

Issues and Requests Relating to Foreign Trade and Investment - Hong Kong

Category	No	Issue	Issue Details	Requests	References
12 Exchange Controls	(1)	<u>Radical Fluctuation In Exchange Rate</u>	- As it stands, Member Firm's Subsidiary (MFS) benefits from exchange gain on a direct export transaction in yen. Nevertheless, negotiation for raise in price is difficult. In a transaction with its parent company, the prevailing Yen depreciation enables MFS to offer special prices to its customers. However, MFS runs on a thin margin, so that if the exchange rate swings toward appreciation of Yen, it will instantly show operational loss: such is the severity of the fluctuation band.	- It is requested that the government of the Hong Kong special administrative region of the People's Republic of China (HKSAR) will use its best efforts to: -- stabilise the exchange rate fluctuations, and -- keep the fluctuation band within 6%.	
14 Taxation Systems	(1)	<u>Differences in Transfer Price Taxation System (TPTS) and the Risk of Double Taxation</u>	- Especially under the TPTS, its implementing rules vary by country so that a member firm faces the double taxation risk as a group of companies.	- It is requested that HKSAR: -- overhauls legislative provisions on TPTS (guidelines, etc.), and -- bolsters the APA (advanced pricing agreement) system.	
17 Implementation of Intellectual Property Rights ("IPRs")	(1)	Customs' border enforcement is Insufficient/ Irrational	- Upon suspension of imported goods for suspected IPR infringements, appearance of appraiser as witness becomes necessary. However, on the-spot-appraisal is sometimes found not feasible, requiring a closer laboratory inspection. (Actions) - The obligation under the TRIPs Agreement was implemented by the end of 1996 ahead of the TRIPs deadline of 2000 (but was not enforced as of the end of April 1997). - To enforce the rights under the TRIPs, HKSARG put into effect the following: 1) The bill to amend Copyright Act, Patent Act and Trademark Act is passed by the Parliament. 2) Pursuant to the amendments of these laws, it is made unlawful to make unauthorized copies, to create master copies outside Hong Kong for production within Hong Kong, or to create master copies outside Hong Kong for export to Hong Kong. 3) The customs authority discloses openly to IPRs rightful claimants and to customs authorities of other countries all information obtained in the process of investigating the IPRs infringement. 4) Copyright rightful claimants are authorized to claim import injunction for goods on which a copyright infringement is in doubt. Copyright owners must institute a civil action during the period of injunction to seek remedy and protection. Likewise trademark rightful claimants are authorized to claim injunction for illegal use of trademarks, pursuant to the Trademark Act. 5) All illegal use of trademarks, including without limitation, supply or possession of goods on which trademarks are illegally used constitutes a criminal conduct.	- It is requested that HKSARG takes an appropriate step to facilitate a smooth appraisal, in order to minimise the burden upon the claim holder.	

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				<ul style="list-style-type: none"> - In November 2003, criminal penalty was incorporated into law on parallel imports of illegally copied movies and music products, while the law eliminated the civil and criminal penalties on parallel imports of computer software. Such elimination does effectively emasculate efforts to protect intellectual property rights, and has created a new cause for concern to interested parties. - Infringing products are still abound in the market, despite the convicting sentences handed down in 2003 on the majority of the 1,870 court cases for copyright and trademarks infringements with 6-12 months' imprisonment, unsuspended. - In July 2004, Hong Kong Customs applied for the first time the Organized and Serious Crimes Ordinance (OSCO) to freeze the assets of a pirating syndicate in a case involving intellectual property rights. - In 1 September 2004, Copyright Ordinance was promulgated to impose severe measures on shops engaged in illegal copying. - According to Commerce and Economic Development Bureau ("C&ED") the total amount of suspended counterfeit and pirated products amounted to HK\$14.3 million in 2006 and HK\$1.5 million in 2007 (January - March 2007). The number of shops handling pirated optical discs has declined from 1,000 in 1998 to 40 or so today. - 2009 Report on Compliance by Major Trading Trade Partners with Trade Agreements - WTO, FTA/EPA, BIT states: "Cases are reported by Japanese industry whereby counterfeit and pirated products exported from China via Taiwan require monitoring in terms of its operation, including legislative enforcement". - Legislative overhaul on Intellectual Property Right in Hong Kong is now completed and is consistent with "the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)", according to "2012 Report on Compliance by Major Trading Partners with Trade Agreements". <p>(Improvement)</p> <ul style="list-style-type: none"> - In the increasing number of cases, HKCED has positively responded to requests of rightful claimants by cracking down on counterfeit goods in the market. 		
		(2)	<p>Issues on registration counterfeit Well-Known trademarks</p>	<ul style="list-style-type: none"> - Many trade names including the same as or similar trademarks well-known internationally are registered in Hong Kong, where a company can be readily registered. Furthermore, a large number of confusingly similar trade names are registered in the mainland PRC. Such famous trademarks are used on products manufactured, sold and advertised in PRC. <p>(Actions)</p> <ul style="list-style-type: none"> - On 4 October 2005, based on "The Regime for requesting investigation on the overseas' injury status of intellectual property right", the Window for Counterfeit and Pirated Goods of GOJ (CPG) investigated on the status of the trademark registration in Hong Kong. As a result, CPG found problems on the part of HKSARG as regards its protection of the intellectual property right of the complainant. CPG announced its decision to request HKSARG a bilateral consultation in order to improve the problems. - Subsequent to this announcement, the bilateral G-to-G consultation was held between GOJ and HKSARG for four times in November 2005, February and November 2006, and July 2007. - In April 2008, HKSARG announced its policy for solution of this problem by including it as part of the 2010 revision of the Company Act. - "2012 Report on Compliance" states the surging numerous cases in Hong Kong of unauthorised and illegal use of famous trademarks, etc. of Japanese enterprises, urging rectification in light of the thrust of TRIPS and Paris Convention for the Protection of Industrial Property. 	<ul style="list-style-type: none"> - It is requested that GOH makes a more stringent examination on application for trademark registration, falsely using internationally famous trademark. 	