

New U.S. Sanctions on China: The Uyghur Forced Labor Prevention Act and Further Chinese Company Designations

December 21, 2021

On December 16, 2021, following earlier approval by the House of Representatives, the U.S. Senate passed the Uyghur Forced Labor Prevention Act (“UFLPA” or the “Bill”), which responds to allegations of human rights abuses and forced labor practices in the Xinjiang Uyghur Autonomous Region of China (the “XUAR”).¹ Different versions of the Bill had passed earlier in the year in both the House and Senate; the final Bill represents compromise language reconciling differences between the House and Senate versions.² The Biden Administration has expressed its support for the Bill and for ensuring global supply chains are free from forced labor.³ As such, President Biden is expected to sign the UFLPA into law in the coming days.

The centerpiece of the Bill is the introduction of a U.S. import ban on goods mined, produced or manufactured wholly or in part in the XUAR, produced by certain entities working with the XUAR government to recruit, transport, harbor or receive forced labor or produced by entities that source material from the XUAR. The Bill creates a rebuttable presumption that such goods must be banned unless U.S. authorities determine by clear and convincing evidence that the goods were not produced through the use of forced labor. The Bill also authorizes sanctions against persons determined to be engaged in, responsible for or facilitating forced labor in the XUAR.

In tandem with the passage of the Bill, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) added eight entities to its list of “Chinese Military-Industrial Complex Companies” for supporting surveillance of ethnic and religious minorities in the People’s Republic of China (“PRC”), including in the XUAR. Additionally, the U.S.

¹ Uyghur Forced Labor Prevention Act, H.R. Rep. No. 6256 (2021), *available* [here](#).

² The prior House version of the Bill had included securities disclosure requirements related to human rights abuses in the XUAR and more broadly. Following an approach adopted in the context of U.S. sanctions against Iran, the previous version of the Bill generally would have required issuers of U.S.-registered securities to disclose in their annual and quarterly reports any dealings with persons sanctioned for human rights abuses or corruption. The disclosure in the report would be notified to the SEC through a public disclosure notice similar to the current IRAN NOTICE requirement. The SEC would have been required to transmit the issuer’s report to the President, who would determine if the issuer should be subject to sanctions. These securities disclosure provisions have been dropped from the current Bill.

³ See Statement by Press Secretary Jen Psaki on the Uyghur Forced Labor Prevention Act, *available* [here](#).

Commerce Department issued a final rule adding new foreign entities to the Entity List, including 25 PRC entities engaged in efforts to develop and deploy technologies for military applications and human rights abuses. This Client Update discusses these recent efforts to target persons and entities supporting repression in the PRC.

Sanctions Related to Forced Labor in the XUAR. The Bill amends the Uyghur Human Rights Policy Act of 2020⁴ to add “serious human rights abuses in connection with forced labor” as an additional reason to impose sanctions on persons under the act.

As such, the amendment will require the President, within 180 days after enactment of the Bill, and annually thereafter, to submit a report to Congress that identifies each non-U.S. person, including any Chinese government official, who the President determines is responsible for serious human rights abuses in connection with forced labor with respect to Uyghurs, Kazakhs, Kyrgyz, members of other persecuted groups or other persons in the XUAR.

Subject to potential waiver by the President, each non-U.S. person identified in the report will be subject to blocking sanctions (their assets will be frozen to the extent they come within the possession or control of a U.S. person), and sanctioned individuals will be ineligible for entry into the United States.

The President is authorized to terminate sanctions against blocked persons in certain circumstances, including based on the President’s determination that termination is in the national security interests of the United States.

Chinese Military Companies Sanctions and Entity List Additions. Also on December 16, OFAC designated eight entities as Chinese Military-Industrial Complex Companies (“CMICs”), therefore adding the companies to OFAC’s Non-SDN Chinese Military-Industrial Complex Companies List (“NS-CMIC List”). The eight companies were designated for actively supporting the biometric surveillance and tracking of ethnic and religious minorities in the PRC, and particularly the Uyghur minority in the XUAR.⁵ These designations follow the designation of SenseTime Group Limited, which was added as to the NS-CMIC List on December 10—International Human Rights Day—for

⁴ Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145; 22 U.S.C. 6901 note, *available here*.

⁵ OFAC Press Release, Treasury Identifies Eight Chinese Tech Firms as Part of The Chinese Military-Industrial Complex (Dec, 16, 2021), *available here*. The eight technology companies designated are Cloudwalk Technology Co., Ltd.; Dawning Information Industry Co., Ltd.; Leon Technology Company Limited; Megvii Technology Limited; Netposa Technologies Limited; SZ DJI Technology Co., Ltd.; Xiamen Meiya Pico Information Co., Ltd.; and Yitu Limited.

its development of facial recognition programs that can determine a target's ethnicity, with a particular focus on identifying ethnic Uyghurs.⁶

Designation as a CMIC subjects companies to the investment restrictions under Executive Order 13959, as amended by Executive Order 14032, prohibiting U.S. persons from engaging in certain transactions in publicly traded securities issued by these companies.⁷ Specifically, U.S. persons are prohibited from “purchasing or selling publicly traded securities, or any publicly traded securities that are derivative of such securities, or are designed to provide investment exposure to such securities” of any CMIC. These prohibitions will become effective 60 days after the entities' listing as CMICs and there is a wind-down period of 365 days after designation, during which time purchases or sales of covered CMIC securities by U.S. persons, solely to divest of such securities, are permitted.

Simultaneously, the U.S. Commerce Department's Bureau of Industry and Security (“BIS”) issued a final rule adding new foreign entities to the Entity List, including 25 PRC entities engaged in efforts to develop and deploy biotechnology and other technologies for military applications and human rights abuses.⁸ The Entity List identifies entities that are involved in activities contrary to the national security or foreign policy interests of the United States. Entities added to the Entity List in the final rule are subject to a BIS license requirement that applies to all items subject to the Export Administration Regulations and no license exceptions are available for exports, reexports, or in-country transfers to the entities being added to the Entity List in the rule. BIS will also impose a license review policy of a presumption of denial for these entities. The Commerce Department's additions include four PRC entities already on the NS-CMIC List.⁹ The eight entities added by Treasury to the NS-CMIC List on December 16 were already on the Commerce Department's Entity List.

Implications. The Bill builds on and codifies efforts already underway by various U.S. government departments and agencies to target persons and entities supporting the repression of minority groups in the XUAR.

⁶ OFAC Press Release, Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day (Dec. 10, 2021), [available here](#).

⁷ See Debevoise In Depth, President Biden Amends Chinese Military Companies Sanctions (Jun. 4, 2021), [available here](#).

⁸ U.S. Commerce Department Press Release, Commerce Acts to Deter Misuse of Biotechnology, Other U.S. Technologies by the People's Republic of China to Support Surveillance and Military Modernization that Threaten National Security (Dec. 16, 2021), [available here](#).

⁹ These entities are: Aerosun Corporation; Changsha Jingjia Microelectronics Company Limited; Fujian Torch Electron Technology Co., Ltd.; and Inner Mongolia First Machinery Group Co., Ltd.

OFAC had previously designated individuals and entities under its Global Magnitsky Sanctions Regulations for their connection to human rights abuse against ethnic minorities in the XUAR.¹⁰ Similarly, since 2019 the BIS has added entities to the Entity List for this reason.¹¹

Relatedly, U.S. Customs and Border Protection (“CBP”) has issued Withhold Release Orders (“WROs”) related to forced labor in the XUAR. These WROs permit the detention of goods by the CBP at their port of entry until a finding regarding the forced labor concerns is reached.¹² In July 2021, the U.S. Departments of State, Treasury, Commerce, and Homeland Security jointly issued, and subsequently updated, a Xinjiang Supply Chain Advisory, which outlined the risks that businesses and individuals would face should they not exit supply chains, ventures or investments connected to the XUAR.¹³

Together, these actions and the Bill not only signal an increased effort by Washington to address alleged repression in the XUAR but also demonstrate the wide array of tools that may be used by the U.S. government to tackle human rights abuses more generally.

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We will continue monitoring developments with respect to sanctions in the XUAR and will provide updates as warranted. Please do not hesitate to contact us with any questions.

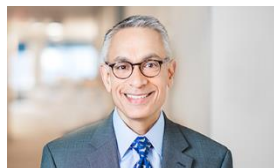
¹⁰ See, e.g., OFAC Press Release, Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order (Jul. 31, 2020), available [here](#).

¹¹ See, e.g., U.S. Commerce Department Press Release, Commerce Department Adds 34 Entities to the Entity List to Target Enablers of China’s Human Rights Abuses and Military Modernization, and Unauthorized Iranian and Russian Procurement (Jul. 9, 2021), available [here](#).

¹² See, e.g., U.S. Customs & Border Protection, CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang (Jan. 13, 2021), available [here](#).

¹³ Xinjiang Supply Chain Business Advisory, Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China (Jul. 13, 2021), available [here](#).

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