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Hong Kong's Special Status

Since its establishment in 2000, the U.S.-China Economic and Security Review Commission has viewed Hong Kong's autonomy as a high priority and has followed developments closely. The Commission has prepared this issue brief as an historical overview of key features relevant to the policy decisions related to Hong Kong's special status.

On May 27, 2020, U.S. Secretary of State Michael Pompeo issued a statement reading: "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. No reasonable person can assert today that Hong Kong maintains a high degree of autonomy from China, given facts on the ground."¹

Upon the transfer of administration of Hong Kong from Great Britain to the People's Republic of China in 1997, the Basic Law of the Hong Kong Special Administrative Region was adopted by the National People's Congress, committing Beijing to upholding a policy of "one country, two systems." This approach was first included in the Sino-British Joint Declaration filed with the United Nations in 1984.*² The Basic Law promised Hong Kong a "high degree of autonomy" and preserved Hong Kong's independent and highly regarded court system; legal, political, and human rights; and commercial rules, regulations and roles, including its separate membership in the World Trade Organization.³ The rule of law has been central to Hong Kong's success as a global financial and banking center and the protection of both its citizens and the large international community in residence. In 2019, over 1,300 U.S. companies maintained offices in Hong Kong.⁴

Leading up to the handover, Congress passed the U.S.-Hong Kong Policy Act of 1992, memorializing special treatment for Hong Kong in multiple sectors. The 1992 Act sustained all protections of Hong Kong under existing U.S. laws and treaties. The Act also authorized the President to suspend these protections if he determined "Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States ... different from that accorded [China]."⁵ In order to sustain its special treatment, the 2019 Hong Kong Human Rights and Democracy Act amended the Hong Kong Policy Act to require the Secretary of State to certify annually that Hong Kong had maintained its autonomy from the People's

* The Joint Declaration states that Hong Kong's autonomy and freedoms "will remain unchanged for 50 years" (effective as of the 1997 handover). The document is registered at the UN as a legally-binding treaty. These commitments by mainland China are included in Hong Kong's Basic Law, passed by China's National People's Congress in 1990 and adopted following the 1997 handover. Basic Law, *Chapter I: General Principles*; United Kingdom, *Sino-British Joint Declaration on the Question of Hong Kong*, 1984.

Republic of China. The 2019 law also provided additional sanctions authorities to the executive branch in the event that Beijing violated the terms of the Basic Law.

The President maintains the authority to take action regarding Hong Kong's status in whole, in part, or in stages. The legislation does not impose limits on the President, leaving the executive branch free to take additional measures. Below is a summary of areas where Hong Kong receives special treatment under U.S. law:*

- The maintenance of Hong Kong's official and semi-official missions in the United States (e.g., the Hong Kong Economic and Trade Office, the Office of the Hong Kong Trade Development Council, the Hong Kong Tourist Association);
- Support for Hong Kong's participation in multilateral fora where Hong Kong is eligible;
- Separate treatment for Hong Kong in regard to economic and trade matters, including import quotas[†] and the negotiation of bilateral economic agreements,[‡]
- Recognition of Hong Kong as a separate customs territory;[§]
- Differentiated terms of access to U.S. exports of sensitive technologies controlled under the multilateral Coordination Committee for Multilateral Export Controls (replaced by the Wassenaar Arrangement)** for as long as the United States "is satisfied that such technologies are protected from improper use or export";⁶
- Recognition of Hong Kong's ships, airplanes, transport licenses, and the negotiation of new transport service agreements;
- Separate cultural and educational exchanges, including through the Fulbright Academic Exchange Program and other exchanges of culture, education, science, and academic research.

Hong Kong's special status led to the conclusion of more than a dozen bilateral agreements and treaties with the United States,⁷ including but not limited to:

- A mutual legal assistance agreement, whereby both sides may choose to cooperate in connection with the investigation, prosecution, and prevention of criminal offenses (such as providing documents or records, executing requests for search and seizure);
- A mutual extradition treaty, whereby a party may surrender fugitive offenders wanted by the requesting party for serious crimes (e.g., murder or attempted murder, rape and sexual assault, kidnapping and human trafficking, extortion);
- A transfer of sentenced persons agreement, whereby a person sentenced to a jail term of at least one year is transferred to the requesting party (if the United States is requesting the transfer, must

* There may be additional laws or statutes that apply to mainland China but have not yet been applied to Hong Kong due to this special status.

[†] A quota represents a government-determined cap on the quantity or volume of imports.

[‡] No trade or investment agreement has been negotiated thus far.

[§] For instance, U.S. Section 301 tariffs in place on U.S. imports from China do not currently apply to U.S. imports from Hong Kong. Takeshi Kihara, "Hong Kong's Tariff Loophole Flourishes in U.S.-China Trade War," *Nikkei Asian Review*, March 4, 2019. <https://asia.nikkei.com/Economy/Trade-war/Hong-Kong-s-tariff-loophole-flourishes-in-US-China-trade-war>.

** Hong Kong is not a member of the Wassenaar Arrangement; however, it maintains a control list based on Wassenaar Arrangement and other export control agreements. U.S. Department of Commerce, Bureau of Industry and Security, "Hong Kong Export Control Information." <https://www.bis.doc.gov/index.php/all-articles/220-eco-country-pages/1060-hong-kong-export-control-information>.

be a U.S. national; if Hong Kong is requesting the transfer, must be a Hong Kong permanent resident);

- A customs mutual assistance agreement for the prevention and investigation of customs offenses;
- An air services transit agreement (e.g., establishing operating routes for airlines, the right to fly across territory, the right to make flight stops for reasons other than taking passengers or cargo);
- An agreement on the exchange of tax information (e.g., from the United States: federal taxes on income, federal estate and gift taxes; from Hong Kong: profits, salaries, and property taxes).*

Separately, the President has several options afforded by the 2019 Hong Kong Human Rights and Democracy Act,⁸ which added several key components to the Hong Kong Policy Act:

- The Act provides the President the authority to sanction individuals responsible for committing acts that violate internationally-recognized human rights in Hong Kong, such as freedom of assembly, association, expression, and media.
 - These individuals are broadly defined as “any foreign person that violates, attempts to violate, conspires to violate, or causes a violation” of human rights in the territory.
 - These sanctions, authorized by executive order invoking the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1701 et seq),[†] would bar such individuals from entering the United States and prohibit transactions of property and other assets in the United States.
- The Act also bars the State Department from denying work or student visa applications from an otherwise qualified Hong Kong citizen on the basis of politically motivated actions taken by the Hong Kong government against the applicant.

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This report is the product of professional research performed by the staff of the U.S.-China Economic and Security Review Commission, and was prepared at the request of the Commission to support its deliberations. Posting of the report to the Commission’s website is intended to promote greater public understanding of the issues addressed by the Commission in its ongoing assessment of U.S.-China economic relations and their implications for U.S. security, as mandated by Public Law 106-398 and Public Law 113-291. However, it does not necessarily imply an endorsement by the Commission, any individual Commissioner, or the Commission’s other professional staff, of the views or conclusions expressed in this staff research report.

* An incomplete list of bilateral agreement with Hong Kong is available at Hong Kong Department of Justice, “Treaties and International Agreements.” <https://www.doj.gov.hk/eng/laws/treaties.html>.

† For more information on IEEPA, see 50 U.S.C. 1701 et seq, <https://www.treasury.gov/resource-center/sanctions/Documents/ieepa.pdf>.

Endnotes

- ¹ U.S. Department of State, *P.R.C. National People's Congress Proposal on Hong Kong National Security Legislation*, May 27, 2020. <https://www.state.gov/prc-national-peoples-congress-proposal-on-hong-kong-national-security-legislation/>.
- ² Basic Law of the Hong Kong Special Administrative Region, *Chapter I: General Principles* (Adopted at the Third Session of the Seventh National People's Congress on April 4, 1990); United Kingdom, *Sino-British Joint Declaration on the Question of Hong Kong*, 1984.
- ³ World Trade Organization, "Hong Kong, China, and the WTO." https://www.wto.org/english/thewto_e/countries_e/hong_kong_china_e.htm.
- ⁴ U.S. Department of State, *2019 Hong Kong Policy Act Report*, March 21, 2019. <https://www.state.gov/2019-hong-kong-policy-act-report/>.
- ⁵ United States-Hong Kong Policy Act of 1992, Pub. L. No. 102-383, October 5, 1992. <https://www.congress.gov/bill/102nd-congress/senate-bill/1731/text>.
- ⁶ Tamotsu Aoi, "Historical Background of Export Control Development in Selected Countries and Regions," *Center for Information on Security Trade Controls*, April 6, 2016, 11; 22 USC Ch. 66 §5713. Commerce between United States and Hong Kong.
- ⁷ Hong Kong Special Administrative Region Department of Justice, "Treaties and International Agreements." <https://www.doj.gov.hk/eng/laws/treaties.html>; U.S. Department of State, *2018 Hong Kong Policy Act Report*, May 29, 2018. <https://www.state.gov/2018-hong-kong-policy-act-report/>; U.S. Department of State, *The Hong Kong Policy Act Report*, June 30, 2007. <https://2001-2009.state.gov/p/eap/rls/rpt/2007/87648.htm>; U.S. Department of State, *United States-Hong Kong Policy Act Report, as of March 31, 1997, April 14, 1997*. https://1997-2001.state.gov/regions/eap/970331_us-hk_pol_act_rpt.html#ID.
- ⁸ Hong Kong Human Rights and Democracy Act of 2019, Pub. L. No. 116-76, November 27, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>.