

HONG KONG, SAR

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$15.1 billion in 2008, an increase of \$2.1 billion from \$13.1 billion in 2007. U.S. goods exports in 2008 were \$21.6 billion, up 7.5 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$6.5 billion, down 7.7 percent. Hong Kong is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were \$5.8 billion in 2007 (latest data available), and U.S. imports were \$6.9 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$17.6 billion in 2006 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$2.9 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was \$47.4 billion in 2007 (latest data available), up from \$41.0 billion in 2006. U.S. FDI in Hong Kong is concentrated largely in the nonbank holding companies, finance/insurance, and wholesale trade sectors.

IMPORT POLICIES

Hong Kong, China is a special administrative region (SAR) of the People's Republic of China. However, for trade and immigration purposes Hong Kong is a distinct entity with its own tariffs, trade laws, regulations, and its own seat at the WTO. 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 had traditionally maintained excise duties on certain goods, particularly alcoholic beverages, which were among the highest in the world. However, on February 27, 2008, the Hong Kong Financial Secretary announced that the 40 percent excise tax on wine and the 20 percent excise tax on beer and liquor containing less than 30 percent alcohol would be eliminated immediately. The 100 percent tax on spirits (more than 30 percent alcohol content), however, was left unchanged. The U.S. Government is pleased with this largely positive development and is actively working with like-minded governments to encourage Hong Kong to eliminate the remaining excise duties on spirits.

Hong Kong banned imports of U.S. beef in December 2003 following a reported case of Bovine Spongiform Encephalopathy (BSE). After 2 years of intensive efforts on the part of the U.S. Government, the Hong Kong government announced the partial reopening of its market to deboned beef derived from animals less than 30 months of age, with numerous restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. World Organization for Animal Health (OIE) guidelines provide for scientifically based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States as "controlled risk" for BSE. The United States continues to press Hong Kong to open fully its market for all U.S. beef and beef products on the basis of science, the OIE guidelines, and the U.S. "controlled risk" classification. It is estimated that the two year full ban (2004-2005) cost U.S. exporters approximately over \$200 million.

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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. Small and medium sized enterprises in Hong Kong have expressed strong opposition to the creation of such a law. In May 2008, the Hong Kong government presented the elements of its proposed competition legislation for public discussion and scrutiny. Following closure of the public comment period in August 2008, the Hong Kong government reiterated its intention to introduce the bill in the 2009-2010 legislative session. The U.S. Government will continue to follow these developments.

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 with deterrent fines and prison sentences. Hong Kong remains vulnerable, however, to some forms of IPR infringement. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection and enforcement efforts and addresses remaining problem areas.

Hong Kong Customs enforcement efforts, including 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. Seven IPR cases have resulted in the freezing of \$13.7 million in assets. The volume of openly marketed pirated optical media found in retail shopping arcades has decreased significantly as a result of OSCO, but infringing products still remain available in 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 unauthorized file sharing over peer-to-peer networks on the Internet, end-user software piracy, and the illicit importation and transshipment of pirated and counterfeit goods—including optical media and name brand apparel from mainland China, raise concerns. To tackle these problems, Hong Kong officials have established a joint task force with copyright industry representatives to track down online pirates that are using peer-to-peer networks for unauthorized file sharing.

In 2007, the Hong Kong government also passed the Copyright (Amendment) Ordinance after extensive consultations with content-providing industries and other stakeholders. In particular, the Ordinance provides for criminal penalties for unauthorized copying and distribution of infringing copies of printed works in the course of profit generating activities. It also provides civil liability for the act of circumventing technological protection measures and criminal penalties for persons convicted of dealing in circumvention devices or providing a circumvention device for commercial purposes. In April 2008, the government proposed several additional amendments to the Copyright Ordinance designed to address the protection of IP in the digital environment. Industry representatives provided written comments in 2008 on the government's proposals, and are collaborating with Internet Service Providers (ISPs) and content user representatives in a government-led Tripartite Forum that seeks to establish a voluntary compliance framework governing IPR protection in the digital realm. It is unclear whether the Tripartite Forum will reach agreement on such a voluntary framework. The Hong Kong government has postponed

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Legislative Council consideration of digital IPR protection amendments to the Copyright Ordinance, pending the outcome of the Tripartite Forum efforts.

Hong Kong Customs routinely seizes IPR infringing products arriving from mainland China and elsewhere. However, stakeholders report that large quantities of counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong destined for both the local market and transshipment to third countries. The lack of expertise within Hong Kong's enforcement agencies in identifying high quality counterfeit drugs and overlapping lines of responsibility for regulating pharmaceutical products make combating counterfeit pharmaceuticals difficult. Customs officials have partnered with four local ISPs to prevent the sale of counterfeit and infringing products on Internet auction sites.

The lack of a copyright register in Hong Kong continues 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 rights holders need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained repeatedly about the lack of a copyright register, the government has declined to establish one, citing concerns about cost effectiveness and divergent views among different copyright owners' associations about the scope of registrations. The U.S. Government continues to promote the development of a copyright register in Hong Kong to protect rights owners and end users.

SERVICES BARRIERS

In November 2005, all banks in Hong Kong were permitted modest increases in the scope of Chinese renminbi (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 United States-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 United States and Hong Kong 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 are barred from practicing Hong Kong law and from employing or forming a partnership with Hong Kong solicitors, but they can practice foreign law. Foreign law firms that wish to provide services in both foreign and Hong Kong law may do so only by establishing an office in Hong Kong 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).

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Food Labeling

Although Hong Kong has a population of only seven million residents, it is the seventh largest market for exports of U.S. consumer-oriented agricultural products (for example, foods, beverages, and processed

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products). In 2008, U.S. exports of this category grew by 67 percent to \$1.3 billion making it the third fastest growing market in the world for U.S. consumer-oriented food and beverage products. Approximately 30 percent of U.S. consumer-oriented food and beverage exports to Hong Kong are officially transshipped to China and Southeast Asia. The United States also exported more than \$1.8 billion of agricultural, fishery, and forestry products to Hong Kong in 2008. While the Hong Kong market has developed due to liberal market access, the Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

On July 9, 2007, an amendment to Hong Kong's Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, and name or identification number (under the International Numbering System), on food labels. Hong Kong's requirements vary only slightly from U.S. regulations. The differences, however, are important, and the United States is concerned that the lack of flexibility in the regulations does not contribute to improved consumer awareness or information. A number of U.S. food products, especially name-brand processed foods, experienced difficulties complying with the labeling changes in the period allotted and this has resulted in some U.S. companies supplying the Hong Kong market from non-U.S. facilities. The United States expressed its objections to this regulation.

On May 28, 2008, Hong Kong's Legislative Council enacted another amendment to Hong Kong's Labeling Regulation that included new labeling requirements for products making nutritional claims. This may raise prices and restrict choice of packaged foods and beverages for Hong Kong consumers when it takes effect on July 1, 2010. Hong Kong's labeling regulations do not follow the labeling practices of major suppliers, and given Hong Kong's small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The new regulation has already resulted in a number of products leaving the market. The United States is requesting that the regulations allow flexibility in granting imports for U.S. products that comply with U.S. labeling laws.

Also, on October 28, 2008, Hong Kong notified the WTO of its proposal to change the existing voluntary food recall system and make it mandatory. The United States will continue to monitor developments in this area in 2009.

Energy Efficiency Labeling and Regulations

The Hong Kong government enacted the Energy Efficiency Labeling Ordinance in May 2008 for consumer electrical appliances. The Ordinance is intended to assist consumers in choosing energy efficient products. Under the Ordinance, the manufacturer or importer's product must be registered with the Hong Kong Electro-Mechanical Services Department and carry an energy label that complies with specified technical requirements. The Ordinance's first phase of implementation mandates standardized energy efficiency labeling for three types of products: air conditioners, refrigerators, and compact fluorescent lamps. The second phase will cover 15 other types of common consumer appliances such as water heaters, computers, and televisions. The implementation timetable for the second phase has not yet been determined. The Hong Kong-specific labeling system could become a trade barrier to the extent that the local system differs materially from internationally agreed labels, such as the "Energy Star" label used in the United States and Japan.

The Hong Kong government is also working toward adoption of energy efficiency regulations and standards for all new government, commercial, and industrial buildings. The regulations would also be applied to existing buildings, whenever they undergo significant renovations or modifications. A

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proposal to establish mandatory energy efficiency standards for buildings was made public in December 2007. The public consultation period ended in March 2008. According to industry experts, several of the proposed energy efficiency standards would be unique to Hong Kong. Although legislation to implement this proposal has not yet been submitted to the Legislative Council, failure to recognize existing international standards could pose a significant trade barrier.

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 representatives, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then repackaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. The United States 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.