

U.S. Sanctions against China Concerning Human Rights Issues in Xinjiang Uyghur Autonomous Region

(U.S. Politics and Diplomacy Study Group)

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1. Introduction

The Uyghur issue has become one of the key points of contention in current U.S.-China relations. In the first U.S.-China telephone summit in February 2021, President Biden raised the issue with President Xi Jinping himself. From this fact, we can understand that the Uyghur issue has become a summit-level issue between the U.S. and China.

In Washington, interest in the Uyghur issue grew rapidly during the Trump administration, and federal sanctions were imposed in the fall of 2019 for Uyghur-related human rights violations. On the eve of the end of the administration's term, the Uyghur issue was recognized as genocide and crimes against humanity, and this recognition became one of the milestones of the growing concern in Washington.

Regarding the process of how the Uyghur issue became a contentious issue in Washington, previous studies¹ have pointed out that related reports and commissioners of the Congressional-Executive Commission on China (CECC) of the Congress and discussion by German anthropologist and analyst Adrian Zenz may have influenced the process.

In this article, the author will discuss two main themes in relation to the Uyghur issue. First discussed is the process by which the Uyghur issue, especially the first major problem of incarceration, became an issue in Washington. The article will focus on the CECC, which has received little attention so far, in addition to the federal government's developments. Second, it will also discuss the possibility that the Uyghur-related sanctions imposed by the U.S. government will affect third countries, especially Japanese companies. In addition, a summary and analysis of the sanctions imposed by the federal government is provided for reference.

2. The Uyghur Issue in Washington

The human rights issue in Xinjiang Uyghur Autonomous Region (XUAR) has been widely discussed in Washington since around mid-2018, but prior to that, the CECC had put a spotlight on the issue.

¹ For example, the following discussion is available. Mori Satoru, "Competition and Negotiation in U.S. Policy toward China (Part 2) (in Japanese)," *Toa*, January 2020, p.71-72

How did this issue become a point of contention in Washington?

(1) Federal government

At a July 2018 Ministerial to Advance Religious Freedom, Vice President Mike Pence referred to the detention of hundreds of thousands or even over a million people.² He also touched on the issue of incarceration in a speech³ on China at the Hudson Institute in October of the same year. In December 2018, the Deputy Assistant Secretary gave a more specific figure of between 800,000 and 2,000,000 to the United States Senate Committee on Foreign Relations, and that the U.S. government's assessment was backed by the intelligence community and open source reporting.⁴ It can be said that the federal government's awareness of the issue of incarceration, together with a concrete understanding of the scale, increased around mid-2018.

(2) CECC

On the other hand, it was the CECC that had taken a stronger interest in the Uyghur issue before the federal government. In January 2018, CECC Chairman Senator Marco Rubio (Republican, Florida) and Co-Chair Congressman Chris Smith (Republican, New Jersey) raised the alarm about human rights violations in Xinjiang.⁵ In May 2018, the Jamestown Foundation released a report by Adrian Zenz⁶ that estimated the scale of incarceration to be in the hundreds of thousands to over a million people, which Senator Rubio described as groundbreaking. It was after the release of this report that the federal government began to pay more attention to the issue of incarceration, with reference to its scale.

In July 2018, a public hearing focusing on the Uyghur issue was held for the first time since the establishment of the CECC in 2001. In August 2018, CECC members sent a letter⁷ to the Secretaries of State and the Treasury, calling for the imposition of sanctions on XUAR Communist Party Secretary Chen Quanguo and others. The letter was signed by 17 bipartisan members of the House

² "Remarks by Vice President Pence at Ministerial To Advance Religious Freedom," July 26, 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-vice-president-pence-ministerial-advance-religious-freedom/>

³ "Remarks by Vice President Pence on the Administration's Policy Toward China," October 4, 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-vice-president-pence-administrations-policy-toward-china/>

⁴ "Testimony of Deputy Assistant Secretary Scott Busby," Senate Foreign Relations Committee Subcommittee on East Asia, The Pacific, And International Cybersecurity Policy, December 4, 2018, https://www.foreign.senate.gov/imo/media/doc/120418_Busby_Testimony.pdf

⁵ "Chairs Raise Alarm About Deteriorating Human Rights Situation in Xinjiang," CECC, January 8, 2018, <https://www.cecc.gov/media-center/press-releases/chairs-raise-alarm-about-deteriorating-human-rights-situation-in>

⁶ Adrian Zenz, "New Evidence for China's Political Re-Education Campaign in Xinjiang," Jamestown Foundation, May 15, 2018, <https://jamestown.org/program/evidence-for-chinas-political-re-education-campaign-in-xinjiang/>

⁷ "Chairs Lead Bipartisan Letter Urging Administration to Sanction Chinese Officials Complicit in Xinjiang Abuses," August 29, 2018, <https://www.cecc.gov/media-center/press-releases/chairs-lead-bipartisan-letter-urging-administration-to-sanction-chinese>

and Senate, including CECC members Senator Rubio and Senator Bob Menendez (Democrat, New Jersey).

In the CECC annual report released in October 2018,⁸ the issue of incarceration, which was not mentioned in the previous year's edition, was placed as the top theme related to the Uyghur issue, and the previously mentioned report by Zenz was also introduced. Thus, it was in the first half of 2018 that the Uyghur issue, particularly related to incarceration, became an issue in Washington, and the CECC played an important role.

3. Implications for Japanese Companies

The author would like to examine the possibility that the sanctions imposed by the U.S. related to the Uyghur-issue will affect third countries, especially Japanese companies. What are the implications for Japanese companies regarding the sanctions imposed by the U.S. Customs and Border Protection (CBP) under the Department of Homeland Security, and the Bureau of Industry and Security (BIS), U.S. Department of Commerce?

(1) Injunction of imports related to forced labor

CBP issued its first Uyghur-related Withhold Release Order (WRO) in September 2019. After the presidential election, the scope of the WROs expanded rapidly, and, in November 2020, cotton and cotton products produced by the Xinjiang Production and Construction Corps (XPCC) and its subordinate organizations began to be subject to WROs. In January 2021, all cotton and tomatoes produced in Xinjiang Uygur Autonomous Region became subject to the WRO.

In a related development involving Japanese companies, on January 5, 2021, imports of UNIQLO CO., LTD. products were blocked at the Port of Los Angeles, which was revealed in May 2021.⁹ The basis for the injunction was a WRO covering the XPCC in November 2020. A WRO is issued under Section 307 of the Tariff Act, which prohibits importing any products that were manufactured by forced labor. In response, UNIQLO announced its position that no forced labor had been found in the production process.¹⁰ Also in August 2020, CBP collected \$575,000 from Pure Circle U.S.A. This is a case of collecting a fine for forced labor,¹¹ and is an indication that more attention should be paid to the issue.

Furthermore, in July 2021, the Biden administration released the Xinjiang Supply Chain Business Advisory. The document was an updated version of the one released by the Trump administration in

⁸ "IV. Xinjiang: Congressional-Executive Commission on China Annual Report 2018," October 10, 2018, https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/2018AR_Xinjiang_1.pdf

⁹ "HQ H318182," Customs Mobile, May 10, 2021,

https://www.customsmobile.com/rulings/docview?doc_id=HQ%20H318182&highlight=uniqlo

¹⁰ UNIQLO CO., LTD. "Statement Regarding Reports of UNIQLO Product Imports Blocked by U.S. Customs," May 25, 2021.

<https://www.fastretailing.com/eng/sustainability/news/2105251100.html>

¹¹ CBP has the authority under the Tariff Act to impose civil penalties against importers who violate the law.

July 2020; from now on, Japanese companies will be required to further scrutinize whether forced labor is part of their supply chain.

In June 2021, a WRO was issued to Chinese companies that manufacture raw materials for solar panels. Xinjiang Uyghur Autonomous Region accounts for about 45% of the global share of polycrystalline silicon, a key component of solar panels.¹² This poses a major problem for Japan, which depends on China for nearly 80% of its solar panel imports.¹³ Under the Biden administration, forced labor in the solar sector has become a new issue, and it is necessary to continue to monitor the scope of industries subject to sanctions.

(2) De facto embargo due to human rights issues

BIS made its first Uyghur-related additions to the Entity List (EL) in October 2019. This was the first time that human rights issues, not just Uyghur, were cited as a reason for inclusion;¹⁴ however, additions to the EL due to Uyghur issues have continued under the Biden administration.

Prior permission is required for export, re-export, and domestic transfer of the listed items. In practice, however, many of the listed items are subject to presumption of denial, and their inclusion on the EL means a de facto export ban, effectively cutting off the path to business for those items. Thus far, companies dealing in surveillance cameras, facial recognition, voice recognition, and genetic analysis have been subject to the listing. It is likely that this reflects Washington's awareness of the issue of Beijing's activity in building a surveillance state, and Chinese companies related to surveillance technology may continue to be listed in the future. In addition to the Uyghur issue, Huawei Technologies Co., Ltd. is also included on the list. It is essential for companies to check if their business partners are listed.

The items that are involved or likely to be involved in activities that are contrary to the interests of the U.S. in terms of national security or foreign policy are subject to the EL. However, as already mentioned, the scope of the EL has been expanding in recent years to include human rights issues, and it is necessary to pay attention to the possibility that new areas will be subject to the EL in the future.

¹² Laura Murphy and Nyrola Elimä, "In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains," Sheffield Hallam University Helena Kennedy Centre for International Justice, May 14, 2021, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>

¹³ Baba Miki, "Suspicion of forced labor in Chinese-made panels—Shadow cast by Xinjiang Uyghur issue on solar power generation," (in Japanese) *Nikkei ESG*, July 5, 2021, <https://project.nikkeibp.co.jp/ESG/atcl/column/00005/070100095/>

¹⁴ Amy K. Lehr, "The United States Blacklisted 28 Chinese Entities over Repression of Muslim Minorities in Xinjiang: What Does This Mean for Human Rights?" Center for Strategic and International Studies, October 11, 2019, <https://www.csis.org/analysis/united-states-blacklisted-28-chinese-entities-over-repression-muslim-minorities-xinjiang>

References

Table 1: Authority, means, and basis of Uyghur-related sanctions

Authority	Means	Governing laws and regulations
U.S. Department of State	Visa restrictions Entry ban	Section 212 of the Immigration and Nationality Act, etc.
Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury	Asset freeze	Global Magnitsky Act
Bureau of Industry and Security (BIS), U.S. Department of Commerce	Entity List (EL)	Export Administration Regulations (EAR)
U.S. Customs and Border Protection (CBP), Department of Homeland Security	Withhold Release Order (WRO)	Tariff Act

Table 2: Visa restrictions and entry bans by the U.S. Department of State

October 2019	Visa restrictions	Administration official(s) (specific names not disclosed)	Section 212 of the Immigration and Nationality Act
July 2020	Entry bans	Three administration officials (Chen Quanguo, etc.) + close relatives	Section 7031 of the Department of State, Foreign Operations and Related Appropriations Act 2020
July 2020	Visa restrictions	Employees of Chinese companies such as Huawei; Human rights violations, not just the Uyghur issue	Section 212 of the Immigration and Nationality Act
December 2020	Visa restrictions	Administration official(s) (specific names not disclosed);	Section 212 of the Immigration and Nationality Act

		Human rights violations, not just the Uyghur issue	
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Table 3: Sanctions by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury

July 2020 (1)	1 group 4 individuals	Chen Quanguo (XUAR Party Secretary) Public security administrations and officials
July 2020 (2)	1 group 2 individuals	Xinjiang Production and Construction Corps (XPCC) and its executives
March 2021 (First issuance under Biden administration)	2 individuals	XPCC executives, public security officers

The UK, Canada, and the EU
cooperated in launch of sanctions.

Table 4: Listing on the Entity List (EL) by the Bureau of Industry and Security (BIS), U.S. Department of Commerce

October 2019	28 groups	Xinjiang Uygur Autonomous Region Public Security Bureau 19 subordinate organizations 8 companies incl. HIKVISION, Dahua, SenseTime, Megvii, and iFlytek
May 2020	9 groups	Institute of Forensic Science, Ministry of Public Security of China, etc. CloudWalk Technology, SenseNets, etc.
July 2020	11 groups	Subsidiary of BGI OFILM, etc.
June 2021 (First issuance under Biden administration)	5 groups	XPCC Solar-related 4 companies (Hoshine Silicon Industry, etc.)
July 2021	14 groups	Information technology related companies

Some call it the “Huawei
of genomics.”

Table 5: Status of Withhold Release Orders (WROs) issued by Customs and Border Protection (CBP)

1990s	7 cases in 1991; 13 in 1992; 4 in 1993 All of the above subjects are Chinese. Congressional pressure was behind the use of the system.
2001-2015	None
After 2016	Re-issue

Table 6: Uyghur-related Withhold Release Orders (WROs)

September 2019	Hetian Taida Apparel
May 2020	Hetian Haolin Hair Accessories
June 2020	Lop County Meixin Hair Product
August-September 2020	6 groups incl. Lop County No. 4 Vocational Skills Education and Training Center
Rapid acceleration after presidential election	
November 2020	Cotton and cotton products produced by the Xinjiang Production and Construction Corps (XPCC) and its subordinate organizations
January 2021	All cotton and tomatoes produced in Xinjiang Uygur Autonomous Region
June 2021 (First issuance under Biden administration)	Hoschine Silicon Industry