

18 May 2017

To Australia-Hong Kong Free Trade Agreement  
Office of Trade Negotiations  
Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton ACT 0221

By email: [a-hkfta@dfat.gov.au](mailto:a-hkfta@dfat.gov.au)

Dear Sir / Madam

### Australia-Hong Kong Free Trade Agreement – Public call for submissions

We refer to the call for public submissions in relation to the potential opportunities and impacts of a possible Free Trade Agreement (FTA) with the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong) announced by the Minister for Trade, Tourism and Investment, The Hon Steven Ciobo MP on 24 April 2017 (Australia-Hong Kong FTA).

We welcome the opportunity to make this submission as a strong relationship with Hong Kong, one of Australia's most significant trading partners, is in Australia's long term strategic interests.

As the world's first global law firm headquartered in Asia, and as the first ever partnership between a Western and Chinese law firm, we believe our integrated business model; our cross-border experience; our strong presence in Hong Kong (we are the sixth largest law firm in Hong Kong, with the largest office of any Australian originated law firm in that market) and our unique combination of "east" and "west" in terms of our client base, and our business itself, provides us with a perspective on certain issues relating to Australia's trade and foreign policy and the ability to make a meaningful contribution to the possible development of an Australia-Hong Kong FTA.

### Australia and Hong Kong's existing foreign relations

Australia and Hong Kong already enjoy strong commercial ties. Over 600 Australian companies have a major presence in Hong Kong, and Hong Kong represents Australia's sixth-largest source of foreign investment.<sup>1</sup> In addition, Hong Kong's location within Asia; its relative distance from Australia; its stable legal

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<sup>1</sup> DFAT, *Hong Kong Country Brief* <http://dfat.gov.au/geo/hong-kong/Pages/hong-kong-country-brief.aspx>.

and regulatory environment; and its sophisticated financial markets and services sectors also means it is an ideal location for Australian companies looking to expand into Asia.<sup>2</sup>

### Trade in goods

Historically, Australia has focused heavily on liberalising trade barriers on goods. This focus has helped to ensure that Australia's export markets have contributed to Australia's economic prosperity. However, Australia cannot be complacent.

To ensure continued growth, Australia must align the outcomes being negotiated in any Australia-Hong Kong FTA with those desired by Australian industry and which are applicable to the market in Hong Kong and any further markets from which those goods are exported from Hong Kong. Where goods remain subject to tariffs in Hong Kong, the government should engage with industry to ascertain which (if any) of those remaining goods are of primary importance to industry, or if there are other areas impeding trade which government should shift its focus to.

The changing nature of Australia's economy, and in turn, its export markets, mean that future export opportunities need to be considered when negotiating an Australia-Hong Kong FTA. The FTA should aim to be flexible enough to move with industry as future export opportunities emerge without impacting on Australia's ability to stay ahead of evolving future markets. This will also help to ensure that the opportunities provided by the FTA are considered by Australian industry as part of their everyday domestic trade activities.

### Trade in services

Given the nature of the Hong Kong economy and the scale of its services sector (for itself and for China), it is the trade of services that provides Australia with the greatest opportunity for future economic development. Currently, services represent 70% of Australia's GDP but only 21.8% of exports.<sup>3</sup> This reflects the historical shift in the Australian domestic economy, gradually moving away from primary products towards services, with nearly 70% of all growth over the past five years attributed to the service industry.<sup>4</sup>

Australia's FTAs must take advantage of the increasing success of Australia's service industry. In 2010, the Productivity Commission found that "although barriers to services exports can exist "at the border", as is often the case in the goods trade, many barriers to service exports occur "behind the border" – that is, they are implicitly barrier implemented through domestic regulations with the destination country".<sup>5</sup> As such, it is important that any Australia-Hong Kong FTA focuses on overcoming the practical impediments to the free flow of services, which include addressing restrictions on data sharing, accessibility and use; discriminatory regulation directed at foreign companies; and opaque accreditation, registration or licensing requirements.

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<sup>2</sup> DFAT, *Hong Kong Country Brief* <http://dfat.gov.au/geo/hong-kong/Pages/hong-kong-country-brief.aspx>.

<sup>3</sup> DFAT, *The importance of services trade to Australia*, <http://dfat.gov.au/international-relations/international-organisations/wto/pages/the-importance-of-services-trade-to-australia.aspx>.

<sup>4</sup> Ruthven, Phil (10 August 2016); *Australia's Growth Industries*, IBISWorld, <https://www.ibisworld.com.au/media/2016/08/10/australias-growth-industries>

<sup>5</sup> Productivity Commission (2015), *Barriers to Growth in Service Exports – Research Report*, <http://www.pc.gov.au/inquiries/completed/service-exports#report>

Australia's key service exports are often (by value) found in the tourism and education sector. These are also relevant to the Hong Kong market. However, we believe that Australia's comparative strengths and market depth are in the financial, professional, infrastructure and IT service sectors. These are also some of the most regulated overseas industries according to the OECD services trade restrictive index. In contrast, Australia imposes a comparatively low level of restriction to services trade. In *all* our trade relationships, Australia should seek to ensure that the regulatory requirements are as reciprocal as possible in nature (or put on a "pathway" to the maximum possible reciprocity, with specific and measureable timetables and reporting requirements), including through the use of equivalence regimes wherever possible.

### Labour mobility

Key to the export of services is the mobility of labour. Australia is one of the most multicultural countries in the OECD. Almost 30 per cent of Australia's labour force was born overseas, and it is predicted that 450,000 Australians will live and work in Asia by 2030. As a result, Australia has a unique opportunity to use its existing network of talent to help Australia increase its touch points within Asia. Any framework which would provide industry with greater opportunities to take advantage of this would ensure greater economic and technical cooperation between Australia and Hong Kong. This would include reducing unnecessary restrictions on the cross-border mobility of intra-corporate staff transferees (that is, where the transfer of the relevant people is within an organisation, and for the purpose of skills transfer within that business and/or the integration of that business, such that the transfer of those staff will not impact on domestic employment by that business or raise any border security issues).

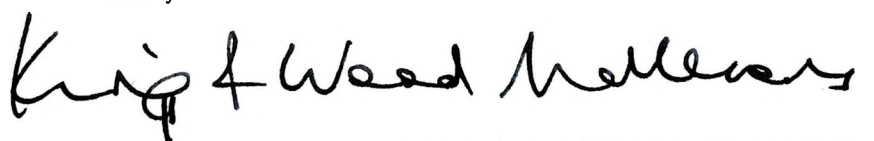
### Australia-Hong Kong FTA and CHAFTA

Hong Kong's location and position as a Special Administrative Region of the People's Republic of China also means that Australian companies looking to gain access to mainland China have used Hong Kong as a bridge to do so. Hong Kong therefore plays a significant role in Australian inbound and outbound Chinese investment. Any Australia-Hong Kong FTA should therefore ensure that the conditions of the FTA are no less favourable than those already present under CHAFTA.

We are making these submissions on behalf of our firm, and the views expressed are our own and not those of any of our clients.

We would welcome the opportunity to discuss this submission with you, and are very happy to assist should there be any queries arising from this submission. Please contact Stuart Fuller, Partner, on 02 9296 2155 / [stuart.fuller@au.kwm.com](mailto:stuart.fuller@au.kwm.com).

Yours faithfully



King & Wood Mallesons