

On September 24, 2024, China's Ministry of Commerce (MOFCOM) [announced](#) that the Working Mechanism of the Unreliable Entities List (the "Working Mechanism") had initiated an investigation of the PVH Group, a global clothing company and owner of brands such as Tommy Hilfinger, Calvin Klein, Warner's, Olga and True & Co.

The action was taken pursuant to the Provisions on the Unreliable Entities List (UEL), a relatively new law in China that allows the Chinese government to impose countersanctions against foreign entities, including companies, organizations or individuals. The Working Mechanism indicated that PVH Group is being investigated for suspected violation of normal market transaction principles, suspension of normal transactions with Chinese enterprises, organizations or individuals, and adoption of discriminatory measures with respect to products from the Xinjiang Uygur Autonomous Region.

## Background on the UEL System

China's UEL system was established by MOFCOM on September 19, 2020, with the publication of [MOFCOM Order No. 4 on Provisions on the Unreliable Entities List](#) (the "Regulation"). The "Working Mechanism" refers to various government agencies that work together to administer the Regulation and maintain the UEL, with the Working Mechanism seated in the MOFCOM, akin to the Forced Labor Enforcement Task Force (FLETF) which is seated in the US Department of Homeland Security (DHS).

The Regulation establishes as its purpose "safeguarding national sovereignty, security and development interests, maintaining fair and free international economic and trade order, protecting the legitimate rights and interests of enterprises, other organizations and individuals of China." The Regulation is unabashedly a countersanction that allows the Working Mechanism to place on the UEL any foreign entity (or individual) that it determines:

- Endangers the national sovereignty, security, or development interests of China
- Suspends normal transactions with, or adopts discriminatory measures against, a Chinese enterprise, organization or individual, in violation of normal market transaction principles and causing serious damage to the legitimate rights or interests of such Chinese enterprise, organization or individual

If placed on the UEL, a foreign entity may be subject to, among other things:

- Restrictions on, or prohibition from, engaging in import or export activities related to China
- Restrictions on, or prohibition from, investing in China
- Restrictions on, or denial of, entry into China by the relevant personnel or transportation vehicles of such foreign entity
- Restrictions on, or cancellation of, any work or stay permit in China of the relevant personnel of such foreign entity, and/or
- Monetary fines.

The Working Mechanism might specify a rectification period, during which any entity placed on the UEL is permitted to rectify its conduct. The restrictions and penalties will be suspended during the rectification period. The Working Mechanism may, on its own initiative or upon the request of a UEL-listed foreign entity, decide to remove any entity from the UEL based on actual circumstances. Where a rectification period is designated, if the entity rectifies its violation and takes actions to eliminate the impact arising therefrom, the Working Mechanism will remove it from the UEL.

## Observations

To date, use of the UEL has been very limited. The Chinese government named only a few foreign defense contractors to the list in 2023 and 2024, allegedly for arms sales to Taiwan. However, the practical significance of those previous UEL listings was very limited, as US defense contractors and certain technology companies are largely precluded from doing business in China by US prohibitions on exports of defense articles and services to that country. Some of those companies named to the UEL list had previously been the target of Chinese government sanctions or export control actions. This new investigation and potential listing of PVH reflects a new willingness by China to use the UEL to target foreign entities over heightening diplomatic and commercial disputes, such as the boycotting of Xinjiang-related products effectuated pursuant to the Uyghur Forced Labor Prevention Act (UFLPA).

Notably, the Regulation allows the Working Mechanism to place a foreign entity on the UEL without any investigation in situations where the facts are considered to be clear – and in fact, the foreign entities presently included on the UEL were listed without any formal investigation.

The UEL structure has striking parallels to the UFLPA, where companies are placed on the UFLPA Entity List with only reasonable suspicion and no formal investigation, and CBP often detains imported goods suspected to be made in violation of the UFLPA using its “rebuttable presumption” standard.

The investigation of PVH Group is the first formal or official investigation under the UEL and will provide insight into how the Working Mechanism may handle such investigations in the future. According to the [announcement](#) of the Working Mechanism:

- PVH Group is required to submit documents and evidence within 30 days demonstrating whether it adopted any discriminatory measure against Xinjiang-related products over the last three years
- PVH Group is permitted to present its defense during the investigation
- The Working Mechanism may, among other investigative measures, interview the relevant personnel and review or reproduce relevant documents and materials with which PVH Group and relevant companies are required to cooperate; and
- Any entity or individual may provide any information and evidence related to the subject matter of the investigation to the Working Mechanism

Notably, an investigation under the UEL Regulation is not subject to any time limit. According to the Regulation, the Working Mechanism may suspend or terminate such investigations based on the “actual circumstances.” If the Working Mechanism decides to place any entity on the UEL, the decision will be published.

In parallel, MOFCOM has commenced an anti-discriminatory investigation against certain restrictive measures adopted by Canada relating to Chinese products, including electric vehicles, and steel and aluminum products. According to MOFCOM, they obtained preliminary evidence indicating that, among other things, the extra tariffs imposed by Canada on electric vehicles, and steel and aluminum products imported from China constitute discriminatory trade practices under China’s foreign trade law. This investigation was initiated on September 26, 2024, and is expected to continue for three months and may be extended under special circumstances.

## Conclusion

In an environment of dramatically heightened trade friction between China and a number of its western trading partners, China is clearly demonstrating its willingness to take countermeasures or impose countersanctions against foreign entities viewed as taking actions that infringe on China’s “national sovereignty, security or development interests” or that “take discriminatory actions against Chinese enterprises, organizations or that ‘violate normal market transaction principles’ in dealing with Chinese enterprises.” The UEL system is based on extremely broad language that could capture any number of foreign companies in actions retaliating against or responding to US restrictions. This action against PVH may only be the start of a series of Chinese countersanctions against, or responses to, companies with significant purchasing and sourcing operations in China, export sales to China or significant investment and manufacturing operations in that country where they satisfy the foregoing criteria.

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