

鲁助人 Patron

梁振英行政長官 The Hon CY Leung GBM GBS JF

巻巻令長 Hon President 創會主席 Founder Chairman

鄭慕智博士 Dr Moses Cheng GBS OBE JP

前任主席 Past Chairmen

許浩明博士 Dr Herbert H M Hui JP

黄紹開 Peler S H Wong MBA

榮譽理事 Hon Council Members

蓄纽閣 PelerSHWong MBA 張永銳 Cheung Wing Yui, Edward

畢烈 Peter Barrett

榮譽顧問 Hon Advisers

劉華森博士 Dr Lau Wah Sum GRS LLD DRAJE

鄭海泉 Vincent Cheng GBS OBE JP

吳天海 Stephen T H Ng

劉國元 Liu Guoyuan JP

方正 Eddy Fong GBS JP

2012-2013 理事會 Council:-

主席 Chairman

黃天祐博士 Dr Kelvin Wong DBA

副主席 Deputy Chairmen

麥理思 George Magnus BBS OBE MA(Cantab)

梁廣海 Edmund K H Leung ses obe JP

黄友嘉博士 Dr David Wong BBS JP

賴顯榮 Henry Lai

陶荣教授 Prof Christopher To

刮庫 Treasurer

文基良 Man Mo Leung

卸任主席 Immediate Past Chairman

黃紹開 Peter S H Wong MBA

行政總裁 Chief Executive Officer

徐尉玲博士 Dr Carlye Tsui 8BS MBE JP

理事會成員 Council Members

陳心愉女士 Ms Bonnie S Y Chan

張惠彬博士 Dr Charles Cheung JPMBADBA(Hon)Yours sincerely

江偉 A F M Conway

范耀鈞教授 Prof Y K Fan BBS JP

孔敬權 Randy Hung

葉成慶 Ip Shing Hing JP

林潔蘭博士 Dr Cynthia Lam

季真士 Carmelo Lee

林宣亮 Alfred Lin 劉廷安 Liu Tingan

莫建鄰教授 Ir Prof John Mok

莫兆光 Stanley Mok

譚學林博士 Dr Tommy Tam JP

鄧宛舜女士 Ms Cynthia Y S Tang

曾立基 Richard Tsang

詹華達 Jim Wardell

黃李鳳英女士 Mrs Alison Wong

王桂壎 Huen Wong JP

黃澤峰博士 Dr Peter C F Wong

楊俊偉 Anthony Yeung

翁月華女士 Ms Linda Y W Yung

容永祺 Samuel W K Yung SBS MH JP

19 June 2013

Multilateral Division

Trade and Industry Department

17/F, Trade and Industry Department Tower

700 Nathan Road

Kowloon

Dear Sirs

Re: Negotiation of Trade in Services Agreement

The Hong Kong Institute of Directors ("HKIoD") is pleased to forward our response to the captioned paper.

HKIoD is Hong Kong's premier body representing directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong's international status.

In developing the response, we have consulted our members and organised focused discussions.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. 2889 9986.

With best regards

THE HONG KONG INSTITUTE OF DIRECTORS

Dr Carlye Tsui

Enc

cc: Dr Kelvin Wong, Chairman, HKIoD

Prof Christopher To, Deputy Chairman, HKIoD & Chairman, Economics and Public Affairs Committee



Issued on: 19 June 2013

Negotiation of Trade in Services Agreement

The Hong Kong Institute of Directors would like to present views and comments on the trade in services agreement (TISA) negotiations.

Nature of the negotiations

It appears to us that the TISA negotiations are not taking place as part of the WTO process. The result would be a plurilateral agreement, though the professed objective is that it could become multilateral in future.

It is not unheard of, that in bilateral or regional trade agreements among bigger and smaller economies, the interests of the stronger economies dominate. The TISA negotiations may be no different, with the agreement reached favouring those stronger economies and the global services corporations based in those strongest economies.

Hong Kong could perhaps take some pride in being among the group participating in the negotiations. But in light of the nature of the negotiations, the Administration will want to avoid the pitfalls that may come about.

Investor-state dispute process

It appears to us the TISA might be one that would not have access to the WTO disputes process. Instead, there is the likelihood that "investor-state dispute processes" will be part of the TISA. In contrast, the WTO General Agreement on Trade in Services (GATS) uses the WTO government-to-government dispute process. Investor-state dispute processes do not exist in GATS or any of the WTO agreements.

Investor-state dispute processes would allow a single foreign investor to sue a government for significant damages if a law policy of that government harms the investment, even if the law or policy is in the public interest. Hong Kong actually came into the spotlight when Philip Morris brought a claim under a Hong Kong-Australia bilateral investment treaty to seek compensation from the Australian government for its tobacco plain packaging legislation. Investor-state dispute processes can be a threat to a government's ability to make policy and regulate in the public interest.

The Administration will want to consider the pitfalls that could come about if the TISA were to include investor-state dispute processes.

Coverage: "positive list" or "negative list"?

It appears to us that the negotiations are to take a "positive list approach" in relation to market access and a "negative list approach" in relation to national treatment.

A positive list approach allows the Administration to make deliberate decisions about which services to be included in the agreement, and therefore retains the freedom to regulate. GATS is a positive list agreement.

The Administration will want to consider taking up a position to insist on "positive list approach" as to all matters in the TISA.



Exclude public services from coverage

Many essential public services are provided on a commercial basis even when provided by the government. Government provision has a role to play in ensuring universal access to public services. It is essential to retain full ability for government to regulate and fund public services in the public interest.

Depending on what is considered "public service" and excluded, the TISA could render some government-provided, publicly-funded public services subject to the TISA's market access commitments.

Even under GATS, the issue has raised some concerns. A somewhat ambiguous definition of "public service" there would strictly mean that few government-provided, publicly-funded public services are not subject to GATS. Even the WTO Secretariat has raised the need for a clearer definition to exclude public services for GATS purposes.

The Administration will want to be sure that the TISA, if reached, does exclude "public services" from its coverage.

Retain ability to make policy and regulate

The TISA negotiations could see proposals to include "necessity tests" that would have the effect of restricting a government's ability to regulate in the public interest. The Administration will want to be sure that the TISA, if reached, would not take away the government's ability to regulate services to achieve public policy goals, like public health, financial stability, consumer rights, public security and environmental protection, and not result in a downward harmonisation of standards.

Movement of natural persons

HKIOD believes Hong Kong should welcome skilled workers and professionals, but the Administration will want to be sure that the TISA, if reached, will not result in a concession of the ability to regulate the movement of people.

Privacy and data security

Service trade could involve processing, storing and transferring of data. The Administration will want to be sure that the TISA, if reached, will put in place an appropriately strong protection framework.

-END-