

# US Imposes Sanctions on 11 Chinese Companies, Citing Human Rights Violations

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On July 22, 2020, the U.S. Department of Commerce issued a [final rule](#) adding 11 Chinese companies (Listed Entities) to the Bureau of Industry and Security's (BIS) Entity List for allegedly "engaging in or enabling activities contrary to the foreign policy interests of the United States," including human rights violations and abuses against Muslim minority groups in the Xinjiang Uighur Autonomous Region (XUAR). The list of sanctioned companies includes current and former suppliers to major international brands in technology and fashion. As a result of being designated, the Listed Entities are effectively cut off from receiving U.S. commodities, software and technology without prior U.S. government approval.

The Entity List is a tool used by BIS to place restrictions on the export, reexport and transfer (in-country) of items subject to the Export Administration Regulations (EAR) to foreign persons (including individuals, organizations and companies) reasonably believed to be involved, or to pose a significant risk of becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The End-User Review Committee (ERC) — an interagency body comprising the Departments of Commerce (which serves as the chair), State, Defense, Energy and, where appropriate, Treasury — generally makes decisions regarding additions to, removals from or other modifications to the Entity List. The ERC has wide discretion in making such decisions (*i.e.*, a "reasonable belief" standard), and addition to the list can have a significant impact on companies doing business around the world.

In its notice designating the Listed Entities, BIS stated that the entities were engaging in or enabling certain activities in the XUAR contrary to U.S. foreign policy interests. Specifically, the ERC determined that "[a]ll eleven entities have been 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 XUAR. Nine of these companies were added for allegedly using forced labor to make their products — including manufacturers of hair products (Hetian Haolin Hair Accessories Co. Ltd.), textiles (Changji Esquel Textile Co. Ltd.) and selfie cameras (Nanchang O-Film Tech). The remaining two companies, Xinjiang Silk Road BGI and Beijing Liuhe BGI — which are affiliated with the genetics and medical diagnostic entity BGI Group — were added for allegedly conducting genetic analyses used to further repress Muslim groups in the XUAR. Several of these companies have released statements [denying these allegations](#).

As a result of being added to the Entity List, the Listed Entities are subject to specific license requirements that are in addition to the license requirements imposed elsewhere in the EAR. Effectively, without prior authorization from BIS, the Listed Entities are banned from receiving any items "subject to the EAR," including nonsensitive "EAR99" items (*i.e.*, general commercial products) that generally would not require a license. "Items subject to the EAR" are defined to include items in the United States, all U.S.-origin items wherever located and certain foreign-made items (for example, items with more than a de minimis level of U.S. content).

Interestingly, the final rule carves out certain items for which BIS will have a case-by-case license review policy.<sup>1</sup> This includes certain consumer goods that offer protection against chemical or biological agents. In light of the current global pandemic, BIS also

<sup>1</sup> This policy of case-by-case review applies to items that fall within the Export Control Classification Numbers (ECCNs) 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983 and 2E983, as well as items designated as EAR99 that are described in the Note to ECCN 1A995.

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adopted a case-by-case review policy for items subject to the EAR that are necessary to detect, identify and treat infectious diseases. For all other items subject to the EAR, BIS adopted a presumption of denial for licenses, and no license exceptions are available to the Listed Entities.

The final rule is the latest of three rounds of XUAR entity designations in the past 10 months. On October 9, 2019, BIS added to the Entity List the XUAR People's Government Public Security Bureau, 18 of its subordinate municipal and county public security bureaus, one subordinate institute and eight companies in the telecommunication, supercomputing and surveillance industries. On June 5, 2020, BIS added nine more entities, including companies suspected of enabling high-tech surveillance in the XUAR.

The Chinese government has reportedly responded that these designations are being used to oppress Chinese companies and impugn Chinese policies. Nevertheless, the U.S. government has shown a sustained commitment to applying export control and other restrictions on companies engaged or implicated in certain activities in the XUAR. We expect that this trend will continue and that more Chinese entities and individuals may continue to be designated or subject to other U.S. restrictions in the coming months.

The move also comes amid rising tensions between the United States and China, and less than two weeks after the administration imposed sanctions on multiple Chinese officials for allegedly aiding in human rights abuses. The Trump administration has become increasingly critical of China, for both its response to the coronavirus pandemic and its activities related to Hong Kong and the South China Sea.

While addition to the Entity List does not prevent all business with these companies — and would not, for example, prevent companies from purchasing products from the Listed Entities — in practice, major companies may be hesitant to continue doing business with any entity identified by the U.S. as being involved in human rights violations. As such, companies should carefully review their business activities, particularly their reliance on supply chains that have critical Chinese links, as well as other business activities with Chinese companies that may be the target of future U.S. government actions.