HONG KONG

TRADE SUMMARY

The U.S. trade surplus with Hong Kong was $6.5 billion in 2004, an increase of $1.8 billion from $4.7 billion in 2003. U.S. goods exports in 2004 were $15.8 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from Hong Kong were $9.3 billion, up 5.2 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 $3.2 billion in 2003 (latest data available), and U.S. imports were $3.0 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $8.6 billion in 2002 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $1.3 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong in 2003 was $44.3 billion, up from $41.6 billion in 2002. U.S. FDI in Hong Kong is concentrated largely in the finance, wholesale, and manufacturing sectors.

On June 29, 2003, Hong Kong and China signed the Closer Economic Partnership Arrangement (CEPA), a free trade agreement granting Hong Kong's manufacturers and service suppliers preferential access to the PRC market. CEPA was implemented on January 1, 2004, providing tariff-free treatment for Hong Kong-origin goods in 374 product categories as well as preferential access to 18 service sectors. Preferential access for five types of value-added telecommunications services was implemented on October 1, 2003.

On August 27, 2004, Hong Kong and China signed the second phase of CEPA to further liberalize trade in goods and services. Effective January 1, 2005, Hong Kong-origin goods in 529 additional product categories are exported to China tariff-free; as of January 1, 2006, another 184 products will enjoy this treatment. Additionally, effective January 1, 2005, Hong Kong service providers enjoy preferential treatment in eight new service 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. However, Hong Kong does maintain excise duties on certain goods, including alcoholic beverages and wine. Duties on alcoholic beverages and wine range from 40 percent to 100 percent *ad valorem* and have been identified as a significant concern for U.S. exporters and producers. The Hong Kong government issued a consultation paper in December 2004 proposing reductions in these duties.

Hong Kong banned imports of U.S. beef in December 2003 following the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the state of Washington. As of the publication of this report, the U.S. Government is continuing to work with the Hong Kong government to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards related to BSE to reflect current scientific knowledge. U.S. beef exports to Hong Kong in 2003, prior to the import ban, were valued at approximately $82 million. At that time, Hong Kong was the fifth largest export market for U.S. beef. For the past eleven months, the U.S. Government estimates that the Hong Kong government's import ban has cost U.S. beef exporters nearly $75 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. However, there are vulnerabilities to some forms of infringement, and 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 to sell no 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 2004, there were 783 piracy-related arrests. During the same period, the judiciary handed down 924 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 CD 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 is 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 China and elsewhere in the region, are continuing problems. The software industry estimates that Hong Kong's software piracy rate was 52 percent in 2003, placing Hong Kong well above the software piracy rates in other advanced economies and resulting in losses of approximately $102 million to rights-owners. According to the U.S. film industry, in November 2004 it found 2,446 Hong Kong IP addresses from which Internet users could download infringing movies for free, as opposed to only 107 such IP addresses in 2003. The Hong Kong government has taken some steps against each of these problems. In September 2004, Hong Kong authorities took to court a software end-use piracy case for the first time in almost two years, attaining guilty pleas from two of the defendants. Hong Kong Customs made numerous seizures of cross-border shipments of IPR infringing products from China in 2004. Hong Kong officials have also established a joint task force with copyright industry representatives to track down on-line pirates using peer-to-peer networks for unauthorized file-sharing. However, end-use piracy, Internet piracy, and the cross-boundary flow of infringing products continue to result in significant losses to American companies, and U.S. officials have urged Hong Kong authorities to intensify efforts against these problems.

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 June 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. However, the Department of Health 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 patent protection and counterfeiting issues as they pertain to pharmaceutical products.

In February 2004 the Hong Kong government enacted an amendment to the Copyright Ordinance that provided tougher measures against illicit copy shops. These provisions took effect on September 1, 2004. In December 2004 the Hong Kong government initiated public consultations on another proposed amendment to the Copyright Ordinance that will deal with various aspects of end-use piracy. At present, Hong Kong law provides end-user criminal liability only for four categories of works: computer software, movies, television dramas, and sound recordings. Printed works are not protected by criminal liability.

SERVICES BARRIERS

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. In October 2004, the Hong Kong government began a 2-month public consultation on the regulation of Internet Protocol (IP) Telephony. The objectives of the consultation were to seek views on whether the existing regulatory requirements for traditional voice telephony service should be applied to the new services and whether Internet Service Providers should be allowed to operate IP Telephony services. In November 2004, the government decided to revoke in 2008 a CDMA (code division multiple access) license and a TDMA (time division multiple access) license from two local operators. The government will conduct a spectrum review in 2005 in which it will examine whether a more free-market approach, like spectrum trading, would better fit Hong Kong's needs. Under the current scheme, operators of second-generation mobile phone services cannot change the way they use their spectrum once it is assigned, although they may transfer the license with government approval.

In November 2004, the Bank of China began providing clearing arrangements that permit Hong Kong-licensed banks to conduct personal Renminbi (RMB) business. The scope of RMB business is limited to deposit-taking, exchange, remittances and credit cards. U.S. banks licensed in Hong Kong are able to provide RMB services.

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. and 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 country points. However, restrictions on frequencies and routes for these services remain, as the agreement fell well short of creating "open skies." Bilateral talks aimed at further liberalization are scheduled for April 2005.

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.

Hong Kong has no general competition law that prohibits incumbents from using their market dominance to keep out new entrants. There are several domestic service sectors where one firm, or a handful of firms, dominate market share.

ELECTRONIC COMMERCE

Hong Kong places great importance on its role as an information technology and electronic commerce hub. In June 2004, the Legislative Council passed amendments to the Electronic Transactions Ordinance to update and improve the legal framework for the use of electronic transactions. The ordinance mandates a technology-neutral approach regarding electronic signatures for satisfying legal signature requirements. It also removes unnecessary legal impediments to electronic transactions and streamlines the operation of a voluntary recognition scheme for certification authorities.

As part of its electronic-government initiative, Hong Kong launched the Multi-Application Smart Identity Card in June 2003. In addition to providing access to various government services, the card also features an embedded digital certificate that enables secure on-line bank, stock trading, or tax return transactions.

In January 2004, the Hong Kong government opened the Government Electronic Trading Services (GETS) market to a second company for the electronic submission and processing of import and export trade documents and dutiable commodities permits.

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, the 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.