**미국 의회와 학계-201922013 전지은**

**[Havard] A look at the future as Beijing seeks more influence over Hong Kong**

**June, 1, 2020**

**Ash center:**  Could proposed economic sanctions already threatened by the U.S. jeopardize the special relationship Hong Kong has with the international community, particularly in the world of business and finance? Do you think the international economic consequences of moving ahead with this new law was at all a factor in Beijing’s decision-making on the issue?

**Saich:** We do not know yet exactly what the economic sanctions will entail. Certainly, removing the “special status” of Hong Kong granted by the U.S. would be a major blow to the local economy and to its position as a global financial and trading center. The U.S.business community is not unanimous in its support for this, pointing out the major impact it would have on the lives of those in Hong Kong (as well, of course, for its own business).

It is difficult to know how this played into Beijing’s calculations. Certainly, they felt the situation was slipping out of control and that action was needed and perhaps they thought that they could carry the international business community with them against the political authorities. It is certainly a gamble as Hong Kong is of vital importance to Beijing for its financial and capital markets. It is an essential gateway providing access to foreign currency and playing a crucial role in integrating China’s financial system with global markets. Some figures indicate this:

* In 2018 — 65 percent of Foreign Direct Investment (FDI) accessed in China came via Hong Kong
* 60 percent of China’s outbound investment went via Hong Kong

**[CRS] China Moves to Impose National Security Law on Hong Kong**

**June, 4, 2020**

…..On May 29, 2020, President Donald J. Trump accused China of extending “the reach of China’s invasive state security apparatus into what was formerly a bastion of liberty,” and of doing so in violation of the Joint Declaration and the Basic Law. In response, the President said he would “begin the process of eliminating policy exemptions that give Hong Kong different and special treatment.” He did not specify a timeframe for action. Multiple bills related to protecting Hong Kong’s autonomy are pending in the U.S. Congress.

**NPC Decision**

The NPC decision authorizes the NPCSC to “formulate” and impose on Hong Kong legislation “to improve the HKSAR legal system and enforcement mechanisms.” The legislation is to “effectively prevent, stop, and punish acts and activities to split the country, subvert state power, organize and carry out terrorist activities, and other behaviors that seriously endanger national security, as well as activities of foreign and external forces to interfere in the affairs of the HKSAR.” The NPC decision also states that the HKSAR government should complete local national security legislation required by the Basic Law “as soon as possible.” In addition, Hong Kong’s Chief Executive is instructed to “effectively prevent, stop, and punish acts and activities endangering national security,” carry out national security education in Hong Kong, and report regularly to Beijing about Hong Kong’s national security work. Finally, the decision states, “When needed, relevant national security organs of the Central People’s Government will set up agencies in the HKSAR to fulfill relevant duties to safeguard national security in accordance with the law.” It is unclear if these agencies will be branches of the national security organs, Hong Kong entities, or some form of joint entities. China’s central government currently maintains in Hong Kong a Liaison Office, an Office of the Commissioner of the Ministry of Foreign Affairs, and a garrison of 12,000 People’s Liberation Army soldiers.

**Hong Kong**

To comply with the NPC decision, the HKSAR government and Hong Kong’s Legislative Council (Legco) must pass the local legislation required by Article 23 of the Basic Law (See below). In addition, the HKSAR government is required to “promulgate and implement” the NPCSCdrafted national security legislation.

**Reasons for the NPC Action**

NPCSC Vice Chairman Wang Chen on May 22, 2020, alleged a surge in national security risks in Hong Kong over the last year justified the need for the NPC decision. He highlighted calls for Hong Kong independence, attacks on the Chinese national flag and national emblem, efforts to “incite” the people of Hong Kong to be “anti-China” and “anti-Communist Party of China,” activists’ “besieging” Chinese government’s institutions in Hong Kong, and alleged efforts to “discriminate against and exclude” people from mainland China. Wang lashed out, too, at external forces for providing “support and an umbrella for the antiChina forces disrupting Hong Kong.” Wang also argued that the HKSAR government’s failure for the last 23 years to comply with Article 23 of the Basic Law made the NPC decision necessary. ….

**Implications for Hong Kong**

The NPC’s approval of the decision has started a process that may result in the people of Hong Kong being subject to national security laws imposed by China’s central government that are broader in scope than what is required by Article 23 of the Basic Law. For example, the NPC resolution requires the NPCSC laws to prohibit “terrorist activities” and “foreign and external forces interfering in the affairs of Hong Kong,” language which is not included in Article 23….

**Issues for Congress**

It remains unclear how President Trump might implement his new policies on Hong Kong. The USHKPA authorizes the President to determine in an Executive Order “that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People’s Republic of China.” In 2019, Congress passed the Hong Kong Human Rights and Democracy Act (P.L. 116-76) in response to the proposed changes to the HKSAR’s extradition law and to provide support to the protesters. Congress may consider passage of other legislative measures to address the threat to Hong Kong’s autonomy and the human rights of Hong Kong residents. The Hong Kong Be Water Act (H.R. 5725 and S. 2758) would authorize the President to impose sanctions on persons and entities suppressing freedoms in Hong Kong. H.R. 6947 would allow the President to recognize Hong Kong as an independent country. S. 3798 would impose sanctions on “foreign persons” who are responsible for the erosion of China’s fulfilment of its obligations under the Joint Declaration.

**[CRS] Revoking Hong Kong’s Preferential Trade Status: Legal Framework and Implications**

**June 5, 2020**

**U.S. Legal Framework on Hong Kong’s Status**

To recognize the Joint Declaration, the United States enacted the U.S.-Hong Kong Policy Act of 1992, which it later amended in the Hong Kong Human Rights and Democracy Act of 2019. Under this legal framework, Congress states that, among other things, the “United States should continue to fulfill its obligations to Hong Kong under international agreements, so long as Hong Kong reciprocates,” and the “United States should respect Hong Kong’s status as a separate customs territory, and as a WTO member country.” Further, it adds that the United States should “grant the products of Hong Kong nondiscriminatory trade treatment by virtue of Hong Kong’s membership in the General Agreement on Tariffs and Trade” (i.e., GATT, the WTO’s predecessor) and “recognize certificates of origin for manufactured goods issued by” Hong Kong. To implement these policy statements, these acts approve the following: (1) continued application of existing U.S. laws to Hong Kong in the same manner as they applied prior to July 1, 1997, unless otherwise provided for by law or executive order; and (2) continuation of all international agreements to which the United States and Hong Kong are members, provided these agreements were in force on or after July 1, 1997, and entered into before November 27, 2019. The President may decide to suspend application of a U.S. law that provides Hong Kong with treatment different from that accorded to China if he determines that “Hong Kong is not sufficiently autonomous to justify” such different treatment. Such a determination must be done via executive order and may be rescinded by a subsequent executive order if the President determines that Hong Kong has regained sufficient autonomy to qualify for differential treatment. ….

**Hong Kong and the WTO**

Hong Kong retains its own membership in the WTO (separate from China), as the organization permits customs territories, in addition to countries, to join. As stated above, the Joint Declaration and Basic Law permitted Hong Kong to retain its membership in the WTO’s predecessor (i.e., GATT) and carry over this membership to the WTO in 1995 (which China did not join until 2001). Other nonsovereign customs territories are also WTO members, including Macao and Taiwan, which has led to what some refer to as a “One China, Four WTO Memberships” phenomenon. It is unclear whether the Trump Administration intends to revoke its recognition of Hong Kong as an independent WTO member. The 2020 State Department Report appears limited to finding that Hong Kong lacks sufficient autonomy to justify differential treatment “under U.S. law,” and makes no express finding that Hong Kong is not “legally competent” to carry out its WTO obligations, or that it would be inappropriate to continue recognizing Hong Kong as a WTO member. That said, should the Trump Administration consider taking steps in this direction, there are several legal issues to consider. First, any actions that President Trump may take under U.S. law do not affect Hong Kong’s status as a WTO member vis-à-vis other WTO members. In other words, Hong Kong would not lose its WTO membership due to any potential U.S. actions to revoke its trade privileges under U.S. law, and other WTO members are not required to adhere to a U.S. decision on the matter. Second, the question whether a determination that Hong Kong is effectively no longer autonomous from China relieves the United States from its international obligations to Hong Kong is more complex. Hong Kong is not a sovereign State—although its independent legal personality from China has led some to describe it as a “quasi-State.” Thus, if the United States concludes that Hong Kong no longer has a separate legal personality or legal capacity from China, one might argue that the United States no longer needs to respect its WTO obligations to Hong Kong, as only actors with international legal personality may incur or be owed international obligations. Hong Kong could, however, argue that it retains its legal personality, at least with respect to trade, as this status remains in effect under the Basic Law. Thus, if future U.S. actions raise questions about WTO compliance, Hong Kong could take actions separate and apart from China against the United States, including raising questions in the relevant WTO committees, or initiating a dispute by requesting consultations under the WTO’s Dispute Settlement Mechanism. The United States may refuse to participate in such proceedings, but its unilateral determination cannot prevent Hong Kong from seeking to assert its rights as a WTO member.