

U.S. Government Expands Restrictions on Exports to China, Iran, and Russia and Issues New Business Advisory Regarding Forced Labor in Xinjiang

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The Bureau of Industry and Security (“BIS”) in U.S. Department of Commerce has added 34 more companies to its Entity List in its continued expansion of U.S. export controls to address human rights in the Xinjiang Uyghur Autonomous Region of China (“XUAR”), to limit the supply of certain U.S.-items to the Chinese and Russian military, and to counteract diversion of U.S. items to Iran. These designations build on prior actions, including those of the Trump Administration, to use U.S. export and import controls to address U.S. foreign policy concerns with respect to China, Iran, and Russia.

Because of these new BIS Entity List designations, U.S. companies and those that distribute items from the United States or items containing U.S.-origin content exceeding certain thresholds must ensure they are not directly or indirectly supplying any of these 34 companies unless there is an applicable U.S. Government authorization. In addition, this action indicates that further restrictions relating to China, Iran, and Russia for such foreign policy and national security reasons are likely under the Biden Administration. Accordingly, companies subject to U.S. export controls should consider whether their transactions with China, Iran, and Russia could be affected and should weigh whether heightened due diligence may be needed with respect to those countries.

The full list of the 34 additional companies that BIS has placed on the Entity List is available [here](#).

XUAR-Related Designations.

Almost half of these new Entity List designations – 14 of the 34 – were companies that BIS determined are involved in coerced labor, mass detention, or high-technology surveillance of Uyghurs, Kazakhs, and other Muslim minority groups in the XUAR. In making the designations, the Department of Commerce cited China’s “genocide and crimes against humanity” in the XUAR.

These designations continue a broadening host of measures that the United States has imposed against Chinese companies for their treatment of Uyghurs, Kazakhs and other

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Muslim minority groups in the XUAR. U.S. Customs and Border Protection (“CBP”) has invoked its long-standing authority under Section 307 of the Tariff Act of 1930 (“Section 307”) to issue withhold release orders (“WROs”) against the importation of goods made with child, convict or forced labor, which we previously discussed [here](#), [here](#), [here](#), and [here](#). These WROs have blocked the importation into the United States of textile and food products that rely on XUAR-sourced cotton and tomato products, among other goods. In June, CBP issued a WRO for imports of solar panels and metallurgical-grade silicon products made by Hoshine Silicon Industry Co. Ltd. and its subsidiaries (“Hoshine”). This latest WRO against Hoshine will likely have profound effects on the U.S. solar industry’s supply chains since Hoshine is the world’s largest producer of such materials used in the fabrication of solar panels and signals that the Administration places a higher priority on these human rights issues than on its policies to combat climate change by encouraging more clean energy generation, such as through the use of solar power.

These Biden Administration’s actions follow those that the Trump Administration began using to address the situation in the XUAR. The Trump Administration had placed Chinese companies on the BIS Entity List and had also added certain Chinese entities to the U.S. Department of the Treasury Office of Foreign Assets Control’s (“OFAC”) List of Specially Designated Nationals and Blocked Persons (“SDN List”) to target those believed to be complicit in human rights abuses in the XUAR. As a result of such designations, the scope of permissible transactions by U.S. companies with those SDNs or persons on the Entity List is severely curtailed. U.S. companies generally cannot deal with those SDNs or their property subject to U.S. jurisdiction and generally cannot send items that are subject to the U.S. Export Administration Regulations (“EAR”) to persons on the Entity List, absent some exemption or authorization.

Other Xinjiang-Related Legal Developments.

On July 13, the U.S. Departments of Commerce, Homeland Security, Labor, State, and Treasury, and the Office of the U.S. Trade Representative (“USTR”) updated a joint business advisory (“Updated Business Advisory”) relating to the XUAR. The Updated Business Advisory is available [here](#) and broadens an earlier version originally issued on July 1, 2020. The Updated Business Advisory urges U.S. companies to use heightened due diligence to avoid business with entities known to have ties to the XUAR. Like the earlier 2020 version of the guidance, the Updated Business Advisory continues to warn companies of the “reputational, economic, and legal risks of involvement with entities that engage in human rights abuses” in the XUAR and now lays greater stress on certain themes in the earlier guidance. For instance, the Updated Business Advisory has added the Department of Labor and the USTR as co-authors of the guidance and highlights certain efforts of the Department of Labor and the USTR to address forced labor and human rights in the XUAR. In addition, the Updated Business Advisory adds to the list of warning signs of forced labor in supply chains and includes new guidance specific to the U.S. construction, solar energy and surveillance technology industries.

In addition, there is also significant activity in Congress to address alleged forced labor in

the XUAR. In June, the U.S. Senate passed legislation containing the Trade Act of 2021, which would, among other things, create a specific division within CBP to investigate forced labor in consultation with subject matter experts in the U.S. Department of Labor and U.S. Department of State, which would presumably increase CBP's investigative resources to issue more WROs and potentially to detain more merchandise sourced from China under those WROs. Separately, on July 14, the Senate by unanimous consent also approved a bill containing the Uyghur Forced Labor Prevention Act, and it is assumed that the House will also vote to pass this legislation because it had already voted to pass H.R. 6210 by the lopsided margin of 406 – 3 during the previous 116th Congress. Once enacted and signed into law by President Biden, this legislation would amend Section 307 to create a rebuttable presumption that all items originating from the XUAR are the product of forced labor unless the importer can provide evidence to the contrary, including goods made in third countries from raw materials sourced from the XUAR. Differences and details of these various bills aimed at the XUAR situation will need to be reconciled between the two houses of Congress in the coming months, but such stiffer laws regarding the importation of goods made in the XUAR or from raw materials sourced from the XUAR are certainly foreseeable in the not too distant future.

Chinese and Russian Military End User (“MEU”) Designations.

In this latest action, BIS also added 11 companies to the Entity List for supporting Chinese and Russian military efforts. In the case of China, BIS added five entities for supporting China's development of lasers and Chinese command, control, communications, computers, intelligence, surveillance and reconnaissance programs. With regard to Russia, BIS added six entities for diverting items that are subject to the EAR to Russia's military. Besides the Entity List additions, BIS also designated one further Russian entity under the Military End-User List (“MEU List”) that has been created under EAR Part 744.

Because of the Entity List designations, exports and transfers to these Chinese and Russian firms of most items sourced from the United States or with significant U.S. content will now require a BIS export license under the EAR. BIS has indicated that it will consider any export license applications for these firms added to the Entity List with a presumption of denial. For the MEU List designation, Supplement 2 to EAR Part 744 specifies the scope of restricted items that generally will require a license. (The EAR generally requires export licenses to provide those items to companies on the MEU List, as well as any unlisted MEUs that are part of, or support, the Burmese, Chinese, Russian, and Venezuelan militaries.)

These designations are in-line with the Biden Administration's vow to continue confronting China and Russia as previous administrations had done. Although the Trump Administration established the MEU List, in practice, it did not add many entities to that list. These recent measures illustrate a more proactive approach by the Biden Administration to identify entities involved with supporting the Chinese and Russian military and a greater willingness to use export controls more vigorously to address such

support.

As a result, U.S. companies must be certain their internal trade compliance procedures include current, real-time list checking within their sales and purchasing systems and deeper due diligence regarding new customers. BIS has stated it expects U.S. exporters to engage in enhanced due diligence for exports to China and Russia, especially for items that could be used to support the Chinese or Russian military or their respective suppliers. Moreover, given ongoing U.S. geopolitical tensions with these countries that are unlikely to recede anytime soon, such heightened diligence will likely be required for the foreseeable future.

Diversions of U.S.-Origin Goods to Iran and SDNs.

Finally, BIS named eight companies to the Entity List for sending items to Iran or to SDNs. Four of these companies are Chinese companies that BIS believes facilitated the export of EAR-controlled items to SDNs. The other four are Canadian or Lebanese entities believed to have procured U.S. items for eventual reshipment to Iran.

Although the target of these BIS designations were non-U.S. companies, U.S. persons are also expected to conduct sufficient due diligence to identify “red flags” and to avoid doing business with foreign persons that could be seeking to divert EAR-controlled items to sanctioned locations (such as Iran) or to restricted parties (such as SDNs or those on the Entity List). BIS and OFAC can (and often do) impute knowledge to U.S. companies of diversions of items to sanctioned places or parties if reasonable due diligence would have uncovered such a risk of diversion or if the U.S. exporter lacked reasonable internal controls that would have discovered such risks.

Conclusion.

These latest BIS Entity List and MEU List designations are a further reminder that U.S. companies need to maintain vigilant trade compliance policies and procedures, including reasonable due diligence proportionate to the foreseeable risks to ensure compliance with applicable U.S. export control, import and economic sanctions laws and regulations and to remain attuned to further shifts and additions to those laws and regulations. Dorsey & Whitney has experienced attorneys in its National Security Group to help companies implement or improve their compliance policies and practices.