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No immediate changes as the U.S. contemplates Hong Kong's trade and commercial status

By David Kaufman, David Cheng, John Sandweg, and Rachel Winkler

On May 27, United State Secretary of State Michael Pompeo announced in a communication to Congress:

The State Department is required by the Hong Kong Policy Act to assess the autonomy of the territory from China. After careful study of developments over the reporting period, I certified to Congress today that Hong Kong does not continue to warrant treatment under United States laws in the same manner as U.S. laws were applied to Hong Kong before July 1997.

The statement could impact the special trade and commercial status Hong Kong has had with the United States for the past 23 years, even as the territory became part of the Peoples Republic of China.

Is there an immediate impact?

No. The statement does not have any automatic repercussions. While the Secretary's statement references the 1992 Hong Kong Policy Act, the impetus for his statement was the 2019 Hong Kong Human Rights and Democracy Act (HKHRDA). The 2019 Act required the State Department to evaluate Hong Kong's autonomous status annually.

What is next?

The Trump Administration could take steps to modify the trade and other economic relations between the U.S. and Hong Kong. However, the Administration is not required to do so. The Administration could also issue specific sanctions on trade or other actions against certain individuals. Those individual actions could, under the HKHRDA and other authorities, include asset freezes and visa bans.

How is Hong Kong's status now different from the rest of China?

The U.S. has a special trade relationship with Hong Kong, as the region is not impacted by the same tariff, trade restrictions, and sanctions as the Chinese mainland. In addition, it is generally easier for individuals to travel between the U.S. and Hong Kong.

Nixon Peabody will continue to monitor the U.S./China relationship, including the trade and commercial status of Hong Kong, and provide guidance to clients as new developments emerge.

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