



POLICY ALERT // NOVEMBER 22, 2019

Congress Likely to Pass Sanctions Targeting Hong Kong and Chinese Officials

The U.S. Senate on November 19, 2019, unanimously approved sanctions targeting Hong Kong and Chinese officials responsible for the violent crackdown on protesters in Hong Kong, threatening to further strain U.S.-Chinese relations as trade talks are at a critical stage.¹ The U.S. House of Representatives on October 15, 2019, approved a bill with similar sanctions provisions,² but the House and Senate need to resolve differences between the two bills before sending a consensus bill to the President for approval.

- ▶ Both the House bill and the Senate bill require the President to block the assets of any non-U.S. person who the President determines is responsible for the “extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong.”³ The bills also require the President to block the assets of any non-U.S. person who the President determines is responsible for other gross violations of human rights in Hong Kong.⁴
- ▶ Unlike the Senate bill, the House bill also would require the President to block the assets of any person who the President determines is responsible for “repeated acts or decisions which contravene the shared obligations of China and Hong Kong under the Joint Declaration and Basic Law and undermine the national interests of the United States in Hong Kong’s autonomy and the rule of law.”⁵ The House and Senate must resolve this difference before the bill can move to the President for approval.
- ▶ The President must make an initial round of determinations within 180 days of the law’s enactment.⁶ The President may terminate sanctions targeting individuals if there is credible evidence that the sanctions were imposed in error, or the person has been prosecuted for the conduct for which sanctions were imposed.⁷ The President may also terminate sanctions if the person targeted has significantly changed his or her behavior, paid an “appropriate consequence” for the activity, and “credibly committed” not to engage in the same behavior again.⁸

The Senate passed the sanctions bill as the U.S.-China relationship continues to deteriorate and amid reports that U.S.-China trade talks have stalled. The sanctions bill gives the President six months to impose sanctions related to Hong Kong, but the threat of sanctions may impede progress on a trade deal, which is among the President’s top foreign policy priorities. The President can delay the enactment of the Hong Kong sanctions by vetoing the bill, but the bill passed both the



House and the Senate with veto-proof majorities, putting the President at risk of losing a veto override vote in the event that he uses his veto power. The President already has the authority to target human rights abuses under the Global Magnitsky Human Rights Accountability Act⁹ and Executive Order 13818¹⁰ but has not used it in this context.

- ▶ On November 6, 2019, a bipartisan group of senators introduced a bill that would prohibit a federal employee retirement fund from investing in Chinese companies.¹¹ On August 23, 2019, the President threatened to use the International Emergency Economic Powers Act to force U.S. firms to leave China.¹²
- ▶ Chinese direct investment in the United States has plummeted during the past two years as U.S. scrutiny of Chinese investment has increased and trade tensions have cast a shadow over U.S.-Chinese relations.¹³ Reforms of the U.S. process for reviewing foreign direct investment apply to all foreign direct investment, but investments from Chinese firms often receive particular focus.¹⁴
- ▶ As of November 19, 2019, the United States and China had not yet reached agreement on key aspects of a “Phase I” trade agreement, including the removal of U.S. tariffs and Chinese purchases of U.S. agricultural goods.¹⁵ To facilitate the talks, the United States has delayed the implementation of some tariffs¹⁶ and granted broad exceptions to measures that prohibit transactions with Chinese firms.¹⁷ Unleashing these measures could create additional financial crimes compliance risks for banks as companies adopt non-transparent financial practices to evade them.¹⁸



Endnotes

- 1 S.1838, Nov. 19, 2019, (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>.
- 2 H.R.3289, Oct. 15, 2019 (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 3 S.1838, §7(a)(1)(A), Nov. 19, 2019 (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>; HR.3289, §7(a)(1)(A), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 4 S.1838, §7(a)(1)(B), Nov. 19, 2019 (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>; HR.3289, §7(a)(1)(C), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 5 HR.3289, §7(a)(1)(B), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 6 S.1838, §7(a)(2)(A), Nov. 19, 2019 (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>; HR.3289, §7(a)(2)(A), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 7 S.1838, §7(g), Nov. 19, 2019 (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>; HR.3289, §7(f), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 8 S.1838, §7(g)(3), Nov. 19, 2019 (Engrossed in Senate), <https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>; HR.3289, §7(f)(3), Oct. 15, 2019, (Engrossed in House), <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 9 See 22 U.S.C. 2656.
- 10 Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," Dec. 21, 2017, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/glomag_eo.pdf.
- 11 Sen. Marco Rubio, "Rubio, Shaheen Lead Bipartisan, Bicameral Bill Banning TSP Board from Steering Federal Retirement Savings to China," Nov. 6, 2019, <https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=F2EF0841-1043-44DD-B816-A1DE48F5C04A>.
- 12 President Trump, Twitter, https://twitter.com/realDonaldTrump/status/1165111122510237696?ref_src=twsrc%5Etfw%7Ctwcamp%.
- 13 New York Times, "U.S. Outlines Plans to Scrutinize Chinese and Other Foreign Investment," Sept. 17, 2019, <https://www.nytimes.com/2019/09/17/us/politics/china-foreign-investment-cfius.html>.
- 14 New York Times, "U.S. Outlines Plans to Scrutinize Chinese and Other Foreign Investment," Sept. 17, 2019, <https://www.nytimes.com/2019/09/17/us/politics/china-foreign-investment-cfius.html>.
- 15 Wall Street Journal, "Stalled U.S.-China Trade Talks Raise Threat of Another Impasse," Nov. 19, 2019, <https://www.wsj.com/articles/stalled-u-s-china-trade-talks-raise-threat-of-another-impasse-11574202440>.
- 16 New York Times, "Trump Delays Planned Tariff Increase in 'Gesture of Good Will' to China," Sept. 11, 2019, <https://www.nytimes.com/2019/09/11/us/politics/trump-counterfeit-drugs-china.html>.
- 17 Commerce Department, "U.S. Department of Commerce Extends Huawei Temporary General License," Nov. 18, 2019, <https://www.commerce.gov/news/press-releases/2019/11/us-department-commerce-extends-huawei-temporary-general-license>.
- 18 Justice Department, "Chinese Telecommunications Conglomerate Huawei and Huawei CFO Wanzhou Meng Charged With Financial Fraud," Jan. 28, 2019, <https://www.justice.gov/opa/pr/chinese-telecommunications-conglomerate-huawei-and-huawei-cfo-wanzhou-meng-charged-financial>.