

US Trade Controls Against China Reach Supply Chain and End-Use Targets and Activities

Supply chain, end use, and human rights–related sanctions, export controls, and Entity List designations target public and private entities in China.

Human rights–related designations

The US government has increasingly relied on regulatory tools to further US policy and national security objectives with respect to Chinese companies the US has determined to be involved in human rights violations and abuses. Through designations in [October 2019](#), [June 2020](#), and [July 2020](#), the US Department of Commerce has added nearly 50 Chinese state-owned and commercial organizations to the [Entity List](#) for being “implicated in human rights violations and abuses in the implementation of China’s campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uyghurs, Kazakhs, and other members of Muslim minority groups in the Xinjiang Uyghur Autonomous Region (XUAR).” Designated entities include companies the US has determined to be using forced labor in the textile, apparel, and hair accessory industries as well as companies the US has determined to be supplying surveillance technology to the Chinese government.

Parties on the Entity List are generally precluded from receiving exports, re-exports, and in-country transfers from anyone (whether US persons or not) of certain or in some cases all commodities, software, or technology subject to the Export Administration Regulations (EAR). The term “subject to the EAR” generally includes all items exported from the United States, all US-origin items regardless of location, certain foreign-origin items with more than *de minimis* amounts of controlled US content, and in some cases foreign-origin items developed from US software and technology.

Through two actions in July 2020 (see [here](#) and [here](#)), pursuant to [Executive Order 13818](#) and the Global Magnitsky Human Rights Accountability Act, the Treasury Department’s Office of Foreign Assets Control (OFAC) added to its Specially Designated Nationals (SDN) and Blocked Persons List eight Chinese government entities and officials in connection with alleged human rights violations and abuses against Muslim minority groups in the XUAR. As a result of these designations, US persons are prohibited from directly or indirectly engaging in most transactions or dealings with these parties as well as any entities owned 50% or more by one or more SDNs, absent of OFAC authorization.

Supply chain exposure

On July 1, 2020, the US Departments of State, the Treasury, Commerce, and Homeland Security issued a [business advisory](#) (Advisory) identifying potential risks for businesses with supply chain links to entities involved in forced labor and human rights abuses in the XUAR and throughout China. The Advisory identifies the primary supply chain exposure as:

- Assisting in developing surveillance tools for the Chinese government in Xinjiang
- Relying on labor or goods sourced in Xinjiang, or from factories elsewhere in China implicated in forced labor from Xinjiang in their supply chains
- 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 in close proximity to internment camps operated by businesses accepting subsidies from the Chinese government to subject minority groups to forced labor

To ensure compliance and mitigate risk, the Advisory recommends that businesses develop protocols for human rights due diligence and close monitoring of their upstream and downstream supply chain exposure. Such diligence should consider, among other factors:

- Whether a company in the business's supply chain (Supply Chain) is located or has any operations in the Xinjiang region
- Whether the Supply Chain relies on labor or goods sourced from Xinjiang or from factories elsewhere in China implicated in the forced labor of individuals from Xinjiang, including satellite factories in Xinjiang
- Whether the Supply Chain is involved in the development of surveillance or movement-tracking tools for the Chinese government in Xinjiang
- Whether the Supply Chain aids in the construction of internment facilities and/or manufacturing facilities that are in close proximity to Xinjiang
- The extent to which the Supply Chain's activities implicate industries identified as having used forced labor in Xinjiang¹

Restrictions on exports to China

The Department of Commerce's Bureau of Industry and Security (BIS) has undertaken a number of recent actions aimed at further restricting certain EAR-regulated activities relating to China. On April 28, 2020, BIS [issued a new rule](#) that expands existing end-use controls that previously required a license for certain exports, re-exports, and transfers of items subject to the EAR for military end uses in China (in addition to Russia and Venezuela).

The new rule also increases the list of items that require prior BIS licensing to China. There is a presumption of denial on export and re-export license applications for items that now require a license for export or re-export to China. BIS noted that because of the increasing integration of civilian and military functions in China, "this expansion will require increased diligence with respect to the evaluation of end users in China," to include consideration of whether the end user's parent or subsidiary is engaged in military end uses or is a military end user.

Additionally, BIS has made or proposed changes to certain EAR license exceptions, resulting in increased restrictions on exports to China (and other countries in Country Group [D:1](#), which lists countries of national security concern). BIS has eliminated License Exception [CIV](#) (relating to certain items controlled for national security reasons), proposed eliminating License Exception [APR](#) (relating to certain additional permissible re-exports), and suspended license exceptions [previously available for Hong Kong](#) that are not available for China.

Conclusion

In light of the US government's recent actions targeting human rights violations and abuses in the XUAR and restricting the export of items to China, parties engaged in business dealings in China and subject to OFAC jurisdiction or the EAR should consider their current procedures for monitoring their supply chains, end users, and end uses.

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Endnotes

¹ Such industries are: Agriculture; Cell Phones; Cleaning Supplies; Construction; Cotton Yard, Cotton Fabric, Ginning, Spinning Mills, and Cotton Products; Electronics Assembly; Extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc); Fake Hair and Human Hair Wigs, Hair Accessories; Food Processing Factories; Hospitality Services; Noodles; Printing Products; Footwear; Stevia; Sugar; Textiles (including such products as apparel, bedding, carpets, wool); and Toys.