

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. While there have been several notable developments in Hong Kong's trade and trade-related policies since the previous Trade Policy Review in 1994, no major changes have occurred since the transfer of sovereignty on 1 July 1997, apart from measures aimed at enforcing the protection of intellectual property rights. The Government's basic approach is still to let markets operate freely and openly as far as trade and investment are concerned. Thus, it has not sought to promote or rescue individual industries, even in the face of the Asian crisis.

2. The openness of the economy of Hong Kong, China to trade is such that all imports enter the region tariff free, even though more than half of all tariff lines remain unbound. Furthermore, there are few non-tariff barriers; these include quantitative restrictions or trade controls for health, security and environmental reasons. Moreover, there is virtually no government controls on the composition or destination of exports, except in the case of restrictions maintained under the WTO Agreement on Textiles and Clothing and for UN sanctions (for which the Central People's Government is now responsible). Nor has Hong Kong resorted to unilateral action to address trade disputes and problems. In addition, the HKSAR has few restrictions on inward and outward investment, and seemingly no sector-specific incentives to attract foreign direct investment (FDI). Its openness to FDI combined with sound macroeconomic policies, its transparent rules-based legal environment, simple tax system with low tax rates, skilled and reliable labour force, the availability of infrastructure together with its proximity to other major markets have greatly contributed to Hong Kong's attractiveness to business.

3. Shortly before the transfer of sovereignty, the authorities acceded to the WTO Agreement on Government Procurement (GPA), which entered into force on 19 June 1997.

4. The Government also confirmed its firm commitment to a policy of "minimum intervention and maximum support". Furthermore, it indicated that, within the framework of a free market, it would pursue a "proactive industrial support policy" aimed at sustaining and promoting the productivity and international competitiveness of manufacturing and service industries. The characterization of its industrial support policy as proactive may be somewhat misleading, however, as this policy does not appear to be aimed at "picking winners" through the use of industry-specific measures or incentives. Instead, the authorities have sought to ensure a business environment conducive to structural adjustment, investment, and growth by emphasising broad initiatives to enhance the skills and technology base of the economy, encourage new products and processes, remove infrastructural and land constraints, and liberalize regulated industries, particularly those providing basic business inputs (e.g. telecommunications services).

5. Prior to the transfer of sovereignty, the authorities also implemented comprehensive legislation aimed at ensuring Hong Kong's compliance with the TRIPS Agreement. More recently, perhaps in response to criticism by some WTO Members, the HKSAR authorities have taken steps to strengthen the enforcement of these and other laws intended to protect intellectual property rights.

6. In the authorities' view, competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to a minimum. Hence, the Government has adopted what might be characterized as a light-handed approach to competition and regulation, eschewing an all-embracing comprehensive competition law. Although the Consumer Council has questioned the adequacy of Hong Kong's competition policy, particularly with regard to non-traded goods and services, the authorities maintain that Hong Kong's high degree of openness to trade and foreign direct investment and its strong reliance on market forces in combination with sector-specific regulatory,

administrative and, in the case of telecommunications, legislative measures are sufficient to ensure highly competitive markets both for goods and services. This issue is the subject of an ongoing debate in Hong Kong.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Import registration

7. Almost all shipments into Hong Kong, China are subject to a post-shipment trade declaration primarily for statistical purposes.¹ All cargo imports are also subject to an import manifest containing detailed information on packages, accompanying documents, the consignor, the consignee and the carrier. The trade declaration and the import manifest must be lodged with the Customs and Excise Department. Declaration can either be lodged using prescribed paper forms or by using the Electronic Data Interchange (EDI) service operated by Tradelink Electronic Commerce Limited.²

Table III.1
Articles exempted from import/export declaration under the Import and Export (Registration) Regulations

Transshipment cargo.
Transit cargo.
Articles imported or exported by the Government or the Hong Kong Garrison.
Goods for sale in ship and aircraft stores.
Personal baggage.
Postal packets of a value less than HK\$4,000.
Samples and advertising material supplied free of charge.
Articles imported for exhibition or to be used in a sports competition.
Marine fish arriving directly from fishing grounds on fishing craft registered or licensed in Hong Kong.
Gifts of a personal nature.
Used empty freight containers regularly imported.
Aircraft parts or accessories for maintenance imported by transport operators based outside Hong Kong and servicing international routes.
Banknotes and coins after issue into circulation.
Radio and television production and broadcasting equipment owned and imported by a person established or resident outside Hong Kong.
Means of transport for the purpose of use as a means of conveyance for trade.

Source: HKSAR Government.

¹Every person who imports or exports any article other than an exempted article (Table III.1) is required to lodge with the Customs and Excise Department an import or export declaration within 14 days after the importation or exportation of the article. For an exempted article, it is necessary to indicate clearly on the cargo manifest the relevant category of the exempted article in order to facilitate trade documentation and verification.

²Tradelink is a consortium; the Government and, currently, 11 trade-related organizations in Hong Kong are the shareholders. The promotion of EDI is a main feature of the Community Electronic Trading Service (CETS), which aims to implement EDI for Government trade-related documents, such as restrained textiles export licences, trade declarations, certificates of origin, cargo manifests and dutiable commodities permits. Currently, CETS, in addition to paper applications, may be used to apply for restrained textiles export licences and trade declarations. CETS were launched in January 1997 and April 1997 on restrained textiles export licences and trade declarations, respectively.

(ii) Tariffs

8. The applied tariff of Hong Kong, China is 0%. As of June 1998, 37.8% of all tariff lines (HS 1996) were bound at zero representing 43.7% of the value of Hong Kong's imports in 1996. The bound items include all agricultural, fish and fishery products (965 lines) as well as various other industrial goods (1,343 lines), accounting for 26.1% of industrial items (5,139 tariff lines).

9. In the context of the Uruguay Round and the implementation of the WTO Agreements, Hong Kong bound 1,952 tariff lines (32.0% of tariff lines) at zero rates, accounting for 30.5% of the value of Hong Kong's merchandise imports in 1996. At the WTO Singapore Ministerial Conference in early December 1996, Hong Kong was party to the Ministerial Declaration on Trade in Information Technology Products (the "Information Technology Agreement" (ITA)), which bound tariffs on specific information technology products at zero. Hong Kong bound its tariff on all products covered by the ITA at zero on 1 July 1997 (instead of in four stages): the products covered accounted for 7.7% of the value of Hong Kong's imports in 1996.

10. At the APEC Economic Leaders Meeting in Osaka in November 1995, Hong Kong offered to bind an additional 225 tariff lines at zero with effect from January 1996. In its 1996 APEC Individual Action Plan (IAP), Hong Kong committed itself to binding at zero a further 20% of its imports with effect from January 2000, another 25% of imports with effect from January 2005, and all remaining tariffs with effect from January 2010. In 1997, the HKSAR proposed the removal of tariffs on toys, as well as nuisance tariffs, in response to Economic Leaders' instruction on early voluntary sectoral liberalization at their meeting in November 1996. Toys were eventually selected as one of the nine fast-track sectors for early voluntary liberalization at the Vancouver Ministerial Meeting in November 1997.³

11. As a result of the absence of tariffs, there are no laws, regulations or administrative procedures governing product valuation for customs valuation purpose. Except in the case of selected for inspection by the Customs for the purpose of detecting contraband and mis-declaration, import cargo is allowed immediate delivery upon fulfilment of licensing and import declaration requirements. Average clearance time in the past three years has been two weeks for sea cargo and within 90 minutes for air cargo.⁴

(iii) Other import related levies and charges

12. A charge is payable to the Customs and Excise Department at the time of lodging trade declarations. All goods other than those listed in Table III.1 are subject to the trade declaration charge, irrespective of source or destination. The revenue accrues to the general budget. Since 1 August 1998, the declaration charge on imports of non-foodstuffs has been HK\$13 (for paper declaration) for consignments worth up to HK\$46,000; a further HK\$0.25 is levied on every

³The 15 sectors are environmental goods and services, toys, energy, fish and fishery products, mutual recognition arrangement for telecommunications equipment, gems and jewellery, forest products, medical equipment and instruments, chemicals, automotive, fertilizers, oilseeds and oilseed products, natural and synthetic rubber, civil aircraft, and food. Of these sectors, the first nine were selected for fast-track action, whereby the scope of coverage and implementation details were to be finalized by June 1998 with a view to commencing implementation wherever possible in 1999. The proposal on the other six sectors is to be further developed by November 1998.

⁴The "clearance time" refers to the time actually taken to process the cargo selected for customs inspection.

additional HK\$1,000 or part thereof.⁵ The charge on imports of foodstuffs is set at HK\$13 per shipment, irrespective of the value declared.⁶ In 1996/97, the trade declaration charge on imports and exports generated revenue of HK\$1.2 billion. The revenue from such charges accrue to the General Revenue.

Table III.2
Fees related to the issuance of import licences, August 1998

Product	Licence application (HK\$)	Price of licence forms (HK\$ per pad)
Textiles:		
Import Licence Form 7	40	13
Licences issued under Special Import Licensing (Textiles)	43	15
Scheme for piece-knitted garments:		
Special Import Licences (Form 8b, 8c and 8a)	..	34
Ozone depleting substances	910	34
Pharmaceutical products and medicines	0	34
Radioactive substances and irradiating apparatus	0	20
Radio transmitting equipment	300 ^a	20
Reserved commodities	0	0
Rice	0	20
Sand:		
Sand permit	0	0
Route permit	160	n.a.
Strategic commodities	0	20
Pesticides	0	20
Endangered species under CITES:		
Live animals	420 ^b	0
Dead animals or their parts or derivatives, and plants	140	0
Plants and soil	0	0
Acetylating substances	0 ^c	0
Import of left-hand-drive vehicles	0	20
Optical Disc Mastering and Replication Equipment	0	20
Waste		
Single shipment	11,500	n.a.
Multiple shipments	18,680	n.a.

.. Not available.

n.a. Not applicable, application to be submitted in the form of a letter.

a For import permit applicants who are not holders of a "Radio Dealers Licence".
For holders of a "Radio Dealers Licence", no import permit is required for individual shipment.

b Import licence fee for one licence covering the same species.

c Import authorizations are only issued to holders of valid licences.

Source: HKSAR Government.

⁵When EDI service is used, the general rate affecting imports is HK\$0.50 for consignments worth up to HK\$46,000; a further HK\$0.25 is levied on every additional HK\$1,000 or part thereof.

⁶For the items classified in Appendix I of the Hong Kong Imports and Exports Classification List. When EDI is used, the rate is HK\$0.50.

13. Additional fees are levied in the context of the licensing procedures required for a variety of restricted or controlled products. Traders of ozone-depleting substances covered by the Montreal Protocol, exporters of restrained textiles, and participants in the Textile Traders Registration Scheme must be registered with the Trade Department, which collects an annual registration fee.⁷ The issuance of export and import licences, either for individual consignments or on an annual basis (for excisable products and acetylating substances), may attract licence application and licence form fees. Table III.2 provides an overview of the import-related fees. In 1996/97, the Government collected an estimated HK\$2.9 million from import and export licensing on dutiable commodities and HK\$239.9 million from textile licensing.

14. Anchorage, port clearance, buoy and port and light dues collected an estimated HK\$269 million in 1996/97.

15. Serious smuggling offences may be subject to heavy penalties, up to HK\$500,000 and imprisonment for two years upon summary conviction, and unlimited fine and seven years upon conviction.⁸ In 1997, the Customs and Excise Department seized HK\$117 million worth of goods, including cigarettes, smuggled between Hong Kong and China (mainland) with a potential loss of excise duty of HK\$13.6 million.

(iv) Import prohibitions, restrictions and controls⁹

16. Though a large number of products enter or leave the HKSAR freely, there exist various trade restrictions including prohibitions and controls on health, safety, security or environmental grounds. Some of these restrictions are designed to ensure compliance with international obligations, such as, the requirements of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (and its subsequent amendments), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Basel Convention. Import quotas apply to rice (Chapter IV) and to ozone-depleting substances covered by the Montreal Protocol. The HKSAR does not impose specific trade controls on cultural grounds.

17. The Government administers an import licensing or notification system for a variety of commodities, on health, safety, environmental, security and anti-smuggling grounds, or to meet obligations arising from international requirements. Items covered by the system include strategic commodities, reserved commodities, pharmaceutical products and medicines, pesticides, radioactive substances and irradiating apparatus, left-hand-drive vehicles, ozone-depleting substances, textiles and clothing, optical disk mastering and replication equipment, endangered species of animals and plants, and waste.

⁷Textiles control registration is a prerequisite for exporters and manufacturers who wish to export textiles to markets subject to restraint under the ATC. The Trade Department accepts only one registration from each exporter or manufacturer. The annual fees for textile controls registration and for participation in the Textile Traders Registration Scheme are HK\$1,712 and HK\$2,825 per annum, respectively. Traders of ozone-depleting substances covered by the Montreal Protocol have to be registered under the Ozone Layer Protection Ordinance. The registration fee for two years is HK\$2,790.

⁸Smuggling offences considered "serious" include the alteration of transport, and construction, repairing and maintenance of vessels for the purpose of smuggling.

⁹According to the authorities, the only requirement is that all cargoes must be properly recorded in cargo manifests upon importation and exportation. It was reported that in April 1998 an arms-dealer/conglomerate based in China, whose subsidiaries had been caught in the illegal trading of weapons and military equipment in recent years, opened an office in Hong Kong. The Government is committed to preventing the HKSAR from "becoming an arms-dealing centre" and pledged to monitor the activities of the dealer and other arms-related business. (South China Sunday Morning Post, 14 June 1998).

18. For strategic commodities, controls through import licensing requirements are aimed at ensuring compliance with controls laid down by various international agreements or arrangements.¹⁰

19. To secure a reserve of certain staple food products, reserve stock (and licensing) obligations currently apply to rice, frozen meat and frozen poultry (Chapter IV).

20. For the import of pharmaceutical products and medicine (defined by section 2 of the Pharmacy and Poisons Ordinance), an import licence is required under the Import and Export (General) Regulations. The issuance of an import licence for these goods is subject to the prior endorsement of the Pharmacy and Poisons Board of the Department of Health. Licences are also required to control imports of certain agricultural pesticides and insecticides or to ensure the collection of excise duties. Licensing requirements for textiles are imposed to ensure compliance with regulations and to discharge obligations under the Agreement on Textiles and Clothing.

21. For the import of radioactive substances and irradiating apparatus¹¹, an import licence is required under the Import (Radiation) (Prohibition) Regulations. An import licence is also required for the importation of left-hand-drive vehicles.

22. Changes in licensing requirements since the last Trade Policy Review in 1994 include:

- amendments made to the Schedules to the Import and Export (Strategic Commodities) Regulations, to keep the control lists of Hong Kong in line with those adopted by various international export control regimes¹²;
- the introduction of a permit system in 1996 for waste shipments into and out of the HKSAR. The system aims to ensure that prior consent is obtained from territories concerned before commencement of any waste shipment, thereby fulfilling Hong Kong's obligation under the Basel Convention¹³;
- the introduction of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance in June 1997. Under the Ordinance, services knowingly provided to assist programmes of weapons of mass destruction are prohibited;¹⁴ and
- the introduction of licensing schemes in 1997 to complete production lines of optical discs and essential components of production lines for producing optical discs. The licensing system aims to better monitor the flow of optical disc mastering and manufacturing equipment into and out of the HKSAR and to prevent their use in copyright infringing activities.¹⁵

¹⁰These include the Wassenaar Arrangement, the Nuclear Non-Proliferation Treaty, Nuclear Suppliers Group, Missile Technology Control Regime, the Australia Group on Chemical and Biological Weapons Proliferation. Hong Kong, China is not a member of these regimes.

¹¹An import licence for these goods is issued upon the applicant's production of a licence issued under the Radiation Ordinance for possession, use, or dealing in or with such goods. All of the relevant licences must be issued prior to the import.

¹²The regimes include the new control list adopted by the Wassenaar Arrangement; the Chemical Weapons Convention; and the export schedules of the U.S. and the EU.

¹³WTO document G/LIC/N/1/HKG/2 (G/LIC/N/2/HKG/1), 19 November 1996.

¹⁴Persons providing such services are liable to a fine of HK\$500,000 and to imprisonment for two years on summary conviction; and an unlimited fine and imprisonment for seven years upon conviction.

¹⁵WTO document G/LIC/N/1/HKG/3 (G/LIC/N/2/HKG/2), 9 February 1998.

23. Under a Transshipment Cargo Exemption Scheme implemented by the Trade Department, transshipments of products such as pharmaceuticals, reserved commodities, and certain pesticides may be exempt from licensing requirements.¹⁶

24. In addition to rice quotas, import quotas (and licensing) are required in Hong Kong for ozone-depleting substances. These measures have been put in place so as to protect the environment in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer.¹⁷

25. For health reasons, import prohibitions are maintained on potentially harmful food products, including certain smokeless tobacco products, products containing non-permitted colouring matter, artificial sweeteners (and the sweeteners themselves), aflatoxins or erucic acid, and preservatives or anti-oxidants. The import and sale of two toxic forms of asbestos, i.e. amosite and crocidolite, are prohibited, so as to protect public health. Plants and animals are also subject to import restrictions.¹⁸

26. Since 1994, pharmaceutical products containing a number of drugs have been deregistered due to their linkage with diseases such as cancer.¹⁹ Accordingly, these products can no longer be imported, or manufactured in Hong Kong, for sale or use.

27. Hong Kong prohibits importation and exportation of the highly endangered species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in order to fulfil its obligations under the Convention.

28. As a consequence of the outbreak of Bovine Spongiform Encephalopathy (BSE) in the United Kingdom, import licences covering U.K. frozen/chilled beef have been suspended since 28 March 1996. Importation of live poultry from China was prohibited for a certain period of time due to the occurrence of Influenza A H5N1 cases in 1997.²⁰

¹⁶Transshipment cargo is defined as any imported article that is consigned on a through bill of lading or a through airway bill from a place outside the HKSAR to another place outside the HKSAR and is or is to be removed from the vessel, vehicle or aircraft in which it was imported and either returned to the same vessel, vehicle or aircraft or transferred to another vessel, vehicle or aircraft before being exported, whether it is to be transferred directly between such vessels, vehicles or aircraft or whether it is to be landed in the HKSAR after its importation and stored pending exportation.

¹⁷Import quotas are currently maintained on hydrochlorofluorocarbons (HCFCs) (Table III.3). Quotas are initially allocated to applicants who have made substantial imports of the controlled substances before the control measures are implemented. In the subsequent control period, quotas are allocated according to individual quota holders' performance in the preceding period. Any unused quotas will be allocated under a points system, where preference is generally given to end-users or applicants who have installed recycling facilities.

¹⁸Under the Rabies Ordinance, the import of all species of the family Desmodontidae (vampire bats) is prohibited. Species listed under Schedule 1 and 3 of the Animals and Plants (Protection of Endangered Species) Ordinance are subject to import control. The First Schedule of the Plant (Importation and Pest Control) Ordinance lists plants subject to import restriction.

¹⁹Drugs may be de-registered on grounds of toxicity or their contribution to cancer or cardiac problems. The de-registered drugs are Oxyphenisatin, Diethylstilbestrol, Fenfluramine, Dexfenfluramine and Potassium antimony tartrate. Only registered drugs can be imported or manufactured in Hong Kong for sale or use.

²⁰Importations of live chickens, and ducks and geese resumed respectively in February and May 1998 with strengthened inspections put in place.

Table III.3

Import quotas, 1994-97

(Tonnes unless otherwise specified)

Type of product	Quota period	Quota level	Local consumption	Degree of utilization (per cent)
(a) Substances depleting the ozone layer				
Chlorofluorocarbons (CFCs) ^a	1994	576.45	531.37	92
	1995	576.45	451.30	78
1,1,1-trichloroethane ^a	1994	277.95	237.89	86
	1995	277.95	217.96	78
Ten other fully halogenated CFCs ^a	1994	2,750 kg.	80.17 kg.	3
	1995	2,750 kg.	79.59 kg.	3
HCFCs	1996	138.93	89.38	64
	1997	138.93	97.23	70
(b) Rice	1994	328,500	328,248	100
	1995	325,728	326,850	100
	1996	329,184 ^b	331,607	100
	1997	342,900	332,712	100

a Imports for local consumptions have been banned since 1 January 1996.

b An additional 1,800 tonnes of rice was imported in 1996 outside the quota as reserve stocks for five newly registered stockholders.

Source: HKSAR Government.

(v) Trade sanctions

29. The imposition of sanctions resulting from security and foreign affairs considerations is the responsibility of the Central People's Government.²¹ Thus, sanctions arising from decisions made by the UN Security Council are implemented in HKSAR upon the instruction of the Central People's Government and by the enactment of United Nations Sanctions Ordinance and its subsidiary regulations. Currently, Hong Kong, China maintains trade embargoes, with varying coverage, on Angola, Burundi, Iraq, Liberia, Libya, Rwanda, Somalia, Tanzania, Uganda and Zaire. They are administered by the Trade Department through circulars to traders stipulating the licensing requirements and relevant conditions. Monitoring is through manifest checking, the trade declaration, and the enforcement of relevant legislation by the Customs and Excise Department.

(vi) Emergency trade measures

30. Hong Kong, China has not taken any safeguard action under Article XIX of the GATT.²²

(vii) Countertrade

31. The Government maintains that there are no legal provisions covering countertrade. Nor does it engage in countertrade. It does, however, compile information on the extent of countertrade or similar arrangements in which Hong Kong firms may be involved.

(viii) State trading

32. Hong Kong, China does not maintain any state-trading enterprises.²³

²¹Before the transfer of sovereignty, sanctions arising from decisions made by the United Nations Security Council were implemented in Hong Kong through Orders in Council issued by the U.K. Government.

²²Hong Kong has notified that it had neither safeguard measures within the meaning of Article 10 of the Safeguards Agreement, nor voluntary export restraints or similar measures within the meaning of Article 11.1(b) of the same Agreement on the entry into force of the WTO Agreement (WTO document G/SG/N/2/HKG (G/SG/N/3/HKG), 12 March 1996).

(ix) Other measures

33. No origin certificates are needed for goods imported definitively into or in transit through Hong Kong, China. Hong Kong does not have any preferential rules of origin.²⁴ Reflecting its open market environment, Hong Kong, China has no local-content requirements. Nor does the Government contract for or mandate the use of preshipment inspection activities as defined under the Agreement on Preshipment Inspection.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Export prohibitions, controls and licensing requirements

34. As on the import side, Hong Kong, China maintains relatively few restrictions on exports. A tight regulatory framework in the textiles and clothing sector, required by commitments under the WTO Agreement on Textiles and Clothing (ATC), is the only major exception. Other export controls are mainly for strategic reasons or to implement commitments assumed under international agreements such as CITES or the Montreal Protocol. An overview of the products covered by export licensing requirements and the fees involved, if any, is found in Table III.4.

35. Hong Kong, China is currently subject to quantitative restrictions on textile exports to Canada, the European Union, Norway and the United States in accordance with the ATC, which was implemented on 1 January 1995, replacing the Multifibre Arrangement (MFA). The quantitative restrictions associated with the ATC are to be removed by 2005 under a ten-year phase-out programme. Changes in the scope and content of these quantitative restrictions since the last Trade Policy Review of Hong Kong include the elimination of some quotas in respect of imports from Hong Kong.²⁵ A comprehensive system of export controls is applied to administer the existing restraints. Export licences are issued by the Government for restrained textiles and clothing. Certificates of Hong Kong origin are required for the European Union and Norway. Under the Textiles Trader Registration Scheme²⁶, exports of textiles and clothing items to non-restrained markets must be notified only by the exporter. Quotas are transferable.²⁷

²³Hong Kong, China has notified that it had no state-trading activities under GATT Article XVII (WTO document G/STR/N/3/HKG, 19 November 1997).

²⁴WTO document G/RO/N/1/Add.1, 22 June 1995.

²⁵One category subject to specific limit and 22 categories subject to group limits have been fully or partially relaxed by the United States, under its stage 2 integration programme; two restraint items have been relaxed by Canada; and four categories by the EU, under its stage 2 programme. Norway has implemented the first two stages of its liberalization programme since 1 January 1996 and 31 December 1997, respectively, and is to lift its remaining restraints on HKSAR's textile and clothing exports on 31 December 1998.

²⁶The scheme, aimed both at facilitating trade and tightening controls, covers all textile imports, textile re-exports, domestic textile exports to non-restrained markets, domestic exports of properly marked textile samples not exceeding US\$250 in f.o.b. value to the United States, domestic exports of mutilated or stamped samples of no commercial value to the United States, and textiles transshipments. Details of each consignment must be filed via carrier to the Trade Department.

²⁷Two types of quota transfer system exist. Permanent transfers enable the transferee to continue receiving a quota allocation based on his/her export performance against the transferred quantity. In temporary transfers, the transfer is only for the year in question, and the export performance of the transferee against the transferred quantity is attributed to the transferor. All quota transfers must be register with the Trade Department. For details of the operation of the quota transfer system, see GATT (1994).

equipment was introduced.²⁸ No major change has taken place in Hong Kong's export licensing requirements in respect of other commodities.

38. According to the authorities, no changes have been made to export prohibitions and approval procedures since the previous Trade Policy Review of Hong Kong.

(ii) Voluntary restraints, surveillance and similar measures

39. Apart from restrictions applied under the ATC, there is no evidence of the authorities' being involved in arrangements, unilaterally or with importing countries, aimed at restricting, moderating or otherwise influencing exports from Hong Kong, China.

(iii) Export-related charges and levies

40. Hong Kong, China does not impose export taxes. However, like imports, all exports other than those listed in Table III.1 are subject to a trade declaration charge.²⁹ The fees charged are currently HK\$0.5 (EDI declarations) or HK\$13 (paper declaration) for consignments valued at less than HK\$46,000 and HK\$0.25 for each additional HK\$1,000 or part thereof. The charge for export declaration of goods with the country of origin other than HKSAR is HK\$0.5 (EDI declaration) or HK\$13 (paper declaration) for the first HK\$23,000 and HK\$0.5 for each additional HK\$1,000 or part thereof. Additional fees may be levied on specified services, including registration or issuance fees for export licences, permits and certificates of origin; and charges on air cargo throughput, anchorage and port clearance. The application fees for textile export licences and for origin certificates are estimated to have generated revenue of HK\$143 million and HK\$5.6 million, respectively, in 1996/97.

41. For exports of Hong Kong manufactured clothing and footwear items specified in the Schedule to the Industrial Training (Clothing Industry) Ordinance, there is a clothing training levy of HK\$0.3 in respect of each HK\$1,000 value or part thereof in addition to the declaration charge. The levies are used to finance the Clothing Industry Training Authority, a statutory non-profit-making organization with a mandate to provide training facilities for persons employed in the clothing industry.³⁰

(iv) Certificates of origin

42. The Government provides an origin certification system to help exporters to meet the requirements of importing countries.³¹ Certificates of origin are also required for the export of restrained textiles to the EU to supplement Hong Kong's Textiles Export Controls System and to provide evidence that the textiles exports are of Hong Kong origin.

43. The Trade Department is responsible for administering the origin certification system and issuing certificates. Five other organizations in Hong Kong, China have been designated by the

²⁸As in the case of imports, the scheme applies to complete production lines of optical discs, including essential components of production lines for producing optical disks.

²⁹Export manifests are also required for cargo exports in packages or bulk.

³⁰A construction industry training levy is imposed on all construction works in Hong Kong to finance the Construction Industry Training Authority, which provides craftsmen training for the construction industry.

³¹Certificates of origin for re-exports may also be issued, for trade facilitation purpose, against established proof of the origin of the re-export goods, such as a certificate of origin issued by the originating country.

Government as competent to issue certificates of origin under Article 11 of the International Convention for the Simplification of Customs Formalities 1923.³²

44. The Government operates a manufacturer and product registration system and allows only registered manufacturers with verified manufacturing capability to apply for a certificate of origin or an export licence for restrained textiles. Under the system (the Factory Registration System), factories are required to demonstrate their capabilities to manufacture the product for which they are registered before they are entitled to the issue of a Certificate of Hong Kong Origin or a restrained textiles export licence. The production capabilities, as evidenced by the requisite factory premises, machinery and appropriate workforce, must be verified by Customs and Excise Department before approving the factory registration. Periodic re-inspections are envisaged to ensure that the registered factories continue to engage in active production.

(v) Export promotion and marketing assistance

45. The status and function of the Hong Kong Trade Development Council (HKTDC), a statutory body aimed at assisting manufacturers, exporters and importers to enter markets and expand sales, have generally remained the same since the previous Trade Policy Review.³³ The HKTDC's major activities include organizing trade fairs around the world, publishing market surveys, product reports, product-specific magazines, and a monthly newspaper targeting business leaders and decision-makers in overseas markets. Emphasis has been placed recently on the promotion of Hong Kong's services exports; of the HK\$317 million budgeted for promotional expenditure in 1998/99, HK\$40 million is allocated to promote Hong Kong's services exports. In addition to its Hong Kong offices, HKTDC currently operates 51 branch offices in 34 countries and regions.³⁴ In 1997, the HKTDC organized more than 300 promotional events, including 19 trade fairs in Hong Kong.

46. According to the authorities, about half of HKTDC's export promotion effort is focused on Europe and the Americas, 20% on China (mainland), 12% on Japan, 12% on organizing international trade fairs in Hong Kong, and the remainder on the rest of Asia and other markets.

47. The HKTDC raises funds through fees for participation in fairs, the sale of publications and the like. The ratio of self-generated revenue to gross recurrent expenditure was over 70%, and government funding amounted to HK\$588 million in 1996/97.

48. Hong Kong, China maintains no export (or other) subsidies notifiable under Article XVI:1 of GATT 1994 and Article 25.2 of the Agreement on Subsidies and Countervailing Measures.³⁵

(vi) Export finance, insurance and guarantees

49. The Hong Kong Export Credit Insurance Corporation (ECIC) was established in 1966 to provide insurance protection for Hong Kong exporters against non-payment risks arising from

³²These organizations are The Hong Kong General Chamber of Commerce, Federation of Hong Kong Industries, The Indian Chamber of Commerce, Hong Kong, The Chinese Manufacturers' Association of Hong Kong, and The Chinese General Chamber of Commerce.

³³The governing body of TDC is a 19 member council comprising representatives of Hong Kong trade and industry bodies, private sector leaders and government officials. The Chairman is appointed by the Chief Executive of HKSAR.

³⁴HKTDC opened offices (branch or consultant office) in Dalian, Jakarta, Kuala Lumpur, Moscow, Santiago and Wuhan in 1994, and in Chengdu, Fuzhou, Johannesburg, Kunming, Prague, Qingdao, and Sao Paulo in 1995.

³⁵WTO document G/SCM/N/25/HKG, 30 June 1997.

commercial and political events. The ECIC is wholly owned by the Government, which therefore guarantees all contingent liability. As the ECIC operates in accordance with a statutory policy aimed at securing reserves sufficient to meet all its expenditure, this guarantee does not necessarily constitute government financial assistance to exports. In fiscal year 1997/98, the total amount insured by the ECIC amounted to some HK\$21,500³⁶, a 7% increase over the previous year. In June 1998, possibly as part of its "proactive industrial support policy" (section (4)(v)), the Government introduced the Pilot Credit Guarantee Scheme for SMEs involved in exporting. This scheme was suspended in August 1998, however, and merged into the HK\$2.5 billion Special Finance Scheme (section (4)(v)(c)).

(vii) Measures maintained by importing countries

50. According to the authorities, exports from Hong Kong are currently subject to provisional or definitive anti-dumping duties in Argentina, Australia, Canada, the European Union, Mexico, the Philippines, and South Africa. It is estimated that Hong Kong's domestic exports subject to anti-dumping actions amounted to some HK\$73 million, representing some 0.035% of Hong Kong's total domestic exports.³⁷

(4) INTERNAL MEASURES

(i) Taxation

(a) Indirect taxes

51. Excise duties and a motor vehicle first-registration tax are significant instruments of indirect taxation. In 1996/97, excises and the registration tax, respectively, accounted for an estimated HK\$8.4 billion, (4.1%), and HK\$3.2 billion (1.5%) of total government revenue.

52. The Government levies excise duties on four types of goods: alcoholic liquors, hydrocarbon oil, methyl alcohol, and tobacco. The excise duty regime applies equally to imported and locally manufactured products, and a uniform duty rate and the same valuation methods apply to all products of the same category, whether imported or locally manufactured. Whereas a specific duty system is used for hydrocarbon oil, tobacco, and methyl alcohol, *ad valorem* duty rates apply for alcoholic liquors.³⁸

53. Duties on hydrocarbon oil contribute about 55% to total excise revenue; the relevant rates, and their development over time, are set out in Table III.5. The Dutiable Commodities Ordinance was amended in 1996 to improve efficiency by introducing an administrative penalty, in lieu of prosecution, for offenders committing minor offences³⁹, and streamlining the procedures for the assessment of duty, and licence and permit control

³⁶Unaudited figures.

³⁷According to the authorities, using the export statistics of 1997 as reference.

³⁸In March 1994, a single *ad valorem* system of duties was introduced for alcoholic liquor, replacing the previous "specific-cum-*ad valorem*" system.

³⁹Minor offences in this context include illegal possession of dutiable good at control points.

Table III.5
Duty rates for dutiable commodities 1994-99

Hydrocarbon oil (HK\$ per litre)

	1994/95	1995/96	1996/97	1997/98	1998/99
Aircraft spirit	4.92	5.31	5.79	6.14	6.51
Leaded petrol	5.46	5.90	6.43	6.82	6.82
Unleaded petrol	4.86	5.25	5.72	6.06	6.06
Light diesel oil	2.45	2.65	2.89	2.89	2.00

Alcoholic liquors (ad valorem duty rates)

	1994/95	1995/96	1996/97	1997/98	1998/99
Alcoholic beverages and ethyl alcohol products with alcoholic strength above 30 per cent by volume	100	100	100	100	100
Wine made from grapes	90	90	90	60	60
Alcoholic liquors (excluding wine made from grapes) and ethyl alcohol products with alcoholic strength of not more than 30 per cent by volume	30	30	30	30	30

Methyl alcohol (HK\$ per 100 litres)

	1994/95	1995/96	1996/97	1997/98	1998/99
Methyl alcohol and any admixture containing methyl alcohol	747	747	747	792.0	840.0
In addition, for every 1 per cent by which the alcoholic strength by volume exceeds 30 per cent	25	25	25	26.5	28.1

Tobacco

	1994/95	1995/96	1996/97	1997/98	1998/99
Cigarettes (HK\$ per 1,000 pieces)	580	626	682	723	766
Cigars (HK\$ per kg.)	745	805	877	930	986
Chinese prepared tobacco (HK\$ per kg.)	142	153	167	177	188
All other manufactured tobacco except tobacco intended for the manufacture of cigarettes (HK\$ per kg.)	701	757	825	875	928

Source: HKSAR Government.

54. Excise duty exemptions and refunds are granted on goods exported from Hong Kong with the consent of the Customs and Excise Department, or for other specified purposes (Table III.6). In the fiscal year 1997/98, the revenue forgone as a consequence of exemptions and refunds under the Dutiable Commodities Ordinance amounted to HK\$2.6 billion (US\$334 million), about 30.5% of excise revenue collected on these items. Drawbacks were removed from the Dutiable Commodities Ordinance in 1996.⁴⁰

⁴⁰ According to the authorities, drawback was removed because there had not been any case of use of duty-paid goods for production input, and because there is provision for claim of refund on goods used for manufacture of dutiable goods under the Dutiable Commodities Regulation.

Table III. 6
Products and activities qualifying for excise exemptions, refunds and drawbacks

<p><u>Exemptions</u></p> <p>Stores, lubricants and fuel for ships of more than 60 tonnes net register and for ocean-going tugs and aircraft in quantities determined by the Commissioner of the Customs and Excise Department, for use either outside or partly inside Hong Kong (the fuel exemption refers to vessels other than pleasure vessels):</p> <ul style="list-style-type: none">- hydrocarbon oil for the bench testing of aircraft engines for aircraft operating mostly outside Hong Kong;- light diesel oil with a marker and a colouring substance;- diesel oil used in the blending of fuel oil in licensed depots;- vehicle fuel for disabled drivers (subject to quantitative ceilings);- export goods (including re-exports);- goods destroyed with the consent of the Commissioner;- duty-paid goods which have been exported and subsequently re-imported;- samples or advertising material of no commercial value and not intended for re-sale;- goods drawn as samples for analysis by the Government Chemist;- goods donated to charitable institutions;- goods imported by passengers or crew members for their own use in quantities determined by the Commissioner; and- goods for diplomats and international organizations operating in Hong Kong. <p>A refund of duty may be granted in respect of duty-paid goods used in the manufacture of any dutiable goods under Regulation 14A of the Dutiable Commodities Ordinance.</p> <p><u>Refunds</u></p> <p>Duty-paid goods:</p> <ul style="list-style-type: none">- exported from Hong Kong with the consent of the Customs and Excise Department;- which were imported in pursuance of a contract of sale, and for which the description, quality, state or condition of the goods was not in accordance with the contract, or the goods were damaged in transit, and the importer, with the consent of the Customs and Excise Department, has destroyed the goods unused or has returned them to persons outside Hong Kong who supplied them;- used in the manufacture of dutiable goods;- supplied for the use or consumption of a person who is entitled immunity or exemption from duty;- drawn as samples for analysis by the Government Laboratory; and- comprising fuel placed in the fuel tank of pleasure vessel of more than 60 tonnes net register and for use by that vessel in reaching an identified port outside Hong Kong.
--

Source: HKSAR Government.

55. Excise duty paid on production inputs, such as tobacco or hydrocarbon oils, may be reclaimed on exportation of the processed product (Table III.6). There are no exemption or refund arrangements for goods traded between Hong Kong and the mainland. Dutiable goods imported into Hong Kong from the mainland and exported to the mainland from Hong Kong are treated in the same manner as imports/exports from and to other parts of the world.

56. Since the last Trade Policy Review of Hong Kong, a new appeal procedure has been introduced. Parties affected by government decisions on excise taxation may now appeal to the Administration Appeals Board.⁴¹ Regarding exemptions and refunds, aggrieved parties may appeal to the courts for judicial review on the government decision.

⁴¹The Administrative Appeals Board was established with the enactment of the Administrative Appeals Board Ordinance in 1994 to hear and determine appeals lodged by any person aggrieved by certain administrative decisions. Members of the Board including the Chairman, Deputy Chairman and panel members are appointed by the Chief Executive.

Table III.7
Motor vehicle first registration tax in Hong Kong
(Per cent, and *ad valorem* rates)

1993-94

Categories		Rates (on c.i.f. value)
Private cars (c.i.f. value)		
Basic cars (below HK\$30,000)		90
Semi-luxury cars (between HK\$30,000-HK\$60,000)		105
Luxury cars (exceeding HK\$60,000)		120
Motor cycles and motor tricycles		90
Other types of vehicles (Taxis, public and private light buses, public and private buses, special purpose vehicles)		15
Goods vehicles		
Van-type light goods vehicles:		
not exceeding 1.9 tonnes		90
exceeding 1.9 tonnes		50
Other types of goods vehicles		35

from August 1994

Categories		Rates (on taxable value)
Private cars		
taxable value not exceeding HK\$100,000		40
taxable value between HK\$100,001 and HK\$200,000		45
taxable value between HK\$200,001 and HK\$300,000		50
taxable value exceeding HK\$300,000		60
Motor cycles		40
Motor tricycles		40
Goods vehicles		
Van-type light goods vehicles not exceeding 1.9 tonnes:		
taxable value not exceeding HK\$100,000		40
taxable value between HK\$100,001 and HK\$200,000		45
taxable value exceeding HK\$200,000		50
Van-type light goods vehicles exceeding 1.9 tonnes:		20
Other goods vehicles		18
Other types of vehicles (Taxis, public and private light buses, public and private buses, special purpose vehicles)		4

Note: The taxable value of a vehicle is its published retail price excluding the value of three exempted accessories (i.e. air-conditioners, audio equipment, and anti-theft devices) and distributor's warranties. In the exceptional case where there is no published retail price, e.g. when an individual imports a model which is not available for sale in ordinary markets, the Commissioner for Transport, who is empowered under the Motor Vehicles (First Registration Tax) (Amendment) Ordinance 1994 to assess retail prices of vehicles, has the power to determine the level of the first-registration tax.

Source: HKSAR Government.

57. Violation of excise regulations may result in confiscation of the goods, fines of up to HK\$1 million and imprisonment of up to two years.

58. Imports of excisable products must be stored in a general bonded warehouse, a public bonded warehouse, or a licensed warehouse nominated by the importer until the duty is paid or the goods are re-exported. The same requirement applies to domestically produced excisable goods. In 1996/97, the Government collected HK\$34.9 million from the bonded warehouse supervision charge, up by 10.8% on the previous year.

59. The motor vehicle first-registration tax is levied on the taxable value of motor vehicles.⁴² The taxable value of a vehicle is its published retail price excluding the value of exempted accessories and distributors' warranties. Rates on passenger cars vary according to their taxable value (Table III.7).⁴³ Since the last Trade Policy Review of Hong Kong, various amendments to the Motor Vehicles (First Registration Tax) Ordinance have been made. In 1996, the Ordinance was amended to enable the Commissioner for Transport to set the maximum value for tax-exempt items, i.e. exempted accessories and distributors' warranty, so that the value of these items in excess of the ceiling value would be taxable.⁴⁴ In 1997, a further amendment was introduced concerning the redefinition of the scope of dutiable accessories, trade operations, warranty, duties on resales, and of depreciation, as well as strengthening of the customs' power of enforcement. First-registration tax is not applicable to any motor vehicle propelled solely by electric power and that does not emit any exhaust gas.

(b) Direct taxation

60. Hong Kong's income tax system is noteworthy for its simplicity and low tax rates, both of which are partly the consequence of the virtual absence of incentives other than accelerated depreciation that applies across the board.⁴⁵ With the exception of income from certain international shipping services, which are tax exempt, profits (total income minus total deductions) derived from trading, professional or business activities in Hong Kong are subject to statutory tax rates of 16% in the case of corporations and 15% for unincorporated businesses. No taxes are levied on dividends received from a corporation subject to Hong Kong's profits tax or on capital gains. The combination of very generous depreciation allowances and no taxation of dividends or capital gains means that companies operating in Hong Kong face marginal effective tax rates that are even lower than the 15% statutory rate of profits tax: 11.9% for a typical manufacturing company and only 3.7% for a typical service company, according to a recent study.⁴⁶ The maintenance of such a simple, low tax system

⁴²A disabled person is not liable for first-registration tax on the first HK\$300,000 of the taxable value of a motor vehicle.

⁴³Motor cycles, motor tricycles, goods vehicles and other types of vehicles (taxis, public and private light buses, public and private buses, special-purpose vehicles) are also subject to the motor vehicles first-registration tax. The Motor Vehicle (First Registration Tax) Ordinance was amended by a resolution in 1997 to extend the first-registration tax (FRT) exemption for electric vehicles for three years up to 31 March 2000.

⁴⁴No ceiling values have been set on the exempted accessories and distributors' warranties as of 1 August 1998. In the 1996 amendment, a provision on sanctions against abuse to obtain remission of the first-registration tax was also introduced. The remission scheme aims to provide an incentive for scrapping old cars; car owners replacing vehicles of not less than ten years old by petrol driven cars may receive a reduction of the first-registration tax.

⁴⁵Accelerated depreciation involves an initial write-off for machinery and buildings at rates of 60% and 20%, respectively; a regular annual deduction is then allowed at the rate of 10, 20, 30 or 4% of the remaining balance, using the straight-line method. Where it is owned by the end user, a 100% write-off is allowed for expenditure on plant and machinery specifically related to manufacturing, and for computer hardware, software and development costs. Capital expenditure on refurbishment and redecoration of buildings and structures is amortized over five years, based on a 20% straight-line annual write-off.

⁴⁶Chen and McKenzie (1997).

undoubtedly contributes to Hong Kong's attractiveness to foreign investors.⁴⁷ Marginal statutory tax rates on salaries range from 2% to 17%.⁴⁸

61. Property tax is charged to the owners of land and/or buildings in Hong Kong; it is computed at the standard rate of 15% on the net rental value of the property. However, corporations carrying on an active business are exempt from property tax because income from property is aggregated with other income and subject to the profits tax.

62. In 1996/97, profits taxes accounted for 24% of the Government's revenue while taxation of salaries accounted for 13.7%.

(ii) Sanitary and phytosanitary (SPS) measures

63. All food imported for sale in Hong Kong must comply with the standards laid down in the Public Health and Municipal Services Ordinance and its subsidiary legislation. Monitoring samples are taken by staff of the Department of Health for inspection, chemical analysis and bacteriological examination at points of importation as well as at wholesale and retail levels to ensure that standards of hygiene are met. Laboratory spot inspections on import consignments are carried out to ensure compliance. The Health Department monitors the safety of imported and locally produced foods. According to the authorities, the food standards correspond to ISO or other internationally accepted standards, insofar as those standards are applicable.

64. Hong Kong maintains plant and animal quarantine requirements based on the recommendations of the Asia and Pacific Plant Protection Commission (APPPC) and International Office of Epizootics (OIE), respectively. The Agriculture and Fisheries Department administers the Plant (Importation and Pest Control) Ordinance, Public Health (Animals and Birds) Ordinance and Rabies Ordinance to implement SPS measures in Hong Kong.

65. Imports of all meat, meat products, poultry, milk, cream and frozen confectioneries require an official health certificate issued by the competent authority in the country of origin.⁴⁹ The certificate must state whether the goods has been properly packed under sanitary conditions, is fit for human consumption and, in the case of meat, whether inspections (ante and post-mortem) have been carried out. Official health certificates from competent health authorities of the exporting country are also required upon importation of game, meat and poultry. The importation of game and prohibited meat requires the approval of the Director of Health.⁵⁰ Imported animals and birds must generally be covered by an import permit issued in advance by the Agriculture and Fisheries Department, comply with the terms of such permit, and be accompanied by a health certificate issued by the

⁴⁷Interestingly, Hong Kong has no comprehensive double taxation treaties. It does, however, have limited arrangements concerning shipping profits (with the United States) and airline profits (with Canada, Germany, Korea, the Netherlands, New Zealand and the United Kingdom). Furthermore, an understanding has been reached with the People's Republic of China on tax relief for Hong Kong airlines and shipping companies and for the avoidance of other cases of double taxation of income flows between Hong Kong and the mainland. The authorities envisage negotiations with a view to concluding comprehensive double taxation treaties with selected countries where this is considered to be in Hong Kong's interest. Such negotiations have yet to begin.

⁴⁸The total tax charged on total taxable income (income net of deductions) cannot exceed 15%.

⁴⁹Before recognizing the certificates of an overseas authority, Hong Kong, China requests the country concerned to provide information about the production plants (including slaughterhouses), domestic health and sanitary requirements, and the legal controls over exported commodities.

⁵⁰"Prohibited meat" is the kind of meat specified in the Schedule to the Imported Game, Meat and Poultry Regulations. According to the authorities, these are the kinds of meat for which sanitary condition cannot be ascertained.

competent veterinary authority of the exporting country. Similarly, the importation of plants requires a phytosanitary certificate issued by the relevant authority of the exporting country. Milk, milk beverages, cream and frozen confection imports must be from a source of manufacture approved by the Provisional Urban Council or Provisional Regional Council.

66. Since the previous Trade Policy Review of Hong Kong, the Mineral Oil in Food Regulation was amended to allow the presence of hydrocarbon wax in an amount not exceeding good manufacturing practice in chewing gum products. In 1996, the Food and Drugs (Composition and Labelling) Regulation was amended to bring the provisions into line with the international standards for labelling as prescribed by Codex Alimentarius. In 1998, the Public Health (Animals and Birds) Regulations were amended to prevent the spread of H5N1 avian influenza to Hong Kong, China.

(iii) Standards and other technical requirements

(a) Standards, testing and certification

67. Hong Kong, China does not have a single official standards authority. The Industry Department operates as the liaison point with WTO and the consultation point for other WTO Members seeking information on standards. Between January 1995 and February 1998, Hong Kong made 21 notifications (including addenda and revisions) under the Agreement on Technical Barriers to Trade (TBT Agreement).⁵¹ All bureaux and departments concerned have the responsibility for ensuring compliance with the WTO Agreements. The Industry Department issues written reminders to all standards-related bureaux and departments twice a year on Hong Kong, China's obligation to adopt international standards whenever possible and to submit notifications of technical regulations to the WTO. Where standards have to be applied in Hong Kong for reasons including safety, health or environmental considerations, they are based essentially on international standards and/or appropriate overseas standards.

68. Since the last Trade Policy Review of Hong Kong, a total of nine legal regulations involving the use of standards, relating to consumer protection and safety, health, environmental protection and telecommunications, have been introduced.⁵²

⁵¹The notifications related to the application of U.S. and EEC emission standards for large diesel vehicles and the tightening the emission standards for light vehicles; a voluntary energy efficiency labelling scheme for household refrigeration appliances; labelling requirements for food and food products; banning registration of certain new vehicles powered by diesel compression ignition engines; identification marking and bilingual safety labelling requirement; voluntary energy efficiency labelling scheme for air conditioners; imposition of a statutory duty on manufacturers, importers and suppliers of certain consumer goods to ensure safety of the products; minimum requirements for achieving energy-efficient lighting installations; tightening of the emission standard of private cars in line with the U.S. State of California; tightening of the specifications of diesel fuel in line with the European CEN standard; tightening of the emission standards for light and heavy vehicles in line with the U.S. and EEC standards; minimum requirements for achieving energy-efficient design of air-conditioning installations in buildings; technical requirements for customer premises equipment to be connected to the direct exchange lines of the public switched telephone networks; introduction of a voluntary energy efficiency labelling scheme for washing machines; evaluation and certification requirement for telecommunications equipment; and acceptance of various standards.

⁵²WTO documents G/TBT/Notif. 95.73, 93, 152, 339, 345; Notif. 96.38; Notif. 97.152, 153, 154; 17 March 1995, 3 April 1995, 12 May 1995, 30 November 1995, 21 December 1995, 29 February 1996, 22 April 1997, 22 April 1997, 22 April 1997.

Table III.8
Standards and technical regulations in HKSAR

Ordinance/Regulation	Responsible bureau / department	Summary of legislation
Road Traffic Ordinance (RTO) (Chapter (Cap.)374-Laws of Hong Kong), Road Traffic (Construction and Maintenance of Vehicles) Regulations, Road Traffic (Safety Equipment) Regulations	Transport Department	The two regulations cover an extensive requirement of vehicle construction and standards.
Fire Service (Installation and Equipment) Regulations (Cap.295)	Fire Services Department	Portable equipment, e.g. fire extinguishers, fire blankets should be tested in accordance with a set of recognized national/international standards and be approved by Fire Services Department before putting in use in Hong Kong.
Dangerous Goods (General) Regulation (Cap. 295)	Fire Services Department	Gas cylinders and pressure vessels should be tested in accordance with a set of national/international standards and be approved by Fire Services Department before putting in use in Hong Kong.
Electricity Ordinance (Cap 406)	Electrical and Mechanical Services Department	Provides statutory control over electricity safety in Hong Kong.
The Electrical Products (Safety) Regulation (EPSR) and the Plugs and Adapters (Safety) Regulation (PASR)	Electrical and Mechanical Services Department	Both are sub-legislation under the Electricity Ordinance. In May 1998, when the EPSR became effective, the PASR was repealed. Under the EPSR, all electrical products designed for household use and supplied in Hong Kong shall comply with the prescribed safety requirements and shall be issued with certificates of safety compliance. Concerning the safety standards, IEC Standards as well as relevant international/national standards that comply with the prescribed safety requirements of the EPSR are acceptable.
Ozone Layer Protection Ordinance (Cap 403)	Environmental Protection Department	<p>Under Section 4 of the Ozone Layer Protection Ordinance (Cap. 403), it is an offence for any person to import or export ozone-depleting substances (ODSs) without a licence. With this control provision, coupled with an administrative quota system, import of halons has been banned since January 1994. Import of other ODSs such as chlorofluorocarbons, carbon tetrachloride, 1,1,1-trichloroethane and hydrobromofluorocarbons has also been banned since January 1996.</p> <p>Under the Ozone Layer Protection (Products containing scheduled substances) (Import Banning) Regulations, made under the Ozone Layer Protection Ordinance (Cap. 403), no person shall import a product containing ODSs from any country or place which is not a party of the Montreal Protocol, unless these are imported for essential use as described in Section 3 of the regulation. In addition, products containing halons are banned from import from all countries.</p>
Noise Control Ordinance (Cap. 400)	Environmental Protection Department	Stipulating noise emission standards for certain portable air compressors, hand-held percussive breakers and motor vehicles including motorcycles. The standards are either identical with or are substantially the same as international standards and/or appropriate overseas standards.

Table III.8 (cont'd)

Ordinance/Regulation	Responsible bureau / department	Summary of legislation
Waste Disposal Ordinance (Cap. 354)	Environmental Protection Department	Under the auspices of the United Nations Environment Programme, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, came into effect globally in 1992. Under this Convention, control is effected by a system of notification and consent amongst the states of export, transit and import prior to the commencement of transboundary waste movement. The Convention also prohibits trade in hazardous and other wastes with non-parties, except under separate bilateral or multilateral agreements which are compatible with the requirements of the Convention. In order to fulfil Hong Kong's obligation under the Basel Convention, import and export of hazardous wastes, or of any waste for disposal in Hong Kong is subject to a permit system control under the Waste Disposal (Amendment) Ordinance 1995. Waste importers and exporters are required to apply for import and export permits from the Environmental Protection Department prior to the commencement of the waste shipment.
Consumer Goods Safety Ordinance (Cap. 456)	Trade and Industry Bureau	Stipulates that consumer goods shall comply with general safety requirements (GSR).
Water Pollution Control Ordinance (Cap.358)	Environmental Protection Department	Sets discharge standards for sewage in Hong Kong.
Public Health (Animals and Birds) Ordinance (Cap.139), Rabies Ordinance (Cap.421)	Agriculture and Fisheries Department	Live animals imported into Hong Kong must be accompanied by a permit or licence, which includes health requirements in line with those stipulated by the International Office of Epizootics (OIE).
Plant (Importation and Pest Control) Ordinance (Cap. 207)	Agriculture and Fisheries Department	Plants imported into Hong Kong must be accompanied by a permit or licence which includes health requirements in line with those stipulated by the International Plant Protection Convention (IPPC).
Telecommunication Ordinance (Cap. 106)	Office of Telecommunications Authority	The Office of Telecommunications Authority may issue technical telecommunications regulations in the form of HKTA specifications and regulations/exemption orders for the purpose of licensing and control of telecommunications, telecommunication services and telecommunication apparatus and equipment.
Air Pollution Control Ordinance, (Cap. 311), Laws of Hong Kong	Environmental Protection Department	<p>Under section.80 of the Air Pollution Control Ordinance (Cap. 311), it is an offence for a person to import into Hong Kong any quantity of asbestos known as amosite or crocidolite or any substance or item made with or containing amosite or crocidolite. It is however not an offence to import amosite and crocidolite if the substances form an integral part of the structure or fittings of a ship brought into Hong Kong for repair or breaking-up. The authority may, on application in writing, grant an exemption to permit the importation of amosite or crocidolite or substance to such conditions as the authority may specify if he is of the opinion that such an exemption is warranted and that the exemption would unlikely lead to a health risk to the community.</p> <p>Under the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations made under the Air Pollution Control Ordinance (Cap. 311), every motor vehicle manufactured after certain dates shall be so constructed that the emission therefrom conforms to the relevant European, Japanese or U.S. standards. Vehicles meeting these standards with certification reports recognized by other governments will be type-approved. This type-approval is one of the prerequisites for vehicle registration under the Road Traffic Ordinance (Cap. 374). The authority may exempt any motor vehicle or class of motor vehicle from the provision of the Regulations if he considers that it would be in the public interest to do so.</p>

Table III.8 (cont'd)

Ordinance/Regulation	Responsible bureau / department	Summary of legislation
Public Health and Municipal Services Ordinance, (Cap. 132) and its subsidiary legislation	Department of Health	Sets out standards regulating food.
Toys and Children's Products Safety Ordinance, (Cap. 424).	Trade and Industry Bureau	Prescribes the requirement for toys and children's products to comply with the stipulated safety standards.

Source: HKSAR Government.

69. Hong Kong has been a correspondent member of the ISO (International Organization for Standardization) since 1987. There are more than 1,730 Hong Kong organizations certified to the ISO 9000 series of quality standards and 17 to ISO 14000 series. The Government plans to launch an accreditation scheme, operated by the Industry Department, to afford certification bodies the opportunity to apply for accreditation and to demonstrate that they are operating in accordance with the relevant ISO/IEC conformity assessment standards or guide.

70. Under the Hong Kong Laboratory Accreditation Scheme (HOKLAS), 74 laboratories are currently accredited for local testing.⁵³ Their activities cover calibration services and testing of products such as chemicals, construction materials, electrical and electric goods, food, textiles and toys, as well as environment-related testing. The HOKLAS has established agreements/arrangements for the mutual recognition of test results with accreditation schemes in 21 economies in Asia, Europe and the United States.⁵⁴ Under each mutual recognition agreement/arrangement, signatories accept test reports endorsed by the other party. Agreements or arrangements concluded by HOKLAS are for the mutual recognition of test reports only; they are scheme-to-scheme arrangements, non-binding and are not government-to-government agreements. Thus, they do not confer any international rights nor constitute obligations for the Government. Nor do they commit the Government to accept test reports from accredited laboratories of agreement partners for the enforcement of any laws or regulations. Under these mutual recognition agreements, test reports endorsed by HOKLAS are considered by the agreement partners as having the same technical validity as test reports endorsed by the partners themselves.

71. The Industry Department, a correspondent member of the ISO, maintains a Product Standards Information Bureau, which provides advisory services to industry on technical requirements abroad. The Industry Department is also a registered subscriber of the International Electrotechnical Commission (IEC) standards.

(b) Marking, labelling and packaging requirements

72. Under the Trade Descriptions Ordinance, administered by the Customs and Excise Department, false trade descriptions, marks and mis-statements in respect of goods supplied in the course of trade are prohibited.

⁵³These comprise 12 government laboratories, two university laboratories, 56 commercial laboratories and four accredited laboratories located outside Hong Kong.

⁵⁴The names of signatory organizations and the dates of signature (in parentheses) are: National Association of Testing Authorities of Australia (1990); American Association for Laboratory Accreditation (1990); United Kingdom Accreditation Service (1989); Dutch Council for Accreditation (1993); International Accreditation New Zealand (1991); European Cooperation for Accreditation (interim agreement - currently 15 members) (1994); Singapore Accreditation council (1996); and Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement (currently seven members) (1997).

73. Special labelling and marking requirements apply to vehicles, toys and children's products, consumer goods, gold and platinum articles, fire service products, electrical products, food, pesticides, telecommunication products, pharmaceutical products, and radioactive substances and irradiating apparatus.

74. Safety warning labels in both Chinese and English are generally required for consumer goods, toys and children's products. The warning or caution phrases must be legibly and conspicuously shown on the goods, any package of the goods, a label affixed to the package or a document enclosed in the package.

75. Under the Weights and Measures Ordinance, pre-packaged food products must carry labels indicating:

- percentage by weight or the actual amount of any ingredient where its labelling places special emphasis on the presence or otherwise of that ingredient; and
- "use by" dates for pre-packaged foods that are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health.⁵⁵

There is no requirement that the labelling show whether rice is genetically engineered or whether frozen meat is hormone treated.

76. Food that is reasonably expected to last for more than 18 months or that is deep frozen needs to be accompanied by an indication of its minimum durability, by indicating "best before" in both Chinese and English.⁵⁶ Food that has been irradiated needs to be suitably labelled. The composition of skimmed and semi-skimmed milk must be also indicated.

77. No eco-labelling system exists in Hong Kong, China.

(iv) Government procurement

78. The basic principles underlying government procurement policy are: accountability to the public for the use of taxpayer's money; the achievement of the best value for money; transparency in procedures and practices for selling to the Government; and open and fair competition in tenders.

79. Hong Kong acceded to the WTO Agreement on Government Procurement (GPA) on 20 May 1997, which entered into force for Hong Kong on 19 June 1997. According to the authorities, Hong Kong, China maintains an open and non-discriminatory public procurement system for goods and services, and extends voluntarily non-discriminatory treatment on an MFN basis to all countries irrespective of whether they are signatories to the GPA.

80. The government procurement process is governed by the Stores and Procurement Regulations issued by the Financial Secretary under the Public Finance Ordinance. These regulations are supplemented by Financial Circulars issued by the Secretary for the Treasury. In order to fully realign the tendering procedures with the GPA, the Government has revised certain provisions concerning tender procedures (Chapter III of the Regulations). Hong Kong was given a one-year deferred application of Article XX of the GPA to allow time for the setting up of a Bid Challenge System,

⁵⁵WTO document G/TBT/Notif.95.152/Rev.1, 18 May 1995.

⁵⁶Hong Kong's terms of accession to the GPA are found in a WTO document WT/Let/141, 22 May 1997.

which is to deal with complaints from suppliers or contractors on alleged breaches of the Agreement. According to the authorities, the Government fully complies with the provisions of GPA.

81. Most government procurement of goods and services in Hong Kong is handled by the Government Supplies Department (GSD), which is the Government's central procurement agent. The GSD is involved in the purchases of goods and services, except those whose value is within the direct purchase limits specified in the Stores and Procurement Regulations (SPR).⁵⁷ A few departments conduct their own procurement of goods, e.g. the purchase of vehicles by the Government Land Transport Agency, boats and vessels by the Marine Department and printing machines and paper by the Government Printer. Construction services are procured by the individual works departments, under the general supervision of the Works Bureau.⁵⁸ Individual departments may make direct purchases only of low value items or with special approval from the relevant authorities. Services are generally procured by individual departments. In the fiscal year 1996/97, the Government awarded supply contracts amounted to some HK\$4,000 million through GSD, and some HK\$17,700 million for construction services.⁵⁹

82. Contracts are awarded by various Tender Boards, depending on the procurement area and costs involved. The Government Supplies Tender Board is responsible for contracts concerning goods and general services below a threshold of HK\$6 million; the Public Works Tender Board for works and related contracts below HK\$15 million; the Marine Department Tender Board for procurement of vessels and marine contracts worth HK\$3.5 million or less; the Home Affairs Department Tender Board for contracts relating to local public works and minor environmental improvement works contracts worth HK\$3 million or less; and the Printing Department Tender Board for procurement of printing machines and paper with contract values worth HK\$2.5 million or less. Tenders exceeding these limits are submitted to the Central Tender Board, chaired by the Secretary for the Treasury and including the Director of Government Supplies, the Secretary for Works, the Deputy Secretary for the Treasury and a member of the Department of Justice appointed by the Financial Secretary. According to the authorities, the HKSAR does not discriminate between products on the basis of their country of origin. Since 1996, the GSD no longer engages any buyer agents and, accordingly, British Crown Agents are no longer used as agents for overseas purchases.⁶⁰

83. Open and competitive tendering procedures are normally employed for government procurement exceeding:

- HK\$500,000 for goods and general services; and
- HK\$1 million for construction and engineering services.⁶¹

⁵⁷All policy bureaux and departments are delegated the authority to make direct purchases of stores of a value not exceeding HK\$50,000. This limit is raised to HK\$75,000 for departments with Supplies Officers, HK\$120,000 for departments with Senior Supplies Officers, and HK\$200,000 for departments with Chief Supplies Officers. For overseas purchases, the financial limits include the f.o.b. value of the stores purchased, but exclude the freight, insurance and other incidental charges.

⁵⁸The Works Bureau also maintains a register of approved works contractors and a central works contractors performance report system.

⁵⁹The share of the public sector in total investment expenditure on construction, in terms of the value of work put in place for residential and non-residential buildings and other construction works in Hong Kong, was 47.2% in 1996 and 38.9% in 1997.

⁶⁰Until 1995, the Crown Agents acted as a buyer's agent for the GSD, sourcing and negotiating contracts with potential suppliers on behalf of the Hong Kong Government in return for a commission, which was normally 2% of the contract value.

⁶¹Limited or restrictive tendering procedures are permissible only under specified exceptional circumstances, and with the prior approval of the Secretary for the Treasury or the Director of Government Supplies (for tenders invited by GSD only).

84. For goods and services within direct purchasing limits, bureaux and departments are normally required to obtain at least two quotations (for purchases with a value not exceeding HK\$20,000) or five quotations (for purchases with a value above HK\$20,000) from suppliers/contractors capable of providing the required stores/services, and to accept the lowest offer to specification.

85. Bureaux and departments are generally required to use standard tender forms when inviting tenders.⁶² The approval of the Secretary for the Treasury is required for use of other departmental forms.

86. Unsuccessful tenderers are informed of the reasons for their rejection upon request; any supplier or contractor who feels aggrieved may lodge a complaint directly with the procuring department or to the relevant Tender Board, the Independent Commission Against Corruption, or the Office of the Ombudsman.⁶³ Any aggrieved supplier or contractor may also apply for judicial review in accordance with the rules of the High Court. There is no Hong Kong law that provides for sanctions against bid-rigging and similar collusive business practices. The Government is in the process of establishing a bid challenge system that will be in conformity with the GPA. The system aims to deal with complaints from suppliers/contractors on alleged breaches of the GPA.

(v) Industrial support policies

87. While the Government has characterized its industrial support policy as proactive, this does not appear to entail industry-specific intervention or other attempts to "pick winners". On the contrary, its industrial policy involves minimum government interference with the functioning of markets, but maximum support for the development of human capital, infrastructure, applied research and development, and facilitation of technology transfer and upgrading. The policy also involves the maintenance of a business-friendly regulatory regime and "light-handed" approach to competition.

(a) Promotion of new technologies and training

88. Hong Kong operates a variety of schemes intended to enhance the technology base of the economy, encourage the development of new products or production techniques, and/or remove skills-related obstacles considered to impede new manufacturing and services activities.⁶⁴

⁶²They are also required to ensure that a complete set of tender documents is issued to all tenderers, these include: the relevant standard tender form; terms of tender including the conditions to be observed when submitting a tender, the tender validity period, and the currency to be used for the contract; general conditions of contract covering the conditions the contractor has to comply with in executing the contract; special conditions of contract covering any conditions peculiar to the contract; offer to be bound, signed and completed by the tenderer, to include his/her address and the tendered sum; tender specifications that define the requirements of the contract; bills of quantities or quantities required of the contract where applicable; and detailed price schedules or schedule of rates where applicable.

⁶³The Ombudsman is empowered to investigate a complaint concerning the procedures adopted in inviting tenders, determining the qualification of persons to tender and the selection of the successful tenderer.

⁶⁴Major public bodies responsible for the development and promotion of new technologies in industry include the Hong Kong Productivity Council (HKPC), the Hong Kong Industrial Technology Centre Corporation (HKITCC), the Hong Kong Industrial Estates Corporation, and the Provisional Hong Kong Science Park Company Ltd. For the development and application of new technologies for specific industries, the Government has also provided funding support for the setting up of a number of centres, including the Telecommunication Technology Centre, the Jewellery Technology Centre, the Hong Kong Pharmaceutical Technology Centre, and the Consumer Media Laboratory for Innovative Home Electronics Technology. Support for these projects is usually provided in the form of grants and these centres are expected to self-finance after a certain period of time.

89. To promote the development of human capital, the Government provides technical education and vocational training in eight public institutions: the Vocational Training Council (VTC), the Hong Kong Productivity Council, the Clothing Industry Training Authority, the Employees Retraining Board, the Commission on Strategic Development, the Chief Executive's Commission on Innovation and Technology, and the Construction Industry Training Board. Expenditure for scientific research and payments for technical education related to the trade or business of a company are deductible expenses items in the calculation of profits tax. The VTC administers the New Technology Training Scheme, which started in 1992 to assist employers to have employees trained in new technologies. In February 1997, the Government raised the level of grant from 50% to 75% of the total cost of training, removing the ceiling of the grant. The scheme is funded by income from investment of the New Technology Training Fund, consisting of HK\$105 million in trust, established by the Government. The VTC also administers the Engineering Graduate Training Scheme to assist engineering graduates to obtaining the training necessary to qualify as professional engineers.

90. In regard to the technological infrastructure, the Government set up the Industrial Support Fund to finance industry support projects that are beneficial to the industrial or technological development of Hong Kong. In addition, technology ventures or applied research and development projects that have the potential for commercial exploitation may apply for funding support under the Applied Research Fund. The Hong Kong Industrial Technology Corporation also administers the Innovation Loan for technology-based start-up companies in general and the Early Technology Business Capital Loan Scheme for its incubatees.⁶⁵

(b) Adjustment assistance

91. Various adjustment assistance programmes exist in Hong Kong, including the Employees Retraining Scheme, Job Matching Programme, and other retraining schemes by the Vocational Training Council as well as schemes run by the Clothing Industry Training Authority.

92. The Employees Retraining Scheme (ERS) is administered by the Employees Retraining Board (ERB) which started full operation in 1993. It is designed to provide adjustment training and placement assistance for employees affected by changes in the labour market arising from economic restructuring. Apart from vocational skills and adjustment training, the ERS also offers placement assistance and follow-up services to retrainees with a view to helping them to re-enter the employment market and to retain their new jobs. Since its inception, the ERB has provided over 243,000 retraining places for more than 132,200 persons. The average placement rate for graduate retrainees looking for jobs was around 76% during the period from April 1997 to March 1998.

93. The Job Matching Programme, administered by the Labour Department, provides personal counselling and job-matching services for unemployed local workers. Suitable jobs for registered job seekers under the programme are identified by placement officers in the Department.

(c) Assistance for current production

94. Hong Kong does not operate any financial support schemes to cushion domestic producers from international market fluctuations or to offset the impact of intervention abroad.

⁶⁵The Innovation Loan was launched on 23 January 1997 with an initial capitalization of HK\$5 million. Each technology start-up company may receive a maximum loan of HK\$0.3 million. The Early Technology Business Capital Loan offers loan facilities to HKITCC's incubatees of up to HK\$1 million of each successful application.

95. The Agriculture and Fisheries Department (AFD) encourages farm activities by providing infrastructural and financial support through low-interest loans to farmers to enhance agricultural productivity and to promote safe and environmentally friendly production methods.⁶⁶ In late 1994, the AFD launched an Accredited Vegetable Farm Scheme, which is intended to better protect the environment and consumers against pesticide residues. Under the Scheme, vegetable farms that adopt good horticultural practices, and use pesticides safely in accordance with a pest-control programme are granted accreditation. Accredited farms are strictly monitored and their use of pesticides supervised. The produce of accredited farms will go through the wholesale market in specially marked vegetable baskets.

96. Within the framework of a free market economy, the Government provides various services for small and medium-sized enterprises (SMEs)⁶⁷; these comprise 98% of all manufacturing and service establishments in the HKSAR, and employ about 60% of the working population. The Government believes that the key to success for SMEs lies in the increase in competitiveness through productivity enhancement in terms of operational efficiency and the value added to products. In July 1996, the Government set up a Small and Medium Enterprises Committee to address the specific concerns of SMEs.⁶⁸ The activities of the Committee include seminars and exhibitions. The Government also established a HK\$2.5 billion Special Finance Scheme for Small and Medium Enterprises in August 1998, aimed at helping SMEs to secure finance from lending institutions by means of government guarantee. This scheme was felt to be necessary to assist certain SMEs which, in the face of the liquidity crunch caused by the Asian financial turmoil, would otherwise be unable to obtain adequate financing from lending institutions, despite their good track record and credit worthiness.

97. The Government also set up a Services Support Fund in 1996 to provide financial support for projects that may contribute to the overall development and the competitiveness of Hong Kong's services sectors. Service support bodies, trade and industry associations, higher education institutions, professional bodies, research institutes and locally incorporated companies are eligible to apply for the funding support. By August 1998, the Government has allocated a total of HK\$100 million to the Fund. Of this amount, the Industry Department has approved about HK\$70 million to support 41 projects.

(d) Provision of industrial land

98. All land in Hong Kong is state property, and is granted for development by public auction, tender, or private treaty under land leases, which are normally for a term of 50 years from the date of grant. According to the authorities, the Government's industrial land policy is to ensure that there is an adequate supply of fully serviced industrial land to cater for the changing needs of the industrial sector.

99. Through the Hong Kong Industrial Estate Corporation (HKIEC), the Government offers land in its industrial estates to industries with new or improved technology and processes, which cannot

⁶⁶The loan funds include the Kadoorie Agricultural Aid Loan Fund, the J. E. Joseph Trust Fund and the Vegetable Marketing Organization Loan Fund. At the end 1997, loans issued since the inception of these funds reached HK\$387 million.

⁶⁷An SME is a firm with less than 50 employees.

⁶⁸The Small and Medium Enterprises Committee comprises government officials, representatives of major industry-support organizations and industrial and trade associations, and other members from the private sector with background knowledge of SMEs.

operate in the multi-storey factory buildings, in which many factories are located in Hong Kong.⁶⁹ Three industrial estates, providing 214 hectares of industrial land are currently in operation, and a fourth estate is being planned.⁷⁰ Reflecting recent development of the services sector in Hong Kong, the Government has decided that with effect from mid-1998, the scope of the industrial estates would be expanded to cater to services industries that cannot be accommodated in multi-storey buildings.

100. An enterprise wishing to set up a factory in an industrial estate must meet the criteria laid down by the HKIEC, i.e. that the industrial project is of a nature which prohibits it from being carried out in an ordinary multi-storey building, that the project is not an offensive trade⁷¹, and that the primary activity is not storage or warehousing. Projects that are most welcome into the industrial estates are those involving new/improved products or technology, and with high value added. No specific industries, however, appear to be targeted for eligibility.⁷²

101. The Government is in the process of setting up of a Science Park, to help nurture technology-based companies, promote technology transfer and enhance regional cooperation in technological development. The Government is also planning to set up a second Industrial Technology Centre.⁷³

(e) Business and services promotion

102. The Government aims to create a business-friendly environment to facilitate the development of a world-class services sector in Hong Kong. Thus, the Helping Business Programme was launched in 1996 to cut red tape, reduce the costs to businesses of complying with government regulations, provide new business support services, and to transfer public services to the private sector, where appropriate market conditions prevail. A Services Promotion Programme is in place to promote Hong Kong as a pre-eminent services centre. In 1997 a new, Permanent Business and Services Promotion Unit was established in the Financial Secretary's office to take forward the two programmes.

(f) Investment strategies

103. According to surveys conducted by the Industry Department, banking and financial facilities together with infrastructure are among the main factors contributing to Hong Kong's attractiveness to foreign direct investment; interestingly, the low level and simplicity of Hong Kong's tax system is thought to be of lesser importance. Hong Kong also has an investment promotion programme, which

⁶⁹The cost of land in these industrial estates is apparently set at a premium to cover the cost of formation of the serviced land. According to the authorities, it is inappropriate to compare the premium charged by HKIEC with market prices because land in the industrial estates is subject to very restrictive lease conditions which specify the use of the land and impose restrictions on assignment and sub-letting. It is therefore not in direct comparison with the land sold by public auction or tender. HKIEC reviews the premium levels every year to determine whether they should be adjusted to reflect inflation.

⁷⁰The land premiums for the three estates range between HK\$2,250 and HK\$3,400 per square meter.

⁷¹'Offensive trade' refers to any trade, business, process or manufacture which, in the opinion of the designated authority (referring to either the Urban Council or the Regional Council), causes offensive or noxious effluvia or dust or is otherwise of an offensive or harmful nature or which involves the slaughtering of animals or birds.

⁷²In the three estates, there are various industries, including food products, electronics, electric appliances, metal moulds and dies, satellite-related services, printing, machinery, chemicals and pharmaceuticals.

⁷³The Hong Kong Industrial Technology Centre Corporation was set up in June 1993 and the first Centre was opened in March 1995. Major services provided by the Centre include administration of a technology-based business incubation programme to support technology start-ups in their initial years; lease of office accommodation and facilities to established technology-based companies; and organization of seminars and exhibitions to facilitate technology transfer and commercialization of research and development activities.

seeks to attract overseas investments to Hong Kong's manufacturing and service sectors, and promote Hong Kong's further development as a regional and global service centre. A variety of programmes are implemented through a network of seven investment promotion units attached to Hong Kong Economic and Trade Offices. They are located in Tokyo, New York, San Francisco, London, Brussels, Toronto and Sydney. The 'One Stop Unit' of the Industry Department (HKOSU) also implements the same programmes, including the following free services to:

- provide general and specific information on investment in the HKSAR, e.g. the availability and cost of land, government regulations, and industrial and servicing support services;
- arrange tailor-made programmes for visiting investors, including in-depth briefings, visiting of sites and offices, meetings with local businessmen and relevant government officials;
- match overseas investors with interested local businessmen to facilitate joint-venture and technology-transfer projects; and
- provide after-sales services to overseas investors already established in Hong Kong and to assist in any expansion plans or reinvestment projects.

104. All businesses in the HKSAR must obtain a Business Registration Certificate from the Inland Revenue Department (IRD) within one month of the commencement of business. The average time for the IRD to complete the processing of an application is two weeks. The business registration fee is HK\$2,250. The certificate must be renewed annually. The placement of responsibility for business registration under the IRD is justified by the authorities on the grounds that it facilitates tax collection as persons who are required to obtain a Business Registration Certificate are also generally liable to profit tax.

105. Foreign investors in the HKSAR may use all available forms of business entities. Private limited companies and branches of foreign companies are the two most commonly used forms. There is no capitalization requirement for a private company.

106. According to the authorities, Hong Kong has an open and free investment regime, offering a level playing field for local and overseas investors, based on the principles of fairness and non-discrimination. There are no restrictions on foreign exchange transaction, capital movement or repatriation of funds, nor special approval or notification requirements for foreign investment in Hong Kong. On a sectoral basis there are a few regulatory restrictions in some business sectors (Table III. 9). Recent deregulation measures include actions to liberalize international telecommunications services, which has been franchised to a single provider, by terminating the franchise eight years ahead of the original expiration, and by opening up at least 50% of the exchange lines of the provider to other fixed network operators by early 1999 (Chapter IV).

Table III.9
Regulating restrictions for foreign investment

Sector	Nature of the regulatory measures	Remarks
Banking	Commercial presence	Commercial presence for banks incorporated overseas must take the followings forms: (a) Banks incorporated overseas may maintain: (i) offices to which customers have access for the purpose of banking business (or deposit-taking business in the case of a restricted licence bank) and/or arranging or entering into any other financial transactions, in only one building; and (ii) no more than two additional offices (other than an automated teller machine or similar devices) to which customers and others have access for the purpose of any other types of business in a separate building or buildings. Such offices may consist of no more than one regional office and one back office. (b) A limited company incorporated by an overseas bank in the HKSAR may apply for a licence to operate as a licensed bank, restricted licence bank or deposit-taking company in the form of a subsidiary with branching rights. In the case of an application for a full banking licence, the institution must have been an authorized institution for at least ten years and be closely associated and identified with the HKSAR. An overseas bank may also acquire an existing locally incorporated bank with branching rights subject to the consent of the Monetary Authority. (c) Banks incorporated overseas may also set up representative offices in the HKSAR, but such offices are prohibited from taking deposits and undertaking banking business in general.
	Residence requirement of the chief executive	As a licensing condition, institutions authorized under the Banking Ordinance must appoint a chief executive and not less than one alternative chief executive, each of whom is subject to residence requirement in Hong Kong.
	Provision for statutory insurance	Statutory insurance, such as employer's liability insurance in respect of employees, must be purchased from an insurer authorized in Hong Kong.
Insurance	Commercial presence	Under the Insurance Companies Ordinance, only a company or an association of underwriters can apply for authorization to carry on an insurance business. In the case of the former, commercial presence must take the form of a Hong Kong subsidiary, branch or representative office, although insurance business cannot be carried out through a representative office.
	Residence requirement for the chief executive	As a licensing condition, the chief executive of an insurer authorized in Hong Kong must be based in Hong Kong.
	Exclusive franchise agreement	Franchises have been awarded by the Airport Authority (a government-owned statutory body) for aircraft base and line maintenance services for the new airport at Chek Lap Kok. On base maintenance, the franchise will be non-exclusive. On line maintenance, there will be not more than three franchisees in the first five years and not more than four franchisees in the following five years. There are no restrictions on foreign ownership of the franchisees. The award of these franchises follows the level playing field principle.
Air transport support services	Recognition of qualifications	Foreign nationals who wish to practise as barristers in Hong Kong must satisfy one of the following conditions: - they have obtained their qualifications in Hong Kong; - they have obtained their qualifications in England, Northern Ireland or Scotland and have: (i) practised as a barrister or advocate in the United Kingdom for at least 3 years; (ii) are Hong Kong permanent residents; or (iii) have been ordinarily resident in Hong Kong for at least 7 years; - they are Commonwealth citizens or citizens of the Republic of Ireland, have been ordinarily resident in Hong Kong for 7 years, and have obtained a Postgraduate Certificate in Law from a local university (Bachelor of Law may be obtained in their country of origin); - have been admitted as a solicitor in Hong Kong for at least 3 years before the application for admission and during that time were in practice as a solicitor in Hong Kong or employed by the HKSAR Government as a legal officer; - have been admitted as a barrister or legal practitioner in Australia, Canada (except Quebec), New Zealand, Republic of Ireland, Zimbabwe or Singapore; have experience in advocacy; and have been employee in the Department of Justice of the Government of HKSAR as a legal officer for at least 7 years and were so employed for at least 3 years on work similar to that usually undertaken by a barrister of 10 years' seniority; and intend, if admitted, to practice as a barrister in Hong Kong within 12 months after admission.
Professional services - Legal		

Table III.9 (cont'd)

Sector	Nature of the regulatory measures	Remarks
	Market access restrictions	Foreign law firms may operate in Hong Kong subject to the following restrictions: <ul style="list-style-type: none"> - a law firm registered as a foreign firm is not permitted to practise Hong Kong Law or employ and/or enter into partnership with Hong Kong solicitors; - a registered foreign firm may enter into an association with a local law firm provided that the number of foreign lawyers to local lawyers in the association does not exceed the ratio of 1:1 (this requirement may be waived by the Law Society under exceptional circumstances); and - a branch of a foreign law firm registered as a local law firm (i.e. practises Hong Kong Law) may bear the same name as the foreign firm provided that a registered foreign firm of the same name has practised foreign law in Hong Kong in the immediate past three years.
- Accounting	Residence requirement	To obtain a practising certificate, a professional accountant has to be present in Hong Kong for not less than 10 days in the preceding 12 months.
- Pharmacy	Recognition of qualifications	Relevant U.K. or Commonwealth qualification holders may be registerable without taking the registration examination, the Pharmacy and Poisons Board in practice requires holders of these qualifications to meet all the above requirements before they can be registered. Therefore, the qualification requirements are in practice non-preferential.

Source: HKSAR Government.

(vi) Intellectual property

107. The legislation on intellectual property rights in the HKSAR provides protection for patents, copyrights, trade marks, trade secrets (undisclosed information), industrial designs, layout designs (topographies) of integrated circuits, and plant varieties.

108. Since the previous Trade Policy Review, there has been a major reform in Hong Kong's legislation concerning intellectual property: the changes have occurred according to the relevant provisions in the Basic Law, and in order to ensure full compliance with TRIPS, notably by introducing the Intellectual Property (World Trade Organization Amendments) Ordinance in 1996.⁷⁴ According to the Ordinance, various reforms in a number of areas have been made, including amendments to:

- the Registration of Patents Ordinance⁷⁵, to provide for government use of patents in times of declared extreme urgency⁷⁶;
- the Trade Marks Ordinance, to allow for the registration of shape marks;
- the Trade Descriptions Ordinance and the Copyright Ordinance⁷⁷, to enable a right holder to apply for detention orders from the Hong Kong courts for pirated or counterfeit goods; and
- the Copyright Ordinance, to provide for performers' rights for musical, dramatic and literary works, and rental rights for computer programs and sound recordings.

109. The Intellectual Property Department is responsible for the development of legislation on intellectual property (IP), promotion and education on IP. The Department is required by statute to

⁷⁴Hong Kong's legislation on intellectual property had provided protection for patents, copyrights, trade marks, industrial designs and, since 1994, layout designs (topographies) of integrated circuits. Undisclosed information is protected by common law. According to the authorities, Hong Kong's previous intellectual property laws had largely been in compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the new laws go beyond the TRIPS, incorporating part of provisions under the WIPO Copyright Treaty 1996 and the WIPO Performances and Phonograms Treaty 1996.

⁷⁵In force before 27 June 1997.

⁷⁶Extreme urgency is whenever the Chief Executive considers it necessary or expedient for the maintenance or securing sufficient supplies and services essential to the life of the community.

⁷⁷In force before 27 June 1997.

provide registration services and to maintain registries of rights for trade marks of goods and services, patents, and registered designs.

110. The Customs and Excise Department is responsible for enforcing the criminal aspects of infringement of intellectual property rights (IPRs). The Department investigates complaints against infringement of trade marks, copyright, and false trade descriptions. Custom officers have extensive powers of search and seizure at all levels where copyright piracy and trade mark counterfeiting may be encountered, from street sale to manufacturing and import or export trade. It also collaborates with overseas enforcement authorities and owners of trade marks and copyright to combat infringement of intellectual property rights. The number of officers in charge of IPR enforcement has also increased in the past few years.⁷⁸ Large-scale operations have been carried out on shops and on-street unlawful sale of pirated CD products. From January 1998 to June 1998, pirated goods valued at HK\$1,280 million were seized and 1,116 people were arrested; goods with false trade descriptions and counterfeit valued at HK\$63 million were seized and some 1,290 people were prosecuted; and some 320 persons were jailed for copyright and trade mark offences. The courts of the HKSAR are also responsible for the enforcement of patents and other IPR-related civil remedies.

111. Changes in the Custom's power of IPR enforcement since the previous Trade Policy Review include the commencement of operation in December 1996 of legislation giving effect to TRIPS border control measures; the enactment of the Copyright Ordinance empowered Customs officers to seize suspected copyright pirated goods, which may be deemed forfeited after a specified period,⁷⁹ and the enactment of the Prevention of Copyright Piracy Ordinance (Section viii) empowering Customs to inspect all licensed optical disc manufacturers without a warrant.⁸⁰

112. The HKSAR is a party to the main international intellectual property conventions including the Paris Convention for the protection of industrial property; the Berne Convention for the protection of literary and artistic works; the Universal Copyright Convention; the Geneva Convention for the Protection of Sound Recordings; the Patent Cooperation Treaty; and the Convention establishing the World Intellectual Property Organization.

Table III.10
Seizure by Hong Kong Customs of infringement on copyright and trade mark counterfeits

(a) Copyrights

Type	Quantity (number)			Value (HK\$ ('000))		
	1996	1997	1998 (up to June)	1996	1997	1998 (up to June)
Computer-related items (computer manual, software, CD ROM, micro-computer, etc.)	286,358	694,438	614,886	12,104	26,874	18,973
Video-related items (audio equipment, cassette tapes, laser discs, CD ROM, etc.)	480,503	3,162,208	28,484,643	27,821	136,455	1,214,740
Sound recording (music compact discs, karaoke laser discs, etc.)	146,895	325,562	476,625	5,810	12,105	15,126
Literature (printed books, etc)	29,059	125,629	4,878	1,316	4,932	153
Miscellaneous	..	..	..	1,787	7,010	31,109
Total	..	..	..	48,838	187,377	1,280,101

⁷⁸From 117 in 1995 to 201 as of June 1998.

⁷⁹Powers were also given for the disclosure of information to other enforcement agencies to facilitate better cooperation in copyright protection.

⁸⁰The Ordinance also enables Customs to better monitor the optical disc manufacturing industry by the establishment of a compulsory registration system.

(b) Trade Descriptions

Type	Quantity (number)			Value (HK\$ ('000))		
	1996	1997	1998 (up to June)	1996	1997	1998 (up to June)
Clothing	1,065,178	2,143,155	857,772	81,262	84,433	49,969
Leather goods	42,448	24,405	20,607	7,908	7,908	7,837
Watch and accessories	50,086	322,537	46,514	15,423	15,423	2,191
Computer and accessories	8,408	5,080	597	9,511	9,511	43
Pharmaceutical product and medicine	85,756	680,743	6,669	331	331	128
Foodstuff	65,733	9,928	19,492	2,458	325	268
Electrical and electronic goods	72,904	407	130	3,985	129	75
Others	..	..	..	30,741	36,165	2,419
Total	..	..	..	151,619	154,224	62,930

.. Not available.

Source: Customs and Excise Department, HKSAR Government.

(a) Patents

113. Patent owners may obtain protection through registration in Hong Kong under the Patents Ordinance, effective as an independent patent regime in the HKSAR since 27 June 1997.⁸¹ The Ordinance provides for the granting of standard patents and short-term patents.⁸² Protection in Hong Kong takes effect on the date on which the fact of the patent grant is advertised in the Government Gazette. The HKSAR courts enforce the patents registered under the Ordinance.

114. For standard patents, a two-stage registration system has been introduced. In the first stage, the applicant files a request to record a designated patent application with the HKSAR Patents Registry, a newly established organization under the Intellectual Property Department. The application must be made within six months of the publication of the application in a designated patent office.⁸³ In the second stage, the applicant files a "request for registration and grant" within six months after the date of grant of the designated patent or publication of the request to record, whichever is later. Once granted in Hong Kong, China, the standard patent is independent of the designated patent granted by the designated patent office.

115. For short-term patents, applications must be made directly to the Patents Registry. A short-term patent is granted to products or processes only after a formality examination, though validity of

⁸¹The previous patents system in Hong Kong, under Registration of Patents Ordinance, was based on the registration in Hong Kong of U.K. patents or of European Patents designated in the United Kingdom. This was essentially a re-registration system based on a first registration taking effect in the United Kingdom. The transitional arrangements under the Patents (Transitional Arrangements) Rules basically provided that patents registered under the previous law are treated as patents granted under the new law.

⁸²A standard patent qualifies for protection for a maximum period of 20 years, and a short-term patent for 8 years, subject to payment of renewal fees. A designated patent application is either an application in a designated patent office for a patent, which application has been published under the law of the designated patent office or an international application which has been published and which has validly entered its national phase in a designated patent office.

⁸³The designated patent offices are: the Chinese Patent Office, the United Kingdom Patent Office and the European Patent Office, in respect of patents granted under the European Patent Convention designating the United Kingdom. However, patents granted by these offices are not automatically protected in the HKSAR.

such patents is based on the usual standards of novelty, inventiveness and industrial applicability. Applicants have to file a search report from a prescribed searching authority.⁸⁴ The validity of the standard and short-term patents is open to challenge in courts of the HKSAR.

(b) Copyright

116. The new Copyright Ordinance came into operation on 27 June 1997.⁸⁵ Protection for recognized categories of literary, dramatic, musical and artistic works, films, television broadcasts and cable diffusion, and works made available to the public on the Internet is within the scope of the Ordinance. No formalities (including registration) are required to obtain copyright protection for works in the HKSAR. Hong Kong, China's approach is to protect works and performances originating from anywhere in the world without the need for reciprocity.

117. Both civil and criminal enforcement of copyright is available under the Copyright Ordinance. Import or export of pirated articles as well as involvement in copyright piracy outside the HKSAR for the purpose of importation into the HKSAR is a criminal offence. Those who engage in copyright piracy, production of infringing articles on a commercial scale, or possession of infringing articles for trade or business are subject to a maximum fine of HK\$50,000 per infringing article and a term of imprisonment of up to four years.⁸⁶ The Customs and Excise Department, as a primary agency for enforcement of criminal sanctions against copyright piracy and trade mark counterfeiting, accepts written complaints filed by copyright owners or their legal representatives.⁸⁷ Since December 1996, the Department has implemented new border measures to assist copyright and trade mark holders in applying to the High Court for a detention order for imports of pirated and counterfeit goods. The holders may then take civil action against the importers.

118. Under the Copyright Ordinance, the "parallel importation" of a copyright work within 18 month period of its first publication or release anywhere in the world is both a criminal offence and a civil liability. Civil remedies remain after the 18-month period and throughout the copyright term of the work. According to the authorities, this approach is intended to strike a balance between competing interests of copyright owners and exclusive licensees on the one hand, and that of the retail trade on the other. There is a provision to defend a person who imports a work without the licence of the copyright owner if a particular exclusive licensee has acted unconscionably.⁸⁸ It is required that copyright owners publicize their intention to restrict importation or appoint a sole distributor, and supply relevant information to the Customs to request enforcement of these provisions. The defendant must prove that he did not have reason to believe that the copy was an infringing copy. If the infringing act constitutes a criminal offence, the general criminal procedure will follow; the Customs is the criminal copyright enforcement agency. If the infringing act is a civil wrong, the

⁸⁴A prescribed searching authority refers to any one of the Patent Offices of Australia, Austria, China, Japan, the Russian Federation, Spain, Sweden, the United States, and the United Kingdom and the European Patent Office.

⁸⁵Since 1 July 1912, the relevant United Kingdom Copyright Acts had been applicable to Hong Kong for copyright protection.

⁸⁶The maximum penalty for dealing in or possessing articles or equipment for making infringing copies for the purpose of trade is a fine of HK\$500,000 and imprisonment for eight years.

⁸⁷The complaints require proof of copyright subsistence and evidence to show that the copyright was infringed for the purpose of trade. The copyright owner or his representative is required to examine the seizures and testify in the subsequent court proceedings.

⁸⁸In determining whether the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the particular trade for the orderly distribution of copies of that category of work and, in particular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by the copyright owner or the exclusive licensee, or would unreasonably prejudice the legitimate interests of the copyright owner or exclusive licensee.

copyright owner must initiate general civil proceedings. In some cases, sole distribution rights may be unduly restrictive, possibly causing consumer prices in Hong Kong to be unduly high and reducing the choice of products, both of which contribute to the infringement of copyright laws.⁸⁹

119. The Prevention of Copyright Piracy Ordinance was enacted on 25 March 1998. The Ordinance sets out a statutory licensing scheme for the manufacture of optical discs in Hong Kong; this is in addition to the import/export licensing requirements previously described. The first applications for import and licenses were received by the customs in May 1998. Under the main provisions of the Ordinance:

- all business involved in the production of optical discs in Hong Kong are required to obtain a licence from the Commissioner of Customs and Excise;
- the manufacture of optical discs in Hong Kong without a valid licence from the Commissioner is a punishable offence with a maximum fine of HK\$500,000 and imprisonment for up to two years on first conviction. The maximum penalties are doubled for second and subsequent convictions;
- all optical discs manufactured in Hong Kong must bear a unique manufacturer's code indicating their source of manufacture. The Commissioner of Customs and Excise assigns the codes;
- customs officers have the power to inspect licensed premises at all reasonable times without a warrant. They may seize, seal or detain any items in connection with offences under the Ordinance;⁹⁰ and
- the Commissioner keeps a register of licences. Information on the register is accessible to the public.

(c) Trade marks

120. To obtain trade mark protection in Hong Kong, China, owners of trade marks can apply for registration under the Trade Mark Ordinance. They must show that the mark meets the relevant requirements.⁹¹ Trade marks must be registered in the HKSAR to be protected under the Ordinance.⁹² Registration may be refused if the application fails to satisfy registration criteria, if it resembles a mark registered previously in Hong Kong, or if there is likelihood to deceive. The owner of a registered trade mark has an exclusive right to use the mark on his/her goods or services, and can take legal action to prevent any party from using the registered mark without his/her consent. The registration remains in force for seven years from the date of application for registration, and may be renewed indefinitely for successive periods of a maximum of fourteen years.

⁸⁹South China Morning Post, 15 September 1998, "Piracy thrives under parallel import law".

⁹⁰In the first six months of 1998, Customs seized more than 29 million suspected pirated optical discs, compared to around 4.5 million in 1997.

⁹¹It normally takes no more than ten months for an applicant to be informed that the proposed mark may be advertised. The public then has a two-month period to object on legal grounds. The mark can normally be registered in a further two months, if no objection is received. In total, therefore, the registration process takes about 14 months if there is no opposition to the mark. The registration is effective from the date of receipt of a valid application by the Trade Marks Registry.

⁹²The Hong Kong Trade Marks Registry has been in operation since 1874; registration of trade marks in services started in 1992. In 1997, applications to the Registry numbered some 18,500.

121. As in the case of copyrights, Customs officers have the power of investigation at all levels where trade mark counterfeiting may be encountered, from street sale to manufacturing and import or export trade. The complaint procedures are similar to those for copyrights in that the right owners should prove to Customs the subsistence of the rights concerned, identify to Customs the alleged infringements of the subject goods, and testify such findings to the court to assist with prosecution. Fraudulent use of a trade mark, including selling and importing goods bearing a forged trade mark or possessing or using equipment for that purpose, is a criminal offence under the Trade Descriptions Ordinance.⁹³ The maximum penalties for trade mark offences are a fine of HK\$500,000 and imprisonment for five years on conviction on indictment, and a fine of HK\$100,000 and imprisonment for two years on summary conviction.

122. The Intellectual Property (World Trade Organization Amendments) Ordinance was enacted in May 1996 to amend, *inter alia*, the existing Trade Marks Ordinance to ensure compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A new Trade Marks Bill is in the process of being drafted.⁹⁴ The current Trade Mark Ordinance will continue to be valid until it is replaced by the new one.

(d) Designs

123. On 27 June 1997, the new Registered Designs Ordinance came into force, and the HKSAR established its own, independent designs registry. According to the authorities, the Ordinance enables designs to be registered in Hong Kong, China, on the basis of a formality examination only.

124. Registered designs under the previous United Kingdom Designs (Protection) Ordinance enjoy continued protection beyond their current periods of registration, provided the owner makes an application to renew registration in the HKSAR.⁹⁵

(e) Layout designs of integrated circuits

125. In 1994, the Layout-design (Topography) of Integrated Circuits Ordinance was enacted. Under the Ordinance, the right is attached to a layout-design (topography) upon its creation; no formal requirements, including registration or deposit, are necessary for protection of the right.

126. The duration of protection is ten years from the date of first commercial exploitation wherever in the world it occurs, by, or with the licence of, the right holder, or 15 years after the creation of the layout-design (topography).

(f) Trade secrets

127. Legal protection of trade secrets in Hong Kong, China, falls within the scope of legal protection of undisclosed information, and is based on the common law. It is illegal for the recipient

⁹³Unregistered trade marks are protected by the action of passing-off under the common law, though this is generally considered more difficult to bring than an action for infringement of a registered trade mark. A passing-off action is a common law remedy for the invasion of a property right not in a mark, name or get-up improperly used, but in the business or goodwill likely to be injured by the misrepresentation made by the passing off of one person's goods as the goods of another.

⁹⁴Major contents of the proposed Bill include broadening of the range of signs that can operate as trade marks, such as permitting sound and scent to be registered; simplification of licensing procedures; and broadening categories of applications.

⁹⁵Before the enactment of the Registered Designs Ordinance, designs registered in the United Kingdom under the Registered Designs Act 1949, as amended, were protected automatically in Hong Kong, under the United Kingdom Designs (Protection) Ordinance.

of confidential information to take an unfair advantage of it, and the recipient must not make use of the information without the consent of the person communicating the information. In order to establish a case of breach of confidence, the information must have the quality of confidence and must have been communicated in circumstances that any reasonable person standing in the place of the recipient would have realized upon reasonable grounds that the information was given in confidence and there must be actual or threatened unauthorized use of the information to the detriment of the party communicating it. An action against a breach of confidence is through a civil proceeding in court. The civil remedies for breach of confidence granted by the court are similar to those available to other intellectual property rights, namely, injunctions, damages and accounts for profit.

(vii) Competition and regulatory policy

128. Hong Kong's approach to competition and regulation involves minimum interference.

(a) Legislation on restrictive business practices

129. Hong Kong, China adopts a largely non-legislative approach to promote economic efficiency through competition. Hong Kong has no general competition law, cartel law or other horizontal legislation banning or sanctioning collusive or restrictive business practices such as bid-rigging, price enforcement, boycotts or price arrangements between competitors.⁹⁶ Instead, a sector-specific approach has been preferred to safeguard competition through a combination of regulatory, administrative and, in the case of telecommunications, legislative measures. This approach reflects the Government's view that Hong Kong is a small, open and thus highly competitive economy so that there is no need to enact an all-embracing competition law. According to the authorities, the Government is committed to the promotion of competition. The Secretary for Trade and Industry is responsible for developing overall competition policy for HKSAR and ensuring that this is applied consistently across all government bureaux and departments; implementation of competition-related measures rests with relevant policy bureaux and departments.

130. In response to a 1996 Consumer Council report recommendation, the Government agreed to adopt a comprehensive competition policy. This involved:

- issuing a policy statement on the objectives of promoting competition and discouraging restrictive business practices;
- requiring all policy bureaux to give due regard to the competition angle;
- requesting all bureaux and departments to submit initiatives for promoting competition;
- establishing a Competition Policy Advisory Group (COMPAG) to be chaired by the Financial Secretary;
- requesting the Consumer Council to continue to monitor and review trade practices in sectors prone to "unfair" trading activities; and
- urging the Consumer Council to direct further efforts to help businesses draw up codes of practices that are pro-competition.

131. The Government holds the view that voluntary compliance with guidelines or codes of practice is a more appropriate approach for a small, highly open and competitive economy like the

⁹⁶Complaints may be addressed to the Consumer Council, which can either investigate a complaint or refer it to the relevant government department for investigation. It is unclear whether the Government's existing procedures for dealing with such complaints are sufficiently effective.

HKSAR. In its Statement on Competition Policy, released in May 1998, the Government stressed that it will "not interfere with market forces simply on the basis of the number of operators, scale of operations, or normal commercial constraints faced by new entrants." It envisages taking action "only when market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency or free trade, to the detriment of the overall interest of Hong Kong." The Statement recognizes potentially restrictive practices⁹⁷, noting that whether a practice is restrictive or not must be determined in the light of the actual situation. Major competition policy measures listed in the Statement include raising public awareness and encouraging competition; initiating pro-competition measures in the public sector; supporting the Consumer Council's work in drawing up codes of practice and in monitoring and reviewing business practices in sectors prone to anti-competition behaviour; and establishing a repository of competition-related concerns and complaints. For implementation of the policy, COMPAG is to invite all government entities to adhere to the Statement, propose initiatives for furthering the competition policy objective, examine the impact of all new proposals on competition and, where appropriate, bring this to the attention of the ExCo and LegCo. Alleged restrictive practices may be referred to the relevant policy bureau or department or to the Consumer Council for consideration. The COMPAG Secretariat will keep track of all referrals and bring these to the attention of COMPAG should there be substantial policy or systemic implications.

Box III.1: Consumer Council's proposal for comprehensive competition policy and law.

The Consumer Council published a comprehensive report on competition policy, titled "Competition policy: the key to Hong Kong's future economic success" in November 1996. The report, submitted to the Government for policy consideration, was also made available to the public. The objective of the study was to examine whether Hong Kong needed a comprehensive competition policy and competition law, and if so, to consider what framework should be adopted, what should be enacted, and what institutions should be established. The report followed a series of studies by the Council since 1992 on certain key sectors of the domestic economy including banking, domestic gas supply, broadcasting, telecommunications, and residential property markets.

The report recognized that in the past two decades, Hong Kong had undergone an economic structural change from a manufacturing-based economy to a service economy. The report however finds that "not all markets in service sectors are automatically highly competitive under a laissez-faire regime." Some services are mainly provided domestically and insulated from international competition. These include legal and accounting services, medical and dental services, public utilities, local radio and television broadcasting, retail banking services, restaurants and supermarkets. The report suggests that factors behind a possible lack of competitiveness may be the high property and wage costs in Hong Kong, partly due to the lack of direct competition and imperfections in the market.

The report recommends the adoption of a comprehensive competition policy and, inter alia, enactment of a general competition law in Hong Kong, because legal enforcement is viewed as the only transparent and effective way to prevent and deal with restrictive practices.

Source: Consumer Council (1996).

132. Hong Kong, China has no bilateral agreements for mutual cooperation in competition policy with foreign countries. Nor has it adopted any multilateral, regional or bilateral measures regarding competition policy. Hong Kong, China does, however, participate in competition policy dialogues in APEC and the WTO.

⁹⁷These include price-fixing, bid-rigging, market allocation, sales and production quotas, joint boycotts, unfair or discriminatory standards, predatory behaviour, retail price minimums, conditioning the supply of certain goods and services to acceptance of certain restrictions.

(b) Regulated industries

133. Regulatory arrangements governing certain basic services, such as electricity, gas, and mass transport are intended to avoid the exploitation of natural (technical) monopolies and ensure continuous supplies at reasonable prices.⁹⁸

134. The Government considers that public transport services should be operated by the private sector or by public corporations operating on prudent commercial principles, where the Government provides a regulatory framework, such as the Road Traffic Ordinance.

135. No subsidies have been given to public transport services. Competition is encouraged in the sector; the Government grants new bus franchises and ferry services by public open tender, and no exclusive rights are granted. During the franchise period, if the performance of the franchisee is found to be unsatisfactory, the Government has the power to terminate the franchise and put the service routes up for open tender to select a new franchise operator.

136. Though the number of suppliers is not regulated, electricity in Hong Kong is supplied by two private companies, the Hong Kong Electric Company and China Light and Power. The former supplies electricity in the Hong Kong Island and the outlying islands, and the latter in the Kowloon Peninsula and the New Territories. They generate and distribute electricity and are the sole and exclusive suppliers of electricity in the areas they serve. The Government controls companies' rates of return from electricity-related activities and facilities, and monitors financial and technical performance, by way of control agreements with each company.⁹⁹ There are no legal provisions regulating these activities. According to the authorities, the agreements do not bestow any exclusive rights. Nor do they exclude new entrants. As they restrict companies' rates of return, the control agreements may lead to over-investment. With a view to promoting greater efficiency in the distribution of electricity, the Government has commissioned a study, to be completed by the end of 1998, on interconnection and competition in the electricity supply sector, including opening of access to the two existing electricity grids to third parties.¹⁰⁰

137. Gas is supplied by private sector companies. According to the authorities, there is no restriction on the number of firms in this market. Nevertheless, one company, the Hong Kong and China Gas Company (HKCG), produces and supplies town gas through an extensive transmission network reaching all major centres of population.¹⁰¹ The company has no exclusive rights to produce or supply town gas. There are no entry or price-related regulations in the sector. The only production-related regulation relates to operational safety (the Gas Safety Ordinance). Liquefied petroleum gas (LPG), on the other hand, is supplied by major oil companies in the form of cylinders and through piped supply from bulk stores to some housing complexes.

⁹⁸Although claims about the existence of natural monopolies continue to influence public policy in Hong Kong and elsewhere, the concept is becoming increasingly irrelevant as new technologies emerge that are efficient at much lower levels of production than previously. Consequently, the characterization of "natural monopoly" has given way to the notion of "workable competition" (Rose, 1997, p. 2).

⁹⁹Electricity tariffs fall into four broad categories: domestic, commercial, small industrial, and large industrial. The average tariffs are about 85.0 cents per unit (kWh) for a typical domestic household (with a monthly consumption of 250 units), 96.0 cents per unit for commercial consumers, 88.3 cents per unit for small industrial consumers and 69.8 cents per unit for large industrial consumers.

¹⁰⁰Such interconnection has been implemented only in the case of emergency.

¹⁰¹The Consumer Council, in its reports, pointed out some restraints to competition in the piped town gas sector, including the de facto monopoly and absence of price regulation enjoyed by the HKCG.