

Chapter 8

HONG KONG

PROTECTION OF INTELLECTUAL PROPERTY

Hong Kong improved its intellectual property rights (IPR) legal system while still under British rule and before returning to China. The aim of these improvements was to bring its IPR system into compliance with the TRIPS Agreement. Japan acknowledges these efforts and the implementation review under the TRIPS Council, which Hong Kong underwent in June 2000.

However, some Japanese companies have reported that misleading company names similar to Japanese company names were registered by third party in Hong Kong, and misappropriated. Japan requests Hong Kong to improve the situation promptly.

With respect to the distribution of infringing products, it is also necessary to monitor Hong Kong's efforts to improve the operation of its system, including Hong Kong's efforts to strengthen the regulation to prevent the infringing goods from border passing.

1) Issue of registration of misleading Company names

<Outline of the measure >

In Hong Kong, many world famous trademarks are being used by third parties as their own company names without prior consent. Also, many misleading company names that are identical or similar to such well-known trademarks have been registered (misleading company names). Furthermore, there are cases in which the misleading company names are being used on products manufactured and sold in China and on the advertisements for such products.

<Problems under international rules>

The obstacles within Hong Kong's legal system that provide the background for such issues are: (1) the scope in which changes may be requested against company names that are identical or similar to well-known registered trademarks and company names is extremely limited; and (2) even when the trademark right holder wins a lawsuit against a third party that has registered without prior consent a misleading company name that is similar to registered trademark, and secures a judgment that the third party cancels its registration, such misleading registered company names cannot be effectively eliminated if the defendant (the one who registered the misleading company name) does not implement the ruling. Improvements are necessary in light of TRIPS Agreement and the Paris Treaty.

<Recent developments>

Regarding this matter, bilateral talks were held with Hong Kong on November 18, 2005 and again on February 23 and November 20, 2006, using the system of surveying the status of infringement upon intellectual property rights committed overseas (established in April 2005).

2) Issues related to Counterfeit, Pirated and other Infringing Products, etc.

Japanese industries reported that counterfeit and pirated Japanese products are exported from China by way of Hong Kong. It is necessary to monitor Hong Kong's efforts to regulate counterfeit and pirated products and other intellectual property right infringements to ensure appropriate protection of intellectual property rights, and proper implementation of the TRIPS Agreement.

(See General of Part I Chapter 3 on ASEAN.)