

Insights

U.S. GOVERNMENT FORMALIZES END OF PREFERENTIAL TREATMENT FOR HONG KONG SAR

IMPOSES ADDITIONAL SANCTIONS MEASURES AFFECTING CHINA AND HONG KONG SAR

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The U.S. Government is continuing to implement measures under U.S. export controls and economic sanctions in response to China's recent actions involving Hong Kong SAR, including China's enactment of a new national security law on June 30, 2020. With these measures come additional areas of potential risk for organizations that have operations or engage in activities involving these destinations. Organizations should continue to be proactive in monitoring their activities to understand and address the effect these additional risks may have on their business.

Formalization of Tightened Export Controls

On July 14, 2020, President Trump issued an [Executive Order on Hong Kong Normalization](#), which formalized the U.S. Government's recently announced policy to end different and preferential treatment afforded to Hong Kong SAR in relation to mainland China. The Executive Order specifically requires that the heads of all affected agencies take action within 15 days to amend their regulations to reflect this policy. Among the regulations to be amended are the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). The Executive Order makes specific reference to the revocation of license exceptions for exports and reexports to, and transfers within, Hong Kong SAR where such license exceptions would not be available if the export, reexport, or in-country transfer involved China; this change was implemented on June 30, 2020, when the U.S. Commerce Department suspended the use of such license exceptions. Nonetheless, additional amendments to the relevant regulations should also be anticipated.

These additional export control measures build upon other recent measures further tightening certain export, reexport and transfer transactions involving China, including [expansion of the military end-use and military end-user restrictions](#) in section 744.21 of the EAR and [revisions to the foreign direct product rule](#) in section 736.2 of the EAR. In addition to these measures, last month the [U.S. Department of Defense released a list](#) of 20 entities that it had determined qualified as Communist Chinese military companies under Section 1237 of the National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261). Section 1237 required that the U.S. Secretary of Defense publish a list of Communist Chinese military companies operating directly or indirectly in

the United States and update this list on an ongoing basis. The list includes a number of Chinese aviation, shipbuilding, and telecommunications companies, including Aviation Industry Corporation of China, China Aerospace Science and Industry Corporation, and Huawei. Although this list does not have the force of law for purposes of the military end-use and military end-user restrictions, the presence of a company on this list is a red flag that the U.S. Government could consider such an entity to be a military end-user.

New Economic Sanctions

In addition to measures relating to export controls, the July 14 Executive Order also contained additional U.S. sanctions measures. Specifically, the Executive Order authorizes the U.S. Secretary of State or the U.S. Secretary of the Treasury (in coordination with one another) to impose blocking sanctions on persons based on their involvement in:

- Developing, adopting or implementing the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong SAR;
- Coercing, arresting, detaining, or imprisoning individuals under that law;
- Activities undermining democracy in Hong Kong SAR or threatening the peace, security, stability or autonomy of Hong Kong SAR;
- Censorship or other activities with respect to Hong Kong SAR that limit the freedoms of expression, assembly, or access to free and independent media; or
- Extrajudicial rendition, arbitrary detention, torture, or other violations of human rights in Hong Kong SAR.

Also on July 14, 2020, President Trump signed the Hong Kong Autonomy Act (H.R. 7440), which requires the U.S. Secretary of State to identify by October 12, 2020, non-U.S. individuals and entities that have materially contributed to the Chinese Government's failure to preserve Hong Kong SAR's autonomy. The President is then authorized to impose sanctions (including blocking sanctions and visa denial or revocation measures) on the listed persons; such sanctions become mandatory one year after the individual or entity is identified in the report. The Secretary of State is also required, within 30 to 60 days of the submission of the report identifying persons contributing to the failure to preserve Hong Kong SAR's autonomy, to publish a list of foreign financial institutions that knowingly conduct significant transactions with such persons. Within one year of a foreign financial institution being identified on this subsequent report, the President must impose at least five of a list of ten available sanctions; within two years, the full list of sanctions must be applied to the foreign financial institution.

These measures are being implemented in addition to the June 2020 enactment of the Uyghur Human Rights Act of 2020 (Public Law 116-145), which requires the President to identify and report

foreign persons responsible for human rights abuses in China's Xinjiang Uyghur Autonomous Region (Xinjiang) and to impose blocking sanctions against and deny or revoke visas for such persons. On July 1, 2020, the U.S. Treasury Department, in conjunction with the U.S. State Department, U.S. Commerce Department, and U.S. Department of Homeland Security, separately [advised](#) organizations to monitor their supply chains for risks related to Xinjiang, including risks involving facilities outside of Xinjiang that use labor or goods from the region.

Organizations with operations in or activities involving China or Hong Kong SAR should take steps now to assess their activities involving those destinations. For organizations that have already begun such a review, it is important to ensure that the review encompasses these recently enacted U.S. export controls and economic sanctions measures, as well as those to be implemented in the coming weeks pursuant to this latest Executive Order.

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- International Trade

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