U.S. Warns of Heightened Risk of Doing Business in Xinjiang

John M. Foote, Jennifer E. McCadney

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On July 13, 2021, the U.S. Departments of Commerce, State, Treasury, Commerce and Homeland Security and the Office of the U.S. Trade Representative issued an updated Advisory on supply-chain risks for U.S. businesses whose business activities may be implicated by human rights concerns related to forced labor in and outside of Xinjiang, China.

The updated Advisory, which echoes the State Department's annual report on genocide, declares that the Chinese government is committing genocide and crimes against humanity. Given the gravity and extent of these abuses, the updated Advisory notes that "businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law." This warning suggests that the U.S. government is likely to take further action against companies and products with ties to Xinjiang.

In the interim, the updated Advisory encourages business, including financial institutions to undertake heighted due diligence to identify potential supply chain or other linkages to Xinjiang and forced labor. However, the updated Advisory, like the original, cautions against relying on third-party audits alone and encourages collaboration with industry groups to share information on risks in the region.

The updated Advisory particularly urges caution with respect to the following sectors that have been identified as using forced labor: Agriculture (including such products as raw cotton, hami melons, korla pears, tomato products, and garlic); Cell Phones; Cleaning Supplies; Construction; Cotton Yarn, 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; Footwear; Gloves; Hospitality Services; Metallurgical grade silicon; Noodles; Printing Products; Renewable Energy (polysilicon, ingots, wafers, crystalline silicon solar cells, crystalline silicon solar photovoltaic modules); Stevia; Sugar; Textiles (including such products as apparel, bedding, carpets, wool); and Toys.

Risks of doing business with companies implicated in Xinjiang-related human rights abuses is not limited to supply chains and inbound merchandise. For example, the United States has imposed a variety of sanctions on Chinese companies involved in human rights abuses in Xinjiang, including technology companies that provide the digital infrastructure necessary for mass surveillance in the region. These measures broadly prohibit U.S. and non-U.S. companies from exporting or transferring U.S.-origin goods, software, and technology to the sanctioned parties.

The updated Advisory is the latest indication that human right concerns will play a central role in the Biden Administration's approach to China. U.S. businesses should carefully review the updated Advisory in detail and consider their legal and reputational exposure to Xinjiang-related risks with respect to existing relationships and future transactions.