

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$9.8 billion in 2006, an increase of \$2.4 billion from \$7.5 billion in 2005. U.S. goods exports in 2006 were \$17.8 billion, up 8.7 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$7.9 billion, down 10.7 percent. Hong Kong is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Hong Kong were \$3.7 billion in 2005 (latest data available), and U.S. imports were \$4.9 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$9.0 billion in 2004 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$1.4 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong in 2005 was \$37.9 billion (latest data available), up from \$34.8 billion in 2004. U.S. FDI in Hong Kong is concentrated largely in the non-bank holding companies, finance, and wholesale trade 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, has traditionally maintained excise duties on certain goods, including alcoholic beverages that were among the highest in the world. On February 28, 2007, following numerous interventions by the U.S. Government, the Hong Kong Financial Secretary announced with immediate effect that taxes on wine would drop from 80 percent to 40 percent, and beer and liquor (containing not more than 30 percent alcohol) would drop from 40 percent to 20 percent. The 100 percent tax on spirits (more than 30 percent alcohol content) was left unchanged. The U.S. Government is pleased with this largely positive development and encourages Hong Kong to eliminate the remaining excise duties on alcoholic beverages.

Hong Kong banned imports of U.S. beef in December 2003 following an imported case of Bovine Spongiform Encephalopathy (BSE). After two years of intensive efforts on the part of the U.S. Government and industry, the Hong Kong government announced the partial reopening of its market, with certain restrictions, in December 2005. Excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the two-year ban cost U.S. exporters approximately \$160 million. The U.S. Government continues to press Hong Kong to normalize trade and implement import requirements consistent with World Organisation for Animal Health (OIE) guidelines or international standards.

COMPETITION POLICY

In late 2006, the Hong Kong government established an independent Competition Policy Review Committee to discuss the need, scope and application of a comprehensive and cross-sector law on competition. This has caused heated controversies on possible impacts of such a law in Hong Kong, especially among the business sector, and the U.S. Government will continue to follow these developments.

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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 Hong Kong government has increased its efforts to educate the public about intellectual property through television advertisement campaigns, a "No Fakes" program, and well-publicized raids against producers and retailers of infringing goods. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection efforts and addresses remaining problem areas.

In 2006, there were 1,063 arrests for optical disc piracy and 708 other counterfeit-related arrests. During the same period, the judiciary handed down 1,453 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. Since 2004, Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. As a result, the volume of openly-marketed pirated optical media found in retail shopping arcades has decreased significantly in recent years, but infringing products remain available in certain parts of Hong Kong. U.S. Government 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 some U.S. companies, but the rapid growth of peer-to-peer downloading from the Internet, end-use piracy, and the illicit importation and transshipment of pirated and counterfeit goods—including optical media and name brand apparel from mainland China—continue to be problematic. The software industry estimates that Hong Kong's software piracy rate in 2005 was 54 percent, placing Hong Kong well above the software piracy rates in other advanced economies. Losses to business and entertainment software rights owners are estimated at approximately \$147 million, and the government has yet to successfully prosecute a contested business end-user piracy case.

The Hong Kong government has taken some steps to address each of these continuing 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. The case is currently under appeal. 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. In addition to criminal litigation, both the music and movie industries have increased the use of civil lawsuits against illegal file downloaders. However, because of the higher cost-effectiveness of civil liability, the industries have called on the government to expand criminal liability by putting forward "Digital Agenda" legislation covering digital technology issues, including copyright issues, as soon as possible.

Hong Kong Customs routinely seizes IPR infringing products from mainland China and elsewhere. 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

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with Integrity,” to prevent and stop piracy activities at auction sites. Under the program, ISPs intensified 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. In October 2006, the Hong Kong government also partnered with software industry representatives in launching a pilot program to provide free on-site audits for companies to determine if they are unknowingly using unlicensed software and to assist violators in purchasing licenses to guarantee the use of genuine computer products. This program is part of recently announced efforts to reduce high software end-user piracy rates and crack down on companies using pirated software.

Another education program begun in February 2006 by the Hong Kong Customs and Excise Department was a pilot run of the "Youth Ambassador Against Internet Piracy Scheme." About 200,000 "youth ambassadors" participated in the program, and, by July 2006, the Hong Kong Customs and Excise Department announced that it had received 1,200 reports of suspected BitTorrent seed files involving pirated copyright work from the youth ambassadors. According to the Hong Kong government, over 60 percent of the infringing files were removed, and a great majority of the remaining files were invalidated. Despite these concrete actions, U.S. officials continued to urge Hong Kong authorities to intensify efforts to address end-user piracy, as well as retail counterfeiting problems.

On June 21, 2006, the government extended the expiry date of the Copyright (Suspension of Amendments) Ordinance 2001 from July 31, 2006 to July 31, 2007 to give lawmakers more time to examine its draft of an enhanced Copyright Ordinance and industry representatives sufficient opportunity to express their views. The Hong Kong Legislative Council continued to debate draft legislation for this enhanced Copyright Ordinance and delayed adoption of the legislation several times with no set timetable for approval. Industry stakeholders remained concerned about possible loopholes in the proposed legislation concerning digital rights management and circumvention of technical prevention measures, parallel imports for optical discs, fair use provisions for copyrighted works, and business end-user software piracy. In December 2006, the Hong Kong government published a public consultation "Copyright Protection in the Digital Environment" document to address the challenges of the digital era and ensure that amendments to the Hong Kong Copyright Ordinance would cover issues related to Internet piracy.

The lack of a copyright register in Hong Kong continued in 2006 to make it difficult for law enforcement officials and prosecutors to identify original copyright owners in infringement cases, effectively increasing the burden of proof that copyright owners need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained about the lack of a copyright register in the past, on July 18, 2006, the government decided not to establish such a register, citing concerns about a register's cost-effectiveness and divergent views among different copyright owners' associations. In 2006, the U.S. Government continued to promote the promulgation of an amended Copyright Ordinance, including development of a copyright register in Hong Kong, which would protect rights owners and end users and cover issues related to Internet piracy.

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 fixed-line telecommunications network services market on January 1, 2003. There are no limits on the number of licenses which can be issued and no time limit for submitting license applications. In July 2004, the Hong Kong government announced that it would cancel

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the fixed and mobile network interconnection fee by June 30, 2008. In 2006, Hong Kong's Office of the Telecommunications Authority (OFTA) published a public consultation paper that detailed specific proposals for canceling the fee. While mobile phone operators welcomed the consultation, fixed line phone operators questioned the move because it would mean the loss of approximately HK\$600 million (approximately US\$77 million) in fees paid by wireless providers to fixed line operators each year. The HKG also has preliminary plans to force the city's fixed-line operators to lease their networks to providers of voice over Internet protocol (VOIP) services. This move was prompted by complaints that fixed-line operators were blocking such sales to protect market share.

As of November 2004, U.S. banks licensed in Hong Kong have been able to provide renminbi (RMB) services. 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 (code sharing) 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. In 2005, the U.S. and Hong Kong governments convened a round of negotiations to expand the Air Services Agreement. The talks were inconclusive and no further negotiations have been scheduled.

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).

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.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent-infringing pharmaceutical products. 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. According to industry, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then re-packaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. 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.

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