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The U.S. Imposes New Export Control, Telecommunications and Other Measures in Response to China’s Actions in Hong Kong and Xinjiang Province

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Each day that passes seems to bring with it ever more rapid and significant changes to the U.S. relationship with China. The State Department certified to Congress that Hong Kong no longer enjoys a high degree of autonomy from China. This certification paved the way for Hong Kong’s special trading status to be revoked and for Hong Kong to be treated like the rest of mainland China with regard to a range of U.S. export control, trade and national security regulations. Simultaneously, the administration and Congress have taken a number of steps to sanction China over its policies toward the Uyghur minority in Xinjiang Province. Federal agencies including the Federal Communications Commission (FCC), and U.S. Departments of Commerce, Homeland Security, State, and Treasury have now begun to take action to implement these policy changes.

On June 29, 2020, the State Department announced that the United States was terminating all sales and exports of defense articles to Hong Kong subject to the International Traffic in Arms Regulations (ITAR). In doing to, the State Department emphasized that it “can no longer distinguish between the export of controlled items to Hong Kong or to mainland China” and “cannot risk these items falling into the hands of the People’s Liberation Army.”

Also on June 29, the Commerce Department announced that it would impose additional export controls on Hong Kong under the U.S. Export Administration Regulations (EAR). As a result, effective June 30, 2020, all exports, reexports, and transfers of goods, software, and technology (collectively “items”) that are subject to the EAR will be treated identically to items bound for the People’s Republic of China (PRC). Although trade in many consumer items will not be impacted by this change, in some cases, companies will be required to obtain new U.S. export licenses to continue to do business with Hong Kong. This change is effective as to any items not already on their way to Hong Kong (e.g., on the loading dock ready to ship or en route aboard a vessel) as of June 30, 2020.

In addition, an EAR license will now be required before Hong Kong citizens may have access to EAR-controlled items that require a license for PRC citizens to access. This change becomes effective on August 28, 2020, and applies to both current and future employees, contractors, and other persons with access to company facilities, servers, or other locations where EAR-controlled items are housed. Again, many consumer-oriented industries will see little impact from this rule change, but all companies employing Hong Kong citizens should carefully review their access to any controlled items and take steps now to apply for any licenses that may be required.

Additional U.S. actions on China are moving ahead at the FCC. On June 30, 2020, the FCC formally designated Huawei, ZTE, and their parents, affiliates, subsidiaries as “covered companies” for the purpose of the FCC’s ban “on the use of universal service support to purchase equipment or services from companies posing a national security threat.” The Huawei order and ZTE order finalize the initial designations of these entities and the ban that we previously highlighted in January 2020.

As a result, universal service fund (USF) recipients are prohibited from using USF funds to purchase, obtain, maintain, improve, modify, manage, or otherwise support Huawei or ZTE equipment or services in any way. So far, however, the orders have not required any USF recipients to remove and replace existing covered equipment under the mandate of the *Secure and Trusted Communications Networks Act*, which we discussed in April 2020. This mandate has been delayed while the FCC establishes a reimbursement mechanism for the contemplated “remove and replace” framework.

Finally, U.S. responses to alleged human rights abuses against China’s Uyghur minority are continuing to accelerate. On July 1, 2020, the Treasury Department, State Department, Commerce Department, and Department of Homeland Security jointly issued a business advisory alerting companies of supply chain exposure when choosing to operate in Xinjiang or engaging with entities that “use labor from Xinjiang elsewhere in China.” The advisory provided a list of business activities and supply chain risks that companies should review carefully to avoid being labeled by the United States as facilitators of human rights abuse and subjected to various sanctions. These include (1) assisting in developing surveillance tools for the PRC government in Xinjiang; (2) relying on labor or goods sourced in Xinjiang, or from factories elsewhere in China implicated in the forced labor of individuals from Xinjiang in their supply chains, given the prevalence of forced labor and other labor abuses in the region; and (3) aiding in the construction of internment facilities used to detain Uyghurs and members of other Muslim minority groups, and/or in the construction of manufacturing facilities that are in close proximity to camps operated by businesses accepting subsidies from the PRC government to subject minority groups to forced labor.

The U.S. Congress has also acted to address human rights concerns regarding the Uyghur issue and Hong Kong. Legislation authorizing economic sanctions against Chinese government officials found to be involved in human rights abuses against the Uyghurs was signed into law in June. And on July 2, 2020, the Senate approved a House-passed measure that would authorize the imposition of sanctions on individuals and entities found to have assisted in the imposition of a new national security law on Hong Kong. The bill now goes to the president, who is expected to sign it.

The latest U.S. actions on China, Hong Kong and the Uyghur issue — while each significant in their own right — collectively signal a new phase in the U.S. relationship with China. It is one marked by close scrutiny of financial and trade relationships and supply chains. Companies doing business in or with China, as well as those that use products sourced from China, should closely monitor these changes and their potential impact on their own operations.

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