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# Hong Kong's National Security Law: Implications for India

## ABSTRACT

China has enacted a National Security Law for the special administrative region of Hong Kong. The provisions of the law can be used to curb peaceful dissent and enhance Beijing's control over the region. It has the potential to not only change Hong Kong's legal and political autonomy, but also alter its status as a global financial centre. This paper offers an overview of the national security law and its implications for the 'one country, two systems' (OCTS) principle, and looks at the responses of different countries to the announcement of the law. It also analyses the law's implications on Hong Kong's relations with India.

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## INTRODUCTION

In June 2020, Hong Kong—a special administrative region of Mainland China—was subject to a new law on national security, which significantly alters its legal and political autonomy under the ‘one country, two systems’ (OCTS) principle that has been in place since the 1980s. Hong Kong was previously a port city of the British Empire, and inherited a different society, culture and legal tradition from Mainland China. As a result, when it was handed back to China under the 1984 Sino-British joint declaration (“1984 Joint Declaration”), the legally binding treaty sought to retain Hong Kong’s way of life, common law legal system and capitalist economy, and guarantee its politico-economic status for 50 years from 1997.<sup>1</sup> Except in the areas of national defence and foreign affairs, Hong Kong exercised a wide range of autonomy in finance, economy, trade, development, transport and communications.<sup>2</sup> This arrangement was further consolidated under the OCTS policy proposed by China’s supreme leader Deng Xiaoping in 1982,<sup>3</sup> and accorded legal recognition under Article 31 of the Constitution of the People’s Republic of China.<sup>4</sup> The enactment of the Basic Law, Hong Kong’s mini constitution, further clarified that although the region is “an inalienable part of China”, it will enjoy a high degree of autonomy and exercise its own executive, legislative and independent judicial power.<sup>5</sup>

Owing to these documents, Hong Kong citizens have enjoyed rights and freedoms that are seldom available in the mainland, such as freedom of speech, expression, association, assembly, and protection from unlawful and arbitrary arrest. These guarantees have also preserved the freedom of the press and access to information, which play an important role in securing Hong Kong’s free economy and bolstering efforts to fight corruption.<sup>6</sup> In a way, Hong Kong’s status as a global trade and financial centre is reliant on its capacity to preserve the

rule of law through its independent judiciary, and apply fair and consistent rules over individuals and businesses.

Over the years, however, there has been a gradual erosion of the OCTS principle. The citizens of Hong Kong remain dissatisfied with the slow pace of democratic reforms, such as the introduction of universal suffrage for elections to the executive and the legislature.<sup>7</sup> Indeed, China has evolved methods to exercise greater legal and political control over the region. In 2014, the National People's Congress (NPC)—China's national legislature—issued a statement proposing that candidates for the position of Chief Executive of Hong Kong, “must love the country and love Hong Kong”.<sup>8</sup> This was seen as a means to exclude pro-democracy candidates and undermine the promise of universal suffrage. The 2019 extradition bill, now withdrawn, was also regarded as an instrument to weaken the OCTS principle. Worried that it would legalise arrests of political dissidents and transfer them for trials in China, it resulted in widespread political turmoil in the Hong Kong region.

In what appears to be a response to those protests, the NPC implemented the National Security Law (NSL)<sup>9</sup> in late June 2020. Since then, several individuals have already been arrested under the law. Jimmy Lai, owner of *Apple Daily*, a major pro-democracy paper was arrested on 10 August for “colluding with foreign elements,” “incitement,” and “conspiracy to defraud”.<sup>10</sup> Several other activists, protestors, students and pro-democracy politicians have been arrested under the NSL for offences such as “secession”.<sup>11</sup>

## **THE NATIONAL SECURITY LAW AND ITS IMPACT ON HONG KONG'S AUTONOMY**

In May 2020, the NPC decided that Hong Kong needs a national security law to safeguard “long-term prosperity and stability” and uphold

“national sovereignty, security and development interests” in the region.<sup>12</sup> Beijing expressed concerns regarding social unrest and escalating street violence in Hong Kong, and specifically criticised the activities of the “Hong Kong independence” organisations, “violent radicals” and “blatant interference by external forces”.<sup>13</sup> While this is the narrative that China has pushed forward, analysts believe that the NSL’s target is peaceful dissent and Hong Kong’s autonomy. The fact that the law was unaccompanied by an official English translation—contrary to previous practice—further betrays this objective.<sup>14</sup>

The Standing Committee of the NPC was given the task to draft the law. While there was speculation that the draft would be published for a brief period of consultation, such an event did not happen.<sup>15</sup> The NSL was eventually enacted by the Standing Committee of the NPC on 30 June 2020 and promulgated in the Hong Kong Special Administrative Region (HKSAR) on the same day.

The NSL contains 66 articles divided in six chapters, including crimes and penalties; HKSAR’s duties and institutions safeguarding national security; and institutions of the Central People’s Government (CPG)<sup>a</sup> in the HKSAR for safeguarding national security.<sup>16</sup> The key features of the NSL that have come under heavy criticism are elaborated in Table 1. The four offences criminalised under the law are broadly defined and can lead to—according to Amnesty International—“discriminatory or arbitrary interpretation and enforcement, which could undermine human rights protection.”<sup>17</sup>

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a The Central People’s Government (also known as the State Council) is the supreme administrative organ of China. The council has 35 members and is currently chaired by Premier Li Keqiang.

**Table 1. Key provisions of the National Security Law**

Category	Description
<p>Crimes and penalties (Articles 20 to 30, Chapter III)</p>	<p>Offences are grouped under four categories: secession, subversion, terrorism, and collusion with foreign forces. Depending on level of involvement, the penalties vary from criminal fines and confiscation of property, to life imprisonment.</p>
<p>National Security governance and enforcement structures (Articles 12 to 19, Chapter II and Articles 48 to 61, Chapter V)</p>	<p>The law mandates that the following institutions and enforcement mechanisms should be established in Hong Kong to implement the law:</p> <ul style="list-style-type: none"> <li>• <b>Committee for Safeguarding National Security</b> chaired by the Chief Executive, which will be responsible for preserving national security in Hong Kong. <ul style="list-style-type: none"> <li>○ Under the supervision of and accountable to the Central People's Government (CPG), China's chief administrative authority).</li> <li>○ The committee secretariat is headed by a Secretary-General appointed by the CPG, upon nomination of the Chief Executive.</li> <li>○ A National Security Adviser designated by CPG will attend committee meetings and advice on its functioning.</li> <li>○ Its work is not subject to disclosure and its decisions are outside judicial review.</li> </ul> </li> <li>• <b>Office for Safeguarding National Security ("CPG Office")</b>: Will be established by the CPG. It will propose key strategies and policies for safeguarding national security; collect and analyse intelligence; and handle cases endangering national security.</li> <li>• The Hong Kong Police Force and Department of Justice need to establish separate <b>departments for safeguarding national security</b>. The appointment for the head of the department is done by the Chief Executive, upon endorsement of the CPG office.</li> </ul>



<p>Enforcement and Jurisdiction (Article 55, Chapter V)</p>	<p>Hong Kong is to exercise jurisdiction over national security cases, except in the following circumstances:</p> <ul style="list-style-type: none"> <li>• The case is complex due to the involvement of a foreign country or external elements</li> <li>• A serious situation occurs where the HKSAR Government is unable to effectively enforce the HKSAR National Security Law; or</li> <li>• A major or imminent threat to national security has occurred.</li> </ul>
<p>Applicability (Articles 36 to 38, Chapter III)</p>	<p>The National Security Law applies to, inter alia:</p> <ul style="list-style-type: none"> <li>• offences committed within Hong Kong;</li> <li>• offences committed by Hong Kong permanent residents and entities (whether in or outside Hong Kong); and</li> <li>• offences committed against Hong Kong by non-permanent residents from outside Hong Kong.</li> </ul> <p>An offence is deemed to be committed within Hong Kong when an act constituting the offence, or the consequence of the offence occurs in Hong Kong.</p>
<p>Final powers of interpretation (Articles 62 and 65, Chapter VI)</p>	<p>The NSL will prevail over local laws of Hong Kong. Final powers of interpretation rest with the Standing Committee of the NPC.</p>

*Source: Authors' own.*

Human rights protection is guaranteed in Hong Kong under the Basic Law, local laws and international conventions. Hong Kong became a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) through the United Kingdom, when it was still a crown colony. Article 39 of the Basic Law provides that these instruments will be applicable to Hong Kong. The enactment of the Hong Kong Bill of Rights Ordinance (BORO) 1991, officially incorporated the ICCPR into HKSAR's domestic laws. This incorporation has had a significant impact on the region's criminal

justice system—laws inconsistent with BORO and the ICCPR have been struck down by court.<sup>18</sup>

In this context, Hong Kong's local laws balance individual rights and civil liberties with the state's imperatives to preserve law and order. Under the NSL, however, there are no similar limitations to the state's power when addressing offences that it describes. For instance, the Johannesburg principles on the ICCPR provide that only an act that incites a violent overthrow of the government should be considered as a threat to national security, and anything less should not be used to curtail civil liberties.<sup>19</sup> Subversion (Article 22) under the NSL, however, purports to criminalise “organising, planning and participation” in acts even if they do not incite a violent overthrow of the government. Such a wide definition could be deemed sufficient to hold individuals culpable for their tweets and social media posts, or academic discussions. Many Hongkongers have reportedly redacted social media posts and erased messaging app histories,<sup>20</sup> while books by pro-democracy activists are being purged from libraries.<sup>21</sup>

The CPG, NPC and China's judiciary have also been given a more direct role in enforcing and interpreting the NSL in Hong Kong. The Chief Executive (head of the Hong Kong government) is empowered to appoint key individuals to the national security governance mechanisms established under the law. However, these appointments require the concurrence of the CPG—indicating that the candidate will not be appointed, unless they have been approved by Beijing. Some bodies, such as the department of national security within the Hong Kong police force, can recruit personnel from outside the region; this means that the division could be staffed by Chinese professionals.<sup>22</sup> As of August 2020, many of these provisions have already been put into effect. The new Office for Safeguarding National Security in Hong Kong—which is directly under the CPG's control—is headed by party

hardliner, Zheng Yanxiong<sup>23</sup> and is entirely staffed by authorities of relevant national security agencies under China.<sup>24</sup>

The NSL and its enforcement mechanisms therefore bring landmark changes to rule of law, human rights protection and the autonomous functioning of Hong Kong's institutions. Moreover, the final powers of interpretation of the law reside with the China's NPC, while jurisdiction over certain cases will reside entirely with China. This means that Hong Kong's independent judiciary would have limited control over how the law is implemented—in the context of rights and freedoms guaranteed in the region. Additionally, the transfer of certain cases—upon China's approval—to the mainland judiciary is also troublesome. After all, China's judiciary does not enjoy judicial independence and autonomy from the state machinery. There is little legislative guidance for Mainland courts on the application of such provisions—for instance, speech against the government is often penalised even if there is no force or threat of force.<sup>25</sup> In 2017, a court in China sentenced Wu Gan to eight years' imprisonment and five years of deprivation of political rights, for “subverting state power”, citing his criticism of the government on the Internet.<sup>26</sup> This widens the categories of acts that could be considered as “offences” and raises questions regarding fair trials for the accused.

### NSL 2020: Déjà vu to 2003

The debate on the desirability of a national security law for Hong Kong is not new. Notably, an effort to enact a similar law was taken by the Hong Kong government in 2002 when it drafted the National Security (Legislative Provisions) Bill.<sup>b</sup>

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b Article 23 of the Basic Law provides that the HKSAR has the power to enact laws on several crimes (including those mentioned under the NSL), namely treason, secession, sedition, subversion, theft of state secrets, and prohibiting foreign political organizations or bodies from conducting political activities in the region.

Some of the bill's provisions went above and beyond the baseline requirements of Article 23. At a normative level, a law to criminalise these offences was viewed as antithetical to Hong Kong's separate system and way of life that guaranteed freedom of press, speech and information.<sup>27</sup> Many segments of the Hong Kong society participated in the brief consultation period and registered their concerns regarding the law. For instance, business organisations such as the Hong Kong General Chamber of Commerce, the American Chamber of Commerce, and the China Business Council, raised questions regarding provisions that would restrict public disclosure and inhibit access to government information.<sup>28</sup> The Hong Kong Bar Association expressed their view that local laws were sufficient to tackle the crimes listed in Article 23, and as such there was no need to enact a new law. They said that even if a national security law was considered in the future, it should be consistent with the ICCPR, the Basic Law, and the Johannesburg principles.<sup>29</sup>

Despite these concerns, the bill was rushed; the government ignored public concerns, distorted results of the public consultation, and ridiculed those who objected to the bill—leading to a crisis in public confidence.<sup>30</sup> This resulted in mass protests and around 500,000 people took to the streets; the 2003 bill was eventually withdrawn.<sup>31</sup> Fast forward to 2020, and there were no public consultations on the new NSL; its provisions have not paid heed to the concerns raised 17 years ago. An important question also remains unanswered: Did China's NPC have the power to enact the NSL when such power was bestowed to the HKSAR through Article 23? This is a complex legal question that requires an analysis of the constitutional relationship between China and Hong Kong.

Regardless, China is of the opinion that “national security is a matter of national interest that concerns the whole population of China and

falls squarely within the purview of the central authorities.”<sup>32</sup> Under the Basic Law, the CPG is responsible for foreign affairs and defence in the Hong Kong region—and national security could be considered to be falling under the purview of defense.<sup>33</sup> In fact, the NSL was implemented by adding it to Annex III of the Basic Law, which allows for the application of certain national laws to Hong Kong.

However, it is interesting to note a statement from 2015 when China made its own law to preserve national security in the mainland. The law was not applicable to China’s autonomous regions, but they were directed to “fulfil responsibilities for the preservation of national security”.<sup>34</sup> Zheng Shuna, vice chairperson of the Legislative Affairs Committee of the NPC had clarified that while this goal extends to Hong Kong, the law would not be enacted there. The Hong Kong government also issued a statement saying that “the law shall not be applied to the city”, but instead national security would be guided by local legislation in accordance with Hong Kong’s mini constitution.<sup>35</sup> With the NSL, these considerations were not discussed properly and have been done away with entirely.

## **DIPLOMATIC FALLOUT**

The NSL has caught the attention of many countries, with some even framing their own laws and policy measures as a response. The extraterritorial application of the law, its impact on Hong Kong’s autonomy—especially given its status as an international financial centre—can have a wide impact on foreign trade, businesses, diaspora, expatriate communities, tourists, and international students. Largely, the responses of countries can be categorised as follows: (1) suspension or termination of extradition treaties; (2) travel advisories to citizens to exercise caution when traveling to Hong Kong; (3) prohibiting exports

of dual-use goods and technology to Hong Kong; and (4) relaxation of visa and immigration rules to allow Hongkongers to move to other countries. Table 2 outlines the responses of specific countries to the NSL.<sup>c</sup>

**Table 2: Some Responses to NSL**

Country	Response				
	Extradition treaty	Advisory for traveling to Hong Kong	Exports of weapons and dual-use goods and technology	Visa rules and residency pathway	Other measures
United Kingdom	Suspended indefinitely	Yes	Arms embargo on crowd control equipment	Hong Kong BN(O) visa introduced	-
United States	Suspended	Yes	Prohibited	No, it has ended preferential treatment for immigration visas	Revoked 'separate territory' status  Targeted sanctions against 11 Chinese and Hong Kong officials

<sup>c</sup> The authors have selected these six countries since they have been the few to implement targeted policies to address the impact of the NSL.

Canada	Suspended	Yes	Prohibited	No separate measure announced	-
Australia	Suspended	Yes	-	Eased visa and residency rules	-
New Zealand	Suspended	Yes	Same treatment as Chinese exports	Will not do so	-
Germany	Suspended	Yes	Prohibited	-	-

*Source: News reports and ministry websites.*

The United Kingdom (UK), being a party to the 1984 Joint Declaration, has an obligation to ascertain whether or not China has adhered to the provisions of the treaty. Since 1997, the Secretary of State for Foreign and Commonwealth Affairs has reported biannually to the British Parliament on implementation.<sup>36</sup> The UK deems the NSL as a clear breach of China's obligations since it violates Hong Kong's autonomy and threatens freedoms and rights protected by the joint declaration.<sup>37</sup> Considering its unique responsibilities under the treaty, UK introduced a new Hong Kong BN(O) visa which will provide British nationals (overseas) and their immediate family members, an easy route to immigration and, eventually, British citizenship.<sup>38</sup> Around 350,000 Hongkongers already hold BN(O) passports, and more are eligible to apply for it.<sup>39</sup>

The US' response to the NSL is the most stringent and can be viewed in the backdrop of the deteriorating relations between Beijing and Washington. US President Donald Trump revoked Hong Kong's special

status under the United States-Hong Kong Policy Act 1992, under which Hong Kong was treated differently from China with respect to tariffs, investments and travel.<sup>40</sup> It has also imposed targeted sanctions on senior Chinese and Hong Kong government officials under the US' Hong Kong Human Rights and Autonomy Act 2019 and the Hong Kong Autonomy Act of 2020.<sup>41</sup>

The European Union also registered its concern about the “extensive erosion of rights and freedoms, the lack of safeguards and clarity in the law; and its extraterritorial provisions.”<sup>42</sup> The EU presented a coordinated plan of action in response to the law at the EU/Member state level, where they must examine the implications of the law on asylum, migration, visa and residence policy; scrutinise and limit exports of specific sensitive equipment and technologies; and monitor the extraterritorial application of the law and its impact on extradition arrangements.<sup>43</sup>

In light of such measures taken by various countries, India will need to examine the potential impact of the law on its bilateral relations with Hong Kong.

## **IMPLICATIONS FOR INDIA**

The extraterritorial application of the NSL detailed under Article 38—combined with its broad definitions of offences—can cast criminal liability on a wide range of individuals and entities. Anyone, regardless of nationality or residency, can be prosecuted under the NSL for acts committed inside Hong Kong.<sup>44</sup> Peter Chau Siu-Chun, law Professor at the University of Hong Kong, illustrates this with an example: if Canadian citizens in Canada advocate that Hong Kong should have the right to self-determination and encourage Hong Kongers to form a



group to achieve such a goal, they can be arrested in principle if they as much as transit through Hong Kong.<sup>45</sup>

Such extraterritorial reach of the law can be viewed as unreasonable interference in the domestic affairs of other states. Indeed, it even goes beyond the principles that underpin China's own criminal laws. For instance, Chinese criminal laws follow the principle of "dual criminality" in the prosecution of foreign criminals: the crime should be punishable in both countries for China to proceed in its courts.<sup>46</sup> The NSL is a significant expansion of China's criminal laws, since crimes such as secession and subversion are not part of common law legal systems (like India).

This is a primary reason why as many as six countries—Australia, Canada, France, Germany, New Zealand and the United States—have announced a suspension or termination of their extradition treaties with Hong Kong.<sup>47</sup> This will enable countries to refuse requests to extradite foreign nationals to China, if they have flouted the NSL through their actions, activities and statements. Moreover, there is also a concern that foreign nationals suspected of violating the NSL could be immediately arrested if they travel or transit through Hong Kong. The UK's suspension of extradition treaty was based on the concern that the NSL exposes British and other nationals traveling to Hong Kong to arrest under the law. Australia<sup>48</sup> and New Zealand<sup>49</sup> have also advised their citizens against traveling to Hong Kong, pointing out that the law does not contain sufficient legal or judicial safeguards for the accused.

India has an extradition treaty with Hong Kong in the form of the 1997 Surrender of Fugitives Offenders treaty. Hong Kong is home to a large Indian community, as well as many Indian professionals who work in the service industry, banking and finance, and shipping.<sup>50</sup> The Indian community in Hong Kong is estimated to be nearly 38,000 (including

Indian nationals and those categorised as ‘People of Indian Origin’<sup>d</sup>) and approximately 32,000 hold Indian passports.<sup>51</sup> Hong Kong has also emerged as a popular destination for Indian students pursuing higher studies. In 2018, the number of Indian students in Hong Kong crossed 1,100. Indian citizens also take part in student and faculty exchange programmes and joint research activities carried out by Indian and Hong Kong educational institutions.<sup>52</sup>

In this context, India can consider if it wants to alter its visa, migration and residence policy for Indian nationals traveling to Hong Kong for work or other reasons. Since there is a genuine possibility that travel or transit through Hong Kong could expose Indian nationals (suspected of violating the NSL) to arrests, India could issue similar travel advisories. Additionally, if there are Indian nationals or members of the diaspora community who wish to return to India, the Ministry of External Affairs could expedite this process through the Indian consulate in Hong Kong. Some Indians may be eligible for UK’s new Hong Kong BN(O) visa; however, uncertainty regarding Brexit may affect the inclination to move to the UK. Another concern centres on Indian students who are pursuing higher studies in Hong Kong. With the wide reach and definition of crimes under the NSL, there is no clarity as to whether there is an exemption for academic discussion.<sup>53</sup> As such, students of political science, international relations and other subjects—who may engage in academic discussions on Hong Kong’s autonomy—may find themselves liable under the new law.

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d A Person of Indian Origin (PIO) is a person who, or any of whose ancestors, was an Indian national and who is presently holding another country’s citizenship/nationality i.e., he or she is holding a foreign passport. In 2015, the PIO cardholder scheme was merged with the Overseas Citizenship of India (OCI) cardholder scheme. “Overseas Citizenship of India (OCI) Cardholder”, Ministry of Home Affairs, November 15, 2019, [https://www.mha.gov.in/PDF\\_Other/4OCICardholder\\_Acomparativechart\\_15112019.pdf](https://www.mha.gov.in/PDF_Other/4OCICardholder_Acomparativechart_15112019.pdf).

India could also re-examine its extradition arrangements, in line with the reasoning adopted by other countries. However, it is important to note that these treaties do not allow extradition for Indian citizens and contain exemptions for political offences. In this regard—even if an extradition treaty is operational—it is highly unlikely that an Indian national would be extradited to Hong Kong under the NSL. However, given how cities like Dharamshala are home to Tibetan refugees—and the NSL is defined widely—the refugees could face the prospect of extradition if they directly or indirectly make references to Hong Kong's autonomy. This connection would be tenuous to establish, and extradition remains a largely political decision and could be refused by India. Nevertheless, the decision to suspend extradition treaties is significant since it clearly expresses the loss of faith in Hong Kong's executive and judicial autonomy from China. If India does suspend its treaty, it would amount to a conclusive positioning on where New Delhi stands on the NSL.

### **Spotlight: Trade and investments**

In 2002, the business community in Hong Kong was consulted in relation to a proposed security law similar to the one passed this year. As per the 2002 consultation, business organisations had wanted the government to first issue a white paper that would have the exact wording as in the actual law before introducing the bill in parliament.<sup>54</sup> But in 2020, the business community was not consulted at all nor was there any white paper. In fact, the text of the new law was kept secret and was made public only after the law was passed. In 2002, even the reservations submitted by these organisations about the bill were not given their due consideration. The current law will not only apply to people but also companies and extends jurisdiction for crimes committed within or outside Hong Kong. Financial gains may be confiscated, or licenses revoked if found guilty of violating the terms of the law.

A stable political system and the free movement of capital had made Hong Kong the financial capital of the world over the years. Hong Kong follows a free trade policy with all applied tariff rates at zero.<sup>55</sup> Its economy is dominated by the external sector with a trade to GDP ratio of 375 percent. Hong Kong is the trade and finance centre of the world, with the service sector contributing to 92 percent of GDP and 88 percent of employment.<sup>56</sup> Amidst the ongoing crisis brought about by the NSL, Hong Kong's score in the Index of Economic Freedom 2020 has been downgraded to second place—the first time in more than two decades.<sup>57</sup> Indeed, the current situation has raised concerns in the country's business community. A survey by the American Chamber of Commerce found 80 percent of the respondents expressing concern over the new law; 60 percent feel it will impact their business.<sup>58</sup> Several companies such as Facebook, Google have announced restrictions on data requests from the government. Businesses are rethinking their long-term goals for their operations in Hong Kong, and there is talk of some of them considering relocating to Singapore. Financial flows have already started favouring Singapore and in July 2020, foreign currency deposits doubled in banks located in Singapore.<sup>59</sup>

This does not bode well for Hong Kong, reeling as it is from uncertainties caused by the ongoing US-China trade war, and suffering as well the economic fallout of the COVID-19 pandemic. As per the quarterly economic report of 2020, the economy has contracted by 8.9 percent as compared to the first quarter of 2019 and by 3 percent compared to the previous quarter.<sup>60</sup> Unemployment rate is the highest in nine years at 4.2 percent. The disruption of supply chains has affected the external sector with a decline in exports by about 9.9 percent in the first quarter.

The changes in security law by China have met with retaliatory measures from the US. Hong Kong's trade will likely be negatively

affected. The United States-Hong Kong Policy Act of 1992 allows the US to treat Hong Kong separately from Mainland China in matters relating to trade and economic affairs, provided that Hong Kong is sufficiently autonomous from mainland China.<sup>61</sup> In 2020, the US ended the differential treatment of Hong Kong,<sup>62</sup> meaning that the tariff restriction measures imposed on China since 2018 will be extended to Hong Kong including anti-dumping and countervailing duties.<sup>63</sup> After the 2018 trade war, China had re-routed a significant portion of its exports and imports from the US through Hong Kong.<sup>64</sup> As per the latest notice from the US government published on 8 August 2020, goods originating from Hong Kong are to be relabeled “Made in China”.<sup>65</sup> As things are, the trade tensions since 2018 had already impacted exports from Hong Kong to the US (See Table 4). The latest policy change will deliver another blow to trade ties.

**Table 4 – Export to the US by China and Hong Kong**

<b>Exports to US (\$billion)</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>QTR 2019</b>	<b>QTR 2020</b>
China	503.7	544.0	455.4	220.0	180.9
Hong Kong	7.0	6.2	4.7	2.2	6.1

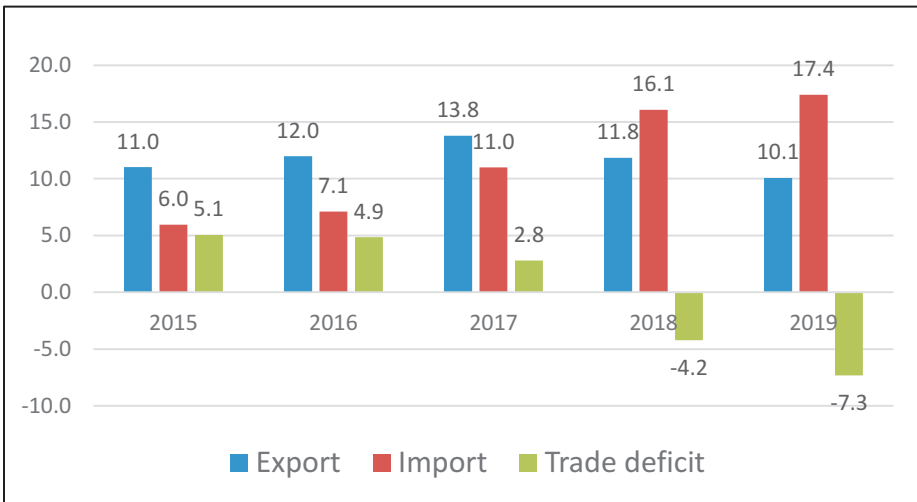
*Data from USITC DataWeb*

In turn, trade relations between the US and China also impact India, as the US is a significant trade partner for India. Hong Kong is a destination for re-export of Indian goods to the global market. India's re-exports have grown at the rate of 11.5 percent from 2014<sup>66</sup> and Hong Kong is the fourth largest export market for India.<sup>67</sup> India is of the view that Hong Kong can play an important role in strengthening ties with China, as it is considered a gateway to China. Thus, global tensions due

to political unrest in Hong Kong carry consequences for India's trade with the rest of the world, as well as with China. Figure 2 shows the declining trend in exports from India to Hong Kong since 2017.

Imports, on the other hand, have grown at a faster rate. Hong Kong climbed to sixth position in terms of imports in 2019, as compared to 13<sup>th</sup> in 2016.<sup>68</sup> Another factor in the economic relations with Hong Kong is the trade deficit that India has with China. India is keen to reduce the large trade deficit it has with China. Trade deficit with China in fact reached a five-year low in 2019; however, simultaneously, there was a significant worsening of the trade balance with Hong Kong since 2017 as seen in Figure 2 and it turned negative for the first time in 2018. This is possibly due to some amount of re-routing of exports from China through Hong Kong. Further, the trade war with the US will lead China to look for other markets. Indian authorities therefore, have decided to put imports from Hong Kong under stricter scrutiny.<sup>69</sup>

**Fig 2 - Trade between India and Hong Kong (US\$ billion)**



Data from UNCOMTRADE

India has taken economic measures against China following the eruption of border tensions in May 2020. That same month, India made changes to the country's FDI policy rules, requiring investments from China to go through government approval route (until then, China's investments fell under the 'automatic approval' route). The new rules would also apply to Hong Kong. Hong Kong has about 111 foreign portfolio investors registered in India, which is much higher than the 16 of China.<sup>70</sup> This has worried Hong Kong investors who are now considering options to relocate funds to Cayman Islands, Mauritius or Singapore. Hong Kong is a hub for global investments including China's, that directs a major part of its investments through Hong Kong. Between April 2000 and March 2020, direct investments from Hong Kong to India stood at US\$ 4.2 billion, which exceeded that of China's US\$ 2.3 billion.<sup>71</sup> Hong Kong is also the third largest foreign investor in Indian startups.<sup>72</sup> The new rules have already impacted one of the two major overseas investors in the power sector—China Light and Power Co. Ltd, which now has to wait for government approval for its ongoing deals.<sup>73</sup>

Hong Kong also provides a healthy ecosystem for startups, providing them with a good base to gain access to the Chinese market. Moreover, in terms of tax rates, conducting business from Hong Kong is beneficial: there is no withholding tax nor capital gains tax, and the corporate rate tax is lower than in comparable countries. India and Hong Kong also recently signed the Dual Tax Avoidance Agreement (DTAA) in 2018. The InvestHK held multiple road shows to attract Indian businesses in 2018.<sup>74</sup>

At present, doing business in Hong Kong is likely to be negatively affected by the changing policy stand of countries that want to decouple from the Chinese economy. Further, the tensions between the US and

China may lead to the relocation of companies in favour of India.<sup>75</sup> It will be up to Indian policymakers to help attract the businesses that are looking to diversify out of Hong Kong due to the ongoing tensions, even as these enterprises have so far favoured Southeast Asian countries.


Hong Kong is keen to strengthen bilateral ties with India and has plans to open a country representative office in India.<sup>76</sup> A regional office may help ease the flow of FDI and lead to smoother coordination in the wake of the changes in India's FDI policy and other measures. While it is too early to reckon how the situation will unfold, in the long run, businesses operating in Hong Kong may feel the pressure to align more closely with the political agenda of China and India will seek to diversify and look for other export destinations and reduce its dependence on Hong Kong or China.

## CONCLUSION

Hong Kong's new National Security Law brings an irreversible change to the OCTS principle and its autonomy. Given Hong Kong's importance as a global trade and finance hub, countries across the world have taken notice of these developments. While 53 states voiced their support for the Chinese law before the UN Human Rights Council (citing the principle of non-interference in another state's internal affairs),<sup>77</sup> 27 countries—led by the UK—criticised it.<sup>78</sup> India did not join either statement, but in early July 2020 said that the country was watching “developments closely” since a large Indian community lives there, and hoped that relevant parties will take into account the issues raised and address them “properly, seriously and objectively.”<sup>79</sup> The statement was noteworthy, given that New Delhi has remained silent on the Hong Kong protests over the years. India has denied visas to activists from China and Hong Kong previously,<sup>80</sup> and refrained from meeting



protestors who petitioned to G-20 members to pressure China to scrap the 2019 extradition bill.<sup>81</sup>

India's July 2020 statement is likely a consequence of the ongoing border tensions between India and China. India's retaliatory measures against China on the FDI policy has impacted Hong Kong as well. India's decision now to scrutinise imports from Hong Kong is also with the view of the country's trade deficit with China. However, any changes to India's Hong Kong policy would make an impact on its China policy. If India modifies its legal cooperation, migration and diaspora policy—in line with what other countries have done—this would come as a remarkable shift in New Delhi's positioning on Hong Kong. The impact that this could have on efforts to de-escalate border tensions with China also needs to be considered. Nonetheless, New Delhi will have to make a realistic assessment of the need to adopt measures to help protect Indian nationals and persons of Indian origin in Hong Kong. As the full implications of the NSL are yet to be understood, India should carefully follow developments in the region before making any changes to its own policy. 

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