

Trade & Commerce

Hong Kong

1. Free Trade Agreements

Hong Kong aims to conclude the Hong Kong-ASEAN free trade agreement ("**FTA**") in 2016. This was announced by Hong Kong's Financial Secretary John Tsang earlier this year.

ASEAN comprises Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

China and ASEAN already have a longstanding FTA, but Hong Kong is not part of it. Although there was some discussion as to whether or not to have Hong Kong accede to the China-ASEAN FTA, all parties decided in 2013 that Hong Kong and the ASEAN nations should start negotiations for a separate FTA. Hong Kong already has FTAs with New Zealand, Chile, Iceland, Liechtenstein, Norway and Switzerland, etc.

Based on 2013 figures, the ASEAN nations were collectively Hong Kong's second largest trading partner for trade in goods, and in 2012, ASEAN was Hong Kong's fourth largest trading partner for services.

Based on government announcements, the FTA is expected to cover the following areas which represent the usual areas covered in most regional FTAs:

- i. elimination and/or reduction of tariffs;
- ii. rules of origin;
- iii. liberalisation of trade in services;
- iv. liberalisation, promotion and protection of investments;
- v. intellectual property cooperation;
- vi. non-tariff barriers;
- vii. trade remedy measures;
- viii. customs procedures and trade facilitation;
- ix. economic and technical cooperation; and
- x. dispute settlement.

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Should the ASEAN-Hong Kong FTA be successfully concluded, Hong Kong would stand to benefit substantially for the export of goods and services to ASEAN. However, the access to the ASEAN markets from Hong Kong may not be uniform across all 10 ASEAN nations, as each nation sometimes seeks exclusions or offers different tariffs under its previously negotiated FTAs.

2. Export Control

Pursuant to Strategic Trade Controls Circular No. 8/2015 published by the Trade and Industry Department, the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2015 came into effect on 20 April 2015.

This brought Hong Kong's export control regime in line with the agreements by the Wassenaar Arrangement at the Plenary meeting in December 2013.

Two interesting areas which were added are set out below along with their definitions.

Intrusion software

"Software" specially designed or modified to avoid detection by 'monitoring tools', or to defeat 'protective countermeasures', of a computer or network capable device, and performing any of the following:

- The extraction of data or information, from a computer or network capable device, or the modification of system or user data; or
- The modification of the standard execution path of a program or process in order to allow the execution of externally provided instructions.

"Intrusion software" excludes hypervisors, debuggers, software reverse engineering tools, DRM software, software for asset tracking or recovery.

IP network surveillance systems (5. A. 1. j.)

IP network communications surveillance systems or equipment, and specially designed components therefore, having all of the following:

- Performing all of the following on a carrier class IP network (e.g., national grade IP backbone):
 - Analysis at the application layer (e.g., Layer 7 of Open Systems Interconnection (OSI) model (ISO/IEC 7498-1));
 - Extraction of selected metadata and application content (e.g., voice, video, messages, attachments); and
 - Indexing of extracted data; and
- Being specially designed to carry out all of the following:
 - Execution of searches on the basis of 'hard selectors'; and

- Mapping of the relational network of an individual or of a group of people.

IP network communications surveillance systems excludes systems or equipment for marketing, network Quality of Service (QoS) and Quality of Experience (QoE).

Therefore, the import or export of intrusion software or IP network communications surveillance systems now require an import or export licence from the Trade and Industry Department to be obtained prior to the import or export.

3. Food Labelling

The Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 (the "**Amendment Regulation**") was passed in October 2014 by the Legislative Council. Traders should familiarize themselves with the requirements on nutritional composition of infant formulae and nutrition labelling of infant formulae, follow-up formulae and prepackaged food for infants and young children. Formulae for special medical purposes may be exempted if it is appropriately labelled.

Based on the guidance provided by the Centre for Food Safety, infant formula products that are caught would be formula product which is intended for consumption as a substitute for human breast milk that is specially manufactured to satisfy, by itself, the nutritional requirements of persons of any age up to and including 12 months until the introduction of appropriate complementary feeding, or marked or labelled as "infant formula" (嬰兒配方產品) or with any other words of similar meaning would be considered as infant formula.

According to the same guidance, follow-up formulae is formula product which is represented as a replacement for human breast milk or infant formula (including its replacement or subsequent replacement), and intended for consumption as a liquid element in a progressively diversified diet by persons of any age from 6 months to under 36 months would be considered as follow-up formula.

The requirements on nutritional composition and nutrition labelling of infant formulae came into operation on 13 December 2015. They are referred to as the "Energy + 33 nutrients" nutritional composition requirement, and the "Energy + 29 nutrients" nutrition labelling requirement, based on the number of nutrient types listed per each requirement.

There is a longer grace period for the requirements on nutrition labelling of follow-up formulae and prepackaged food for infants and young children, which will only come into operation on 13 June 2016.

4. Waste electrical and electronic equipment

To tackle the growing problem of waste electrical and electronic products ("WEEE"), Hong Kong has long debated implementing a mandatory Producer Responsibility Scheme. Until now, Hong Kong has only had voluntary schemes.

In March 2016, the Legislative Council passed the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Act 2015. It amends the Product Eco-Responsibility Ordinance (Cap. 603) and the Waste Disposal Ordinance (Cap. 354), and by doing so, introduces a mandatory Producer Responsibility Scheme ("PRS").

The mandatory PRS and WEEE disposal requirements have yet to come into force despite having been gazetted. It is unclear when they will come into force, but it may only come into force closer to the completion of the infrastructure to support these new requirements -- a WEEE Treatment and Recycling Facility, is completed. The completion of this facility is targeted to take place in 2017.

The new requirements cover air-conditioners, refrigerators, washing machines and television sets as well as computers and certain associated devices including printers, scanners and monitors. However, it does not cover mobile phones, as the authorities were of the view that there is a healthy second hand market for mobile phones. However, producers should be careful to differentiate between products that could either be classified as mobile phones or tablets, as tablets are covered under the new requirements.

Manufacturers and importers of regulated electrical equipment will be required to register as registered suppliers and pay a recycling fee for regulated electrical equipment that is distributed in Hong Kong.

In addition, a seller must arrange, after distribution of regulated electrical equipment, a removal service for consumers free of charge so that the old equipment can be delivered to a competent recycler.

Any person who is engaged in the storage, treatment, reprocessing and recycling of regulated e-waste must obtain a waste disposal license, and a permit is required for the import and export of regulated e-waste, while regulated e-waste will no longer be accepted at landfills for disposal.

The legislation has clarified that these exclude repair activities.

5. UN sanctions

Between 2015 – 2016 to date, Hong Kong has updated its sanctions regulations to be in line with the latest United Nations Security Council Resolutions.

Among the new and amended sanction regulations, the affected countries include Somalia, Iran, Liberia, Cote d'Ivoire, Libya, Yemen, South Sudan, Central African Republic and the Democratic Republic of Congo.

Most of the resolutions prohibit financial dealings with blacklisted persons, while some prohibit trade in arms and munitions. The new sanctions also

include the prohibition against providing military assistance, advice or training to certain blacklisted persons or groups related to those jurisdictions.

The sanctions also prohibit the entry into or transit through Hong Kong of certain blacklisted persons related to those jurisdictions.

Hong Kong traditionally only enacts sanctions in line with the United Nations Security Council resolutions, and generally does not take its own political stances by enacting its own additional sanctions.

6. New non-preferential rules of origin

On 6 May 2015, Hong Kong's Trade and Industry Department introduced new non-preferential rules of origin by issuing Certificate of Origin Circular No. 1/2015, which replaces a previous circular.

Hong Kong's non-preferential rules of origin do not apply to determining the origin of an item for the purposes of preferential tariffs under Hong Kong's free trade agreements. However, both these non-preferential rules of origin and Hong Kong's preferential rules of origin are quite similar, including the product specific rules.

It is interesting to note, however, that the Trade Descriptions Ordinance (Cap. 362) applies the rules of origin of Hong Kong's free trade agreements when a trader indicate the country of origin of a product.

