kong have already identified increasing opportunities in the following sectors:
- **Food and beverages:** Hong Kong is an important market for Australian food, wine and other alcoholic beverages and a strategically important trading partner in the Asian region which, according to the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), drives much of the increase in global import demand for agricultural commodities of interest to Australia;⁸
 - **Consumer products:** With virtually no local manufacturing, imports dominate Hong Kong's large, lucrative and growing market for consumer products, including beauty and health, fashion, clothing and lifestyle products. In its analysis of Hong Kong's appeal as a destination for consumer products, the Australian Trade and Investment Commission (Austrade) describes Hong Kong as a "shop window" to millions of tourists (44.4 million from mainland China alone in 2017) and an ideal testing ground for products entering the region. For instance, Hong Kong was the second largest export market for Australia's beauty products (cosmetics and perfumery) after New Zealand in 2017-18, representing 14 per cent of the total exports. Australian cosmetics exports to Hong Kong grew by 25.8 per cent in 2017 to a value of \$109 million. Australia's exports have more than doubled over the last 5 years;

⁸ *Food demand to 2020*, ABARES Conference paper 12.4, March 2012

- **Fintech:** According to the EY Fintech Australia Census 2018, Hong Kong was ranked one of the top four markets for Australian fintech companies for global expansion.⁹ Active initiatives taken up by the Hong Kong Government and businesses and major Fintech events in Hong Kong present opportunities for Australian fintech start-ups and enterprises to find investment, partnership, collaboration and customers, and use Hong Kong as a landing pad to expand their businesses. Hong Kong has been actively promoting and allocating significant resources to the Fintech industry, covering financial technologies over a wide range of categories. Australian companies have already set up regional headquarters in Hong Kong to capitalise on the growing demand for fintech services such as cloud-based and big data-enabled e-commerce monitoring services, cybersecurity, and payment and billing systems; and
 - **Education:** Hong Kong will remain one of Australia’s top markets for international education, particularly in high-quality online and distance education. According to Austrade, the Hong Kong Education Bureau has identified Australia as Hong Kong’s second most popular overseas English-speaking study destination with 15 per cent of the market share, with the United Kingdom in first place at 19 per cent. Australia is also the second largest transnational education provider behind the United Kingdom in a highly competitive, open and high cost market, with a strong presence with around 150 Australian programs currently being delivered in Hong Kong.
20. However, without a legal framework locking down tariff-free trade in goods, a liberal services regime and modern rules addressing barriers to contemporary digital and technological developments, there is a risk that Australian companies would be less likely to take up emerging opportunities in Hong Kong, as they would be exposed should it ever choose to tighten its settings in these emerging sectors.

Utilising Australia’s FTA networks to promote long-term trade liberalisation

21. Australia has negotiated a network of bilateral and regional free trade agreements as a means of setting shared rules for open and liberal trade and investment flows across the Indo-Pacific region. An ambitious and comprehensive agreement with Hong Kong covering trade in goods, services and investment would complement these agreements. A-HKFTA contributes to the Government’s goal under the Foreign Policy White Paper for Australia to

⁹ *EY FinTech Australia Census 2018 – Profiling and defining the fintech sector*, Ernest & Young Australia, 2018. Available <https://fintechauscensus.ey.com/2018/Documents/EY%20FinTech%20Australia%20Census%202018.pdf>

have FTAs with countries that account for 80 per cent of our total trade by 2020.

PART 3: OBJECTIVES OF GOVERNMENT ACTION

22. The Government's objective for concluding A-HKFTA and the associated Investment Agreement was to improve conditions for enhancing Australia's competitiveness in Hong Kong, and with the wider region, through securing:
- a commitment to bind all tariffs at zero;
 - increased certainty and greater access for Australian service suppliers, particularly in financial, education, professional (such as engineering, accounting and legal) and transport services;
 - improved market access for two-way investment in Australia and Hong Kong under modern investment protection rules;
 - protection of the Government's ability to regulate legitimately on public policy matters;
 - improved mutual recognition of professional qualifications;
 - new commitments addressing the importance of digital trade, including in banking and financial services, providing certainty for Australian businesses to transfer data across borders while protecting privacy and consumer rights;
 - a permanent moratorium on the imposition of customs duties on electronic transactions;
 - greater opportunities for Australian professionals, such as intra-corporate transferees, seeking to work and live in Hong Kong with family members;
 - guaranteed access for Australian suppliers to the government procurement markets in Hong Kong;
 - increased confidence for Australian intellectual property (IP) rights holders and users;
 - commitments to ensure that the benefits of A-HKFTA are not undermined by anti-competitive practices; and
 - greater transparency in the making and implementation of laws, regulations and government decisions of each Party.
23. The most viable option available to the Government to achieve these objectives was the negotiation of a bilateral FTA and an investment agreement with Hong Kong. The following section considers other options available to the Government.

PART 4: ALTERNATIVE MEANS BY WHICH TO ACHIEVE THESE OBJECTIVES

No action

24. As explained in **Part 2: Problem Identification**, not having an FTA and an updated Investment Agreement with Hong Kong poses a number of significant problems to Australia's longer-term trade and investment relationship with Hong Kong. These include the following:
- Australian business is exposed to the risk that Hong Kong could legally impose tariffs on Australian goods, and by doing so extend more favourable treatment to Australia's competitors who have already entered into preferential trade agreements with Hong Kong (such as New Zealand);
 - Without an arrangement to secure open settings and better access to key services markets, Australian services exporters and investors will remain constrained in their ability to take up emerging opportunities; and
 - The 1993 Investment Agreement currently in force between Australia and Hong Kong contains outdated rules which have been used by a third party investor to challenge an Australian public policy measure. The outdated rules pose an increased risk of a successful ISDS challenge against the Commonwealth.

Regional trade negotiations

25. The Comprehensive Progressive Agreement for Trans-Pacific Partnership (CPTPP) recently entered into force between Australia and Canada, Japan, Mexico, New Zealand, Singapore and Vietnam. Brunei, Chile, Peru and Malaysia continue to work towards ratification. The Regional Comprehensive Economic Partnership (RCEP) has been under negotiation since 2012, between the 10 ASEAN Member States and six ASEAN FTA partners – Australia, China, India, Japan, Korea and New Zealand. These countries are working intensively with the aim of concluding RCEP in 2019. While the CPTPP and RCEP address a comprehensive range of trade and investment market access and rules issues, Hong Kong does not participate in either platform.
26. Meeting Australia's policy interests with Hong Kong through accession to either the CPTPP or RCEP would result in significant delays, and likely to be less focused in delivering the ambitious and comprehensive outcomes formulated bilaterally. While procedures for interested parties to accede to the CPTPP have now been put in place (as of January 2019), these processes will take time, including as existing Parties would need to agree to any potential accession request and market access commitments would need to be negotiated. RCEP also envisages a future accession process once concluded, however with negotiations yet to be concluded or a future agreement ratified,

pursing Australia's policy interests with Hong Kong through RCEP would also take a significant amount of time.

27. Initiating other regional FTA negotiations in which Hong Kong and Australia both participate remains a distant prospect. Hong Kong and Australia are Asia-Pacific Economic Cooperation (APEC) members, but APEC is not a forum for negotiating binding, enforceable commitments on trade. Preliminary work is being undertaken within APEC on a proposal for a Free Trade Area of the Asia-Pacific (FTAAP) that could include Hong Kong and Australia. However, FTAAP has varying levels of support from APEC economies and a decision about whether negotiations should be launched is unlikely in the near future.

Multilateral trade negotiations

28. Members of the WTO have not been able to achieve significant market access outcomes since the Uruguay Round, which concluded in the early 1990s. Australia, along with other WTO Members, is looking to commence negotiations on E-Commerce in the WTO with a view to securing strong global rules on e-commerce that facilitate trade and build trust in the online environment. These negotiations have yet to commence and, while Hong Kong signed on to the recent Joint Statement on Electronic Commerce signalling an intent to commence negotiations on trade related aspects of e-commerce, it is difficult to predict the final outcome or timeframe for these negotiations. The diverse membership of the WTO would likely moderate the level of commitments, relative to what can be achieved in a bilateral FTA.
29. There is no multilateral agreement on investment currently under negotiation. A bilateral agreement is therefore the best mechanism available to terminate the existing 1993 Investment Agreement and to lower the risk of ISDS claims being brought against the Government's regulatory measures.

Plurilateral trade negotiations

30. In the absence of multilateral trade negotiations on services, Australia and Hong Kong have been among 23 Parties negotiating a plurilateral Trade in Services Agreement (TiSA). TiSA intended to build on existing WTO rules on trade in services, with the long-term objective being to incorporate those new rules into the WTO. TiSA negotiations stalled with the election of the new US administration, and the US – a Chair of the negotiations – is yet to release its policy position on the Agreement.

PART 5: BENEFITS AND IMPACT

31. Certainty and transparency are important drivers in attracting business to markets, and ensuring they remain. Guaranteed zero-tariffs for Australian exports, improved certainty in the regulatory environment for investors and service providers, enhanced market access for Australian service providers, and

rules on data flows and localization of servers are likely to enhance the Australia-Hong Kong business relationship. A balanced investor protection mechanism safeguards the Government's ability to pursue legitimate public policy objectives.

Goods

32. Hong Kong's demand for Australian goods increased by 5.8 per cent in the last five years. Table 6 illustrates the strength of Australia's export trade in goods with Hong Kong.

Table 6: Trade in goods – Australia and Hong Kong, 2017-18					
Goods exports		\$11.4 billion	Goods imports		\$1.1 billion
% share of total		3.6%	% share of total		0.4%
Rank		6 th	Rank		30 th
Growth trend (2013-2018)		5.8%	Growth trend (2013-2018)		- 5.3%
Top 10 goods exports			Top 10 goods imports		
1	Gold	\$8 billion	Gold	\$322 million	
2	Edible products and preparations	\$382 million	Telecommunication equipment and parts	\$123 million	
3	Telecommunication equipment and parts	\$303 million	Electronic integrated circuits	\$61 million	
4	Fruits and nuts	\$162 million	Pearls and gems	\$36 million	
5	Meat (excl beef)	\$159 million	Jewellery	\$34 million	
6	Alcoholic beverages	\$142 million	Edible products and preparations	\$28 million	
7	Pearls and gems	\$130 million	Printed matter	\$27 million	
8	Perfumery and cosmetics excluding soap	\$114 million	Silver and platinum	\$23 million	
9	Zinc	\$110 million	Prams, toys, games and sporting goods	\$21 million	
10	Optical goods	\$110 million	Household-type equipment	\$20 million	

Source: ABS catalogue 5368.0.55.003 and unpublished ABS data. Year 2017-18 figures unless specified otherwise. All currencies AUD.

33. As stated in earlier parts of this Analysis, Hong Kong does not currently apply tariffs on Australian exports but has the right to increase tariffs on certain Australian goods under the WTO Agreement. The A-HKFTA provides certainty to Australian exporters by binding all tariffs at zero upon entry into force. In the event that Hong Kong increases its applied tariffs under the WTO Agreement, Australian exports will continue to benefit from duty free access to Hong Kong under the A-HKFTA, provided they meet its liberal rules of origin. These rules will also apply to goods imported from Hong Kong into Australia under the A-HKFTA.

34. Australia has made a reciprocal commitment to immediately eliminate all remaining tariffs on goods produced in Hong Kong upon entry into force. Goods imported from Hong Kong, as shown in Table 7, currently face Australia's applied WTO tariffs, which are already very low – ranging from zero to five per cent for non-FTA partners. Further, some products (representing around 12 per cent of tariff lines) already receive a margin of preference due to Hong Kong's developing country status under the Australian System of Tariff Preferences. Given the relevant domestic industries are already heavily exposed to international competition, it is unlikely that the elimination of tariffs on goods imported from Hong Kong would have substantially detrimental impact on their competitiveness.

Table 7: Goods market access outcomes for Hong Kong, 2017-18			
Australia's top imports from Hong Kong		Applied tariffs	
Gold	\$322 million	971	0%
Telecommunication equipment and parts	\$123 million	764	Up to 5%
Electronic integrated circuits	\$61 million	776	0%
Pearls and gems	\$36 million	667	Gems (various) 0% Pearls 0%
Jewellery	\$34 million	681	5%

Source: ABS trade data on DFAT STARS database. All currencies AUD.

35. Traders using the A-HKFTA will have the flexibility to self-certify that their goods meet the A-HKFTA rules of origin, and will continue to have the option to have goods certified by a third party if they so choose. The A-HKFTA also includes provisions to ensure any non-tariff measures are consistent with the WTO commitments made by Australia and Hong Kong, and are not implemented in a way that creates unnecessary obstacles to trade. Australia and Hong Kong have also committed to continue working closely with each other to consider additional mechanisms to facilitate trade.
36. Traded goods are often subject to mandatory technical regulations in the country of import. Standardising requirements for compliance and/or certification reduce uncertainty for producers and exporters, lowering the cost of doing business. A-HKFTA provides mechanisms to facilitate trade in food products, wine and distilled spirits in particular. This creates opportunities to expand Australia's food and beverages exports to Hong Kong, which was worth \$1.4 billion in 2017-18 – the second highest in value behind gold.¹⁰ As Australia's food and beverages sector seeks to capitalise on continuing strong

¹⁰ Including unprocessed food and processed food and beverages. Source: ABS trade data on DFAT STARS database.

demand from Hong Kong and mainland China, it will benefit from the mechanisms agreed under A-HKFTA, which include the following:

- Guidance on harmonised and standardised labelling: key consumer information such as product name, country of origin, net contents and alcohol content must be displayed on the wine bottle. This will facilitate trade by minimising any requirements for wine to be re-labelled when it moves between Australia and Hong Kong;
- Regulation on food products and food safety assurances: Australian and Hong Kong regulators are required to apply international standards, guidance and recommendations, and to share information on their requirements. Australia's ability to set requirements and standards, including for biosecurity, quarantine, and certification for food products will not be affected. Closer alignment of the Parties' regulatory requirements for food products will facilitate trade by reducing compliance costs for business; and
- A mechanism to enhance collaboration between regulators, and to facilitate speedy resolution should consignments of perishables be delayed at the border. This will help to prevent avoidable loss or deterioration of perishable food products.

Services

37. As explained under **Part 2: Problem Identification**, Hong Kong has applied relatively open market settings to Australian service suppliers operating virtually or with an established presence in Hong Kong, but had not made any legal undertaking to maintain these settings. The A-HKFTA secures Hong Kong's open settings for Australian service suppliers. Furthermore, Hong Kong's services commitments under the A-HKFTA are better than the access it has offered any other trading partner, covering priority sectors such as financial, professional services including legal, engineering and construction services, education and transport, as well as services incidental to mining, manufacturing and energy distribution.
38. For **Financial services**, the A-HKFTA secures guaranteed market access for Australian insurance and banking providers, including those utilising new forms of financial service delivery. Australia and Hong Kong have also agreed on streamlined establishment requirements for Australian banks seeking to establish in Hong Kong as fully incorporated banks. Australia's regulatory framework, and ability to strengthen regulatory requirements, will not be affected.
39. The A-HKFTA also delivers benefits across a comprehensive range of Australia's services trade with Hong Kong, including:

- **Legal services:** Australia has secured Hong Kong's first ever trade commitments on legal services, guaranteeing cross-border access for provision of Australian and international law on business and arbitration. An associated binding side letter requires the Parties to meet within one year of entry into force of the FTA to further advance these commitments;
- **Professional services, including engineering and construction services:** Hong Kong has guaranteed market access for Australian architects, engineers and accountants. A-HKFTA also sets out a framework to assist professional bodies in negotiating agreements for the mutual recognition of professional qualifications and registration between Australia and Hong Kong;
- The A-HKFTA also sets out a framework to make it easier for professional bodies to negotiate agreements for the mutual recognition of professional qualifications and registration between Australia and Hong Kong. Australia and Hong Kong signed a treaty-level side letter, committing to exploring ways to facilitate recognition of existing relevant professional experience to satisfy standards that apply in their respective market for the registration, authorisation, licensing or certification of professional service suppliers;
- **Education services:** the A-HKFTA secures guaranteed market access for Australian education providers, including through any future market reform, for the provision of adult, higher, primary and secondary education services. Australia and Hong Kong have agreed to enhance cooperation between educational institutions and relevant government agencies to encourage cooperation in the areas of quality assurance, recognition of qualifications, online education, distance education and blended learning models;
- **Transport services:** the A-HKFTA secures guaranteed market access for Australian transport and logistics operators, especially the suppliers of road, rail and air transport services. Hong Kong has guaranteed market access for international maritime transport service suppliers (including for passenger services, freight services and vessel maintenance and repair) and for suppliers of services auxiliary to transport, such as stevedores, freight forwarders and customs clearance service providers;
- **Telecommunication services:** Australia and Hong Kong have agreed on modern and high-quality commitments that reflect today's telecommunications environment. They include rules that ensure retail rates are made publically available, which will raise awareness of roaming costs for travellers. Australia and Hong Kong have also agreed to work cooperatively to promote reasonable international

mobile roaming rates. The A-HKFTA includes commitments on submarine cable systems, ensuring access to key infrastructure is provided for Australian suppliers at reasonable and non-discriminatory rates; and

- **Services incidental to mining, manufacturing and energy distribution:** the A-HKFTA secures guaranteed market access for Australian suppliers of equipment maintenance and repair and building cleaning services to support the mining, manufacturing and energy distribution sectors.

40. In the A-HKFTA, Hong Kong provides Australia the best treatment in any FTA in relation to **preferential temporary entry** in the following categories:
- intra-corporate transferees (senior managers and specialists) for up to one year plus further stay of up to five years;
 - installers and servicers for up to three months in any 12 month period; and
 - business visitors for up to 90 days.
41. Australia made commitments to Hong Kong on preferential temporary entry consistent with Australia's existing immigration and workplace relations frameworks – allowing the Government to maintain control over Australia's labour market and ensure its stability. Australia will provide access to Hong Kong citizens in the following categories:
- intra-corporate transferees, including executives or senior managers for temporary stay up to four years and specialists for up to two years, both with the possibility of further stay;
 - independent executives for up to two years; and
 - business visitors for up to three months, or 6-12 months for service sellers.
42. For the first time in any FTA, Hong Kong will guarantee entry, stay and work rights for dependants and spouses of Australians granted entry as intra-corporate transferees for a period of greater than 12 months. Australia will provide right of entry and stay and work for dependants and spouses of intra-corporate transferees and independent executives of Hong Kong who have been granted entry for more than 12 months.

Investment

43. Investment provisions are split across the A-HKFTA and a separate Investment Agreement. Together, these agreements will provide a modern regulatory regime to support the robust investment relationship between Australia and

Hong Kong. They will facilitate direct investment from Hong Kong, or via Hong Kong, into Australia, and provide important protections to Australian investments in Hong Kong.

44. Under the A-HKFTA and Investment Agreement, Hong Kong has undertaken to extend to Australian investors the most favourable treatment it gives to any other investment partner in a subsequent agreement. The agreements together contain protections for the substantial investments in each other's economies, including:
- the customary international law minimum standard of treatment, including fair and equitable treatment and full protection and security;
 - rules governing expropriation, including the right to prompt and adequate compensation;
 - protection against discrimination as compared to each Party's own investors, and as compared to investors from third parties;
 - a guarantee that transfers relating to a covered investment will be able to be made freely and without delay, subject to laws relating to matters such as criminal offences and bankruptcy;
 - a prohibition on performance requirements such as a requirements to export a given level of goods or to transfer technology or proprietary knowledge; and
 - protections relating to senior management and board of directors;
45. The A-HKFTA will also promote foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board (FIRB), increasing it from \$266 million to \$1,154 million. This is consistent with the threshold provided currently to countries for which the CPTPP has come into force, plus China, the Republic of Korea and the United States. Australia has reserved the right to maintain its existing foreign investment review process, including the ability to screen investments in sensitive sectors. Lower screening thresholds of \$15 million and \$58 million will continue to apply to investments in agricultural land and agribusiness respectively, and investments in other land will continue to be subject to FIRB screening.
46. The Investment Agreement includes modern ISDS provisions which allow investors to directly enforce obligations in the agreement. The ISDS mechanism includes important safeguards to preserve the government's ability to pursue national security and legitimate public policy objectives. Such safeguards include:

- a security exception to allow Australia to take measures to protect national security;
- exceptions for tax, prudential and macroeconomic instability measures;
- important clarifications around the standard of indirect expropriation and the minimum standard of treatment;
- general exceptions for health, environmental and other measures; and
- explicit recognition that Parties have a right to ensure that investment activity is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

The ISDS mechanism also requires transparency of proceedings, and mechanisms to expedite claims that are manifestly without legal merit.

47. Australia and Hong Kong have agreed to terminate the 1993 *Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments*, including its provisions for extended protection of existing investments, and replace this with the new Investment Agreement. This avoids “grandfathering” the current agreement’s standard of protection for existing investments. Tobacco control measures are explicitly and specifically carved out of the scope of the ISDS mechanism under the new Investment Agreement, making it impossible to bring a claim under that mechanism with respect to such measures.

E-Commerce

48. Most significantly, for the first time, the A-HKFTA sets **modern e-commerce rules** to govern services trade between Australia and Hong Kong, to facilitate the robust growth of the digital economy. The A-HKFTA includes a number of commitments on data transfer which will benefit Australian businesses exporting goods or services across borders on a digital basis, whether virtually or with a presence in Hong Kong:
- a guarantee that electronic transmissions will not attract customs duties;
 - a commitment to allow the supply of electronic payment services for cross-border transactions;
 - a guarantee to allow the free flow of data across borders where it is part of business activity; and
 - a guarantee that businesses will not, as a condition of trade, be forced to build data storage centres, or use local computing centres in Hong Kong.

Commitments guaranteeing free flows of data across borders, not requiring local data storage, and ensuring clear, transparent and effective regulations applied to cross-border data transfer can greatly assist a business’s operational

capacity and its ability to compete. For instance, the capacity to facilitate electronic payment transmissions for cross-border financial transactions is an indispensable part of international banking and finance services.

Government procurement

49. Under the A-HKFTA, Hong Kong has committed to providing access to its government procurement market at a level equivalent to its WTO Agreement on Government Procurement (GPA) commitments. Australia is acceding to, but not yet a party to, the GPA. This commitment will cover 62 departments and agencies and five non-government public bodies, which account for the majority of Hong Kong's government procurement. Previously Hong Kong only offered access to its non-government public bodies to WTO GPA Members.
50. Australian businesses will have the right to bid for government procurement in all categories of goods and construction services, and many services categories, including
- computer and related services;
 - business services;
 - transport services;
 - rental/leasing of ships, aircraft and other transport equipment;
 - telecommunications and related services; and
 - environmental services.

A treaty-level side letter provides a mechanism through which Australia and Hong Kong can work together to facilitate industry capability to engage in each other's government procurement markets, including conditions for participation and the related assessment process.

51. Australia has made government procurement market access commitments which do not exceed those included in the WTO GPA, requiring listed Commonwealth and State and Territory entities to follow the rules for procurement covered by the A-HKFTA.

Other rules to improve the business environment

52. The A-HKFTA also includes a number of provisions which help to improve transparency and provide certainty, in order to support the competitiveness of Australian exports and businesses. Highlights include:
- rules on customs procedures and trade facilitation building upon the WTO Agreement on Trade Facilitation, including a commitment to allow advance electronic submission and processing of information before goods physically arrive at the port, making it easier for Australian companies to export and do business in Hong Kong; as well

as a commitment to provide traders with advice on customs matters, including tariff classification, customs valuation and whether a good meets the A-HKFTA rules of origin;

- intellectual property rules building on the WTO Agreement on Trade-Related Aspects of Intellectual Property, including due process mechanisms to support the appropriate granting of geographical indications, which aim to increase confidence for Australian intellectual property rightsholders and users;
- a commitment for Hong Kong to maintain legal regimes that target anti-competitive business practices and enforce consumer protection, to ensure that the integrity of market access commitments is not undermined by anti-competitive business conduct;
- an undertaking to ensure that information required to establish or maintain Small and Medium Enterprises (SMEs) are published online, and that all laws, regulations and procedures related to all areas of the FTA are published in advance and administered in a consistent, impartial, and reasonable manner; and
- rules encouraging regulatory coherence between the two Parties to further facilitate active business engagement between Hong Kong and Australia.

States and Territories

53. The A-HKFTA is expected to have a positive impact on regional Australia through greater legal certainty for exports to Hong Kong. The A-HKFTA removes a risk that Hong Kong could restrict access to its market compared to current policy settings in a way that prejudices Australian trade interests. This will provide certainty for Australian exporters that Hong Kong will continue to provide tariff-free entry to Hong Kong. For service suppliers, the A-HKFTA locks in access and ensure non-discriminatory treatment for Australian service suppliers.
54. In addition to establishing facilitative practices and regulatory certainty, the A-HKFTA will reduce costs and red tape for Australian exporters, service suppliers and investors in Hong Kong, by setting common rules and promoting transparency of laws and regulations. These include more transparent and efficient customs procedures, liberal rules of origin, mechanisms through which to address non-tariff barriers, and simplified rules and technical requirements for products, including wine and food.
55. The A-HKFTA is a high-quality, modern agreement, addressing contemporary trade challenges and providing opportunities for Australia's innovative twenty-first century economy. Small and medium-sized enterprises will benefit from

provisions emphasising user-friendliness and accessibility of information on opportunities arising from the A-HKFTA.

56. There are very few WTO rules applying to electronic commerce (e-commerce). The A-HKFTA locks in rules that would facilitate e-commerce as well as ensuring that digital trade will remain free of barriers such as the requirement to locate data storage facilities locally for business transactions that take place in Hong Kong. This will assist regional businesses transacting digital commerce with clients and companies in Hong Kong.
57. The A-HKFTA will also support the expansion of Australia's creative and innovative industries through a common set of intellectual property rules that incentivise research and development and creative endeavour.

Impact on government revenue

58. The estimated loss of tariff revenue for Australia from the A-HKFTA is approximately \$5 million in 2019-2020 and \$25 million over the forward estimates period until 2022, as a result of revenue foregone from the elimination of all Australian duties, other than excise, on goods imported from Hong Kong. This estimate assumes the A-HKFTA will enter into force in early 2020.
59. Resources for a bilateral negotiation with Hong Kong have been met within existing budgets and staff allocations.
60. There is as yet no method for measuring the positive impact on revenue of continued regulatory certainty for Australian services exporters. It is not feasible to attempt to quantify the benefits of an FTA in this sense.

Dispute settlement

61. The A-HKFTA includes a binding State-to-State dispute settlement mechanism, drawing on previous FTAs and the WTO system, to resolve disputes between the Parties. Certain provisions of the A-HKFTA are excluded from the dispute settlement mechanism (the Technical Barriers to Trade Chapter, Sanitary and Phytosanitary Measures chapter, Competition Policy Chapter and the provisions on regulatory coherence and SMEs in the Transparency Chapter).
62. Furthermore, the dispute settlement mechanism only applies regarding a refusal to grant temporary entry under the Movement of Natural Persons chapter if a Party has developed a pattern of practice and the natural persons affected have exhausted all available domestic remedies.
63. The Investment Agreement includes an investor-state dispute settlement mechanism granting investors access to arbitration where a Party has breached

an investment obligation or protection and the investor has incurred loss or damage as a result. The Investment Agreement allows for the protection of Australia's right to regulate for legitimate public welfare and national security objectives, by including appropriate procedural and substantive safeguards and exceptions. These include:

- a package of exceptions that preserves adequate policy space for Australia to take the national security measures it needs going forward related to critical infrastructure and maintaining the integrity of telecommunications networks, as agreed between relevant agencies;
- a recognition that non-discriminatory regulatory actions designed and applied to safeguard public welfare would not constitute indirect expropriation, except in rare circumstances;
- the National Treatment and Most-Favoured Nation treatment obligations applying only in respect of Hong Kong investors or investments that are in "like circumstances" to Australian investors or investments;
- a Minimum Standard of Treatment obligation that does not create any additional substantive rights beyond those provided under customary international law; and
- the mere fact that an action is taken that is inconsistent with an investor's expectations is explicitly stated not to constitute a breach of the Minimum Standard of Treatment, whether or not there is loss or damage to the investment as a result.

PART 6: CONSULTATION

Business, industry and civil society

64. Stakeholder views were considered throughout negotiations on the A-HKFTA and the Investment Agreement. DFAT commenced stakeholder consultations in 2017 with a call for public submissions. DFAT received 11 submissions, which are published on its website.

65. Following the launch of negotiations in May 2017 and throughout, DFAT received a number of public submissions and correspondence from NGOs, companies, peak industry groups and an individual on a range of issues. DFAT conducted in-person consultation with industry, peak bodies and interested stakeholders across a range of States and Territories during negotiations, as well as with business stakeholders in Hong Kong (which is Australia's leading business base in Asia).

66. DFAT provided updates on the negotiations via its website, and consulted stakeholders and interested members of the public via group email address (a-hkfta@dfat.gov.au).

States and Territories

67. The proposed treaty action will have an impact on the States and Territories. The Trade Minister wrote to State and Territory leaders seeking endorsement of Australia's services, investment and government procurement offers to ensure State and Territory governments had oversight of the commitments being made at the regional level of government. All State and Territory Governments endorsed including regional-level commitments in the A-HKFTA market access offers. Several non-conforming measures relating to regional governments are included in annexes related to services and investment market access.

Consultations since the negotiations concluded

68. DFAT has continued to consult stakeholders, State and Territory Governments, and interested members of the public, and other Commonwealth Government departments since the conclusion of negotiations on the A-HKFTA was announced on 15 November 2018. DFAT will also continue to make information on the A-HKFTA publicly available in a timely fashion on its website (<https://dfat.gov.au/trade/agreements/not-yet-in-force/a-hkfta>) and respond appropriately to emails sent by stakeholders and interested members of the public to the DFAT A-HKFTA email address (a-hkfta@dfat.gov.au).
69. A number of business stakeholders, including the Australian Chamber of Commerce in Hong Kong, have made public comments welcoming the outcomes of the negotiations.

PART 7: CONCLUSION

70. It is in Australia's interests to enter into the A-HKFTA and the Investment Agreement, given these agreements are expected to:
- guarantee free flow of data across borders, and a commitment not to require data to be stored locally;
 - secure a legal guarantee that Australian exporters will continue to receive Hong Kong's zero-tariff treatment for their goods;
 - remove any risk associated with adverse changes to Hong Kong's applied policy settings for Australian service suppliers and investors;
 - secure Australian exporters' competitive position in Hong Kong, as a key market for Australia in its own right as well as its role as a gateway for mainland China and the North Asia region

- deliver faster and deeper market access gains than are possible through multilateral or regional trade negotiations;
- be consistent with WTO requirements for free trade agreements; and
- complement Australia's efforts to seek additional trade liberalisation across the region, through the WTO and regional mechanisms including the CPTPP and RCEP, as well as bilateral FTAs.

PART 8: IMPLEMENTATION AND REVIEW

71. Australia's commitments in the A-HKFTA and the Investment Agreement do not extend beyond those already agreed for other Australian FTAs. As such, minimal changes are needed to Australia's regulatory system to implement the A-HKFTA and the Investment Agreement. Implementation of the A-HKFTA and the Investment Agreement will require the following changes:
- *The Customs Act 1901, the Customs Tariff Act 1995* and relevant customs regulations need to be amended to incorporate the preferential tariff rates and rules of origin that will apply to goods imported from Hong Kong under the A-HKFTA;
 - *The Foreign Acquisitions and Takeovers Regulations 2015* will require amendment to incorporate the new thresholds for screening investment proposals by investors from Hong Kong; and
 - *Migration (LIN 18/183: Determination of International Trade Obligations relating to Labour Market Testing) Instrument 2018* will need to be amended through a Ministerial Determination under section 140GBA(2) of *the Migration Act 1958*, to implement Australia's obligations to Hong Kong on entry and temporary stay of intra-corporate transferees and independent executives with respect to Labour Market Testing.
72. The A-HKFTA will enter into force 30 days after the date on which the Parties exchange written notifications that they have completed their respective necessary internal procedures, or on such other date as the Parties may agree.
73. Similarly, the Investment Agreement will enter into force 30 days after the date on which the Parties exchange written notifications that they have completed their respective necessary internal procedures, or on such other date as the Parties may agree. The 1993 Investment Agreement will be terminated when the new Investment Agreement comes into force.
74. To amend the A-HKFTA or the Investment Agreement, both Parties must agree in writing.

75. Either Party may terminate the A-HKFTA by providing 180 days advance notice in writing to the other Party. The Investment Agreement provides for the same termination mechanism, except that following the date of any termination, the Investment Agreement will continue to be in force for a further period of 10 years.

76. The A-HKFTA provides for a Joint Commission which must meet within two years of the date of entry into force. The Joint Commission is charged with reviewing the application and implementation of the A-HKFTA and Investment Agreement, considering proposals for amendment, and other functions as the Parties may agree. A general review of both agreements is to be undertaken within five years of the entry into force of the A-HKFTA, and every five years thereafter.

REGULATORY BURDEN AND COST OFFSET ESTIMATE FOR AUSTRALIA

1. The entry into force of the A-HKFTA is expected to have no regulatory impact for Australian goods exporters to Hong Kong. Australian exporters currently have tariff-free access to Hong Kong and are not required to produce a certificate of origin for their goods. These settings will continue under the A-HKFTA (unless Hong Kong increased its applied MFN tariffs above zero – in which case Australian exporters would need to meet the rules of origin under the A-HKFTA to receive duty free access).
2. Australia requires claims for preferential tariff treatment for goods imported from Hong Kong be supported by a declaration of origin. Unlike certificates of origin, declarations of origin can be completed by the exporter, producer (in Hong Kong), or the importer (in Australia), and they do not need to be purchased or obtained from an issuing body. However, the A-HKFTA provides flexibility for the exporter, producer or importer to obtain a declaration of origin from an issuing body on an opt-in basis.
3. Any regulatory burden is most likely to fall to Hong Kong-based exporters and producers of goods into Australia that choose to trade under the A-HKFTA. Where a declaration of origin is completed by the importer (Australia), there could be a minor compliance cost. In most cases, the terms of individual business contract between exporters and importers would stipulate how a declaration of origin should be completed. As such, it is not possible to estimate the overall compliance cost for Australian importers.
4. Taking the above factors into account, the total average increase in regulatory burden for business is estimated to be minor.