Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

US May Restrict Facial Scanning, Surveillance Gear Exports

By **Alex Lawson**

Law360 (July 16, 2020, 4:16 PM EDT) -- The Trump administration said Thursday it is considering new export restrictions on facial recognition software and other biometric surveillance equipment, citing China's use of such items in its detention and monitoring of Muslim minority groups.

The Bureau of Industry and Security said it was reexamining its rules for those goods as part of a "periodic review" of its export controls, but also specifically called out China's use of facial recognition gear to aid the "repression, mass arbitrary detention and high technology surveillance" of Muslims in its Xinjiang region.

"Reporters visiting the region found surveillance cameras installed approximately every hundred meters in several cities, as well as facial recognition checkpoints at areas including gas stations, shopping centers, and mosque entrances," BIS said in a Federal Register notice slated to be published Friday.

The U.S. and China have butted heads in recent weeks, with the Trump administration **sanctioning** a number of Chinese government officials last week over their alleged participation in human rights abuses in Xinjiang.

While the notice is facially neutral, Orrick Herrington & Sutcliffe LLP partner Harry Clark said China was "unquestionably" at the center of the announcement.

"There has been acute criticism of China with respect to its policies and practices regarding ethnic minorities," Clark told Law360. "The widespread view within the U.S. government is if unfortunately there is going to be oppressive activity, we need to be darn sure it's not through deployment of U.S.-origin equipment and technology."

BIS, housed within the U.S. Department of Commerce, has jurisdiction over so-called dual use export controls, which cover goods with both civilian and military applications. Those items often require an export license from the government, depending on the destination and ultimate use of the item.

The agency is asking the public to comment as it considers new restrictions on a raft of items that are "controlled for crime control and detection" reasons. Along with the facial recognition gear, BIS is asking for comments on exports of visual disruption lasers known as "dazzlers," fingerprint readers, police helmets and voice identification systems, among other items.

BIS made a point to single out high-resolution cameras used in facial recognition that currently do not require a license in most instances. As it considers new restrictions, the agency said interested parties should provide input on factors like resolution and frame rate, as well as criteria that would help differentiate between uses by police and those by commercial entities.

The agency is also considering expanding controls on exports of biometric scanning equipment. Currently, the government only requires a license to export fingerprint and voice print technology, according to the notice.

Rather than conduct a "piecemeal review" of all varieties of biometric scanning, BIS said it was considering imposing across-the-board controls on "iris, vein, earlobe, gait, heartbeat" and other scanning systems, but only in instances where they are used to identify a person without their cooperation.

"BIS seeks input on whether this approach would be better than targeting individual modalities, and if so, what specific technical criteria would be appropriate, and what impact controls would have upon U.S. industry and competitiveness," the agency said.

Crowell & Moring LLP partner Maria Alejandra del-Cerro said the move appears to be "in keeping" with the administration's latest China moves and added that companies should expect restrictions to tighten.

"[It] looks like BIS has spent some time looking into specific aspects of the technology and export controls around those technologies seem likely if the various agencies come to agreement on technical parameters," she told Law360.

BIS did not immediately respond to a request for comment.

--Editing by Daniel King.