



CEPA II (Summary Briefing)

On 27th August 2004, the Mainland and Hong Kong SAR governments (the "Sides") signed the Record of Consultations on Further Liberalisation under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA II"), in keeping with the "building block approach" adopted for further extension of the concessions granted by CEPA and its Annexes, as signed respectively on 29th June 2003 and 29th September 2003 ("CEPA I").

CEPA II provides further liberalisation and Mainland market access for Hong Kong goods and services. Some of the major features of CEPA II are outlined below.

I. Trade in Products (Annex I)

713 additional Hong Kong product categories, which conform to the relevant Rules of Origin ("ROs"), will become eligible for zero tariff upon exportation from Hong Kong to the Mainland. These product categories include food, drinks, leather, textiles, clothing, machinery, equipment, furniture, medicines, compressors and chemical substances. The 713 product categories are composed of 529 "*existing production*" categories which can benefit from the zero tariff from 1st January 2005, and 184 "*planned production*" categories which will become eligible for the zero tariff as of 1st January 2006, upon confirmation by both Sides that the products to which they relate have in fact come into production. Detailed arrangements will be announced by the Trade & Industry Department ("TID") in relation to this "*shortly*" and consultations on the ROs for the new product categories and the upcoming year will be completed by 1st October 2004. (It is reported that, at the request of the Hong Kong watch making industry, the Hong Kong government will seek to ease the RO requirements of 30% Hong Kong manufacturing process with respect to watches. The report states that the industry would prefer to substitute the criteria of Hong Kong based design, assembly, quality control and IP royalties' payments since most actual manufacture of watches is carried out in the Mainland, in Shenzhen and Dongguan. It concludes that such a change in ROs would make CEPA's zero tariff realistically available to Hong Kong watchmakers.¹)

Prior to CEPA II, a total of 374 categories were eligible for zero tariff. The addition of the 713 product categories brings the total number of product categories eligible for zero tariff to 1087, covering most Hong Kong products. Manufacturers may suggest other product categories for future eligibility for the zero tariff.

CEPA II clarifies the procedure already existing under CEPA I for obtaining the zero tariff concession. Manufacturers must apply to the TID for a factory registration demonstrating that the factory in question has the capacity to produce the products for

¹ South China Morning Post, 2nd September 2004.



export. The manufacturer must then proceed to apply for a CEPA Certificate of Origin ("CEPA CO") from the TID or one of the other government approved certification organisations in order to demonstrate conformity with the relevant ROs.

II. Trade in Services (Annex II)

Two types of liberalisation are granted to Hong Kong sectors through CEPA II, with effect from 1st January 2005, unless otherwise specified in particular cases. First, some service sectors already benefiting from concessions under CEPA I are accorded additional concessions, and secondly, concessions are introduced for various service sectors not originally covered by CEPA I.

In order to qualify for CEPA II service sector concessions Hong Kong companies and individuals (where applicable) must comply with the HKSS definition contained in Annex 5 of CEPA I, as supplemented, if applicable, by Annex 2 of CEPA II. They must obtain an HKSS Certificate/香港服務提供者證明書 issued by the TID. This requires certification by a China Appointed Attesting Office/中國委託公證人 ("CAAO") of a statutory declaration made by the HKSS applicant company's "authorised person" and certification by a designated professional² of various supporting documents to the application. In this respect, note should be taken of the provisions of TID Notice No.3/2004 to Service Suppliers (the "Notice"), which relaxed certain requirements of the HKSS definition in the case of group companies, as well as in respect of some of the application documentation.

The Notice removed the requirement for a CEPA designated professional's reports with respect to the premises and staff used for the Hong Kong substantive business which is an essential part of the HKSS definition. It also removed the requirement for submission of original financial documents and the Extract of Information from the Register of Businesses, certified by the Business Registration Office.³ With respect to group companies, as long as the HKSS applicant is Hong Kong incorporated, the Hong Kong substantive business, for the relevant number of years required by the HKSS definition for the sector in question, can have been carried out by the applicant's wholly owned subsidiary/ies(全資附屬公司). In addition, the premises and staff used for the said substantive business can be owned/rented/engaged, as the case may be, by the holding company or subsidiaries of the group of which the applicant is a part (控股公司或該集團的附屬公司).

² A CEPA "designated professional" is Hong Kong certified public accountant or a CAAO, being a practising Hong Kong lawyer registered under the Legal Practitioners Ordinance (Cap. 159 of the Laws of Hong Kong) and recognised by the PRC Ministry of Justice.

³ Copies certified by a designated professional will now suffice.



1. Broadening Already Existing Liberalisation

Additional concessions are accorded to 11 service sectors already included among the existing 18 service sectors to which CEPA I had granted concessions. These sectors are legal services, distribution, freight forwarding, audiovisual services, banking, individual ownership of stores, construction and related engineering, land and maritime transport, medical services, accounting and securities and futures.

The following are a few observations on some of these additional concessions:-

❖ Legal services

There is only one relatively minor additional concession accorded to this sector, namely that *"Hong Kong lawyers providing professional assistance at the request of Mainland law firms on the basis of individual cases will not be required to apply for a Hong Kong legal consultant permit"*.

❖ Retail, Wholesale and Commission Agents' Services

CEPA qualified Hong Kong Service Suppliers ("HKSS") are permitted, with effect from 28th August 2004⁴, to establish wholly foreign owned enterprises ("WFOEs") in respect of certain products for which only joint ventures ("JV") would be possible for other foreign investors at this point in time and/or for which the time thresholds for other foreign investors, even for establishment of a JV, would commence, at the earliest, from 11th December 2004. These products with respect to retail are books, newspapers, magazines, pharmaceutical products, pesticides, mulching films and processed oil. With respect to wholesale and commission agents' services the product list is the same as for retail, with the exception of the last item, processed oil.

CEPA I's previously high financial thresholds for HKSSs to establish WFOEs in the motor vehicle retail sub-sector are waived by CEPA II. The PRC Foreign Investment Commercial Enterprise Measures/外商投資商業企業領域管理辦法 (the "Measures")⁵ specifically preserve and reiterate these financial thresholds for HKSSs establishing retail WFOEs in this sub-sector. It will therefore be necessary to wait for implementing rules in order to be able to give effect to this new concession under PRC law. Nevertheless, this is an indication of CEPA's policy of assisting small and medium enterprises by systematic lowering and eliminating financial thresholds (門檻落低) in anticipation of the general WTO level playing field.

⁴ The day after the signing of CEPA II's Record of Consultations, which took place on 27th August 2004.

⁵ The Measures were promulgated by the PRC Ministry of Commerce on 16th April 2004 with effect from 1st June 2004.



❖ **Banking**

The Mainland branches of Hong Kong banks (i.e. qualified HKSS banks) are permitted to conduct insurance agents' business, subject to approval by the relevant PRC authorities.

❖ **Land Transport**

Passenger transport companies operating franchised bus services in Hong Kong are permitted to establish WFOEs or JVs in all municipal level Mainland cities to provide passenger public transport and hire-car services in those cities. CEPA I had previously restricted road passenger service WFOEs to the Mainland's Western region.

In addition, CEPA II permits passenger transport companies, operating franchised bus services and companies operating in Hong Kong non-franchised bus services (Guangdong Province-Hong Kong cross-boundary coach services), to establish JVs in 9 stipulated Mainland provinces for direct passenger bus services.⁶

❖ **Marine Transport**

WFOE shipping companies are permitted to be established by HKSSs to provide stipulated shipping agency services for vessels owned or operated *by their parent companies* (母公司). These services include customs declarations and inspections (報關和報檢).

HKSSs can set up WFOEs to provide supply services for items other than fuel and water (such as components and food) to vessels owned or managed by their parent companies and HKSSs can also establish WFOEs to provide port cargo loading and unloading services.

❖ **Freight Forwarding**

HKSS freight forwarding agency enterprises in the Mainland can establish branch offices upon full payment of registered capital.

❖ **Individual Store Ownership**

CEPA I had permitted Hong Kong permanent residents with Chinese citizenship ("Chinese PRs") to establish individually owned retail stores (excluding

⁶ These provinces are Guangdong, Guangxi, Hunan, Hainan, Fujian, Jiangxi, Yunnan, Guizhou and Sichuan.



franchising) in Guangdong province. CEPA II extends this concession to Chinese PRs geographically beyond the limits of Guangdong province to encompass all provinces, autonomous regions and municipalities directly under the PRC Central Government. Moreover, the scope of services that Chinese PRs' stores can provide is increased by CEPA II. In addition to retail services, Chinese PRs' can establish stores to provide food and beverage services, hair dressing and beauty treatments, bathing services and services for the repair of goods for daily use.

In this context it may be noted that, where applicable, natural person HKSSs (i.e. individual persons/自然人) may apply to the relevant Mainland authorities to supply services in the Mainland. They must provide copies of documents evidencing their Hong Kong permanent resident status. In sectors such as individual store ownership, where Chinese citizenship is an additional requirement, copies of the Home Visit Permit or Hong Kong SAR passport are also required. All these documents must be attested by a CAAO.

2. Introducing New Liberalisations

In addition to widening concessions for the 11 service sectors already identified in CEPA I and described above, CEPA II allows 8 new service sectors to benefit from concessions, thereby raising the total number of service sectors eligible for CEPA concessions from 18 to 26. The new service sectors are airport services, patent agency, job referral and job intermediary services, information technology, trademark agency, cultural entertainment and professional qualification examinations for 30 types of professional and technical occupations.

Notable among these new liberalisations is the fact that WFOE job referral agencies can be set up. On the other hand, in the case of the related sector of job intermediary services, only JVs can be established and the maximum HKSS (foreign) participation is limited to 70%. The Mainland partner in such a JV is required to have been established for over 1 year. For both these related sectors minimum registered capital requirements of USD 125,000 are stipulated.

III. Timing: Coming Soon!

As was the case when CEPA I was signed last year, CEPA II maps out certain time frames and leaves some matters to be decided in the future.

The following is a chronological summary of what is *coming soon*:-

➤ By 1st October 2004:

Consultations on the ROs for the new product categories included in CEPA II's Annex I will be completed by 1st October 2004.



➤ **"Shortly":**

Detailed arrangements will be announced "*shortly*" by the TID in relation to the new 184 "planned production" product categories which will benefit from zero tariff on exportation from Hong Kong to the Mainland from 1st January 2006, upon confirmation that their production has started. (It is probable that these detailed arrangements will take the form of a TID circular.)

➤ **By 1st December 2004:**

"The 2 sides will complete the amendments and additions to the relevant Annexes of CEPA and sign the relevant texts before 1st December 2004" so that implementation of CEPA can commence with effect from 1st January 2005.

➤ **1st January 2005:**

529 *existing production* categories of products, which meet the relevant ROs, will become eligible for exportation from Hong Kong to the Mainland at zero tariff.

CEPA II Annex II's additional concessions to CEPA I service sectors and the newly introduced concessions to CEPA II's additional service sectors will become effective as of 1st January 2005. Exceptions to this commencement date are CEPA II's general wholesale and retail concessions (excluding motor vehicle retail) and concessions in the sectors of construction and related engineering services, which came into effect on **28th August 2004**.

➤ **1st January 2006:**

184 "planned production" categories of products, which meet the relevant ROs, will become eligible for exportation from Hong Kong to the Mainland at zero tariff, upon confirmation that the said products are in production.

IV. Trade and Investment Facilitation

CEPA I is composed of 3 major areas of liberalisation: trade in goods, trade in services and trade and investment facilitation. The last area, trade and investment facilitation, while more general in nature than the other two, is potentially most important since it sets the groundwork for co-operation between the Mainland and Hong Kong governments for implementation of the concessions provided in the other two areas. It has the potential to assist in streamlining Mainland procedures for Hong Kong manufacturers and HKSSs in their trade and investment in the Mainland, which ultimately could lead to streamlining of procedures for all foreign trade and investment in the PRC and pave the way for smooth introduction of the WTO's level playing field.



CEPA II, however, deals only with trade in products and trade in services, leaving trade and investment facilitation undeveloped by this current phase of the agreements between the Sides.

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**Dibb Lupton Alsop has two China Appointed Attesting Officers ("CAAOs"), Senior Partner, Mrs. Mabel Lui, and Partner, Ms. Dora Chow, available to assist our clients with the necessary CAAO certification of documents required for the CEPA HKSS certification process. Our Corporate Commercial Department has experience in handling CEPA certification applications and advising, in conjunction with PRC practising lawyers in conformity with PRC law, on the establishment of all forms of direct foreign investment in the PRC.*