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New Sanctions and Export Control Laws Target Government of China's Response to Hong Kong Protests

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December 2, 2019 – On November 27, 2019, President Trump signed two companion pieces of legislation into law that target the Government of China's response to political protests currently taking place in Hong Kong. The first statute, the Hong Kong Human Rights and Democracy Act, requires the President to identify and sanction persons deemed responsible for human rights abuses related to protests in Hong Kong. The provisions of the law also have the potential to alter significantly Hong Kong's status under U.S. law as an entity separate from and treated more favorably than mainland China. The law will also require the President to make regular reports to Congress about sanctions imposed under the bill's authority. The second statute, much narrower in scope, will restrict the export of certain munitions items to the Hong Kong Police Force for a period of one year.

The Hong Kong Human Rights and Democracy Act first requires the President to submit a report to certain Congressional committees identifying 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." The law further requires the President impose asset blocking sanctions on any person identified in the report (i.e., by including them on the list of Specially Designated Nationals administered by the Office of Foreign Assets Control), and such persons would be ineligible for visas or admission into the U.S.

The first report is due within 180 days of the bill becoming law, or by May 25, 2020, with additional reports being required at least annually. Updates to the reports are also required within fifteen days of any sanctions action taken under the law's authority. Notably, the law includes a sunset provision that would automatically terminate any sanctions imposed under the legislation five years after its enactment, or by November 27, 2024.

Second, the Hong Kong Human Rights and Democracy Act requires reporting by the U.S. Commerce and State Departments on various aspects of Hong Kong's treatment under U.S. law, to enable an assessment as to whether Hong Kong should continue to be treated as not being part of China for the purpose of certain trade and commercial relationships. Specifically, the U.S. Commerce Department is required to annually report to Congress

on “the nature and extent of violations of United States export control and sanctions laws occurring in Hong Kong,” particularly the use of Hong Kong as a destination for transshipments to facilitate the diversion of controlled goods. If unfavorable findings were made, Hong Kong could find itself subject to much more rigorous export control rules (i.e., comparable to those currently applicable to mainland China) than at present. The law also requires the U.S. State Department to certify annually that Hong Kong is sufficiently autonomous from mainland China in order for the city to retain favorable trade considerations that exempt it from certain tariffs and other adverse trade treatment in its commercial relationships with the U.S.

The second bill that was signed into law, titled “A bill to prohibit the commercial export of covered munitions items to the Hong Kong Police Force,” prohibits the President from issuing export licenses for specified items if those items will be sent to the Hong Kong Police Force, unless certain reports are submitted to Congress. Covered items that are subject to the ban include tear gas, pepper spray, rubber bullets, foam rounds, bean bag rounds, pepper balls, water cannons, handcuffs, shackles, stun guns, and tasers. These restrictions become effective 30 days after the bill became law, or by December 27, 2019, and will automatically expire in one year, or by November 27, 2020.

The laws come in the midst of ongoing and sensitive trade negotiations between the U.S. and China. President Trump had initially hinted that he was considering a veto of the bills, explaining “I stand with all of the things that we want to do, but we also are in the process of making the largest trade deal in history.” After drawing bipartisan criticism for his comments, however, and a threat to override any veto because of the near-unanimous, bi-partisan support of the bills, President Trump ultimately signed the bills into law. In a statement, he explained that he signed the bills “out of respect for President Xi, China, and the people of Hong Kong. They are being enacted in the hope that Leaders and Representatives of China and Hong Kong will be able to amicably settle their differences leading to long term peace and prosperity for all.”

The actual effect of the bills remains to be seen. The long, six-month lead time before the first sanctions report is required means that potentially both an initial trade deal could be reached and the Hong Kong protests could be resolved before the first report is due. On the other hand, if trade deals are not reached, and/or the Hong Kong protests continue, the laws could result in Hong Kong losing its more favorable trade partner status and being treated the same as mainland China, as well as possibly significant consequences for the U.S.-China relationship.

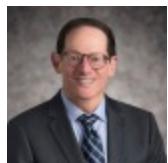
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