

# CLIENT ALERTS

---

## Bold New U.S. Sanctions Against China: Are New Secondary Sanctions in the Offing?

7.23.2020

On the heels of important developments in Europe, the U.S. government has settled on a new, more aggressive approach in its sanctions policy concerning China, and in particular, Huawei. On July 14, 2020, President Trump signed the Hong Kong Autonomy Act to impose sanctions not only on Chinese individuals who assist in depriving Hong Kong of freedom but on banks who help them. The very next day, the United States Department of State, exercising its authority under Section 212(a)(3)(C) of the Immigration and Nationality Act, announced new visa restrictions on employees of Chinese technology companies, including Huawei, that provide material support to regimes engaging in human rights abuses globally.”

This new aggressive approach took further shape with the promulgation of Executive Order 13936, which the federal government published on July 17, 2020. Executive Order 13936, which President Trump authorized the same day he signed the Hong Kong Autonomy Act, directs all federal agencies to suspend or terminate any special advantages that Hong Kong has in trade and other areas. But it goes further.

E.O. 13936 creates a new U.S. sanctions regime targeted specifically at any individual who materially or financially assists in suppressing freedom in Hong Kong. When combined with the Hong Kong Autonomy Act, which specifically targets financial institutions where designated individuals maintain accounts, E.O. 13936 opens the door to a new, more assertive round of secondary sanctions.

Secondary sanctions impose penalties on foreign individuals and entities in an effort to recruit foreign actors in support of U.S. policies. Among the most successful secondary sanctions have been those imposed on foreign financial institutions, which rely heavily on relationships with U.S. financial institutions to facilitate dollar-denominated transactions, among other things. But in the

### Related People

Joseph G. Cosby  
Of Counsel

### Related Services

International Business  
International Trade and  
Customs Specialty Team

## CLIENT ALERTS

---

past, the United States typically imposed sanctions on foreign financial institutions for engaging in certain prohibited transactions with sanctioned individuals or entities. The new model goes further to potentially sanction foreign financial institutions for maintaining any financial relationship with sanctioned individuals or entities.

Now U.S. financial sanctions, the most powerful weapon in the government's sanctions toolkit, *could* be aimed not just at institutions that engage in specified transactions but against institutions that do business with designated individuals. Since the executive order authorizes the State Department and Treasury Department to jointly enforce its provisions, we anticipate that the Department of Treasury Office of Foreign Assets Control ("OFAC") will issue regulations in the coming months that will further define the scope and significance of these sanctions. Those regulations will further elucidate United States policy and its implications for foreign entities.

The U.S. actions follow closely behind the United Kingdom's announcement earlier in July cutting Huawei out of plans for building Britain's 5G network, in a reversal of its previous policy. France also announced that it is adopting stricter regulations designed to more tightly constrain Huawei's role in developing 5G networks in that country. Germany is under increasing pressure to follow suit. What does all of this mean for Huawei's future and for companies doing business with Huawei and other Chinese technology companies?

As we have reported in previous client alerts, U.S. trade sanctions policy and its enforcement of those sanctions are closely related to changes in the political and diplomatic environment. The success of United States policy frequently depends on its ability to obtain support from other nations, especially from its allies in Western Europe. Until recently, U.S. efforts to rally European allies around a policy isolating Huawei in particular and China generally garnered only lukewarm support at best. Although Western Europeans expressed sympathy for Washington's views, countries, including the U.K., predominately ignored American demands that Huawei be frozen out of building 5G networks and other sensitive technology projects.

But all of that began changing recently when the U.K. reversed a decision made in January 2020 and banned Huawei from participating in building Britain's 5G network. In January, the U.K.'s original position limited Huawei's participation but allowed Huawei to sell nonsensitive parts for the 5G system. The new plan, announced on July 14, 2020, will ban British companies from buying nonsensitive Huawei 5G parts after December 31, 2020, and require all Huawei equipment to be removed from British 5G networks by the end of 2027. The British government justified its flip on changed circumstances caused by U.S. trade sanctions in May that cut off Huawei's access to U.S. technology on which Huawei was relying to provide components to the U.K.

Other factors, however, appear to have affected Britain's position. A minor rebellion in Prime Minister Johnson's Conservative Party began almost as soon as the British policy permitting Huawei's participation was announced in January. China's reputation in Western Europe has been damaged significantly by its crack-down on Hong Kong. COVID-19 and recent hard-nosed Chinese diplomacy have also undermined European trust in China and strengthened America's position to exclude

## CLIENT ALERTS

---

Huawei from sensitive technology projects, such as the 5G build-out.

Similar factors have led the French government to tighten restrictions as well. Although France will not ban Huawei products from being used to build 5G networks, it will grant only temporary (3-8 year) licenses to use Huawei products. This policy is designed to discourage companies not already invested in Huawei technology. Observers expect at least two of the four major French mobile service providers to shy away from Huawei entirely, and for the other two, who already use Huawei products, to purchase from Huawei only reluctantly.

In light of this changing diplomatic environment, the recent actions of the U.S. government appear to be moving the United States to a more aggressive regulatory and enforcement strategy. The new executive order, which is authorized in part by the Hong Kong Autonomy Act that President Trump signed on the same day he signed the executive order, is a prime example. Butzel Long will continue to monitor developments in this area and to bring you up-to-date as warranted. If you have any questions concerning how these or other events affect you or your company, please do not hesitate to contact your regular Butzel Long attorney or the author of this alert.

**Joseph G. Cosby**

202.454.2880

[cosby@butzel.com](mailto:cosby@butzel.com)