

Insights

US COMMERCE AND STATE DEPARTMENTS ANNOUNCE MORE STRINGENT TREATMENT OF EXPORTS TO HONG KONG SAR

Jul 01, 2020

On June 29, 2020, the [US Secretary of State](#) and the [US Secretary of Commerce](#) announced changes to US export controls in response to recent actions by China involving Hong Kong SAR. These regulatory changes are likely not the last to affect exports to Hong Kong SAR, so taking steps now to assess your organization's export, reexport and in-country transfer activities with Hong Kong SAR involving items subject to US export controls, including both the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), is important to understand how these and any future changes may impact your business.

The US will no longer authorize exports of US-origin defense equipment to Hong Kong SAR. In addition, efforts are underway to impose the same export controls on dual-use and defense technologies for Hong Kong SARs already exist for China. The specific actions announced June 29 do not indicate how these changes will affect current authorizations for the export (including deemed export) of defense articles, technical data, or defense services to Hong Kong SAR.

As part of these measures, the Department of Commerce suspended its regulations affording preferential treatment to Hong Kong SAR over mainland China, including the availability of export license exceptions. Additional steps to eliminate differential treatment between Hong Kong SAR and China are under review. Commerce's Bureau of Industry and Security (BIS) issued [guidance](#) on June 30, 2020, making clear that the changes effective on that date were limited to the suspension of the use of any license exception for the export or reexport to, or the in-country transfer within, Hong Kong SAR where such license exception would not be available if the export, reexport, or in-country transfer involved China. In lieu of continued use of a license exception, a license must be obtained for any future such activities. Companies which engage in exports or reexports to, or in-country transfers within, Hong Kong SAR pursuant to license exceptions will now need to review those license exceptions to determine whether they are available for China; if not, licenses will need to be obtained.

The BIS guidance also provides for a 60-day transition period for deemed export and reexport transactions involving Hong Kong SAR persons where such transactions occurred pursuant to a

license exception prior to June 30, 2020. Persons may continue to rely upon the relevant license exception for such deemed exports and reexports until August 28, 2020; after that date, a license will be required. Persons wishing to rely on this provision must maintain documentation demonstrating that the Hong Kong SAR recipient was hired prior to June 30, 2020, and provided access to technology pursuant to an EAR license exception available for Hong Kong SAR prior to that date. Companies employing foreign persons from Hong Kong SAR, or that otherwise engage in deemed exports or reexports to Hong Kong SAR nationals, should examine those transactions to ensure that they apply timely for any required authorizations for future deemed exports or reexports.

The changes being implemented by BIS on June 30 are limited to the suspension of the use of license exceptions for exports to Hong Kong SAR where such license exceptions are not available for exports to China. Secretary Ross's press statement did not change the EAR Country Chart or otherwise treat exports to Hong Kong the same as exports to China. However, given the statement by Secretary Ross that the United States is evaluating further actions to eliminate preferential treatment to Hong Kong SAR, companies may wish to take steps now to identify the types of items being exported to Hong Kong SAR and whether such items are controlled for export to China so that they can ensure they are prepared in the event future rule changes require authorization for exports to Hong Kong SAR.

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