



POLICY ALERT /// August 13, 2020

U.S. Takes Additional Economic Steps Against China

During the week of August 3, the Trump administration took additional steps to address perceived national security threats from China through the use of economic measures. In succession, it imposed targeted sanctions on additional Hong Kong and Chinese officials responsible for imposing China's new national security law in Hong Kong and issued Executive Orders directing the Commerce Secretary to identify prohibited transactions with certain Chinese technology companies.

These actions demonstrated the U.S. administration's willingness to target prominent individuals and entities and escalate economic pressure against China. In response, China imposed sanctions on a number of prominent U.S. individuals but did not describe specific prohibited activities or measures. The imposition of these measures and the likely use of additional economic tools and sanctions related to China could create significant challenges for companies operating in Chinese markets.

The sanctions environment remains fluid and companies should closely follow future announcements and guidance from the U.S. government about both specific prohibited transactions and broader constraints with respect to China-based applications that handle U.S. personal data. Companies should also consider potential secondary sanctions risks stemming from additional sanctions on Hong Kong and Chinese officials.

Financial institutions should prepare for potential responses by the Chinese government, which could consist of formal and informal measures.¹ If facing such actions, financial institutions should be prepared to reach out to U.S. authorities for guidance. The past week's developments accelerate the cycle of tit-for-tat coercive economic measures that prior K2-FIN Alerts have forecasted.²

Key Highlights and Considerations

- **On August 7, the Treasury Department imposed blocking sanctions on 11 Hong Kong and mainland Chinese officials for their role in eroding the autonomy of Hong Kong, effectively prohibiting U.S. banks and persons from engaging in any activities involving these officials.**³ These designations, which include Carrie Lam, the Hong Kong Chief Executive, create challenges for companies with a presence in Hong Kong and in China, including making it difficult for firms trying to adhere to U.S. law to meet expectations set by Hong Kong authorities.⁴ Companies should consider steps to assess the extent to which their day-to-day operations would be disrupted if U.S. sanctions expand to other Hong Kong or Chinese government officials, agencies, or companies.
- **On August 8, President Trump also signed two Executive Orders that directed the Commerce Secretary to identify prohibited transactions with Tencent Holdings Ltd. and ByteDance Ltd., Chinese companies that, respectively, own WeChat and TikTok**



mobile applications (“apps”). The administration declared that the apps’ parent companies access the data of U.S. citizens and reportedly assist the Chinese government in widescale censorship. The Executive Orders provide a 45-day window before any prohibition goes into effect and direct the Secretary of Commerce to define what transactions will be prohibited. Companies should carefully monitor future announcements from the Commerce Department regarding how the Executive Orders will be implemented.

- **China has responded with counter-sanctions.** The Chinese government announced unspecified sanctions against 11 Americans, including senior American lawmakers and the heads of human rights and democracy promotion organizations. The Hong Kong police also arrested the head of one of Hong Kong’s largest independent media outlets and several other activists.⁵ In addition to these steps, the Chinese government has repeatedly suggested that it will not let the U.S. sanctions go unanswered.⁶ U.S. business operating in China should anticipate further retaliatory steps and consider implications for business operations.

Hong Kong Sanctions Designations

In a move that targeted high-level Hong Kong officials and those involved in the establishment of the new national security apparatus in Hong Kong, the Treasury Department designated 11 individuals under E.O. 13936, “The President’s Executive Order on Hong Kong Normalization.”⁷ The press release announcing the imposition of sanctions described how each of the 11 officials contributed to the undermining of Hong Kong’s autonomy, either through the imposition of a controversial national security law or otherwise restricting the freedom of expression or assembly of Hong Kong citizens.⁸

- By targeting Carrie Lam as well as senior Hong Kong and Chinese Government officials, the United States has significantly escalated the diplomatic and sanctions pressure on China. Lam in particular has been the face of popular discontent against China’s growing control over Hong Kong.
- It remains unclear whether these designations will be included in the congressional report required under the Hong Kong Autonomy Act. If they are and the Treasury Department subsequently designates these officials under that law, it could create secondary sanctions risk for financial institutions that continue to provide services to these officials.⁹
- Companies operating in Hong Kong will need to balance the long reach of U.S. jurisdiction for the purposes of sanctions enforcement and China’s rejection of unilateral sanctions measures and repeated declarations that their policies with regard to Hong Kong are an internal matter. These companies may find it increasingly difficult to navigate between the two sets of regulatory requirements. There is also a significant likelihood that the United States may respond with further designations as Hong Kong continues its crackdown. In adopting its autonomous human rights sanctions program, the United Kingdom debated imposing such measures on Carrie Lam, although there is no indication such a designation



is imminent.¹⁰ The European Union has introduced a package of measures designed to put economic pressure on China's decision-making in Hong Kong, including through export controls, though the package of steps does not include asset freezes.¹¹

Executive Orders on Chinese Apps

The Trump administration also issued Executive Orders significantly raising the economic pressure on TikTok and WeChat.¹² TikTok is one of the fastest growing social media apps in the United States, and WeChat is an essential platform for communicating between the Chinese diaspora and mainland Chinese.¹³ The Executive Orders would prohibit transactions identified by the Commerce Secretary by U.S. persons and/or involving U.S. origin-goods or technology after 45 days with ByteDance, Ltd. or its subsidiaries (TikTok's parent company), and transactions related to WeChat with Tencent Holdings (WeChat's parent company) or its subsidiaries. The United States could impose a wide range of transaction restrictions.

Companies should consider their exposure to transactions with ByteDance and Tencent and recognize that such scrutiny may extend to other Chinese technology companies, with potential disruptive effects for existing business relationships. Through initiatives like the State Department's Clean Network program, the administration has emphasized the scrutiny it will apply to the Chinese Communist Party's efforts to breach the data privacy of U.S. citizens.¹⁴

- The administration cited how both apps capture personal and proprietary information from their U.S. users and that parent companies could turn such data over to the Chinese government under the provisions of its National Intelligence Law, posing risks to U.S. national security.¹⁵ The administration also highlighted how the Chinese Communist Party reportedly uses apps as part of its censorship efforts.
- The Executive Orders direct the Secretary of Commerce to define what transactions are prohibited. It is unclear in what manner and when the Department of Commerce will define these prohibitions and whether they will provide time for market participants to wind down their exposure to ByteDance or Tencent.
- The move against TikTok comes amid reports that it is in negotiations with Microsoft to sell part of its operations. Such a divestment may allow the app to continue to be used in the United States, particularly in light of Committee on Foreign Investment in the United States ("CFIUS") review of ByteDance's entry into the U.S market.¹⁶ Such a divestment may be difficult to facilitate in a 45-day window, however.¹⁷

China Responds in Kind

After the U.S. imposition of sanctions, the Chinese government responded with countersanctions on 11 U.S. lawmakers and heads of pro-democracy organizations, though it did not specify what form the sanctions would take. This tit-for-tat dynamic on sanctions follows similar measures after the Treasury Department last month designated high-ranking Chinese officials for alleged human rights abuses in Xinjiang.¹⁸



- China announced sanctions on U.S. Senators Marco Rubio, Pat Toomey, Josh Hawley, and Ted Cruz, among others. Beijing did not specify what these sanctions prohibit and how they will be implemented.¹⁹
- Hong Kong authorities also expanded their crackdown on independent media and pro-democracy activities. They arrested Jimmy Lai, a prominent media figure, along with eight others, including two of his sons. His Next Digital media group and Apple Daily newspaper were some of the few indigenous independent media voices in Hong Kong. Hong Kong police also arrested Agnes Chow, leader of the pro-democracy Demosisto group.²⁰
- U.S. businesses operating in China should anticipate further retaliatory steps, particularly as the United States continues to increase pressure on the Chinese Communist Party for its crackdown in Hong Kong. Such steps could include ordering Chinese persons to limit business with U.S. companies or requiring U.S. firms to continue to service designated Chinese persons in potential violation of U.S. sanctions. U.S. businesses should be prepared to address these issues, including by seeking guidance from U.S. authorities.

Endnotes

¹ “China Banks Act to Comply with Trump Sanctions on Hong Kong,” BloombergNews, (August 12, 2020), available at <https://www.bloomberg.com/news/articles/2020-08-12/chinese-banks-move-to-comply-with-u-s-sanctions-on-hong-kong?sref=Pw1Mp35R>.

² See our prior alerts on this topic: “U.S. Takes Additional Measures to Respond to China’s Policies on Hong Kong and Xinjiang,” (July 16, 2020), available at https://www.finintegrity.com/uploads/8/7/8/0/87802750/2020.07.16_-_china_policy_alert_update_-_for_distribution.pdf and “U.S. Prepares Further Measures to Respond to China’s Hong Kong Crackdown,” (June 1, 2020), available at https://www.finintegrity.com/uploads/8/7/8/0/87802750/hong_kong_status_policy_alert_2020.05.31.pdf

³ “The President’s Executive Order on Hong Kong Normalization,” White House, (July 14, 2020), available at <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/>.

⁴ On August 8th, the Hong Kong Monetary Authority stated that unilateral sanctions imposed by foreign governments have no legal status in Hong Kong and encouraged local financial institutions “in assessing whether to continue to provide banking services to [a designated] individual or entity... [to] have particular regard to the treat customers fairly principles.” Hong Kong Monetary Authority, “Financial Sanctions,” (August 8, 2020), available at <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2020/20200808e1.pdf>.

⁵ Nicolle Liu, Hudson Lockett, Xinning Liu, and Jamie Smyth, “China imposes sanctions on US officials in retaliation for Hong Kong measures,” *Financial Times* (August 10, 2020), available at <https://www.ft.com/content/c2d78da3-1fcf-4678-b65d-e1d02aa48ae6>.

⁶ Ministry of Foreign Affairs of the People’s Republic of China, “Foreign Ministry Spokesperson Zhao Lijian’s Regular Press Conference on August 10, 2020,” (August 10, 2020), available at https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1805288.shtml.



⁷ “The President’s Executive Order on Hong Kong Normalization,” White House, (July 14, 2020), available at <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/>.

⁸ United States Department of the Treasury, “Treasury Sanctions Individuals for Undermining Hong Kong’s Autonomy,” press release (August 7, 2020), available at <https://home.treasury.gov/news/press-releases/sm1088>.

⁹ H.R. 7440 “Hong Kong Autonomy Act,” available at <https://www.congress.gov/bill/116th-congress/house-bill/7440/text>.

¹⁰ Henry Foy, and Michael Peel, “U.K. faces call to target China with new sanctions,” Financial Times, (July 6, 2020), available at <https://www.ft.com/content/0453cdd8-fe47-47c6-8748-439c7f1abaa5>.

¹¹ Council of the European Union, “Council conclusions on Hong Kong,” press release, (July 24, 2020), available at <https://www.consilium.europa.eu/media/45222/council-conclusions-on-hong-kong.pdf>.

¹² White House “Executive Order on Addressing the Threat Posed by WeChat,” (August 6, 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-wechat/> and White House “Executive Order on Addressing the Threat Posed by TikTok,” (August 6, 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/>.

¹³ Fang Bing, Adam Xu, and Jiu Dao, “A Ban on WeChat and TikTok, a Disconnected World and Two Internets,” Voice of America, (August 10, 2020), available at <https://www.voanews.com/asia-pacific/voa-news-china/ban-wechat-and-tiktok-disconnected-world-and-two-internets>.

¹⁴ Secretary of State Michael Pompeo, “Announcing the Expansion of the Clean Network to Safeguard America’s Assets,” press release, (August 5, 2020), available at <https://www.state.gov/announcing-the-expansion-of-the-clean-network-to-safeguard-americas-assets/>.

¹⁵ Murray Scot Tanner, “Beijing’s New National Intelligence Law: From Defense to Offense,” Lawfareblog.com, (July 20, 2017), available at <https://www.lawfareblog.com/beijings-new-national-intelligence-law-defense-offense>.

¹⁶ Lauren Feiner and Amanda Macias, “Mnuchin confirms TikTok is under CFIUS review following national security concerns,” CNBC.com (July 29, 2020), available at <https://www.cnbc.com/2020/07/29/mnuchin-confirms-tiktok-is-under-cfius-review.html>.

¹⁷ Georgia Wells, Michael C. Bender, Kate O’Keefe, and Cara Lombardo, “Inside the Microsoft Talks to Buy TikTok’s U.S. Business,” *Wall Street Journal* (August 3, 2020), available at <https://www.wsj.com/articles/microsoft-aims-for-a-deal-to-buy-tiktoks-u-s-business-11596418842?st=bmkn0ioejh7fy40>.

¹⁸ After the Xinjiang sanctions, the Chinese government announced that it was imposing sanctions on four U.S. officials: Sen. Marco Rubio, who introduced the Uyghur Human Rights Policy Act, Sen. Ted Cruz, Representative Chris Smith, and Sam Brownback, the Ambassador-at-Large for International Religious Freedom. It also targeted the Congressional-Executive Commission on China, an independent U.S. government agency that focuses on human rights and rule-of-law issues in the country and the U.S. defense company Lockheed Martin. Chun Han Wang, “China Threatens to Sanction Lockheed Martin Over Taiwan Arms Deal,” *Wall Street Journal* (July 14, 2020) available at <https://www.wsj.com/articles/china-to-sanction-lockheed-martin-over-taiwan-arms-deal-11594727908>.

¹⁹ The full list of the U.S. designated citizens is as follows: U.S. Senators Marco Rubio, Ted Cruz, Pat Toomey, Josh Hawley, and Tom Cotton; U.S. Representative Chris Smith; Kenneth Roth, executive director of Human Rights Watch; Michael Abramowitz, president of Freedom House; Carl Gershman, president of the National Endowment for Democracy; Derek Mitchell, president of the National Democratic Institute; and Daniel Twining, president of the International



Republican Institute. Ministry of Foreign Affairs of the People's Republic of China, "Foreign Ministry Spokesperson Zhao Lijian's Regular Press Conference on August 10, 2020," (August 10, 2020), available at

https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1805288.shtml.

²⁰ Nicolle Liu, Hudson Lockett, Xinning Liu, and Jamie Smyth, "China imposes sanctions on US officials in retaliation for Hong Kong measures," *Financial Times* (August 10, 2020), available at <https://www.ft.com/content/c2d78da3-1fcf-4678-b65d-e1d02aa48ae6>.