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Global Trade Advisory Alert

The US Congress progresses legislation that would impose sanctions on individuals and entities that restrict Hong Kong's authority, and the BIS expands export license requirements for certain exports to China, Russia, and Venezuela

The US Congress progresses legislation addressing Hong Kong's autonomy

On 25 June 2020, the US Senate passed S.3798, the Hong Kong Autonomy Act ("HKAA"), which would impose sanctions on foreign individuals and entities that help China restrict Hong Kong's autonomy. Also, on 1 June 2020, the US House of Representatives introduced its companion bill (H.R.7083), which is currently under committee review with no timeline indicated for the completion of committee review or a House vote.

The Senate bill also calls for the US Department of State ("State"), US Department of Treasury ("Treasury"), and other US federal agencies to establish a multilateral sanctions regime with respect to individuals and entities involved in the erosion of China's commitments to Hong Kong. It requires Treasury and State—no later than 150 days after the enactment of the HKAA—to provide the Congress with lists of foreign individuals and entities that materially contribute to the diminishment

of Hong Kong's autonomy and any foreign financial institutions that knowingly conduct significant transactions with the identified individuals or entities. Further, it requires Treasury and State to submit periodically updated reports identifying foreign individuals, entities, and financial institutions subject to the sanctions. Finally, the Senate bill mandates the imposition of sanctions on the identified individuals, entities, and financial institutions within a year of the initial lists being sent to the Congress, and allows the President to exclude or waive sanctions for a foreign individual, entity, or financial institution under certain conditions.

Sanctions on foreign individuals and entities may include restrictions on property transactions, including:

- Acquiring, holding, withholding, using, transferring, withdrawing, transporting, or exporting any property that is subject to US jurisdiction;
- Dealing in or exercising any right, power, or privilege with respect to such property; or
- Conducting any transaction involving such property.

The United States may also revoke visa or other documentation from the identified foreign individuals or entities.

Sanctions against foreign financial entities may include prohibitions against:

- US financial institutions making loans or providing credits to sanctioned foreign financial institutions;
- The designation of sanctioned entities as primary dealers in US government debt instruments;
- Sanction entities acting as an agent of or repository of funds for the US government;
- Sanctioned entities engaging in any transactions in foreign exchange subject to US jurisdiction;
- The transfer of credit or payment between or through sanctioned foreign financial institutions to the extent the activity is subject to US jurisdiction;
- Certain property transactions to which the sanctioned foreign financial institution has any interest;
- Exports, reexports, and in-country transfers of items subject to US jurisdiction directly or indirectly destined to sanctioned foreign financial institutions;
- Exclusion from the US of sanctioned foreign financial institution corporate officers; and
- US persons purchasing debt or equity of the sanctioned entities, among other restrictions.

BIS amends the EAR to extend license requirements for certain items destined for China, Russia, and Venezuela

On 28 April 2020, the US Department of Commerce's Bureau of Industry and Security ("BIS") published a *Federal Register* notice that it was amending the US Export Administration Regulations ("EAR") to expand certain license requirements for exports, reexports, and in-country transfers of dual-use items destined to "military end users" and/or for a "military end use" in China, Russia, and Venezuela.

The amendment the Electronic Export Information ("EEI") filing requirements for most exports to China, Russia, and Venezuela. Previously, exporters were not required to file EEI for many shipments valued under $2,500 (unless an export license was required) or note the

Export Control Classification Number ("ECCN") when the reason for control under the EAR was only anti-terrorism ("AT"). Now, with limited exceptions, exporters are required to file EEI for all items destined to China, Russia, or Venezuela regardless of the value of the shipment. Additionally, even if a license is not required for the export, EEI must be filed and include the correct ECCN, regardless of reason for control.

The amendment was initially expected to become fully effective on 29 June 2020. However, in response to requests from industry for a delay due to the increased administrative burden that the amendment would create on exporters with respect to submitting additional EEI filings and the relatively short amount of time they had to begin doing so, BIS has partially delayed the effective date of the new filing requirement. Specifically, on 25 June 2020, BIS published a rule revision indicating that the additional EEI filing requirements would take effect on 29 June 2020 for items listed in Supplement 2 to 15 CFR § 744, and on 27 September 2020 for items not listed in Supplement 2, although the BIS will permit exporters in this second category to begin filing before the requirement takes effect on 27 September 2020. Supplement 2 lists the items from the EAR's Commerce Control List that are subject to the military end-use and end-user license requirements of 15 CFR § 744.21, which was modified under the amendment.

The failure to submit timely and accurate EEI may result in penalties of up to USD 10,000 per violation.

How we can help

Deloitte's Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies that would like to understand the potential impact of this rule change on their businesses. Our professionals can help companies seeking to manage the current and potential impacts of the developments described above by:

- Assessing the impact of the new military end-use/end-user provisions of 15 CFR § 744.21, including licensing requirements;
- Determining whether EEI filings are required and whether the filing requirement extension applies;
- Configuring trade technology solutions to automate the EEI filing process; and
- Conducting enhanced due diligence business screening and reporting on foreign entities.

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