

## ARTICLE

# Trump Administration's Response to Human Rights Abuses in China Has Potentially Wide-Ranging Consequences for U.S. Tech Companies and Other Businesses

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In recent weeks, the Trump Administration has stepped up its response to human rights abuses committed against Uyghurs, ethnic Kazakhs, and other members of Muslim minority groups in China's Xinjiang Uyghur Autonomous Region. The moves include the addition of parties to the Commerce Department, Bureau of Industry and Security's (BIS) Entity List as well as sanctions on Chinese government officials alleged to be involved in these abuses, potential new licensing requirements and additional export controls on advanced surveillance systems and other items of human rights concern, and a joint advisory highlighting the risks and considerations for businesses with supply chain exposure to entities involved in human rights abuses in Xinjiang. We provide a roundup of these developments below.

The measures come amidst the backdrop of numerous recent actions targeted at China more broadly, including the decertification of Hong Kong's autonomy, expanded controls on U.S. exports of commercial products to military end users or for military end uses in China, the Defense Department's publication of a list of companies owned or controlled by the Chinese military, restrictions on contractor supply chains related to Chinese telecom equipment and services, and U.S. Attorney General William Barr's recent warning to U.S. businesses that working on behalf of a Chinese company or the Chinese government could trigger registration requirements under the Foreign Agents Registration Act (FARA).

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## Practice Areas

International Trade  
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## **Commerce Blacklists Entities Accused of Human Rights Abuses**

On July 22, 2020, BIS added 11 Chinese entities implicated in human rights abuses in Xinjiang to BIS's Entity List, effectively banning all exports of U.S. commodities, software, and technology to these companies without a license. Most licenses will be subject to a policy of denial, except those involving certain biological, radioactive, chemical, or explosive detection, monitoring, and protective items, as well as items necessary to detect, identify, and treat infectious disease, which will be subject to a case-by-case review policy. BIS previously added 28 Chinese government and commercial organizations to the Entity List in October 2019, including Hikvision and Dahua Technology, and an additional nine entities in June 2020 for their alleged roles in human rights violations and abuses against Uighurs, ethnic Kazakhs, and other members of Muslim minority groups in Xinjiang.

## **OFAC Sanctions Xinjiang Officials and Chinese Government Entities; Additional Sanctions Likely on the Way**

On July 9 and July 31, the Treasury Department's Office of Foreign Asset Controls (OFAC) sanctioned a combined six current or former Xinjiang government officials and two Chinese government entities, the Xinjiang Public Security Bureau (XPSB) and the Xinjiang Production and Construction Corps (XPCC). OFAC designated these individuals and entities for their connection to human rights abuses against ethnic minorities in Xinjiang under Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," which builds upon and implements the Global Magnitsky Human Rights Accountability Act. The action blocks the U.S. assets of the designated entity and individuals and generally prohibits U.S. persons from dealing with them.

Additionally, in June, President Trump signed the Uyghur Human Rights Policy Act of 2020 into law. The new law, which received broad bipartisan support, generally requires the President to identify and sanction each foreign person, including any Chinese officials, that the President determines is responsible for human rights violations in Xinjiang within 180 days of enactment of the law. While some press coverage reports that President Trump may postpone implementing these sanctions to preserve the "Phase One" Trade Agreement with China, U.S.-China tensions have only escalated in recent weeks. The President has until December to determine next steps.

## **Possible New Export Controls on Facial Recognition and Biometric Systems**

Additionally, BIS is considering whether to impose heightened export controls on U.S. facial recognition and other biometric systems. On July 17, 2020, BIS published a Notice of Inquiry seeking public comments on adding licensing requirements for the export of facial recognition and biometric systems for surveillance and other items of human rights concern.

While any new controls could impact exports to many destinations, the notice is particularly focused on China. BIS notes that facial recognition and biometric systems can be used to facilitate human rights abuses, specifically describing China's use of such technology in Xinjiang: "China, for example, has deployed facial

recognition technology in the Xinjiang region, in which there has been repression, mass arbitrary detention and high technology surveillance against [Uyghurs], Kazakhs, and other members of Muslim minority groups.”

With respect to facial recognition technologies, BIS is specifically interested in feedback on what technical criteria of high-resolution cameras would be appropriate for control; what criteria would differentiate these items as more compatible with police and intelligence end uses rather than commercial ones; and, what impact would controls have on U.S. industry competitiveness and leadership. Regarding other biometric controls, BIS is interested in feedback on whether a streamlined or piecemeal approach would be better and, if so, what technical criteria would be appropriate and what impact controls would have on U.S. industry and competitiveness.

For biometric systems, BIS notes that while finger and voice print are already controlled by the Export Administration Regulations’ (EAR) Commerce Control List (CCL), it is reviewing whether to extend similar controls to all biometric systems, including iris, vein, earlobe, gait, and heartbeat systems, to avoid a piecemeal approach.

The notice also seeks comments on other technologies, including dazzlers, long-range acoustic devices, and certain items that are already subject to control on the CCL, such as fingerprint readers; fingerprint powders, dyes, and ink; voice print identification systems; mobile crime scene laboratories; police helmets; and polygraphs and psychological stress analysis equipment.

Comments are due by **September 15, 2020**, and U.S. industry members impacted by any potential new controls are encouraged to weigh in.

### **Xinjiang Supply Chain Business Advisory Encourages Due Diligence**

On July 1, 2020, the Departments of State, Treasury, Commerce, and Homeland Security issued a “Xinjiang Supply Chain Business Advisory,” which highlights existing export controls, import restrictions, government contracts requirements, and sanctions regimes, and encourages U.S. companies to consider human rights-related issues before entering into business partnerships with, investing in, and providing other support to companies operating in or otherwise linked to Xinjiang, or employing the labor of individuals from Xinjiang.

The primary types of supply chain exposure the advisory covers are: (1) assisting in developing surveillance tools for the Chinese government in Xinjiang; (2) relying on labor or goods sourced in Xinjiang, or from factories elsewhere in China implicated in the forced labor of individuals from Xinjiang in their supply chains; and (3) aiding in the construction of internment facilities used to detain Uyghurs and members of other Muslim minority groups, and/or in the construction of manufacturing facilities that are in close proximity to camps operated by businesses accepting subsidies from the Chinese government to subject minority groups to forced labor.

The advisory is an explanatory document and does not, on its own, add or implement any new sanctions or restrictions. However, to the extent a company is involved with China's surveillance efforts or uses forced labor to manufacture products (e.g., cell phones), such company could be the target of future sanctions. For example, the advisory warns that companies selling or providing biometric devices, cameras, computers, items with surveillance capabilities, microchips and microprocessors, tracking technology, or related equipment, software, and technology, or maintenance of goods that have been known to arbitrarily track and control the movements of Uyghurs or others in Xinjiang could face reputational risks and/or trigger U.S. law enforcement or other actions.

Wiley's International Trade and National Security teams continue to closely monitor the U.S. government's efforts to address human rights and other concerns in China and the impact of new restrictions on U.S. and non-U.S. companies. Please contact any of the authors for further information or advice.

*Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this article.*