

# President Trump Signs Sanctions Law to Address Human Rights Violations in China

June 18, 2020

On June 17, 2020, President Trump signed into law the **Uyghur Human Rights Policy Act of 2020** (the “**Act**”). The Act, which was passed by substantial bipartisan majorities in the House and in the Senate, requires the President to submit to Congress within 180 days a report identifying persons responsible for human rights abuses in Xinjiang, and to impose blocking and visa sanctions against the persons identified in the report. Originally introduced in 2019, the Act is intended to respond to human rights violations, including the mass surveillance and internment of Uyghurs and other predominately Muslim ethnic minorities in the Xinjiang Uyghur Autonomous Region of China (the “**XUAR**”) and elsewhere in China.

The signing of the Act was announced through a terse **written statement** from the President, with little additional fanfare. No sanctions under the Act were immediately announced, and the President’s statement gave no hint as to when such sanctions might be forthcoming, or concerning potential additional sanctions related to China’s actions in Hong Kong that the President indicated were under consideration in a May 30 **press briefing**.

## Key Provisions of the Act

### Blocking and Visa Sanctions

Section 6 of the Act requires the President to, within 180 days, submit to the appropriate committees a report identifying foreign persons, including Chinese government officials, he determines to be responsible for certain enumerated human rights abuses in the XUAR (the “**China Sanctions Report**”). The first China Sanctions Report must be made to Congress on or before December 14, 2020, with additional reports required no less than annually after the first report.

In addition to the China Sanctions Report, Section 6 requires the President to block and prohibit transactions in property and interests in property of a foreign person identified in the China Sanctions Report if such property and interests in property:

- are in the United States;
- come within the United States; or
- come within the possession or control of a U.S. Person.

Finally, the Act imposes visa sanctions, which make the persons identified in the China Sanctions Report ineligible for visas, admission or parole, or otherwise revokes visas and entry documentation for such persons. The revocation of visas will take effect immediately and cancel any other valid visa or entry documentation that is in a person’s possession.

Although the sanctions provided for in the Act are styled as mandatory, they apply only to the extent that the President makes the determinations required by the Act, meaning that the Executive Branch will retain broad discretion over the implementation of the sanctions.

### Waiver and Termination of, and Exceptions to, Blocking and Visa Sanctions

Section 6 of the Act also allows the President to waive the application of sanctions with respect to persons identified in the China Sanctions Report if the President determines and certifies to Congress that such waiver is in the national interest of the United States.

Further, the Act provides three exceptions to the sanctions:

- **Exception for Intelligence Activities:** Sanctions will not apply to any activity subject to the reporting requirements under Title 5 of the National Security Act or authorized intelligence activities.
- **Exception to Comply with International Obligations and For Law Enforcement Activities:** Sanctions will not apply to an alien if admitting or paroling the alien into the U.S. is necessary to:
  - permit the U.S. to comply with Agreement regarding the Headquarters of the U.N.;<sup>1</sup> or
  - to carry out or assist law enforcement activity in the United States.
- **Exception Relating to the Importation of Goods:** The Act does not require or otherwise give the President authority to impose sanctions on the importation of goods.
  - Goods include any article, natural or manmade substance, material, supply, or manufactured project, including inspection and test equipment, and excluding technical data.

If the President determines to impose sanctions under the Act, the last of these exceptions would likely be rendered inapplicable through the issuance of an implementing Executive order that would also invoke the authority of the International Emergency Economic Powers Act to prohibit import transactions involving sanctioned persons.

With respect to the termination of sanctions imposed under the Act, the President may terminate the application of such sanctions with respect to a person if the President determines and reports to the appropriate Congressional committees, within 15 days before the termination takes effect, that:

- information exists that the person did not engage in the activity for which sanctions were imposed;
- the person has been prosecuted appropriately for the activity for which sanctions were imposed;
- the person has credibly demonstrated significant change in behavior, has been penalized for the activity for which sanctions were imposed, and has credibly committed not to engage in human rights violations; or
- the termination of the sanctions is in the national security interests of the United States.

Finally, the Act includes a sunset provision, which provides that any sanctions imposed under Section 6 will terminate five years after the enactment of the Act.

## Additional Considerations

In addition to imposing blocking and visa sanctions, the Act includes a number of non-sanctions related guidance. First, Section 4 of the Act provides non-binding recommendations for additional actions the Executive branch and U.S. companies should take in response to the concerns noted in the Act, including additional sanctions and international coordination. Section 5 of the Act amends the Foreign Relations Authorization Act to explicitly link U.S. policy toward the People's Republic of China to the situation in XUAR. Finally, sections 7, 8 and 9 of the Act require the Secretary of State, the Director of the Federal Bureau of Investigation ("FBI"), and the Director of National Intelligence to provide reports to Congress related to the concerns identified in the Act.

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<sup>1</sup> Agreement regarding the Headquarters of the United Nations signed at Lake Success, on 26 June 1947, and entered into force on 21 November 1947, <https://treaties.un.org/doc/Publication/UNTS/Volume%2011/volume-11-I-147-English.pdf>.

## Looking Forward

It is not clear when, or if, the administration will actually impose sanctions under the Act, especially since the initial China Sanctions Report is not due until after the 2020 presidential election. In the meantime, the Act remains a foreign policy tool that can be threatened, even if not used, in bilateral negotiations with China.

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