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CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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On October 26, the United States appealed the panel decision.[46] The filing of an appeal stays the adoption of the panel report by the WTO's Dispute Settlement Body.[47] However, because the United States has blocked appointment of new WTO Appellate Body members since 2017 in an effort to force reforms,[48] the Appellate Body currently lacks the three members required to constitute a panel to review decisions.[49] The absence of a functioning Appellate Body means that the U.S. appeal effectively blocks adoption of the panel report indefinitely. The U.S. notice of appeal states that "[t]he United States will confer with China so the parties may determine the way forward in this dispute."[50] Pointing to the paralysis of the Appellate Body, China characterized the appeal as an "abuse of procedural rules."[51]

United States Pursues Regulatory Actions Against TikTok and WeChat Over Data Security Concerns

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The Trump administration is engaged in an ongoing legal battle against the makers of two Chinese smartphone applications, TikTok and WeChat, over their data-collection and content moderation practices. The administration has used both the International Emergency Economic Powers Act (IEEPA) and the Committee on Foreign Investment in the United States (CFIUS) in an attempt to force the companies to cease U.S. operations and, in TikTok's case, to change ownership. The administration's actions have spurred multiple legal challenges, several of which are ongoing, and for now, both TikTok and WeChat remain in operation in the United States.

The Trump administration has framed the TikTok and WeChat actions as the latest developments in the U.S. government's push to limit China's access to the sensitive data of U.S. persons.[1] The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) expanded CFIUS's mandate to cover certain investments involving "sensitive

[46] Notification of Appeal by the United States, United States – Tariff Measures on Certain Goods from China, WT/DS543/10 (Oct. 27, 2020).

[47] Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Art. 16.4, Apr. 15, 1994, 1869 UNTS 401, 33 ILM 1226 ("If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the [Dispute Settlement Body] until after completion of the appeal.") [hereinafter DSU]; *see also* Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 518, 525 (2020).

[48] *See* Galbraith, *supra* note 47, at 518–19 (summarizing the pressure exerted on the Appellate Body by the Trump administration).

[49] *Id.* at 520.

[50] Notification of Appeal, *supra* note 46.

[51] Ministry of Commerce of the People's Republic of China Press Release, Statement by China at the DSB Meeting on 26 October 2020 (Oct. 29, 2020), *at* http://english.mofcom.gov.cn/article/newsrelease/significantnews/202010/20201003011778.shtml [https://perma.cc/H9UM-KNM7].

[1] Exec. Order 13,942, 85 Fed. Reg. 48,637 (Aug. 6, 2020) (TikTok); Exec. Order 13,943, 85 Fed. Reg. 48,641, (Aug. 6, 2020) (WeChat).

personal data of U.S. citizens that may be exploited in a manner that threatens national security,"[2] and CFIUS has increasingly scrutinized Chinese entries into the U.S. software market.[3] For example, in March 2019, CFIUS pushed Beijing Kunlun Tech Co. Ltd. to unwind its purchase of Grindr, a gay dating app, based on fears that personal information could be used to monitor and blackmail U.S. military and intelligence personnel.[4] In July 2020, FBI Director Christopher Wray accused China of responsibility for a number of significant U.S. data breaches in the past decade, including the compromises of Anthem, Equifax, and the U.S. government's Office of Personnel Management.[5] Wray warned, "If you are an American adult, it is more likely than not that China has stolen your personal data."[6]

The Trump administration's actions against TikTok and WeChat have proceeded along two parallel tracks—one using the executive's authorities under IEEPA to impede both apps' U.S. operations and the other using CFIUS to compel changes in the ownership of TikTok.

On August 6, President Donald Trump issued two executive orders pursuant to IEEPA, addressing the U.S. operations of both WeChat and TikTok.[7] The WeChat order stated that the app, a messaging and social media platform that is widely used in China and among the Chinese diaspora around the world, "automatically captures vast swaths" of its users' data, which "threatens to allow the Chinese Communist Party access to Americans' personal and proprietary information."[8] The order also pointed to risks that WeChat could be censored by the Chinese Communist Party or used as a tool in Chinese disinformation campaigns.[9] The order promised "aggressive action against the owner of WeChat to protect [U.S.] national security."[10]

While the TikTok order leveled many of the same allegations of political censorship and risk for disinformation as the WeChat order, it added a more specific allegation regarding TikTok's collection of sensitive data:

> TikTok automatically captures vast swaths of information from its users, including internet and other network activity information such as location data and browsing and search histories . . . potentially allowing China to track the locations of Federal employees and

[2] FIRRMA was passed as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Pub. L. No. 115-232, Title XVII, § 1703(a)(4)(D)(i)(III)(aa), __ Stat. __ (2018); JAMES K. JACKSON & CATHLEEN D. CIMINO-ISAACS, CFIUS REFORM UNDER FIRRMA, CONG. RES. SERV. IN FOCUS (Feb. 21, 2020).

[3] Katy Stech Ferek, *Data Privacy Increasingly a Focus of National Security Reviews*, WALL ST. J. (Sept. 14, 2020), *at* https://www.wsj.com/articles/data-privacy-increasingly-a-focus-of-national-security-reviews-11600111141.

[4] David E. Sanger, *Grindr Is Owned by a Chinese Firm, and the U.S. Is Trying to Force It to Sell*, N.Y. TIMES (Mar. 28, 2019), *at* https://www.nytimes.com/2019/03/28/us/politics/grindr-china-national-security.html; *see also* Echo Wang, *China's Kunlun Says U.S. Approves Sale of Grindr to Investor Group*, REUTERS (May 29, 2020), *at* https://www.reuters.com/article/us-grindr-m-a-sanvincente/chinas-kunlun-says-u-s-approves-sale-of-grindr-to-investor-group-idUSKBN2352PR.

[5] Christopher Wray, FBI Dir., Speech at the Hudson Institute: The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States (July 7, 2020), *at* https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states [https://perma.cc/GW2Y-R5K3].

[6] *Id.*

[7] Exec. Order 13,943, *supra* note 1, at 48,641; Exec. Order 13,942, *supra* note 1, at 48,637.

[8] Exec. Order 13,943, *supra* note 1, at 48,641.

[9] *Id.*

[10] *Id.*

contractors, build dossiers of personal information for blackmail, and conduct corporate espionage.[11]

Both the TikTok and WeChat orders were initially set to take effect on September 20, 2020.[12]

Utilizing the authorities laid out in the August 6 executive orders, U.S. Commerce Secretary Wilbur Ross announced restrictions on TikTok and WeChat's operations on September 18.[13] The Commerce Department regulations contained two separate sets of restrictions. The first group, scheduled to take effect on September 20, involved an app store ban, which would prevent existing users from updating their apps and new users from downloading the apps.[14] The second, broader set of restrictions would effectively block the apps from operating in the United States by banning their access to the internet hosting and content delivery services they require to function and restricting the use of the apps on U.S. software platforms.[15] The effective dates of this second group were bifurcated, with the restrictions on WeChat scheduled to take effect on September 20 and the TikTok restrictions delayed until November 12 to allow the CFIUS process a chance to resolve the national security concerns raised by TikTok.[16]

A group of WeChat users filed suit in the Northern District of California, seeking to enjoin all aspects of the Commerce Department's order on WeChat on statutory and constitutional grounds.[17] The complaint called the order "a stark violation of the First Amendment," arguing it "regulates constitutionally protected speech, expression, and association and is not narrowly tailored to restrict only that speech which presents national security risks to the United States."[18] The plaintiffs also challenged the order on First Amendment free-exercise-of-religion and Fifth Amendment due process grounds and alleged that it exceeded the president's authority under IEEPA.[19]

U.S. Magistrate Judge Laurel Beeler granted the plaintiffs' emergency motion for a preliminary injunction on September 19, enjoining the WeChat ban on First Amendment

[11] Exec. Order 13,942, *supra* note 1, at 48,637.

[12] *See id.* at 48,637–38 (establishing a forty-five-day effective date from the order's signing on August 6, 2020); Exec. Order 13,943, *supra* note 1, at 48,641–42 (same).

[13] U.S. Dep't of Commerce Press Release, Commerce Department Prohibits WeChat and TikTok Transactions to Protect the National Security of the United States (Sept. 18, 2020), *at* https://www.commerce.gov/news/press-releases/2020/09/commerce-department-prohibits-wechat-and-tiktok-transactions-protect [https://perma.cc/ZE69-YFMV].

[14] *Id.*; Jeanne Whalen, Rachel Lerman & Ellen Nakashima, *U.S. Bans WeChat, TikTok as China Becomes Major Focus of Election*, WASH. POST (Sept. 18, 2020), *at* https://www.washingtonpost.com/technology/2020/09/18/tik-tok-wechat-ban-trump (explaining the practical effects of the app store ban).

[15] U.S. Dep't of Commerce Press Release, *supra* note 13; Ana Swanson, David McCabe & Jack Nicas, *Trump Administration to Ban TikTok and WeChat from U.S. App Stores*, N.Y. TIMES (Sept. 18, 2020), *at* https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html (quoting U.S. Commerce Secretary Ross's description of the restrictions' effects on WeChat: "For all practical purposes it will be shut down in the U.S., but only in the U.S., as of midnight Monday.").

[16] U.S. Dep't of Commerce Press Release, *supra* note 13.

[17] Complaint for Declaratory and Injunctive Relief, U.S. WeChat Users Alliance et al. v. Trump et al., No. 3:20-cv-05910 (N.D. Cal. Aug. 21, 2020) (Doc. 1).

[18] *Id.* at 3–4.

[19] *Id.* at 4–5.

grounds.[20] After reviewing the effects a total ban would have on WeChat's U.S.-based users, who "rely on the WeChat platforms to communicate, socialize, and engage in business, charitable, religious, medical-related, and political activities with family, friends, and colleagues (here in the U.S. and around the world),"[21] the court addressed the government's interest in promoting national security:

> [T]he threats that the government has identified generally are significant. But while the general evidence about the threat to national security related to China (regarding technology and mobile technology) is considerable, the specific evidence about WeChat is modest.[22]

As a result, the court held, "the regulation—which eliminates a channel of communication without any apparent substitutes—burdens substantially more speech than is necessary to further the government's significant interest."[23] The Ninth Circuit declined to stay the injunction[24] and scheduled oral argument for January 2021 on the government's appeal of the preliminary injunction.[25]

On the same day that Judge Beeler granted the preliminary injunction against the WeChat ban, Commerce Secretary Ross released an order delaying the ban of TikTok from mobile app stores until September 27.[26] In the week leading up to the new effective date, federal district courts entertained emergency motions from two separate groups of plaintiffs challenging the TikTok bans.

In *TikTok v. Trump*, filed in the U.S. District Court for the District of Columbia, TikTok's parent company, ByteDance, challenged all of the prohibitions listed in the Commerce Department order, alleging that they represented "a gross misappropriation of IEEPA authority."[27] ByteDance argued:

> Past presidents have used this power responsibly to protect the country from genuine threats from abroad. . . . President Trump, however, used IEEPA against TikTok Inc., *a U.S. company*—headquartered in Los Angeles with hundreds of employees across the United States—to destroy an online community where millions of Americans have come together to express themselves, share video content, and make connections with each other. [28]

Judge Carl Nichols granted ByteDance's request for a preliminary injunction against the mobile app store ban on September 27, the day it was scheduled to go into effect.[29] He ruled that the company was likely to succeed on its claim that TikTok falls under two separate

[20] Order Granting Motion for Preliminary Injunction, U.S. WeChat Users Alliance et al. v. Trump et al., No. 3:20-cv-05910 (N.D. Cal. Sept. 19, 2020) (Doc. 59).

[21] *Id.* at 4.

[22] *Id.* at 20.

[23] *Id.*

[24] Order at 1, U.S. WeChat Users Alliance et al. v. Trump et al., No. 20-16908 (9th Cir. Oct. 26, 2020) (Doc. 24).

[25] *Id.*

[26] U.S. Dep't of Commerce Press Release, Statement on Delayed Prohibitions Related to TikTok (Sept. 19, 2019), *at* https://www.commerce.gov/news/press-releases/2020/09/statement-delayed-prohibitions-related-tiktok [https://perma.cc/3PBS-5X8M].

[27] Complaint for Injunctive and Declaratory Relief at 3, TikTok Inc. et al. v. Trump et al., No. 1:20-cv-02658 (D.D.C. Sept. 18, 2020) (Doc. 1).

[28] *Id.* at 2.

[29] Op., TikTok Inc. et al. v. Trump et al., No. 1:20-cv-02658, slip op. at 1 (D.D.C. Sept. 27, 2020) (Doc. 30).

exceptions to the president's IEEPA authority, which, respectively, ban the government from regulating transactions involving "information or informational materials" and "personal communication[s], which do[] not involve a transfer of anything of value."[30] On December 7, Judge Nichols granted an additional preliminary injunction against the remaining portions of the Commerce Department order, holding that TikTok is likely to succeed on its claims that the order exceeds the president's authority under IEEPA and violates the Administrative Procedure Act (APA).[31] On the APA claim, Judge Nichols concluded that the plaintiffs "are likely to succeed on their claim that the Secretary" acted arbitrarily and capriciously "by preventing a company from operating in the United States on national security grounds without adequately considering whether those national security concerns could be fully resolved through a parallel divestment process."[32] The government has appealed both preliminary injunctions.[33]

In *Marland v. Trump*, filed in the Eastern District of Pennsylvania, a group of TikTok content creators challenged the Commerce Department bans on a variety of constitutional and statutory grounds, arguing that the bans use "a sledgehammer, not a scalpel," to address the potential risks posed by TikTok.[34] After denying plaintiffs' motion for a temporary restraining order against the app store ban,[35] U.S. District Judge Wendy Beetlestone issued a preliminary injunction against the broader TikTok ban on October 30.[36] She held that the plaintiffs were likely to prevail on their claim that the ban represented an *ultra vires* use of President Trump's powers under IEEPA.[37] Her opinion examined the text and history of IEEPA's informational materials exception,[38] concluding that Congress "created an 'IEEPA-free zone,' excluding . . . the indirect regulation of informational materials from the President's otherwise broad emergency powers."[39] She determined that an injunction would be consistent with Congress's strong focus on "protect[ing] the public interest embodied in IEEPA's informational materials exception: 'the robust interchange of information.'"[40] On November 12, the government appealed,[41] but the Commerce Department also

[30] *Id.* at 9 (citing 50 U.S.C. § 1702(b)(1), (3)).

[31] Op., TikTok Inc. et al. v. Trump et al., No. 1:20-cv-02658, slip op. at 1, 21, 29 (D.D.C. Dec. 7, 2020) (Doc. 60).

[32] *Id.* at 28.

[33] Dorothy Atkins, *DC Circ. Expedites Trump's TikTok App Store Ban Appeal*, LAW360 (Oct. 14, 2020), *at* https://www.law360.com/articles/1319680/dc-circ-expedites-trump-s-tiktok-app-store-ban-appeal (noting that the appeal was "fast-track[ed]"); David Shepardson, *U.S. Government Appeals Judge's Order Blocking TikTok Restrictions*, REUTERS (Dec. 28, 2020), *at* https://www.reuters.com/article/us-usa-tiktok/u-s-government-appeals-judges-order-blocking-tiktok-restrictions-idUSKBN2921LY?il=0 (noting the government's appeal of the December 7 preliminary injunction).

[34] Complaint for Injunctive and Declaratory Relief at 2, Marland et al. v. Trump et al., No. 2:20-cv-04597 (E.D. Pa. Sept. 18, 2020) (Doc. 1).

[35] Op., Marland et al. v. Trump et al., No. 2:20-cv-04597, slip op. at 17 (E.D. Pa. Sept. 26, 2020) (Doc. 21). In another case, *Ryan v. Trump*, U.S. District Judge Vince Chhabria denied a TikTok employee's request to enjoin the TikTok order, holding that the plaintiff had failed to show that the Commerce Department regulations (which had not been released at the time of the ruling) were likely to cause irreparable harm. Op., Ryan v. Trump et al., No. 3:20-cv-05948, slip. op. at 2 (N.D. Cal. Sept. 15, 2020) (Doc. 30).

[36] Op., Marland et al. v. Trump et al., No. 2:20-cv-04597, slip op. at 28 (E.D. Pa. Oct. 30, 2020) (Doc. 35).

[37] *Id.* at 21.

[38] *Id.* at 2–3, 14–21 (citing 50 U.S.C. § 1702(b)(3), along with caselaw and legislative history delineating its scope).

[39] *Id.* at 21.

[40] *Id.* at 24 (internal citations omitted).

[41] Notice of Appeal at 28, Marland et al. v. Trump et al., No. 2:20-cv-04597 (E.D. Pa. Nov. 12, 2020) (Doc. 38).

published a notice in the Federal Register announcing its intent to comply with the preliminary injunction "pending further legal developments."[42]

Meanwhile, negotiations over TikTok's ownership have continued via the CFIUS process and could potentially moot the Commerce Department bans on TikTok.[43] The exact timeline of CFIUS's review of TikTok is unclear,[44] but news outlets have reported that it began as early as November 2019,[45] after several U.S. senators requested that the Trump administration investigate the company over its data-collection practices and alleged incidents of political censorship.[46] U.S. Treasury Secretary Steven Mnuchin revealed on July 29 that CFIUS was investigating TikTok,[47] and in a July 31 exchange with reporters, President Trump obliquely threatened to take executive action against the company.[48]

The CFIUS review culminated in an executive order signed on August 14, 2020, in which President Trump ordered the unwinding of TikTok parent ByteDance's 2017 acquisition of Musical.ly,[49] a video-sharing application that provided much of TikTok's early base of U.S. users when the two platforms formally merged in 2018.[50] Relying on the president's powers under Section 721 of the Defense Production Act of 1950, the order set a ninety-day deadline for ByteDance to divest itself of all U.S.-based TikTok assets, including "any data obtained or derived from . . . users in the United States," and it empowered CFIUS to review any proposed sale of TikTok to a U.S. buyer.[51]

The U.S. government has been deeply involved in the negotiations over TikTok's future, closely scrutinizing sale discussions with major U.S. corporations.[52] Although

[42] Identification of Prohibited Transactions to Implement Executive Order 13,942 and Address the Threat Posed by TikTok and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain; Preliminary Injunction Order by a Federal District Court, 85 Fed. Reg. 73,191 (Nov. 17, 2020).

[43] *See supra* note 16 and accompanying text.

[44] Paul Marquardt, *Unusual TikTok Review Calls CFIUS Processes into Question*, LAW360 (Aug. 7, 2020), *at* https://www.law360.com/articles/1299589/unusual-tiktok-review-calls-cfius-processes-into-question.

[45] Drew Harwell & Tony Romm, *U.S. Government Investigating TikTok Over National Security Concerns*, WASH. POST (Nov. 1, 2019), *at* https://www.washingtonpost.com/technology/2019/11/01/us-government-investigating-tiktok-over-national-security-concerns.

[46] Letter from Sen. Marco Rubio to Treasury Secretary Steven Mnuchin (Oct. 9, 2019), *available at* https://www.rubio.senate.gov/public/_cache/files/9ba023e4-2f4b-404a-a8c0-e87ea784f440/FCEFFE1F54F3899795B4E5F1F1804630.20191009-letter-to-secretary-mnuchin-re-tiktok.pdf [https://perma.cc/R6R8-2VFN]; Letter from Sen. Charles Schumer and Sen. Tom Cotton to Acting Dir. of Nat'l Intelligence Joseph McGuire (Oct. 23, 2019), *available at* https://www.democrats.senate.gov/imo/media/doc/10232019%20TikTok%20Letter%20-%20FINAL%20PDF.pdf [https://perma.cc/D3VQ-MRHK].

[47] Donald J. Trump, Remarks and an Exchange with Reporters Prior to Departure for Midland, Texas, 2020 DAILY COMP. PRES. DOC. 547, at 4 (July 29, 2020).

[48] Donald J. Trump, Remarks in an Exchange with Reporters Prior to Departure for Tampa, Florida, 2020 DAILY COMP. PRES. DOC. 559, at 2 (July 31, 2020).

[49] Executive Order Regarding the Acquisition of Musical.ly by ByteDance Ltd., 85 Fed. Reg. 51,297 (Aug. 14, 2020).

[50] Jon Russell, *Short Video Service Musical.ly Is Merging into Sister App TikTok*, TECHCRUNCH (Aug. 2, 2018), *at* https://techcrunch.com/2018/08/02/musically-tiktok.

[51] *Id.*

[52] David McCabe, Ana Swanson & Erin Griffith, *TikTok's Proposed Deal Seeks to Mollify U.S. and China*, N.Y. TIMES (Sept. 14, 2020), *at* https://www.nytimes.com/2020/09/14/technology/deal-tiktok-us-china-trump.html.

Microsoft was a leader in early negotiations,[53] several other bidders emerged over the month of August,[54] including Oracle, a technology company with close ties to the Trump administration.[55] In September 2020, news outlets reported that ByteDance had selected Oracle as its "trusted technology partner" in the United States.[56] Under the proposed terms of the deal, U.S.-based ByteDance investors would gain effective control over TikTok, despite owning a minority of the company's shares, and control of TikTok's recommendation algorithm would remain in Chinese hands.[57] The proposed structure seeks to mitigate CFIUS's reported national security concerns while complying with Chinese export restrictions announced in August 2020 that empower the Chinese government to block exports of valuable technologies, including those "based on data analysis for personalized information recommendation services."[58]

The current status of the deal is unclear, and the Trump administration has given mixed signals about it. News outlets reported that the Treasury Department sought and received changes to the proposed deal, including revisions to the procedures for handling user data,[59] but White House Chief of Staff Mark Meadows criticized the proposed structure as a "repackaging" that would keep TikTok "as a predominantly Chinese-government run company," and questioned whether it met the "national security . . . [and] American-interest thresholds" necessary to gain approval.[60] President Trump has offered conflicting messages. In remarks on September 19, he said that he had "given the deal [his] blessing,"[61] but he told reporters two days later that he would block the deal "[i]f we find that [Oracle] do[es]n't have total control."[62] While ByteDance and Oracle have offered conflicting accounts of the deal, media outlets reported that it would leave roughly 80 percent of the new entity in ByteDance's hands until a planned stock offering in 2021.[63]

[53] Echo Wang, Alexandra Alper & David Shepardson, *Exclusive: TikTok's Chinese Owner Offers to Forego Stake to Clinch U.S. Deal – Sources*, REUTERS (Aug. 1, 2020), *at* https://www.reuters.com/article/us-usa-tiktok-bytedance-exclusive-idUSKBN24X3SK.

[54] Mike Isaac & Andrew Ross Sorkin, *How TikTok's Talks with Microsoft Turned into a Soap Opera*, N.Y. TIMES (Aug. 26, 2020), *at* https://www.nytimes.com/2020/08/26/technology/tiktoks-microsoft-deal-soap-opera-trump.html.

[55] David McCabe, *Trump Says Oracle Could "Handle" Owning TikTok*, N.Y. TIMES (Aug. 19, 2020), *at* https://www.nytimes.com/2020/08/19/technology/trump-oracle-tiktok.html.

[56] McCabe, Swanson & Griffith, *supra* note 52.

[57] *Id.*

[58] Paul Mozur, Raymond Zhong & David McCabe, *TikTok Deal Is Complicated by New Rules from China Over Tech Exports*, N.Y. TIMES (Aug. 29, 2020), *at* https://www.nytimes.com/2020/08/29/technology/china-tiktok-export-controls.html.

[59] David McCabe, Erin Griffith, Ana Swanson & Mike Isaac, *TikTok Accepts Deal Revisions as Trump Prepares to Review Proposal*, N.Y. TIMES (Sept. 17, 2020), *at* https://www.nytimes.com/2020/09/17/technology/tiktok-deal-revisions-trump-review.html.

[60] Jennifer Jacobs, Saleha Mohsin & Nick Wadhams, *Oracle, ByteDance Accept New Treasury Terms on TikTok*, BLOOMBERG (Sept. 17, 2020), *at* https://www.bloomberg.com/news/articles/2020-09-17/oracle-bytedance-said-to-accept-new-treasury-terms-on-tiktok.

[61] Donald J. Trump, Remarks and an Exchange with Reporters Prior to Departure for Fayetteville, North Carolina, 2020 Daily COMP. PRES. DOC. 707, at 1 (September 19, 2020).

[62] David McCabe, Ana Swanson & Michael J. de la Merced, *TikTok Deal Trips Over U.S.-China Power Struggle*, N.Y. TIMES (Sept. 21, 2020), *at* https://www.nytimes.com/2020/09/21/technology/tiktok-bytedance-deal-walmart-oracle.html.

[63] *Id.*

Though negotiations between ByteDance and CFIUS over deal terms and proposed mitigation measures appear to have occurred throughout the fall, little had been made public until TikTok filed a petition in the D.C. Circuit on November 10, asking the court, which has original jurisdiction in CFIUS cases, to enjoin the CFIUS action and the related divestment order.[64] The filing alleges that ByteDance submitted a proposed mitigation plan to CFIUS on November 6, and affirms that ByteDance "intend[s] to file a motion to stay enforcement of the Divestment Order only if discussions reach an impasse and the government indicates an intent to take action to enforce the Order."[65] Two days later, the plaintiffs filed a notice in the D.C. district court indicating that the government had granted a fifteen-day extension in the CFIUS review process.[66] The government granted a further extension to December 4, 2020.[67] Press reports indicate that although the government has declined to grant an additional extension, ByteDance and CFIUS continue to negotiate.[68]

International Human Rights and Humanitarian Law

United States Terminates Hong Kong's Special Status Due to National Security Law Imposed by Beijing

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In June 2019, protests erupted in Hong Kong after its government proposed an extradition agreement with mainland China. Alarmed by the protests, the Central Committee of the Chinese Communist Party announced that it would consider new national security measures for Hong Kong. On June 30, 2020, China's National People's Congress Standing Committee (NPCSC) passed the "Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region." While the law was under consideration, the United States responded by declaring that Hong Kong was no longer significantly autonomous from mainland China and beginning the process of ending Hong Kong's special status under U.S. law. The United States and its allies continue to criticize Hong Kong's deteriorating autonomy from China, pointing to the postponement of elections in Hong Kong as further evidence.

The Sino-British Joint Declaration on the Question of Hong Kong governs China's relationship with Hong Kong.[1] Pursuant to the "one country, two systems" principle enshrined

[64] Petition for Review at 1–2, 34, TikTok Inc. v. Comm. For. Inv. U.S., No. 1:20-cv-02658-CJN (D.C. Cir. Nov 10, 2020) (Doc. 1).

[65] *Id.* at 19.

[66] Plaintiffs' Notice of Extension of CFIUS Matter, TikTok Inc. et al. v. Trump et al., No. 1:20-cv-02658, (D.D.C. Nov. 13, 2020) (Doc. 56).

[67] Plaintiffs' Notice of Extension in CFIUS Matter, TikTok Inc. et al. v. Trump et al., No. 1:20-cv-02658 (D.D.C. Nov. 25, 2020) (Doc. 58).

[68] David Shepardson & Echo Wang, *U.S. Not Extending TikTok Divestiture Deadline, But Talks Will Continue: Sources*, Reuters (Dec. 4, 2020), at https://www.reuters.com/article/us-usa-tiktok-exclusive-idUSKBN28F00V.

[1] The Basic Law serves as Hong Kong's constitution and further codifies the declaration. Hong Kong Special Administrative Region Government Information Services Department, *Hong Kong: The Facts*, *The Basic Law*