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Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

January 2022

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1. New Import Ban on All Products From China's Xinjiang Region

In late December 2021, President Biden signed the Uyghur Forced Labor Prevention Act into law. The new legislation creates a rebuttable presumption that any goods created in whole or in part in the Xinjiang Uyghur Autonomous Region of China (Xinjiang) have been made using forced labor and are therefore banned from entry into the United States. Importantly, while the legislation identifies polysilicon, cotton, and tomatoes as high-priority sectors for enforcement, the ban, which will take effect on June 21, will apply to all goods with Xinjiang-origin inputs, regardless of sector, country of export, or country of origin. The legislation allows for exceptions to the broad ban if the importer can demonstrate to U.S. Customs and Border Protection (CBP) that goods excluded from entry pursuant to the rebuttable presumption were not created using forced labor. However, the government has until June 21–the date the rebuttable presumption takes effect–to release further guidance on how it will identify offending shipments and what kind of documentary evidence will suffice to reverse the forced labor presumption and allow goods to enter the United States. In the meantime, the government will establish a time period for accepting written public comments (at least 45 days), which will be followed by a public hearing. In light of the new law, to avoid entry issues at U.S. ports and to be ready to demonstrate compliance if CBP asks, companies should consider participating in the public comment process; trace, verify, and document their entire supply chains; and identify and replace inputs and suppliers linked to Xinjiang.

2. Economic Sanctions to Increase; Enforcement Risks Related to China

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for more information about any matters in this newsletter:

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U.S. and Allies Threaten Broad Sanctions and Export Controls if Russia Invades Ukraine
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Transacting With Belarusian Sovereign Debt Prohibited
On December 2, the Treasury Department issued a new Directive 1 under Executive Order 14038. The new Directive 1 prohibits U.S. persons from transacting in, financing, or otherwise dealing in new debt with a maturity of greater than 90 days to or for the Belarusian government, effective immediately, in both primary and secondary markets. Similar to the restrictions on U.S. dealings with Russian sovereign debt, Directive 1 restricts dealings in all denominations of debt. Alongside the issuance of this new directive, OFAC designated 20 individuals, 12 entities, and three aircraft as blocked property in response to the Belarusian regime's continued disregard for human rights and democracy. This is the fifth tranche of Belarus-related sanctions since the allegedly fraudulent August 9, 2020 presidential election in Belarus.

Sanctions Part of U.S. Anti-Corruption Strategy
On December 6, the White House released its comprehensive "United States Strategy on Countering Corruption," which comes on the heels of the White House's June 3, 2021 announcement that fighting international corruption is a national security priority. Fighting international corruption will be a whole-of-government approach, and we expect increased cross-border diplomatic and law enforcement initiatives to prosecute corruption. In line with this announced strategy, on December 9, 2021, International Anti-Corruption Day, OFAC sanctioned seven people and eight entities in Central America, Africa, and Europe for corruption.

Airbnb Xinjiang Province Rentals Pose Sanctions Risk
Ahead of the 2022 Winter Olympics in Beijing, Airbnb has more than a dozen homes available for rent in China's Xinjiang region on land owned by a sanctioned Chinese entity. The entity, paramilitary organization Xinjiang Production and Construction Corps, was sanctioned in 2020 for human rights abuses,

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including for helping to create a surveillance and detention program for Muslim minority groups. The listings expose Airbnb to reputational and regulatory risk under U.S. law.

3. White House Announces New Export Control Initiative; AES Update

- On December 9, at the Summit for Democracy, President Biden announced the establishment of the Presidential Initiative for Democratic Renewal, a set of policies and initiatives, including an export control initiative, which build and continue the U.S. government's work to bolster democracy and defend human rights around the world. The Export Controls and Human Rights Initiative's goal is to create a coalition of governments that will work together to best utilize export control tools to monitor and as needed restrict the proliferation of dual-use technologies.
- Beginning January 13, the Commerce Department's Automated Export System (AES) will automatically warn filers if they are exporting a controlled item without a license. If the exporter selects "C33: No License Required (NLR)" but a prohibited combination of information is provided for the ECCN and Country of Destination, exporters will receive Response Code 66Q. If exporters receive this error message, they will have six months to resolve the error before the agency blocks them from moving forward with the filing.

4. U.S. Dept. of Energy Kicks Off Expansive Energy Sector Supply Chain Review

The Department of Energy is seeking input from energy industry stakeholders involved directly or indirectly in the full supply chain, from raw materials to end-of-life material recovery and recycling. This request for information will help inform how the DOE can approach building resilient supply chains for the energy sector. The RFI asks questions and focuses on 14 topic areas including solar photovoltaic technology; wind energy technology; energy storage technology; electric grid-transformers and HVDC; hydropower and pumped storage technology; nuclear energy technology; fuel cells and electrolyzers; semiconductors; neodymium magnets; platinum group metals and other materials used as catalysts; carbon capture, storage, and transportation materials; and cybersecurity and digital components. Responses are due no later than 5 p.m. on January 15.

5. Contractors Encouraged to Establish Effective Cybersecurity Programs Despite CMMC Delay

On November 3, 2021, the Department of Defense (DOD) announced significant changes to its Cybersecurity Maturity Model Certification (CMMC) program via an Advance Notice of Proposed Rulemaking (ANPR). Although the ANPR resulted in an immediate, but temporary, suspension of the CMMC program, the DOD is encouraging contractors to continue to establish and maintain effective cybersecurity programs pending final rulemaking and implementation. Among the changes, the DOD's new CMMC framework reduces the number of certification levels from five to three and eliminates the requirements in the mid-tier certification level (CMMC Level 2) that distinguished CMMC from the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 procedures. Further, the new program authorizes the limited use of enforceable Plans of Action and Milestones and permits contractors pursuing a basic CMMC Level 1 certification to self-assess compliance with the program. According to a recent CMMC-Accreditation Board Town Hall, the DOD will announce the changes by issuing an interim rule with a 60-day public comment period and concurrent congressional review. The DOD anticipates the final CMMC rulemaking period to take anywhere between nine and 24 months. Although these changes affect the implementation timeline for CMMC as a contractual obligation for companies, the DOD encourages the Defense Industry Base to continue improving cybersecurity and is exploring options to provide incentives to companies that achieve CMMC compliance during the provisional program.

6. United States Sets Arms Embargo, Export Restrictions Against Cambodia

As expected following the November 10 joint business advisory on Cambodia issued by the Departments of State, Treasury, and Commerce, the Biden administration issued new restrictions on exports and re-exports to Cambodia on December 9. BIS has designated Cambodia as part of Country Group D:5, which makes it subject to U.S. arms embargo. In addition, Cambodia was added to the list of countries subject to both the military and military intelligence end use and end user controls and restrictions. The State Department also changed the International Trade in Arms Regulations (ITAR) to add Cambodia to its list of proscribed countries, which means that there will be a presumption of denial for all licenses and other approvals for exports and imports of defense articles and defense services destined for or originating from Cambodia.

Trade tip of the month: Changes to the U.S. Harmonized Tariff Schedule that implement an update to the World Customs Organization's Harmonized System tariff nomenclature are set to take effect January 27. The full list of coming changes are described in a newly released report from the International Trade Commission.

Additional Resources

- **Article:** "Startups Need a Grasp of U.S. Trade Controls"
  October 21, 2021
  CFO
  Doreen M. Edelman and Abbey E. Baker
- **Article:** "'Key Business Considerations for U.S. Global Trade Policy"
  November 1, 2021
  Risk Management
  Doreen M. Edelman, Abbey E. Baker, and Christian C. Contardo