

President issues executive order eliminating Hong Kong's preferential treatment

20 July 2020

On 14 July, the same day the President signed into law the [Hong Kong Autonomy Act](#) (the act), President Trump issued the [Executive Order on Hong Kong Normalization](#) (the EO) directing federal agencies to impose a range of trade and other restrictions on Hong Kong in response to China's new [National Security Law](#). The Administration has expressed concerns that the new National Security Law will effectively end Hong Kong's autonomy by enabling Chinese authorities to exercise expansive emergency authority in Hong Kong in connection with activities that they deem to be acts of secession, subversion, terrorism, and/or collusion with a foreign country.

The EO follows from the [directive](#) the President announced on 29 May 2020 to the heads of executive departments and agencies to begin the process of eliminating policy exemptions under U.S. law that give Hong Kong differential treatment in relation to China. Specifically, the EO directs heads of certain agencies to eliminate the favorable treatment afforded to Hong Kong vis-à-vis China across a number of different areas from export licensing to educational programs and immigration policy. The EO requires agencies to take implementing actions within 15 days. The EO also provides authority to the Department of State and Department of Treasury to impose sanctions on foreign persons (individuals and entities) involved in adopting and implementing the National Security Law and other activities that undermine Hong Kong's autonomy, which can happen at any time. In addition, it provides authority to the agencies to impose "secondary sanctions" on any person who provides material support or goods or services to persons designated under the EO.

Suspension of preferential treatment in international trade

The elimination of preferential trade treatment will significantly change the economic relationship between Hong Kong and the United States. Hong Kong, in effect, will be treated the same as mainland China for purposes of the bilateral economic relationship. Specifically, the EO suspends the application of a section of the United States-Hong Kong Policy Act of 1992 that results in the termination of Hong Kong's exemption or preferential treatment in regards to a number of international trade statutes and regulations, including customs marking laws, the Arms Export Control Act, the Defense Production Act of 1950, and the Export Control Reform Act of 2018.

The EO directs the heads of agencies to implement these policies within 15 days. The actions include:

- Revoke license exceptions for exports, reexports, and transfers (in-country) to Hong Kong of goods, software, and technology subject to the Export Administration Regulations (EAR), to the extent those license exceptions provide more favorable treatment to Hong Kong than to mainland China (the Department of Commerce had already [suspended license exceptions](#) for Hong Kong that provided special privileges relative to China effective 30 June 2020).
- Terminate prior export licensing suspensions that apply to exports of defense articles to Hong Kong to previously authorized persons who are physically located outside of Hong Kong and mainland China.
- Give notice of intent to terminate the agreement for the reciprocal exemption of taxes on income from the international operation of ships effected by the Exchange of Notes Between the Government of the United States of America and the Government of Hong Kong.

End of made in Hong Kong labeling

Suspending the application of the United States-Hong Kong Policy Act of 1992 to Section 1304 of Title 19, U.S. code, means that all products produced in Hong Kong to the United States will now be required to be marked "Made in China." Depending on how the EO ultimately is implemented, goods from Hong Kong may also be subject to the duty rates for goods from mainland China, likely resulting in the application of 7.5 percent or 25 percent Section 301 duties on most goods imported from Hong Kong. The United States also may extend application to Hong Kong of existing and pending anti-dumping and countervailing duty measures on more than 150 product categories including steel, chemicals, electronics, tires, textiles, wood products, and other products. While the volume of goods imported to the United States that are manufactured in Hong Kong is relatively small, these changes could have a significant impact on Hong Kong producers. Companies currently shipping goods to the United States that are labeled as "Made in Hong Kong" or "Product of Hong Kong" likely will need to relabel such goods in order for them to be allowed entry into the United States. Improperly labeled goods are subject to detention, seizure, and marking penalties. Further, importers should ensure they are noting that the origin of their goods are "China" on their U.S. Customs entry forms; otherwise, they will be at risk of Customs penalties under Section 1592, for material false information being provided on Customs import entries.

Imposition of sanctions on individuals involved with China's National Security Law

The EO directs the Secretary of State and Secretary of Treasury to sanction "foreign persons" determined to be involved in developing, adopting, and/or implementing China's National Security Law, among other actions. The EO also provides authority to the agencies to impose "secondary sanctions" on any person who, among other things, provides material assistance; financial, material, or technological support; or goods or services to persons designated under the EO. The EO blocks any transactions or transfers involving any and all property and/or interests in property in the United States of anyone determined by the Secretary of State in consultation with the Secretary of Treasury (or vice versa):

- To be or have been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or to be or have been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region.
- To be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

- Actions or policies that undermine democratic processes or institutions in Hong Kong.
 - Actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong.
 - Censorship or other activities with respect to Hong Kong that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Hong Kong, or that limit access to free and independent print, online, or broadcast media.
 - The extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong or other gross violations of internationally recognized human rights or serious human rights abuse in Hong Kong.
- To be or have been a leader or official of:
 - An entity, including any government entity, that has engaged in, or whose members have engaged in, any of the activities described above.
 - An entity whose property and interests in property are blocked pursuant to the EO.
 - To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked by the EO.
 - To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked by the EO.
 - To be a member of the board of directors or a senior executive officer of any person whose property and interests in property are blocked by the EO.

Those determined to be blocked by the order and/or their family members are also prohibited from entering the United States.

These sanctions provisions overlap with but are broader in some ways than the Hong Kong Autonomy Act which allows the Administration to impose sanctions on foreign persons (e.g., Chinese and Hong Kong government officials) and entities determined to have been involved in eroding Hong Kong's autonomy, as well as financial institutions, including banks, determined to have engaged in "significant transactions" with such foreign persons. Such sanctions could result in sanctioned banks losing access to the U.S. financial system, including access to U.S. dollar clearing services. The act also allows the Administration to take action against foreign persons (individuals or entities) that have been found to have "materially contributed" to the erosion of Hong Kong's autonomy, such as companies operating in Hong Kong that facilitate or support the Chinese or Hong Kong government's ability to monitor the populace and/or suppress civil liberties in Hong Kong.

The sanctions authorized in the EO give the Departments of Treasury and State broad discretion to sanction foreign persons (individuals and entities, including banks) for a wide range of activities, including secondary sanctions. In addition, unlike the sanctions authorized in the Hong Kong Autonomy Act, sanctions under the EO can be implemented immediately by the Secretaries of State or Treasury.

Suspension of immigration policies

The EO imposes a number of changes regarding immigration policies. Most notably, the EO subjects Hong Kong to the same immigration policy that applies to mainland China. This means that Hong Kong will now be subject to quota limits for issuance of permanent residency, or a "green card," to Hong Kong citizens. Hong Kong will also be subject to the same "reciprocity" rules as China regarding visa validity periods, which will likely result in shorter visa durations. The EO also enacts the following changes:

- Eliminates the preference for Hong Kong passport holders entering and exiting the United States.
- Reallocates admissions within the refugee ceiling set by the annual Presidential Determination to residents of Hong Kong based on humanitarian concerns.
- Terminates the Fulbright exchange program in regard to future participants traveling to or from Hong Kong or China, thereby eliminating J-1 visitor visas for those scholars.

Additional changes enacted by the order

The EO further directs heads of agencies to give notice of their intent to suspend:

- The Agreement Between the Government of the United States of America and the Government of Hong Kong for the Surrender of Fugitive Offenders.
- The Agreement Between the Government of the United States of America and the Government of Hong Kong for the Transfer of Sentenced Persons.
- A program providing training to members of Hong Kong Police Force and other security services at the Department of State's International Law Enforcement Academies.
- Cooperation consistent with the now-expired Protocol Between the U.S. Geological Survey Department of the Interior of the United States of America and Institute of Space and Earth Information Science of the Chinese University of Hong Kong Concerning Scientific Technical Cooperation in Earth Sciences.

Conclusion

This EO effectively ends the special relationship between the United States and Hong Kong as Hong Kong will now be treated the same as mainland China across a broad set of areas, including trade, customs, immigration, law enforcement cooperation, and foreign policy. China's foreign ministry characterized the Hong Kong Autonomy Act and EO as a violation of international relations norms and a serious interference in China's internal affairs. China has said it will respond by imposing retaliatory sanctions against U.S. individuals and entities, but it remains unclear what form these will take and when China will respond.

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