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Evaluating the Biden Administration's Business and Human Rights Agenda

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President Biden's announcement not to seek reelection affords a useful point of reflection on the business and human rights achievements of his administration. At the time of his election four years ago, the expectations that the administration would aggressively seek to advance business and human rights in the U.S. and globally were high. Many assumed the administration would pursue enhanced measures toward China, introduce strong initiatives regarding climate change, make ample use of sanctions, seek to address human trafficking and promote worker's rights, and actively engage with other governments to address pertinent business and human rights challenges around the world. However, given the makeup of Congress and high levels of partisanship, many were appropriately skeptical of the administration's ability to drive major human rights legislation akin to the flurry of laws that now have been adopted in the European Union that mandate human rights due diligence, sustainability reporting, and other measures.

While six months still remain for the Biden White House, the administration's business and human rights agenda has largely met those expectations. On a high level, there were a few, but limited, major human rights legislative accomplishments, certainly nothing like we have seen in the EU. At the same time, the register of Executive Agency and regulatory achievements is thorough and detailed. The administration has pursued a whole-of-government approach, with numerous government agencies and interagency task forces taking action across a wide variety of subjects and issues. These have included devoting significant resources to enforcing existing laws, an extensive use of executive orders, numerous tools and guidance to support responsible business conduct, and marshaling the support of other democracies in support of common goals. The list below reflects some of the most visible initiatives on a thematic level but in truth reflects only a fraction of the specific steps that the administration has taken since the January 20, 2021 inauguration.

- **UFLPA:** In December 2021, the President signed into law the Uyghur Forced Labor Prevention Act ("UFLPA"). The bipartisan law—initially proposed during the Trump Administration—creates a presumptive prohibition against goods being imported into the United States if they are produced wholly or in part in the Xinjiang Uyghur Autonomous Region of China, through labor pairing or poverty alleviation programs in China, or by companies on an Entity List that have been identified by the government as being connected to forced labor in Xinjiang. Since going into effect in June 2022, more than 9000 shipments, valued at some \$3.5 billion, have been detained. While shipments to the U.S. from Xinjiang have essentially stopped, imports from China overall have plummeted. Worth noting is that outside of the UFLPA there have been three

Withhold Release Orders under Section 307 of the Tariff Act involving China (and five involving other countries), and 11 bans on investments in technologies associated with China.

- **Climate:** Among the most significant administration accomplishments over the past four years have surrounded climate change and energy transition. President Biden ran for office on an ambitious climate action platform. During his four years in office he signed into law the [Inflation Reduction Act](#): comprehensive climate change legislation that invests hundreds of billions of dollars in clean energy, electric vehicles, environmental justice, and other areas; and [The Infrastructure Investment and Jobs Act](#): another signature accomplishment, which also contains expansive climate-related steps, including to remove and permanently sequester carbon dioxide through natural and technological means, invest in clean energy infrastructure, and fund new clean energy programs. Other key achievements include: setting a target to cut emissions by at least 50% by 2030; tackling super pollutants like hydrofluorocarbons and methane through regulation, a national [Methane Action Plan](#), and other steps; pursuing measures to reduce or eliminate emissions for passenger vehicles, trucks, and buses; ramping up electricity standards and setting appliance and equipment standards to replace fossil fuels with electricity; and setting emission performance standards for cement, steel, and plastics. Not all of the Administration's efforts were successful, of course. The Securities and Exchange Commission's climate disclosure rule, for instance, issued in March 2024, was almost immediately stayed pending the bevy of litigation that the rule engendered.
- **Workers' Rights:** Another active focus area has surrounded the rights of workers, largely accomplished through a suite of Executive Orders. Among the most significant is an expansive November 2023 [Memorandum](#) to the heads of all executive branch agencies, ordering a wide range of actions aimed at strengthening labor protections for workers around the world, essentially outlining a whole-of-government approach to protecting workers' rights globally and upholding internationally-recognized labor standards. The memorandum reiterates the importance of addressing global forced labor concerns, as well as a broader set of labor-related rights, including freedom of association and the right to collective bargaining, child labor, discrimination, wage and hour protections, and safe working conditions. Another significant Executive [Order](#), from March 2024, creates labor-management forums at federal agencies, requiring agencies to work with the unions to create plans for implementation for submission to the Office of Personnel Management. The order also holds agencies accountable for implementing previous directives, such as Executive Order 14003, directing agencies to bargain over so-called "permissive subjects" (e.g., the "numbers, types and grades" of employees assigned and over the "methods, means and technology" of performing the work). Other orders include requiring federal contractors and subcontractors to [inform employees](#) of their rights under the National Labor Relations Act, [increasing minimum wage](#) for contract workers, [creating a task force](#) composed of more than 20 federal agency heads to encourage labor organizing, and [mandating union agreements](#) for federal construction projects. There also has been close attention to domestic child labor concerns, as the Department of Labor has reported a substantial increase in illegal child labor. There has been an influx of migrant children from Latin America fleeing violence and poverty, often without a parent in the U.S. The Labor Department has some 800 open investigations at last count. In 2023 alone, Labor closed 955 cases involving child labor, involving 5,800 children illegally employed. The Administration has created an interagency task force to combat child labor exploitation, which has included education, training, videos, and tools across a range of agencies, such as Labor, State, Health and Human Services, Education, Homeland Security, Agriculture, and Justice.

- **Human Trafficking:** Addressing human trafficking has been another particular focus of the administration. Early in his tenure, the President signed the [Countering Human Trafficking Act of 2021](#), making permanent the Center for *Countering Human Trafficking*, which had been a pilot program within the Department of Homeland Security, and is charged with overseeing efforts to eradicate trafficking. In 2021, the White House adopted an expansive [National Action Plan to Combat Human Trafficking](#). Further, the 20 agencies that participate in the [Interagency Task Force to Monitor and Combat Trafficking in Persons](#), created long before the President's election, have pursued robust measures to prevent trafficking, protect victims, and prosecute perpetrators. These included efforts from Health and Human Services to publish a [National Human Trafficking Prevention Framework](#); the State Department to launch training on how to engage with survivors of human trafficking; the Department of Agriculture to increase standards and protections; Education, Defense, and Commerce to host trainings and webinars; the Justice Department to prosecute crimes and lead the Interagency Forced Labor Initiative Steering Group and a Human Trafficking Strategic Initiative and adopt a [Human Trafficking Task Force e-Guide](#); and Treasury to sanction human traffickers. The U.S. Department of Housing and Urban Development also recently released a [report](#) assessing the availability and accessibility of housing and services for trafficking survivors that face housing instability, and the Administration recently [offered](#) \$8 million in rewards for information on human trafficking cartels in Colombia and Panama.
- **Weaponry:** In 2023, the Department of Defense [amended](#) DoD Directive 3000.09 to include greater human rights due diligence associated with autonomous weapons systems. Shortly thereafter, the State Department issued a [Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy](#) that echoed the Directive's primary themes and called on other States to take similar measures regarding their defense industries. These corresponded to [Executive Order on the U.S. Conventional Arms Transfer Policy](#), NSM-18, emphasizing the importance of human rights and international humanitarian law in a variety of ways: (1) featuring human rights prominently in the list of considerations for decisions on potential arms transfers, encompassing a broad range of potential harms, including the possibility that transferred products will contribute to social and political factors that lead to instability and abuses, and taking an expansive view of goods to which it should be applied (such as technologies); (2) including a distinct section on human rights, underscoring its priority as a U.S. government objective and making clear that human rights and national security are directly tied; (3) lowering the burden for withholding approval for arms transfers, stating that approvals will be withheld where it is more likely than not that the goods will be used to commit or aggravate the risks of serious human rights violations (reduced from an "actual knowledge" standard) and extending it to facilitating and enhancing risks of abuses; and (4) instructing decision makers to consider due diligence about the recipient, and noting that the U.S. will monitor the use of arms transfers.
- **Commerce & Sanctions:** In March 2023, the Department of Commerce Bureau of Industry and Security (BIS) [adopted three measures](#): (1) it issued guidance, in the form of [FAQs](#), that expressly directs companies to conduct due diligence on human rights in connection with export license applications for technology and dual-use transfers, affirmatively stating that human rights concerns will be a factor in decisions; (2) it published a [final rule](#) (15 CFR 744) amending the Export Administration Regulations to "confirm that the foreign policy interest of protecting human rights worldwide is a basis for adding entities to the Entity List"; and (3) along with the State Department, it unveiled a new voluntary [Code of Conduct](#) among the U.S. and 23 other subscribing countries outlining the commitment of the U.S. to consider human rights when

reviewing potential export applications of dual-use goods, software, and technologies. Dozens of companies or agencies also have been added to the BIS Entity List for human rights risks, including from China, Burma, and elsewhere. Similarly, over the last four years, the administration has made extensive use of Global Magnitsky sanctions, targeting those engaged in serious human rights abuse, corrupt actors, and their enablers, designating more than 450 people, nearly tripling the total number.

- **AI & Technology:** Anticipating the human rights challenges of global technology, the Administration announced a five principle [Blueprint for an AI Bill of Rights](#), including safe and effective systems, algorithmic discrimination protections, data privacy, notice and explanation, and opt-out provisions. The President also issued an [executive order](#) establishing new standards for AI safety and security, including privacy protections, as well as equity and civil rights, established [principles](#) for applying AI in the workplace, and rules regarding how government agencies may use AI consistent with a respect for rights. The Department of Labor issued new [principles](#) for AI and worker well-being, focusing on developers and employers, and how AI is applied in the workplace. The State Department, likewise, issued a broad [Risk Management Profile for AI and Human Rights](#), a practical guide for organizations to design, develop, and deploy AI in a manner consistent with human rights, as well as a [Democratic Roadmap](#) to address information manipulation while avoiding undermining freedom of expression. The administration also issued [executive orders](#) prohibiting the U.S. government from using commercial spyware that poses national security risks, drove a [coalition of governments](#) in taking steps to counter the proliferation and misuse of commercial spyware, helped spearhead an effort to create [Guiding Principles](#) on Government Use of Surveillance technologies that has been adopted by 45 countries, and took a variety of actions against individuals and entities associated with spyware technologies, including visa bans, export controls, and sanctions.
- **NAP:** After an extensive multi-year consultation, in March 2024, the government issued its second [National Action Plan on Responsible Business Conduct](#), a lengthy and specific document reflecting the government's commitments to strengthen and improve respect for human rights. The NAP emphasizes human rights due diligence, stating the government's expectation that businesses conduct human rights due diligence throughout their value chains, consistent with the UN Guiding Principles on Business and Human Rights, and ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and heightened due diligence in conflict-affected contexts. It includes four areas of focus for the government to promote and incentivize responsible business conduct—establishing a [Federal Advisory Committee](#) on Responsible Business Conduct, strengthening respect for human rights in federal procurement processes, enhancing access to remedy, and providing business resources—with specific forward-looking commitments from 14 federal agencies plus other interagency working groups. In particular, it looks to strengthen the U.S. National Contact Point (NCP) for the OECD Guidelines on Multinational Enterprises through a new advisory body, supplementing the pool of mediators, changing procedures to encourage routine follow-up on cases after conclusion, improving online outreach, developing a policy on reprisals, and otherwise considering options to strengthen the NCP.
- **Tools:** The government has adopted an expansive variety of guidances and tools to assist businesses and sectors in meeting their responsibilities to respect human rights, and government agencies in protecting human rights. For instance, the Department of Labor adopted [Comply Chain](#), a detailed tool to help companies mitigate forced and child labor risks through an

eight-step compliance system. The Department of State recently issued its [Guidance for Online Platforms](#) in protecting human rights defenders, a thorough and practical 10-step guide for online platforms, with a listing of tools, reports, and resources to protect human rights defenders. In a similar vein, State also issued [Guidelines for U.S. Diplomatic Missions](#) in supporting civil society and human rights defenders that seek to hold governments accountable for human rights abuses, helping protect human rights defenders against harassment, abuse, and other attacks.

- Geography-Specific Guidances:** Multiple departments and agencies have teamed up to release and/or update business advisories, highlighting human rights risks connected to businesses and individuals in specific geographies. The ultimate objective of these guidances is to remind companies to conduct appropriate due diligence, or face enhanced reputational, financial, and legal risks, including violations of U.S. anti-money laundering laws and sanctions, as well as abetting human rights abuses. These include: an [Advisory](#) (2021) and [Addendum](#) (2023) reflecting “Risks and Considerations for Businesses and Individuals with Exposure” to human rights abuses in Xinjiang; a [Cambodia Business Advisory](#) (2021); a [Hong Kong Business Advisory](#) (2021); a [Burma Business Advisory](#) (2022) and [Supplement](#) (2024); a [Uganda Business Advisory](#) (2023); a [Sudan](#) advisory (2022, updated 2023) and [South Sudan Business Advisory](#) (2023); an [Advisory](#) for Russia (2024); and an [Advisory](#) focusing on the African gold sector (2024). The government also has [recently](#) issued Statements of Concern in relation to mineral supply chains from Rwanda and the Eastern Democratic Republic of the Congo.
- Global Leadership:** The administration also began hosting [summits for democracy](#), a multi-stakeholder forum involving over 100 partner governments, business leaders, civil society, and other organizations to build more resilient democracies. The first summit occurred in December 2021, with two subsequent in March 2023 and 2024. One of the key pillars in each of the summits has been advancing the respect for and protection of human rights; the 2021 summit included the announcement of a [Presidential Initiative for Democratic Renewal](#), a set of policy and foreign assistance initiatives to bolster democracy and defend human rights globally. In conjunction with the summits, which help raise the profile of human rights around the world and connect it to democratic ideals, the U.S. government and other participating governments have announced different human rights initiatives. Central, in the last few years, have been broad [calls to the private sector](#) to advance democracy, encouraging company initiatives regarding the misuse of technology, fighting corruption, protecting civic space, and advancing labor rights. This has led to a wide range of company [commitments](#), including endorsing joint principles, financial pledges to assist human rights defenders, research programs, and responsible recruitment initiatives.

Mindful that six months remains for this administration, its catalog of business and human rights achievements—and the above represents a small sampling of what has been pursued—already is extensive. While the list of groundbreaking legislation cannot match the sweeping laws adopted in the EU, perhaps limiting the durability of the efforts, the administration has pursued initiatives consistent with its stated priorities four years ago, pushing through several major new laws and maximizing the discretionary tools available to it. Of course, the results in November will probably impact greatly what is rolled back and what is expanded. But the ambition and energy of the Biden Administration in advancing business and human rights largely has matched its high hopes four years ago.



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