HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $7.4 billion in 2005, an increase of $916 million from $6.5 billion in 2004. U.S. goods exports in 2005 were $16.3 billion, up 3.1 percent from the previous year. Corresponding U.S. imports from Hong Kong were $8.9 billion, down 4.5 percent. Hong Kong is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Hong Kong were $3.6 billion in 2004 (latest data available), and U.S. imports were $4.6 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $8.1 billion in 2003 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $1.2 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong in 2004 was $43.7 billion, up from $37.6 billion in 2003. U.S. FDI in Hong Kong is concentrated largely in the finance, wholesale, manufacturing, and banking sectors.

IMPORT POLICIES

The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port, with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment. Hong Kong, however, does maintain excise duties on certain goods, including alcoholic beverages. Duties on alcoholic beverages range from 40 percent to 100 percent *ad valorem* and have been identified as a significant concern for U.S. exporters and producers. The Financial Secretary, however, reiterated in his 2005 budget speech that Hong Kong has no plans to change these duties.

Hong Kong banned imports of U.S. beef in December 2003 following announcement of a case of Bovine Spongiform Encephalopathy (BSE) in the United States. After two years of intensive efforts on the part of the U.S. government and industry, the Hong Kong government announced the lifting of the ban, with certain restrictions, in December 2005. It is estimated that the two-year ban cost U.S. exporters approximately $160 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Hong Kong government continues to maintain a robust IPR protection regime. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, and a judicial system that supports enforcement efforts by sentencing those convicted of IPR violations to prison. There are, however, vulnerabilities with regard to some forms of infringement. The U.S. government continues to monitor the situation to ensure that Hong Kong's IPR protection efforts are sustained and that problem areas are addressed.

The Hong Kong government has sustained public education efforts to encourage respect for intellectual property rights and has re-launched its “no fakes” campaign with local retailers who pledge not to sell counterfeit or pirated goods. Hong Kong authorities also continue to conduct aggressive raids at the retail level and to act against vendors who advertise illegal products over the Internet. In the first eight months of 2005, there were 663 piracy-related arrests. During the same period, the judiciary handed down 918 copyright and trademark convictions, the majority of which led to prison sentences of six to twelve months. Hong Kong Customs’ intelligence operations and raids on underground production facilities have closed most large-scale pirate manufacturing operations, prompting many producers of pirated optical media to switch to computers or compact disc burners to produce illicit copies and forcing retailers to rely increasingly on smuggled goods. In July 2004, Hong Kong Customs used the Organized and Serious Crimes Ordinance (OSCO) to freeze the assets of a pirating syndicate worth $2.7 million. This was the first time OSCO has been applied to an IPR case.

Despite the crackdown on large-scale illicit manufacturing, there is still concern about Hong Kong’s licensed optical media production lines, which give the territory an overcapacity that must be carefully monitored. The volume of openly marketed pirated optical media found in retail shopping arcades has decreased significantly, but sales of infringing products remain a problem. U.S. officials have encouraged the Hong Kong government to sustain the pace of its ongoing enforcement activities aimed at local producers and vendors of infringing products.

Hong Kong's IPR enforcement efforts have helped reduce losses by U.S. companies, but end-use piracy, the rapid growth of peer-to-peer downloading from the Internet, and the illicit importation and transshipment of pirated and counterfeit goods, including optical media and name brand handbags and apparel from mainland China and elsewhere in the region, are continuing problems. The software industry estimates that Hong Kong’s software piracy rate was 52 percent in 2004, placing Hong Kong well above the software piracy rates in other advanced economies and resulting in industry estimated losses of approximately $116 million to rights owners.

The Hong Kong government has taken some steps toward addressing each of these problems. In October 2005, in the first successful case of its kind in the world, Hong Kong convicted a man for using BitTorrent file sharing technology to distribute illegally on the Internet three Hollywood movies. He was sentenced to three months imprisonment. The Hong Kong government issued a press release at the time of the conviction quoting the Secretary for Commerce, Industry, and Trade as stating that the posting of copyrighted materials in Hong Kong using BitTorrent dropped 80 percent in the wake of the man's arrest ten months before. Hong Kong Customs routinely seize IPR infringing products from mainland China. Hong Kong officials have also established a joint task force with copyright industry representatives to track down online pirates using peer-to-peer networks for unauthorized file sharing. However, end-use piracy, Internet piracy, and the cross-boundary flow of infringing products still create significant losses for American companies, and U.S. officials continue to urge Hong Kong authorities to intensify efforts against these problems.

In November 2005, Hong Kong Customs and four local Internet service providers (ISPs), along with trade associations and IPR owners of a number of brand names, launched a new program called "E-Auctioning with Integrity," to prevent and stop piracy activities at auction sites. Under the program, ISPs step up their monitoring of goods auctioned on their sites and remove IPR-violating items when the IPR owners alert the ISPs of the suspected counterfeit goods being auctioned. The information on the auction sites is passed on to Hong Kong Customs for investigation.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent-infringing pharmaceutical products. The local pharmaceutical industry association (which represents a number of U.S. and other international firms) submitted a proposal to the Hong Kong government in 2004 that would give patent holders an opportunity to commence legal action against infringing generics before their marketing authorization applications are processed by the Department of Health. The Department of Health, however, claims it cannot adopt this proposal without amending its pharmaceutical registration law. In addition, the industry has concerns about sales of counterfeit pharmaceuticals, which threaten consumer safety and brand reputation, and it seeks more vigorous enforcement and tougher penalties to deter this kind of illicit trade. The U.S. government continues to urge the Hong Kong government to address both the marketing approval/patent protection linkage issue and the counterfeiting issue as they pertain to pharmaceutical products.

Amendments to the Copyright Ordinance that provide tougher measures against illicit copy shops took effect on September 1, 2004. The Hong Kong government also plans to introduce new end-user piracy-related Copyright Ordinance amendments in the Legislative Council for consideration and enactment before the end of July 2006. In November 2005, the Hong Kong government put forth a preliminary proposal to introduce a new business end-user criminal offense for significant infringements involving the commercial copying and distribution of four types of printed works: newspapers, magazines, periodicals, and books. The proposal also specified numerical "safe harbour" thresholds for offenses under which criminal liability will not be assessed. The proposed thresholds are 1,000 copies of newspapers, magazines, and periodicals within any 14-day period, and a total retail value of under HK$8,000 (about US$1,025) within a 180-day period for books. At present, with the Copyright Ordinance amendments still pending, Hong Kong law provides end-user criminal liability for only four categories of works: computer software, movies, television dramas, and sound recordings.

SERVICES BARRIERS

As a result of changes to legislation and regulations in recent years, there are no significant trade barriers to note with regard to telecommunications or electronic commerce.

Hong Kong completed its liberalization of the fixed-line telecommunications network services market on January 1, 2003. There are no limits on the number of licenses issued and no time limit for submitting license applications. In July 2004, the Hong Kong government announced that it would withdraw its interconnection policy for local fixed-line telecommunications services by June 30, 2008. Interconnection charges will then be subject to commercial negotiation between the operators concerned.

U.S. banks licensed in Hong Kong are able to provide renminbi (RMB) services, which first became available in November 2004. In November 2005, banks in Hong Kong were permitted modest increases in the scope of RMB business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. Making loans in Hong Kong in RMB, however, is still not permitted for any bank.

The October 2002 U.S.-Hong Kong Civil Aviation Agreement significantly expanded opportunities for U.S. carriers. The agreement allows cooperative marketing arrangements between U.S., Hong Kong and third-country carriers (codesharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third countries. However, restrictions on frequencies and routes for these services remain. During 2005, the U.S. government continued its dialogue with the Hong Kong government in an effort to alter these limitations.

Foreign law firms that practice foreign law in Hong Kong are barred from practicing Hong Kong law and from employing or joining into partnership with Hong Kong solicitors. Foreign law firms that wish to provide both foreign and Hong Kong legal services may do so only by establishing a Hong Kong legal practice in which all partners are Hong Kong-qualified solicitors and the number of registered foreign lawyers employed does not exceed the number of Hong Kong solicitors. Such firms may be associated with, or even be branches of, overseas law firms if they meet certain criteria (e.g., at least one partner of the Hong Kong firm must also be a partner in the overseas firm).

OTHER BARRIERS

Pharmaceuticals

U.S. industry has expressed concerns about lengthy approval procedures for new pharmaceuticals, which shorten the effective patent life of new products by six months. In addition, U.S. industry is concerned about the lack of transparency in the Hong Kong Hospital Authority's approval process for new drugs. These cumbersome procedures also inhibit the patent owners' ability to market their products on a timely basis.