



**Asia-Pacific
Economic Cooperation**

2019/CTI/WKSP4/011

Session: I

Scheduling Approaches in Free Trade Agreements – Hong Kong, China’s Experience

Submitted by: Hong Kong, China



**Workshop on Optimizing Investment Measures in
the Asia-Pacific Region
Shanghai, China
11-12 April 2019**

Scheduling Approaches in Free Trade Agreements – Hong Kong, China's Experience

LO Kwan Yung, Trade Officer



Trade and Industry Department

Interface between Investment and Trade in Services

- Traditional Investment Promotion and Protection Agreements (IPPAs) or Bilateral Investment Treaties (BIT)
 - Scope: trade in services covered?
 - Obligations: liberalisation (market access) covered?
- Overlapping of IPPA and trade in services under free trade agreements (FTAs).
- Recent FTAs tackle such interface issues within the agreements, e.g. the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Four Modes of Supply of Services

- Mode 1 : cross-border supply
- Mode 2 : consumption abroad
- Mode 3 : commercial presence **Part of Investment**
- Mode 4 : presence of natural persons

Hong Kong, China's Experience

- In the following presentation:
 - Share Hong Kong, China's experience in the different scheduling approaches for specific commitments in FTAs which cover the liberalisation of investment with respect to commercial presence.

Key Features of HKC's FTAs

Examples of Elements in Hong Kong, China's FTAs -

Goods	Services / Others	Horizontal Issues
<ul style="list-style-type: none">• Trade in Goods• Rules of Origin and Origin Procedures• etc.	<ul style="list-style-type: none">• Cross-Border Trade in Services• Establishment• Financial Services• Movement of Natural Persons• etc.	<ul style="list-style-type: none">• General Definitions• Transparency• Institutional Provisions• Dispute Settlement• General Provisions and Exceptions• etc.

Scheduling Approaches for Specific Commitments

- Positive – GATS type
- Negative – NAFTA type
- Hybrid – combination

HKC's Scheduling Approaches in FTAs

- Positive Listing – HKC's FTAs with:

- ASEAN
- Chile
- Georgia
- Macao

Modes of supply: 1)	Cross-border supply 2)	Consumption abroad 3)	Commercial presence 4)	Presence of natural persons
Sector or Sub-sector	Limitations on Market Access		Limitations on National Treatment	Additional Commitments
F. Other Business Services Advertising services (CPC 871)	1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments		1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments	
Market research and public opinion polling services (CPC 864)	1) Unbound 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments		1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in Horizontal Commitments	
Management consulting services (CPC 855)	1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments		1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments	
Services related to management consulting (CPC 866)	1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments		1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments	
Technical testing and analysis services (CPC 8676)	1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments		1) None 2) None 3) None 4) Unbound except as indicated in Horizontal Commitments	
Services incidental to agriculture and forestry: these are limited to the provision	1) None 2) None 3) None 4) Unbound except as indicated in Horizontal		1) None 2) None 3) None 4) Unbound except as indicated in	

139

Extract from HKC-Chile FTA

HKC's Scheduling Approaches in FTAs

- Negative Listing – HKC's FTAs with:
 - Australia (except financial services)
 - Member States of the European Free Trade Association (EFTA)
 - New Zealand

<u>I-HKC-2</u>	
Sector	BUSINESS SERVICES Professional Services
Industry Classification	CPC 8671 Architectural services
Obligations Concerned	National Treatment (Articles 7.4 and 12.4) Local Presence (Article 7.5)
Measures	Section 13 of the <i>Architects Registration Ordinance (Cap. 408)</i>
Description	<u>Cross-Border Trade in Services, and Establishment and Related Provisions</u> To be registered as a Registered Architect, a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

<u>II-HKC-9</u>	
Sector	BUSINESS SERVICES Professional Services
Industry Classification	CPC 9312 Medical and dental services CPC 93191 Services provided by midwives, nurses, physiotherapists and para-medical personnel Other Professional Services ¹
Obligations Concerned	Market Access (Article 7.5) National Treatment (Articles 7.4 and 12.4) Local Presence (Article 7.5) Performance Requirements (Article 12.6) Senior Management and Boards of Directors (Article 12.7)
Description	<u>Cross-Border Trade in Services, and Establishment and Related Provisions</u> For trade in services, Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above, except for Mode 2 for: (a) Medical and dental services (CPC 9312); and (b) Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191).

Extract from HKC-Australia FTA

HKC's Scheduling Approaches in FTAs

- Negative Listing – Features:
 - Annex I – existing non-conforming measures (NCMs)
 - subject to ratchet
 - Annex II – reservations
 - liberalised or not in the applied regime

HKC's Scheduling Approaches in FTAs

- Hybrid Listing – HKC's FTA with:
 - Australia (financial services)

Section A and Section B – Part I			
Modes of supply:	1) Mode 1	2) Mode 2	3) Mode 3
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)		Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	<u>Section A</u>		<u>Section B – Part I</u>
SECTOR-SPECIFIC COMMITMENTS			
<u>Insurance and Insurance-related Services</u>			
(i) direct insurance (including co-insurance): (i) life (ii) non-life	1) None other than that statutory insurances must be purchased from an insurer authorised in Hong Kong, China. 2) None other than that statutory insurances must be purchased from an insurer authorised in Hong Kong, China. 3) None other than that only an incorporated company authorised by the Insurance Authority (IA) or an association of underwriters approved by		Obligations Concerned: National Treatment (Mode 3) (Article 8.4) Senior Management and Boards of Directors (Article 8.7) Measures: Paragraph 3.5(a) of the Authorization Guideline (GL1) published by the Insurance Authority. Description: The chief executive appointed by the authorised insurer shall normally reside in Hong Kong, China.

SCHEDULE TO ANNEX 8-B – HONG KONG, CHINA – 2

Section B	
Part II	
HKC-L	
Sector	FINANCIAL SERVICES
Subsector	All
Obligations Concerned	National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.7)
Description	Hong Kong, China reserves the right to adopt or maintain: <ul style="list-style-type: none"> (a) Mode 1: Any measure with respect to all financial services other than the financial services referred to in subparagraph (a)(ii), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (g), subparagraph (i), and subparagraph (o) of Annex 8-A; (b) Mode 2: Any measure with respect to all financial services other than the financial services referred to in subparagraph (a)(ii), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (e), subparagraph (f), subparagraph (g), subparagraph (h), subparagraph (i), subparagraph (j)(i), subparagraph (j)(ii), subparagraph (j)(iii), subparagraph (j)(iv), subparagraph (j)(v), subparagraph (k), subparagraph (l), subparagraph (m), subparagraph (o), and subparagraph (p) (excluding intermediation services under subparagraph (p)) of Annex 8-A; (c) Modes 1 and 2: Any measure with respect to statutory insurance services referred to in subparagraph (a) of Annex 8-A; (d) Mode 3: Any measure with respect to all financial services other than the financial services referred to in subparagraph (a), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (e), subparagraph (f), subparagraph (g), subparagraph (h), subparagraph (i), subparagraph (j)(i), subparagraph (j)(ii), subparagraph (j)(iii),

SCHEDULE TO ANNEX 8-B – HONG KONG, CHINA – 13

HKC's Scheduling Approaches in FTAs

- Hybrid Listing – Features:
 - Section A : MA positively scheduled
 - Section B Part I : existing NCMs
- subject to ratchet
 - Section B Part II: reservations
- liberalised or not in the applied regime

Scheduling Approaches for Specific Commitments

- Irrespective of scheduling approaches and their different presentations, all are capable of making commitments of high quality.
- In the end, it is the ambition level of an FTA party which is the most critical.

Thank you



Trade and Industry Department