



The Bottom Line

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HUMAN RIGHTS AND INTERNATIONAL TRADE

Summary

U.S. Customs, the Commerce Department and the Treasury Department are aligning policy to increase pressure on China regarding their goal of ‘re-educating’ the Uighur Muslim population in Xinjiang.

Background

On July 1, 2020, the U.S. Departments of State, Treasury, Commerce, and Homeland Security jointly issued an advisory, “Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses in Xinjiang.”

Last week, the U.S. Department of State released guidance to assist U.S. exporters seeking to prevent their products or services with surveillance capabilities from being misused by foreign government end-users to commit human rights abuses. Although these Advisories do not set out any new laws, they have been published shortly after the Uyghur Human Rights Policy Act of 2020 was signed into law. These developments suggest a shift in enforcement focus on the Xinjiang Uyghur Autonomous Region (XUAR), including imports from XUAR, exports and technology transfers to XUAR, and other business activity in China that may implicate XUAR. The Advisories urge U.S. and non-U.S. businesses, academic institutions, research service providers, and investors with connections to XUAR to implement appropriate human rights due diligence policies, procedures, and internal controls to mitigate reputational, economic, and legal risks. They suggest that the failure to take appropriate due diligence steps may increase the risk of sanctions or law enforcement activity by the U.S. government. Specifically highlighted are industries which directly or indirectly contribute to the crisis, including:

- Exports to China of technologies relating to biometrics or surveillance.
- Joint ventures with Chinese government or Chinese companies who have been known to aid in the development of surveillance systems used against minority groups.
- Imports of cotton – China accounts for 20% of all the cotton in the world and XUAR accounts for 80% of China’s production.
- Imports of hair products.

Current Status

More than 1 million Uighurs from the western Xinjiang province are believed to be held in internment camps where they are forced to study Marxism, renounce their religion, work in factories and face abuse, according to human rights groups and first-hand accounts from Uighurs. Beijing refers to the centers as “re-education camps” and says they provide vocational training and are necessary to fight extremism. The U.S. has banned imports made with forced labor since 1930 to ensure fair trade. Enforcement has increased in recent years and U.S. Customs and Border Protection has blocked shipments by eight companies and entities operating in Xinjiang over the past year. The most recent bill would go further, shifting the burden to any company that operates in Xinjiang or buys goods from there to prove their goods are not tainted. The Commerce Department’s Bureau of Industry and Security (BIS) has also added dozens of companies operating in the Xinjiang Uyghur Autonomous Region (XUAR) to the Entity List. BIS has added companies that it believes rely on forced labor, as well as technology firms that the U.S. government has alleged support a state-surveillance apparatus in XUAR. It has also included state agencies alleged to be responsible for repression of Uyghurs and other ethnic minorities. The Entity List prohibits the export, reexport, or transfer of goods—including software and technology—subject to the U.S. Export Administration Regulations to listed companies.

Impact

U.S. Customs and Border Protection has issued orders that will block the import of certain products from the Xinjiang region. The bans, called “withhold release orders,” will block goods such as cotton, computer parts, hair products and apparel made by certain Chinese producers in Xinjiang suspected to use Uighur forced labor.

The Office of Foreign Assets Control (OFAC) has added China’s Xinjiang Production and Construction Corporation (XPCC) to its Specially Designated Nationals List on July 31 for serious rights abuses against ethnic minorities in China’s Xinjiang Uyghur Autonomous Region. XPCC’s placement on the SDN list means that all U.S. entities or non-U.S. entities subject to U.S. jurisdiction (covered persons) are banned from engaging, directly or indirectly, with XPCC and its majority-owned subsidiaries without a license from OFAC. Any transaction by a covered person that directly or indirectly benefits XPCC may be considered a violation of these sanctions, including apparel-related transactions made anywhere in the world that contain XPCC cotton.

RESOURCES:

- [Xi Jinping Defends Xinjiang Policies Despite Human Rights Concerns](#) (SCMP)
- [U.S. Restricts Imports from China’s Xinjiang Region](#) (NBC News)
- [Treasury Sanctions to Global Human Right Executive Order](#) (U.S. Treasury)