



CLIENT ALERT /// June 1, 2020

## U.S. Prepares Further Measures to Respond to China's Hong Kong Crackdown

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### Summary

In response to Beijing's moves to impose a controversial national security law on Hong Kong, President Trump announced on May 27th a limited visa ban on Chinese students and possible future steps that could include sanctions on Chinese officials and financial institutions. The announcement followed Secretary of State Michael Pompeo's certification to Congress that Hong Kong was no longer sufficiently autonomous from China to enjoy special status under U.S. law.<sup>1</sup> The extent to which these policy changes will impact Hong Kong's future as a global financial hub remains to be seen, but companies should monitor developments closely as they could reset economic and trade relations in the region.

- Secretary Pompeo's determination was required under the 2019 Hong Kong Human Rights and Democracy Act ("Hong Kong Human Rights and Democracy Act"), which amended the 1992 Hong Kong Policy Act ("Hong Kong Policy Act") that established the special treatment accorded to Hong Kong after its 1997 transfer from the United Kingdom.<sup>2</sup> Under the Hong Kong Policy Act, the United States has treated Hong Kong separately from China for the purposes of a wide swath of trade, economic, and financial matters.
- The United States has not yet imposed broader sanctions, altered export control policy, or imposed tariffs on Hong Kong-origin goods as a result of the determination, though President Trump suggested it would.<sup>3</sup> It has acted initially to restrict the entry of Chinese graduate students whose academic pursuits would contribute to advances in China's military capabilities.
- Congress and the administration continue to consider measures to respond to Chinese activity that has U.S. national security or human rights implications. These just-announced and future measures should be understood alongside ongoing targeting of Chinese entities. In the past year alone, the State and Treasury Departments sanctioned Chinese companies, the Commerce Department limited Chinese telecommunications company Huawei's access to U.S.-origin equipment, and the Department of Justice indicted U.S. academics for failing to disclose their Chinese government funding, among other steps.<sup>4</sup>



### Initial Administration Action

On May 27th, President Trump announced a limited visa ban and initiated policy processes to consider further action.<sup>5</sup> These actions suggest a measured approach, though they leave the door open for further aggressive action.

- **Visa restrictions:** Chinese graduate students that have studied or worked at a university, institution, or employer with known links to China's military or intelligence agencies, and whose program of study has potential national security applications, will be denied a visa to study at U.S. academic institutions.<sup>6</sup> The move is designed to protect against the use of research to benefit the development of China's military capabilities.
- **Additional Policy Steps Under Consideration:**
  - Potential sanctions: President Trump expressed his intention to impose sanctions on Chinese and Hong Kong government officials responsible for eroding Hong Kong's autonomy.
  - Review of Hong Kong's special privileges: The administration will review policy exemptions under the Hong Kong Policy Act, including, but not necessarily limited to: exiting extradition treaties; amending export control measures; revising the State Department's travel advisories to reflect the increased presence of the Chinese state security apparatus in Hong Kong; and taking actions to revoke Hong Kong's preferential treatment as a separate customs area and travel territory.
  - Study of Chinese audits and financial disclosures: The President directed his Working Group on Financial Markets<sup>7</sup> to study whether Chinese firms should continue to be listed on U.S.-based equity indexes if they are unable to meet basic auditing and financial transparency measures. As noted below, Congress is considering similar action in the proposed Holding Foreign Companies Accountable Act.

### The Potential for Future Action

**The Hong Kong Policy Act and the Hong Kong Human Rights and Democracy Act allow the President to take several measures to modify U.S. policy regarding Hong Kong.** Companies should be aware that the measures available to the administration could raise compliance and reputational burdens of maintaining relationships with Hong Kong-based entities and potentially alter Hong Kong's attractiveness as a trading and financial hub. These measures include:

- **Sanctions:** The President could, under his International Emergency Economic Powers Act authority, impose targeted sanctions on any foreign person responsible for "the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong" or "other gross violations of internationally recognized human rights in Hong Kong."<sup>8</sup> The sanctions could target high-ranking Chinese government officials, Chinese government entities (such as the security services), or those closely affiliated with the Chinese government,



that could potentially include, for example, state-owned enterprises with a presence in Hong Kong.

- **Export Controls:** The Hong Kong Policy Act directs the United States to support Hong Kong's access to sensitive technologies, so long as such technologies are not re-exported to China. This favorable treatment could be curtailed, limiting what U.S.-origin goods may be exported to Hong Kong. This step would impact supply chains that have already been under strain from U.S.-China trade tensions.
- **Tariffs and Trade Policy:** The administration could impose the same tariffs on Hong Kong-origin exports that it currently applies to exports from China.<sup>9</sup> The policy change would also impact import quotas and certificates of origin. This step would expose Hong Kong to U.S.-China trade tensions in a way that it has been able to avoid for the past three years, particularly if Beijing decides that Hong Kong needs to impose the same retaliatory tariffs that China has applied to U.S. exports.

The Chinese government has promised retaliation against the United States for any actions it interprets as interfering in its domestic affairs.<sup>10</sup> Beijing's response could substantially increase the chilling effect on the U.S.-China trade and investment relationship.

### Additional Legislation

Congress is actively considering legislation that would expand the tools available to the administration to deter and punish malign Chinese activity, including its erosion of Hong Kong's autonomy, human rights abuses within China, and the inability of Chinese companies to meet U.S. financial transparency standards. Relevant legislation includes:

- **S. 178 – Uyghur Human Rights Policy Act of 2019<sup>11</sup>:** Overwhelmingly passed by Congress and awaiting President Trump's signature, this bill would impose Global Magnitsky human rights sanctions on Chinese government officials responsible for the mistreatment of China's Uyghur minority, which includes widespread interment and surveillance. The bill requires the administration to identify specific items and technology that assist the Chinese government in repressing the Uyghurs, including physical surveillance and Internet monitoring tools to add to U.S. export control lists.
- **S. 3798 – Hong Kong Autonomy Act<sup>12</sup>:** This bill would impose sanctions on persons or entities that "materially contribute to the contravention of China's obligations" under the Sino-U.K. Joint Declaration and the Basic Law. The legislation targets banks that conduct "significant transactions" with any of those sanctioned individuals or entities, which could include some of the largest Chinese and multinational banks located in Hong Kong.
- **H.R. 5725 – Hong Kong Be Water Act<sup>13</sup>:** This bill would mandate that the President impose Global Magnitsky sanctions on foreign individuals who have participated in or support the "suppression of the freedoms of speech, association, assembly, procession, or demonstration of the people of Hong Kong." The definition of foreign person includes current and former officials of the government of China, as well as the government of Hong Kong. The bill also requires sanctions against entities owned or controlled by the



government of China (including state-owned enterprises) or their board members or corporate officers who participate in the undermining of the autonomy of Hong Kong.

- **S. 945 – Holding Foreign Companies Accountable Act**<sup>14</sup>: This bill would permit the Securities and Exchange Commission to bar from U.S. equity indexes the trading of shares of any company that is located in a foreign jurisdiction that does not allow the Public Company Accounting Oversight Board to verify its audit processes for three consecutive years. The law would also require firms to declare whether they are owned or controlled by a foreign government. For many years, the Chinese government has barred the PCAOB from inspecting audits of China- or Hong Kong-based companies.

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<sup>1</sup> As Secretary of State Michael Pompeo noted in his press statement: “No reasonable person can assert today that Hong Kong maintains a high degree of autonomy from China, given facts on the ground.” Secretary of State Michael Pompeo, “PRC National People’s Congress Proposal on Hong Kong National Security Legislation,” Press Statement (May 27, 2020), available at <https://www.state.gov/prc-national-peoples-congress-proposal-on-hong-kong-national-security-legislation/>. The summary of the formal report to Congress is available <https://www.state.gov/2020-hong-kong-policy-act-report/>.

<sup>2</sup> See a previous K2-FIN policy alert, “Congress Passes Hong Kong-Related Sanctions, But President Might Veto,” (November 25, 2019), available at [https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.11.25\\_-\\_update\\_-\\_hongkong.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.11.25_-_update_-_hongkong.pdf).

<sup>3</sup> “Remarks by President Trump on Actions Against China,” The White House, May 29, 2020, available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-actions-china/>.

<sup>4</sup> For a previous K2-FIN policy alert on China see, “China Emerging as an Increasing Driver of Global Illicit Finance Risk.” (August 30, 2019), available at [https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.08.30\\_-\\_policyalert\\_-\\_china.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.08.30_-_policyalert_-_china.pdf). For U.S. sanctions against Chinese firms, see, inter alia, Michael Pompeo, “The United States Imposes Sanctions on Chinese Companies for Transporting Iranian Oil,” press statement, (September 25, 2019), available at <https://translations.state.gov/2019/09/25/the-united-states-imposes-sanctions-on-chinese-companies-for-transporting-iranian-oil/>. Though some of the COSCO-related designations were lifted, other Chinese firms have recently been designated for their involvement in Iran-related activity. For recent actions involving export controls for U.S.-origin products destined for Huawei, see United States Department of Commerce, “Commerce Addresses Huawei’s Efforts to Undermine Entity List, Restricts Products Designed and Produced with U.S. Technologies,” press release, (May 15, 2020), available at <https://www.commerce.gov/news/press-releases/2020/05/commerce-addresses-huaweis-efforts-undermine-entity-list-restricts>. For the Department of Justice’s China-related indictments, see United States Department of Justice, “Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases,” press release, (January 28, 2020), available at <https://www.justice.gov/opa/pr/Harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related>.

<sup>5</sup> “Remarks by President Trump on Actions Against China,”

<sup>6</sup> Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People’s Republic of China, May 29, 2020, available at



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<https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-nonimmigrants-certain-students-researchers-peoples-republic-china/>.

<sup>7</sup> The Secretary of the Treasury chairs the Working Group. Its members includes representatives from the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, and the Commodities Futures Trading Commissions. Executive Order 12361—Working Group on Financial Markets, available at <https://www.archives.gov/federal-register/codification/executive-order/12631.html>.

<sup>8</sup> Hong Kong Policy Act of 1992, available at <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter66&edition=prelim>.

<sup>9</sup> Edward Wong, “Pompeo Says Hong Kong No Longer Has Autonomy Under China,” *New York Times* (May 27, 2020), <https://www.nytimes.com/2020/05/27/us/politics/china-hong-kong-pompeo-trade.html>.

<sup>10</sup> Asked directly about the potential for U.S. action, the spokesman for China’s Ministry of Foreign Affairs said: “In response to the wrong moves by the external forces to interfere in the Hong Kong affairs, we will take necessary countermeasures.” Foreign Ministry Spokesperson Zhao Lijian’s Regular Press Conference on May 29, 2020, available at [https://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1784166.shtml](https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1784166.shtml)

<sup>11</sup> S. 178 – Uyghur Human Rights Policy Act of 2019, United States Congress, available at <https://www.congress.gov/bill/116th-congress/senate-bill/178/text>

<sup>12</sup> <sup>12</sup> S. 3798 – Hong Kong Autonomy Act, United States Congress, available at <https://www.toomey.senate.gov/files/documents/Hong%20Kong%20Autonomy%20Act.pdf>

<sup>13</sup> H.R. 5725 – Hong Kong Be Water Act, United States Congress, available at <https://www.congress.gov/bill/116th-congress/house-bill/5725/text?q=%7B%22search%22%3A%5B%22hong+kong%22%5D%7D&r=10&s=5>

<sup>14</sup> S.945 – Holding Foreign Companies Accountable Act, United States Congress, available at [https://www.kennedy.senate.gov/public/\\_cache/files/0/4/04065c9e-9ae9-482c-952b-3380781545c5/B51AE5FF25469574442B23D689389132.05-20-20-holding-foriegn-companies-accountable-act.pdf](https://www.kennedy.senate.gov/public/_cache/files/0/4/04065c9e-9ae9-482c-952b-3380781545c5/B51AE5FF25469574442B23D689389132.05-20-20-holding-foriegn-companies-accountable-act.pdf).