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Treasury, Commerce Target Dozens of Chinese Companies Over Surveillance, National Security Concerns

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Last week, the U.S. Government imposed tough restrictions on U.S. transactions with specific companies in the People's Republic of China (PRC) that are involved in activities contrary to U.S. foreign policy and national security interests. Specifically, on December 16, 2021, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) designated eight companies as Chinese Military-Industrial Complex Companies (CMICs) that "actively support the biometric surveillance and tracking of ethnic and religious minorities in the PRC, particularly the predominantly Muslim Uyghur minority in Xinjiang." Concurrently, the U.S. Commerce Department's Bureau of Industry and Security (BIS) added 25 Chinese companies, among 37 entities total, to its Entity List "that contribute to Beijing's efforts to develop and deploy biotechnology and other technologies for military applications and human rights abuses."

OFAC made its designations under Executive Order (E.O.) 13959, as amended by E.O. 14032, which restricts certain types of investments in CMICs that "operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC" or own/control such a company. The identified entities include companies that develop brain control weaponry, facial recognition technologies, geolocation technologies, software for ethnic surveillance, and drones that have been used to target China's Uyghur and Tibetan populations. As a result of the actions, U.S. persons are now prohibited from buying or selling securities in these companies. All eight of the companies had already been placed on BIS's Entity List prior to Treasury's designations last week.

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President Biden issued E.O. 14032 in June 2021, expanding the scope of prior investment restrictions issued under then-President Trump to better target the PRC's "involvement in military, intelligence, and security and research development programs, and weapons and related equipment production" under the Chinese Communist Party's well-documented Military-Civil Fusion strategy. The restrictions apply to publicly traded securities, or any publicly traded securities that are derivative of such securities (or are designed to provide investment exposure to such securities). A "publicly traded security," pursuant to the EO, is any "security" defined by the Securities Exchange Act of 1934 that trades on an exchange or in over-the-counter markets. The CMIC restriction applies broadly to any U.S. citizen, lawful permanent resident, any entity organized under U.S. law or other U.S. jurisdiction, or any person in the United States. This includes extraterritorial application to the foreign branches of multinational companies organized under U.S. law.

In addition to OFAC's designations, BIS's Entity List designations include four entities previously identified in E.O. 13959, as amended, as CMICs: Aerosun Corporation; Changsha Jingjia Microelectronics Company Limited; Fujian Torch Electron Technology Co., Ltd.; and Inner Mongolia First Machinery Group Co., Ltd. These entities also include the Academy of Military Medical Sciences and its 11 affiliates, which develop biotechnology to support the PRC military. In total, the rule adds 37 entities to the Entity List. Most of these entities are located in the PRC, although three are in Georgia, two are in Turkey, and one is in Malaysia. Out of the 37 entities, BIS designated 25 of them over biotechnology concerns; the remainder were designated because they have supplied or attempted to supply U.S.-origin items that could provide material support to Iran's weapons programs.

The Entity List designation means that exports, reexports, and in-country transfers of items subject to the Export Administration Regulations (EAR) governing exports of commercial and dual-use items, including low-level EAR99 commodities and technology, generally are prohibited to these entities without a license. Further, according to BIS, export licenses will be reviewed under a "presumption of denial" policy and no license exceptions will be available for these entities.

These moves augment increasing efforts by the U.S. Government to address China's use of U.S. capital and American technology in ways that are understood to significantly undermine U.S. national security interests and U.S. policy interests concerning the protection of human rights. Contemporaneously, on December 16, 2021, the Senate passed the Uyghur Forced Labor Prevention Act, which prohibits U.S. imports from China's Xinjiang Uygur Autonomous Region unless an importer can prove that imported goods mined, produced, or manufactured wholly or in part in Xinjiang were not made with forced labor. Section 307 of the Trade Act of 1930, as amended, already prohibits the importation of goods produced from forced, indentured, and child labor into the United States. This latest bill passed Congress with overwhelming bipartisan support and now heads to President Biden for signature. The White House has already voiced support for the bill and President Biden is expected to sign the Bill into law without any amendments.

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