

# HONG KONG, SAR

## TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$13.1 billion in 2007, an increase of \$3.3 billion from \$9.8 billion in 2006. U.S. goods exports in 2007 were \$20.1 billion, up 13.2 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$7.0 billion, down 11.5 percent. Hong Kong is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were \$5.3 billion in 2006 (latest data available), and U.S. imports were \$6.4 billion. Sales of services in Hong Kong by majority U.S. owned affiliates were \$11.0 billion in 2005 (latest data available), while sales of services in the United States by majority Hong Kong owned firms were \$1.7 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was \$38.1 billion in 2006 (latest data available), up from \$32.6 billion in 2005. U.S. FDI in Hong Kong is concentrated largely in the nonbank holding companies, finance, wholesale trade sectors.

## IMPORT POLICIES

Hong Kong, China is a special administrative region (SAR) of the People's Republic of China. 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, including alcoholic beverages, which were among the highest in the world. However, on February 27, 2008, the Hong Kong Financial Secretary announced that taxes on wine, beer, and liquor (containing not more than 30 percent alcohol) would drop immediately from 40 percent, 20 percent, and 20 percent, respectively, to zero. 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 by the U.S. Government and industry, the Hong Kong government announced the partial reopening of its market to deboned beef derived from animals less than 30 months of age, with some restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the 2 year ban (2004-2005) cost U.S. exporters approximately \$160 million. 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. In May 2007, the OIE classified the United States as controlled risk for BSE. The United States continues to press Hong Kong to fully open its market for all U.S. beef and beef products on the basis of the OIE guidelines and the OIE's classification of the United States as controlled risk for BSE.

## 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 policy. The Hong Kong government plans to announce the details of proposed competition policy legislation for public discussion and scrutiny before introducing the bill in the 2008-09 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. On October 2, 2007, the Hong Kong High Court issued an order allowing the confiscation of \$154,000 from the convicted mastermind of a pirated optical disc syndicate for the first time. This ruling could prove a useful new deterrent. The volume of openly marketed pirated optical media found in retail shopping arcades has decreased significantly in recent years 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 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 2007 was 53 percent, well above the software piracy rates in other advanced economies and significantly higher than Korea, Singapore, and Taiwan. Losses to business and entertainment software rights holders are estimated at approximately \$180 million, and the government has not been successful in prosecuting contested business end-user piracy cases.

Hong Kong officials have 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 those who engage in illegal file sharing. However, because of the high costs associated with pursuing criminal charges under the current system, the industries have called on the government to expand criminal liability by putting forward legislation specific to digital technology issues, including copyright protection and digital rights management, as soon as possible. The Hong Kong government promised to release a draft of new digital protection laws by the end of 2007, but by January 2008 had not yet done so.

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 pharmaceutical products make combating counterfeit pharmaceuticals difficult. Customs officials have partnered with four local Internet service providers (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 right 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 such a register, 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 right owners and end users.

After extensive consultation, the Copyright (Amendment) Ordinance 2007 (Ordinance) was passed in July 2007. 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. Additionally, the Ordinance also provides civil liability for the act of circumventing technological protection measures (TPMs). The scope of these two provisions will be further clarified in implementing legislation which the government plans to table before the Legislative Council in the second quarter of 2008, while it continues consulting with stakeholders.

In addition, the Ordinance contains provisions to potentially hold company directors criminally liable for the use of pirated software in their businesses. This measure follows government efforts in 2006 to partner with software industry representatives 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 legitimate computer products. The Hong Kong government has been actively working to inform companies of their obligations under the law. In 2006, as part of the Asia Pacific Economic Cooperation forum Anti-Counterfeiting and Piracy Initiative, the Hong Kong government agreed that its ministries should use only legal software and other copyrighted materials and should implement effective policies intended to prevent copyright infringement on their computer systems, including via the Internet. The U.S. Government supports the Hong Kong government's efforts to ensure the legitimate use of software.

## **SERVICES BARRIERS**

Since November 2004, U.S. banks licensed in Hong Kong have been able to provide renminbi (RMB) services. In November 2005, all 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. In January 2007, the central government granted the approval to mainland lenders to issue RMB bonds in Hong Kong. The first RMB bond issuance in Hong Kong, at the value of 5 billion RMB, was successfully launched in June 2007, making Hong Kong the first place outside mainland China to possess a RMB bond market. Additional private RMB bonds were issued in August and September 2007.

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 that practice foreign law in Hong Kong are barred from practicing Hong Kong law and from employing or forming a 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).

## **STANDARDS, TESTING, LABELING, AND CERTIFICATION**

### **Food Labeling**

Although Hong Kong has a population of only seven million residents, it is an important market for exports of U.S. food and processed products and serves as a transshipment point for food and processed products bound for China. The United States exported more than \$1.3 billion of agricultural, fishery, and forestry products to Hong Kong in 2007. 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.

The Hong Kong government has re-notified the World Trade Organization (WTO) of its intention to implement mandatory nutrition labeling regulations. 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 United States has requested that the regulations allow flexibility for products that comply with U.S. labeling laws and is in the process of developing its formal response to the regulations. If the proposed regulations are passed in their current form, they would be so stringent that market participants estimate compliance costs for relabeling and/or restickering would result in thousands of low volume products disappearing from the market, thus harming consumer choice. In addition, this proposal would significantly increase barriers to market entry. Data reported from a limited but diverse sampling of U.S. and non-U.S. suppliers indicate that up to 80 percent of the 6,000 products that these firms currently export to Hong Kong would not justify the expense of new labeling. For nearly one-third of these items, companies estimate that the cost of compliance would exceed the products' total annual sales to Hong Kong.

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, as well as name or identification number (under the International Numbering System) on food labels. Hong Kong's requirements vary only slightly from U.S. regulations. However, the United States is concerned that the regulations do not contribute to improved consumer awareness or information. All U.S. processed food products exported to Hong Kong already include extensive label information on ingredients, allergens, and additives. As a result of these small differences, U.S. food products, especially name brand processed foods, have had difficulty

complying with the labeling changes in the period allotted. The United States has expressed its objections to this regulation.

During 2008, the Hong Kong government will review the effectiveness of guidelines, originally issued in July 2006, for the voluntary labeling of genetically modified food. The Hong Kong government in 2007 conducted a survey to evaluate the effectiveness of the voluntary food labeling system for genetically modified food and there is concern that the system could be made mandatory, increasing the cost of labeling and harming U.S. exporters. Mandatory labeling could seriously undermine sales in this market for high value U.S. food and agricultural products. Additionally, Hong Kong retailers fear negative consumer reaction and a reduction in consumer choice for food products in Hong Kong if labeling of food products containing biotechnology ingredients becomes mandatory.

### **Energy Efficiency Labeling and Regulations**

The Environmental Protection Department of the Hong Kong government has announced its intention to implement mandatory energy efficiency labeling for consumer products, such as appliances. At this early stage, implementing legislation has not yet been submitted to the Legislative Council and it is uncertain whether and to what extent the Hong Kong government will consult with its trading partners for input on the design and operation of such a labeling system. A Hong Kong-specific labeling system could become a trade barrier to the extent 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 has also announced that it will adopt energy efficiency regulations for existing and new buildings, including requirements that real estate facilities be upgraded to conform to the Building Education and Assessment Model (BEAM) design standard. Although legislation to implement this proposal has not yet been submitted to the Legislative Council, failure to recognize existing international standards would 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 6 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 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.