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U.S. places new export restrictions on Hong Kong

By David Kaufman, Alexandra López-Casero, David Cheng, John Sandweg, and Rachel Winkler

As a sign of the growing tension between the United States and China over the imposition by the Beijing government of a new security law on Hong Kong, the U.S. government on Monday, June 29, announced new restrictions banning the export of U.S.-origin defense equipment to Hong Kong and the desire to impose the same restrictions on U.S. dual-use technologies to Hong Kong as for China. Previously, on May 27, U.S. Secretary of State Michael Pompeo communicated to Congress that the U.S. no longer considered Hong Kong as being autonomous from the People's Republic of China and President Trump two days later announced he was, "directing my administration to begin the process of eliminating policy exemptions that give Hong Kong different and special treatment."[1]

Secretary Pompeo announced on June 29 that the administration would "end exports of U.S.-origin defense equipment and will take steps toward imposing the same restrictions on U.S. defense and dual-use technologies to Hong Kong as it does for China." These restrictions include both defense articles that are on the U.S. Munitions List and dual-use products that the exporter knows will be used for military purposes. Imposing restrictions on the export of defense articles to Hong Kong will eventually require a change to the International Traffic in Arms Regulations (ITAR). As of this morning, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), which administers and enforces the ITAR, has not announced such a change, including in its country-specific guidance. However, such a change could come any time in the coming days. However, this morning, the U.S. Department of Commerce's Bureau of Industry and Security (BIS), which administers the export, reexport, and transfer of dual use and commercial products, announced that effective June 30, 2020, it is suspending any License Exceptions for exports to Hong Kong, reexports to Hong Kong, and transfers (in-country) within Hong Kong of items subject to the Export Administration Regulations (EAR), which provide differential treatment than those available to the People's Republic of China. BIS explained that it is taking this action pursuant to Section 740.2(b) of the EAR, which provides that all License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. Additionally, in the coming months BIS will likely work on changing actual provisions in the EAR pertaining to its licensing policy

[1] See our prior alert, "U.S. looks at redrawing its relationship with Hong Kong."

regarding Hong Kong, reasons for control, and related changes to eventually treat exports, reexports, and transfers to and within Hong Kong as if they were destined to China.

Separate but relatedly, U.S. Commerce Secretary Wilbur Ross announced that his department would suspend “regulations affording preferential treatment to Hong Kong over China, including the availability of export license exceptions.” Exporters of sensitive technology products will likely be required to undergo a rigorous application process to receive a license to export these items to Hong Kong.

Nixon Peabody advises clients on all aspects of export compliance, including U.S. export controls on China and can provide additional details on the existing and announced restrictions. We will continue to monitor these developments and provide further analysis as warranted. If you have questions on these new restrictions or other China-related matters, reach out to your Nixon Peabody attorney or those listed below.

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