

# **Making Xinjiang** **sanctions work**

**Addressing forced labour through coercive  
trade and finance measures**

Professor James Cockayne

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ISBN: 978-1-7397070-1-9

ISBN 978-1-7397070-1-9



## Acknowledgments and disclaimers

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The Principal Investigator and the author of this study is Professor James Cockayne. Anonymous personnel at, and organized through, the University of Nottingham Rights Lab provided research, editorial, review, legal, design and formatting and administrative support. Dr Adrian Zenz (Senior Fellow and Director of China Studies) and Kristina Olney (Director of Government Relations), both of the Victims of Communism Memorial Foundation, reviewed the manuscript and provided helpful feedback, which is gratefully acknowledged.

The UK's Foreign Commonwealth and Development Office (FCDO) has provided the University of Nottingham Rights Lab with funding which has been used towards this project. The FCDO did not have editorial control or influence over the contents of the report or associated research outputs. These reports do not necessarily represent the views of the FCDO or Her Majesty's Government.

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# Executive Summary

Can economic sanctions address Xinjiang forced labour?

The Xinjiang Sanctions research project seeks to answer this question.

Drawing on 3 original datasets containing over 12,000 datapoints (available at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info)), confidential interviews and a year of research, this final report presents the most comprehensive analysis of Xinjiang sanctions to date, and offers ideas for strengthening them.

## Xinjiang forced labour

- Forced labour of Uyghur and other minority workers in and from Xinjiang is entwined with Beijing’s strategy for governing Xinjiang Uyghur Autonomous Region (XUAR).
- Two distinct programmes have generated forced labour: 1) the Vocational Skills and Education Training Centres (VSETCs) inside Xinjiang; and 2) the Poverty Alleviation through Labour Transfers programme, which transfers minority workers, sometimes to other provinces.
- Together, these programmes have put between 2 and 2.5 million people at risk of forced labour in recent years.
- The programmes work in tandem to force consent by minority workers, making it impossible for external actors to prove work is voluntary.
- Understanding what drives Chinese Communist Party (CCP) action in Xinjiang, and where forced labour fits into broader governance strategy, is critical to effective sanctions design.
- What drives CCP action in Xinjiang is not a narrowly economic or developmental, nor a purely commercial, logic, but rather a political and strategic one aimed at transforming society in Xinjiang.
- Different due diligence and corporate responses may be needed depending on whether forced labour risk arises from the VSETC programme or the Poverty Alleviation through Labour Transfers programme.
- The political logic underpinning Xinjiang forced labour suggests China will resist external pressure to change these policies.

## The XPCC

- The Xinjiang Production and Construction Corps (XPCC) is a key instrument for the CCP leadership in Beijing to project and maintain power in XUAR.
- Starting out as a settler garrison, it has evolved into both a complex corporate conglomerate – with 13 subsidiaries listed on Chinese stock markets and more than 862,000 holdings in 147 countries – and a ‘state within a state’.

- In 2021, XPCC production was about 25 per cent of XUAR GDP, and XPCC membership represented around 13 per cent of XUAR population.
- The XPCC has been involved in Xinjiang forced labour since close to its inception. The form that forced labour has taken has evolved with the XPCC, as XUAR has moved from a command economy to a market economy environment.
- Initially XPCC forced labour involved forced and corvée labour of around a million people (largely students) in annual harvests. This has subsequently evolved into forced labour in factories and facilities, including participation (as an employer) in the Poverty Alleviation through Labour Transfers programme.
- The XPCC has also been involved in forced labour in detention contexts throughout its existence. It played an important role in constructing and operating VSETCs, and appears to have had a stake in many of the industrial parks where VSETCs have been co-located.
- While XPCC firms are profitable, they receive major budget support (c. 90 per cent) from Beijing. This points to the XPCC serving a strategic function for the CCP in its governance of XUAR, even as the XPCC provides a field for a range of actors to pursue commercial goals.
- Understanding which actors perceive the XPCC in which way will be important for effective sanctions design and execution.
- How actors perceive the XPCC will influence how they understand the costs and benefits of different sanctions measures. For example, XPCC-linked companies controlled by specific XPCC Divisions may respond as much to local interests, such as local Divisional managers and Party officials, as to centralised policy-setting from Beijing.
- Influencing XPCC involvement in forced labour might depend as much on targeting and influencing the incentives of these local officials, as influencing actors in Beijing.
- For that reason, sanctions design may need to consider how Xinjiang sanctions work in different economic sectors and supply-chains.

## Legal considerations

- Effective sanctions strategy depends on clear signalling of the behaviour or policy that must be changed, and what must be done to ‘cure’ the underlying problem.
- A clear legal characterisation of the underlying violations that must be cured can help with both effective signalling and effective targeting. Clarity about what *exactly* is wrong with China’s Xinjiang policies will help send a clear signal about what needs to be cured in order for sanctions to be terminated or lifted.
- Such clarity also helps with identification of the individuals and entities responsible for the conduct in question – and thus clarifies the audience or target for the signal in question.
- Different normative frameworks also open up different remedial avenues, ranging from ILO Committees to the UN Secretary-General and the International Court of Justice.
- In some cases, reliance on certain norms may shut down certain remedial avenues. For example, while many countries argue that China’s Xinjiang policies violate ILO standards on forced labour, it is questionable whether the normative framework around forced labour provides the basis for enforcement through trade measures.
- While the Chinese government argues that its policies in Xinjiang are legal, Xinjiang sanctions are based on the premise that they are illegal.
- Some analysts have concluded that the policies implemented in Xinjiang in recent years have produced crimes against humanity, or even genocide.
- There are strong indications that China’s policies in relation to employment of minority workers in and from Xinjiang are giving rise to violations of China’s commitments under:
  - the 1998 ILO Declaration on Fundamental Principles and Rights at Work
  - the 1926 Slavery Convention
  - the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons (‘Palermo Protocol’)
  - the ILO Discrimination (Employment and Occupation) Convention No. 111 of 1958 (C111)
  - the ILO Employment Policy Convention No. 122 of 1964 (C122)
  - Exactly which violations arise in which cases will require effective fact-finding and due diligence.
- There are signs that both the VSETC and Poverty Alleviation through Labour Transfers programme have generated forced labour, as that concept is defined in relevant ILO Conventions.

- China has committed to ratify and implement these ILO Conventions. Until then, there may be limits on holding China to those standards, especially through trade measures, given fine print in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. China is, however, also a party to the 1926 Slavery Convention, and there is evidence to suggest that the VSETC programme may have violated China’s commitments under that Convention. The VSETC programme may have produced state-backed enslavement like that considered in post-World War II trials, and UN inquiries into North Korea and Eritrea.
- Meanwhile, the Poverty Alleviation through Labour Transfers programme may violate China’s commitment, under Article 5 of the 1926 Slavery Convention, to put an end to the practice of compulsory labour.
- China’s Xinjiang policies may also be in violation of the UN Protocol on Trafficking in Persons, as well as the ILO Discrimination (Employment and Occupation) Convention No. 111 of 1958 (C111), and the ILO Employment Policy Convention No. 122 of 1964 (C122). An ILO Committee of Experts has recently expressed deep concern regarding conformity of China’s labour management policies in Xinjiang with these ILO Conventions.
- Framing Xinjiang sanctions in terms of ‘forced labour’ may, however, constrain responses in a number of ways.
  - First, until China’s ratification of C29 and C105 is complete, its obligations to ensure respect for the international prohibition on forced labour may be limited to an obligation of conduct, not result.
  - Second, framing concerns in terms of ‘forced labour’ (and employment discrimination) may work *against* the claim that states are entitled to take unilateral trade measures. The interpretation of the General Agreement on Tariffs and Trade (GATT) that prevails in trade dispute resolution circles suggests that enforcement of labour standards should be handled through the ILO, not through trade dispute resolution systems.
- However, there may be several good reasons to frame concerns in Xinjiang in terms of slavery, enslavement and human trafficking, and possibly genocide. These include: accessing a larger set of GATT provisions to underpin unilateral trade measures, including Articles XX(a) (public morals) and XXI (security); shifting the focus of remediation from coercion in the workplace to the larger context of state coercion; and accessing additional dispute resolution channels (the UN Secretary-General, ICJ and PCIA, and the Conference of the Parties for the UN TOC Convention).

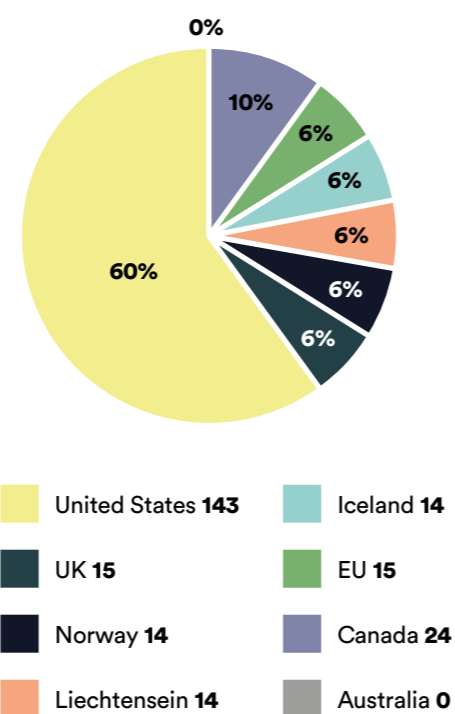
- The exact basis for justifying import bans under international trade law remains unclear. Developing countries may resist the idea that trade barriers can be used to enforce labour standards, since that proposition has been rejected repeatedly in intergovernmental negotiations over the last 75 years.
- There is considerable uncertainty about whether Xinjiang sanctions that restrict trade will survive a challenge through existing trade dispute mechanisms, given how they have been adopted, and the lack of clarity on which GATT provision they are based on.
- Trade measures may therefore be on a firmer footing if they are justified through reference to normative frameworks other than forced labour standards, such as the 1926 Slavery Convention.

### Western sanctions

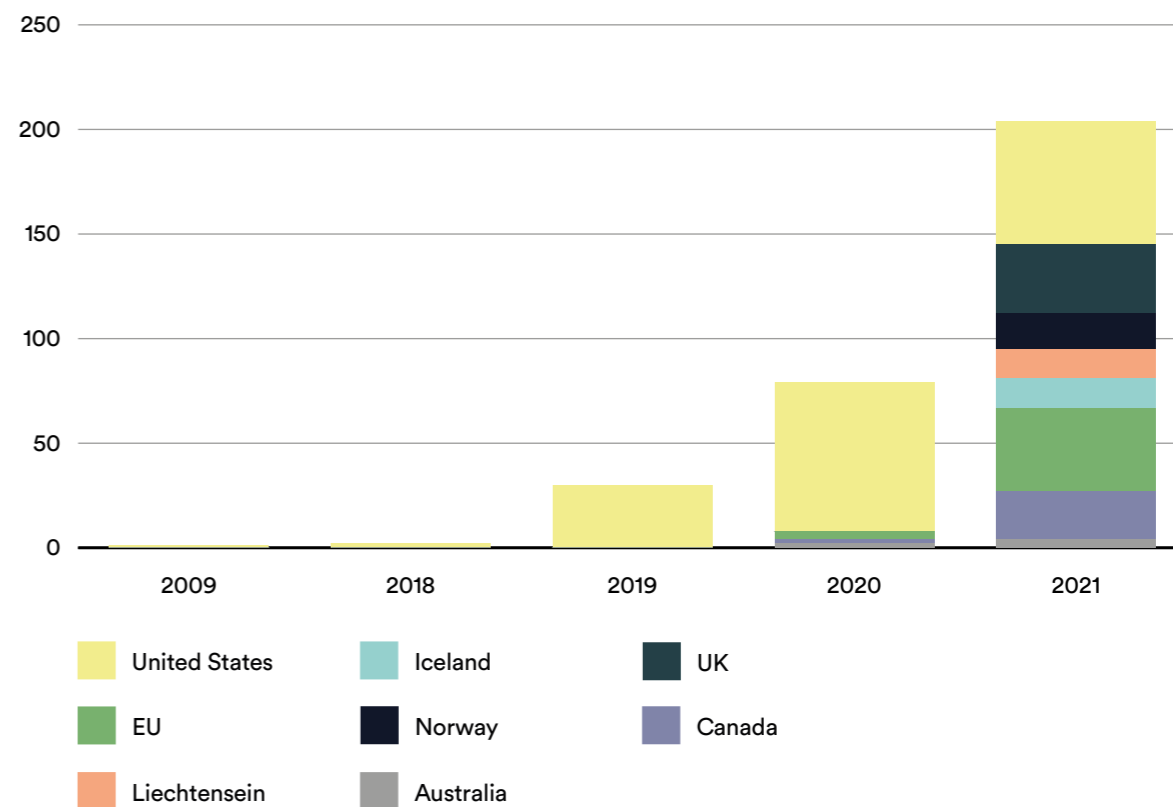
- Understanding what sanctions are in place and how they are operating is critical to analysing their impact and likely success.
- This study and the associated datasets on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info) provide the first compilation, taxonomy and analysis of Xinjiang sanctions.
- The datasets are already in use by several global banks and retailers, which use them to support compliance and policy analysis.
- Governments have adopted 239 measures in response to Xinjiang forced labour (as of June 2022).
- 60 per cent of these have been adopted by the United States. Canada, the UK, the EU and the EU's EFTA partners account for the remainder.
- Import and export controls are the most numerous measures, but are currently focused in the US and Canada. Asset freezes and travel restrictions are being used by a broader set of countries.
- While the US has measures in place against 108 targets, elsewhere the target sets are a small fraction of this size. 36 per cent of all measures target just 4 individuals (senior CCP officials in XUAR) and 3 entities (including the XPCC).
- Import bans are increasingly popular. The US has instituted bans on imports of a range of goods from Xinjiang, and since 21 June 2022 has applied a rebuttable presumption that supply-chains passing through Xinjiang are tainted by forced labour, under the *Uyghur Forced Labor Prevention Act* (UFLPA). Importers will have to provide clear and convincing evidence that the goods they are seeking to import were not made in whole or in part with forced labour if they include components from Xinjiang.
- The value of shipments detained by US authorities in this way has increased from USD 0.218 million in FY 2018 to USD 227 million for the first 6 months of FY 2022, and enforcement is expected to increase.

- Canada has a similar ban in place, and has begun enforcing it. Australia and the EU are contemplating adopting similar arrangements.
- At least 7 countries have asset freezes and travel restrictions in place for entities connected to Xinjiang forced labour. Many of these were adopted in two coordinated sanctions 'rounds', one in January 2021 and another in March 2021 that accounts for more than a quarter of all measures adopted to date.
- Several countries have adopted export controls, with a particular focus on surveillance technology.
- Canada, the EU, UK and US have issued official guidance to businesses that may be exposed to Xinjiang forced labour risk.
- Capital market controls are extremely limited, and having little impact. Some investors are voluntarily beginning to take action, such as heightened due diligence and active engagement, but shareholder action is in its infancy and other investors are clearly happy to hold equities and debt issued by firms tied to Xinjiang forced labour.
- U.S. holdings of Chinese securities have surged 57.5 per cent from \$765 billion in 2017 to as much as \$1.2 trillion in 2020. Vanguard's investments in Xinjiang reportedly tripled between 2018 and 2021, and institutional investors outside the US own shares in many Chinese firms sanctioned by the US.

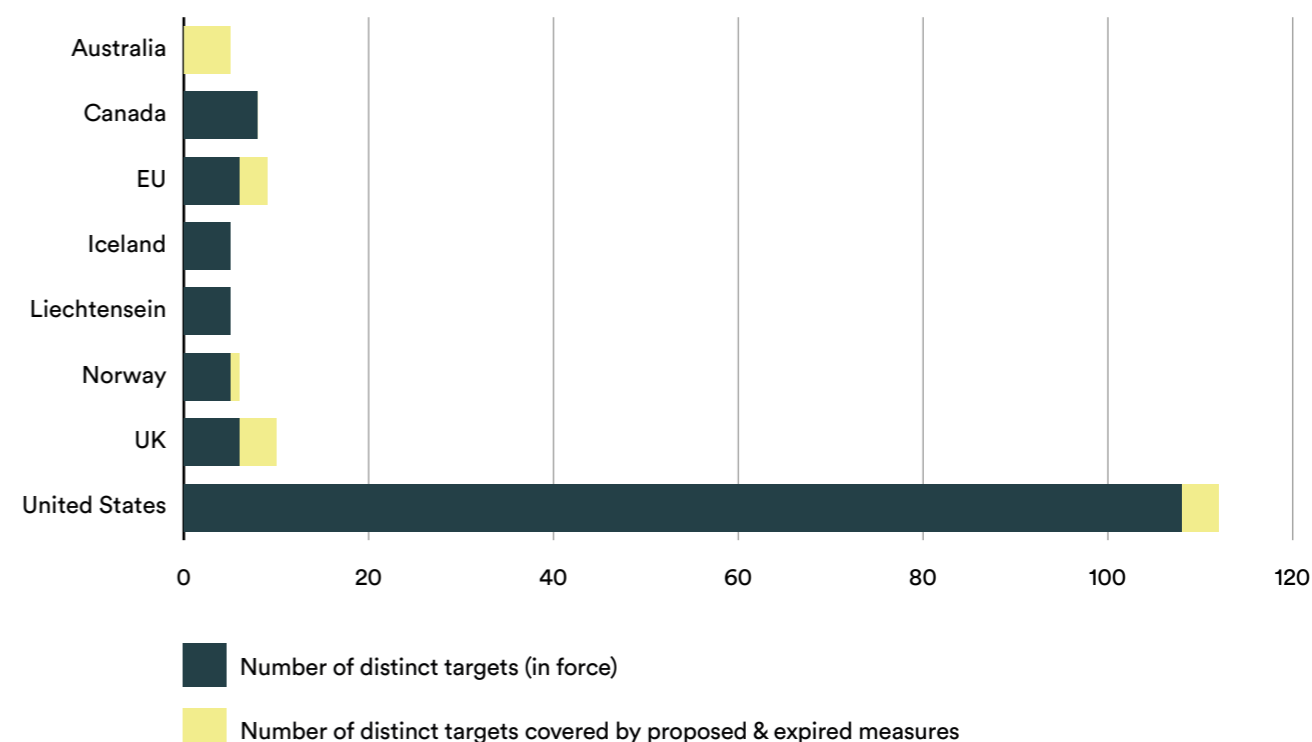
### Measures in force by jurisdiction



### Year-on-year activity on Xinjiang forced labour measures



### Number of distinct targets by jurisdiction



### Chinese counter-measures

- The CCP leadership perceives Xinjiang sanctions as a dangerous and potentially destabilising Western interference with China’s internal affairs, fitting a pattern stretching back at least two centuries.
- China has consequently responded to Western sanctions with a range of formal and informal counter-measures of its own. These aim not only to blunt and block the effect of Xinjiang sanctions, but to counter the spread of the Xinjiang genocide and forced labour narrative.
- They appear to have been successful in chilling participation in and visible support for Xinjiang sanctions, by entities within China – including foreign corporations.
- Despite Beijing’s history of opposition to unilateral sanctions, since 2019 China has developed a formal sanctions infrastructure of its own – the Unreliable Entity List, MOFCOM Order No. 1 of 2021, and the Anti Sanctions Law.
- The Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset identifies 55 such counter-measures, including 42 targeted sanctions against officials and thought-leaders in 14 Western jurisdictions.
- Taken together, MOFCOM Order No. 1 and the Anti Sanctions Law give the CCP almost unfettered scope to order Chinese citizens and firms – apparently including Chinese subsidiaries of foreign firms – not to comply with foreign laws that restrict normal business operations with targeted Chinese entities or otherwise interfere in China’s internal affairs. Chinese state media describe this sanctions infrastructure as creating “a deterrent effect in the face of Western-led hegemony”.
- China’s formal counter-measures have also been supplemented by a series of informal measures involving fomenting boycotts, strategic regulation and informal blacklisting. Targets have included social and labour audit firms, apparel brands and, more recently, high-visibility Western brands such as Intel and Walmart.
- These efforts have succeeded in deterring many inside and outside China from participating in the implementation of Xinjiang sanctions. Social and labour audits across China reportedly now largely avoid discussion of the treatment of Uyghur and other Xinjiang minority workers, making such audits ineffective in assessing that treatment.

- Online measures have emerged as a particularly important aspect of these informal counter-measures. The Chinese government treats online influencers as cut-outs in delivering plausibly deniable measures imposing costs on a range of targets, from H&M to individual researchers. CCP proxies and intermediaries have stoked online boycotts and harassment, whereas online retail platforms and apps have blacklisted targeted firms, notably H&M.
- Beijing’s selection of Intel as a target for informal countermeasures in late 2021 may have been intended to send a signal to Washington about the risks of expanding Xinjiang sanctions to the semiconductor supply-chain, which is adjacent to the solar panel supply-chain, given their mutual use of silica.
- In several of these episodes, both local and foreign competitors have sought to opportunistically capitalise on the targeting of Western brands, by attaching their brand to pro-Xinjiang sentiments.
- Western sanctions need to factor in the CCP’s willingness to take blunting, blocking and counter measures, of both the formal and informal kind.
- Chinese counter-measures may be proving effective in both discouraging corporate support for the Xinjiang forced labour narrative, and encouraging opportunistic firms to adopt pro-Xinjiang branding.
- Due diligence arrangements that rely on third party audits of the treatment of Uyghur and other Xinjiang minority workers across China are likely to be unreliable, given the Chinese government’s success in suppressing discussion of these issues in audit processes.
- There is a growing prospect that Xinjiang sanctions and Chinese counter-measures may trigger a decoupling dynamic, forcing multinationals to choose between access to Chinese or Western markets and supply-chains. At present, firms with strong retail or brand exposure in China appear to be choosing China.
- Western sanctions strategy must therefore factor in Chinese counter-measures and the costs they can impose, or there is a risk of Western Xinjiang sanctions backfiring by making it less costly for entities to comply with Chinese requirements than with Western ones.
- Western actors may also need to develop strategies for preventing and mitigating CCP-coordinated harassment and intimidation online, to lower the costs that China can impose online for those actors that implement Xinjiang sanctions or otherwise support the Xinjiang forced labour narrative.

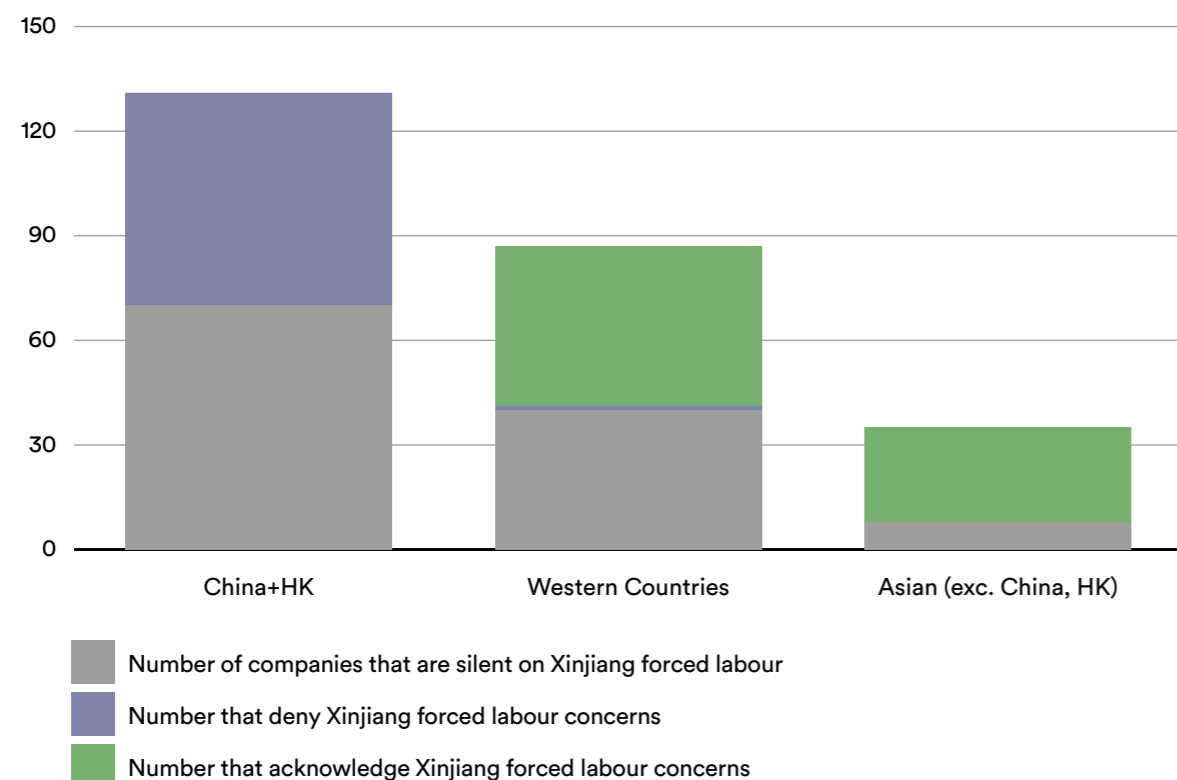
### Features of Chinese informal measures in response to Xinjiang sanctions

	Strategic regulation	Informal blacklisting	Fomenting consumer boycotts	Regulatory availability	Opportunism
<b>Apparel brand boycotts</b> (March-April 2021)	Admin fines; threatened graft investigation	Celebrity influencers and online platforms blacklist firms	State media, Chinese Communist Youth League instigation	Yes – through online and offline means	By domestic brands, Japanese brands
<b>Intimidation of audit firms</b> (April 2021 and beyond)	Yes – legal basis unclear		Not retail facing, but may have chilled foreign clients’ willingness to hire these firms	Yes – possibly through the Anti-Sanctions Law	Support for development of domestic audit industry
<b>Threats to Intel and Walmart</b> (December 2021)	Threatened graft investigation	Celebrity disendorsement	Walmart boycott – but not Intel	Yes – through online means and the CCDI	Intel: push for domestic capacity; Walmart: foreign opportunism (e.g. Carrefour)

### Corporate responses

- This study provides the first centralised collection of corporate responses to Xinjiang forced labour. These will be useful for government, corporate, civil society and academic users worldwide.
- The Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset includes over 8,000 datapoints relating to how 256 companies in 21 countries, including China, are responding to allegations of Xinjiang forced labour.
- Chinese and Hong Kong companies are far more frequently recorded denying the fact of Xinjiang forced labour or concerns around it, whereas companies headquartered in Western countries (as well as some in Japan and Hong Kong) are far more often recorded publicly acknowledging concerns around Xinjiang forced labour. But the most common corporate response strategy, across all three contexts (China, Western, Asian), is silence.
- The responses of Chinese companies show signs of coordination amongst companies, and with state bodies.
- Western companies provide responses detailing a variety of measures taken to strengthen due diligence arrangements. Some show signs of a minimalist approach, with many companies wanting to know “how much due diligence is enough”.
- Despite the growing unreliability of audits in assessing Xinjiang forced labour, 56 per cent of companies that have made their position on Xinjiang forced labour known mention the use of audits. Korean and Japanese firms, in particular, seem to continue relying on audits. As some of these firms are part-owned by Western institutional investors, this raises questions about investor responsibility.
- Firms are reluctant to develop new supply options unless strictly necessary because the competency and volume of production in the PRC is hard to reproduce elsewhere. Firms that *have* chosen to move supply-chains out of Xinjiang have had to bear real short-term costs, not only from developing new supplier arrangements, but also in some cases from having to phase out certain products altogether.
- The data suggests that many companies see little need to develop plans for transitioning supply away from Xinjiang, and that for many of them, it is “largely business as usual”.
- Many responses point to the need for governments to play a more proactive role, providing clearer guidance to companies on what effective due diligence can look like – or how governments will work to mitigate the costs of supply-chain relocation.
- Some responses suggest that the variation in government responses to Xinjiang forced labour risks inducing regulatory arbitrage, as jurisdictions with the lowest production standards risk becoming dumping grounds for goods made with forced labour.
- The data suggests the need for coordinated awareness raising efforts regarding the risks around reliance on third party audits to assess Xinjiang forced labour.
- Governments may need to become more actively engaged in working with specific sectors to develop transition plans for shifting supply away from Xinjiang.

### Regional variations in corporate responses to Xinjiang forced labour concerns



### Sectoral dynamics of Xinjiang sanctions

	Cotton	Tomatoes	Solar
<b>Overall impacts to date</b>	Significant impact on demand for Xinjiang cotton as well as price, with some targeted firms closing manufacturing plants and laying off workers. Western brands have lost market share in China due to counter-measures. No sign of remediation to victims of forced labour.	Limited sanctions enforcement to date. No clear evidence of impact on Xinjiang sector. No sign of remedy for victims of forced labour.	Limited impact – prices at 10-year high. Possible supply-chain bifurcation. No clear roadmap for developing alternative supply means that established firms capture new ‘slavery-free’ demand. No sign of remedy for victims of forced labour.
<b>Strengthen policy opponents?</b>	Sanctions have responded to evidence of ties to forced labour, rather than sought to impact those with ties to policy makers. No differentiation of enforcement approach between XPCC firms and those with more direct influence in Beijing (e.g. Ruyi Group). Targeted sanctions on firms and leaders’ foreign assets could increase impact.	Sanctions have responded to evidence of ties to forced labour, rather than sought to impact those with influence in policy processes. No differentiation of approach between XPCC firms and those with more direct influence in Beijing (e.g. COFCO Tunhe).	Sanctions not yet targeting industry leaders with influence over policy makers (e.g. those with ties to ‘Zhejiang Clique’, or those with ties to Deng Xiaoping’s family & PLA).
<b>Cost asymmetries</b>	Asymmetries marginally favour sanctioning coalition because of Western share of demand and higher price Western consumers pay. This could be further strengthened by broadening coalition to include Central Asian buyers of raw and spun cotton.	Asymmetries currently favour Xinjiang producers. This will change if: 1. EU import ban is adopted and enforced; 2. African or Middle East countries are recruited into the sanctioning coalition; 3. US takes more robust enforcement action (e.g. against fast food companies); or 4. sanctions focus more on the broader COFCO Group – though this risks being perceived as an attack on China’s food security.	Asymmetries strongly favour Xinjiang producers and work against Western importers. This could be addressed by adding a focus on high-quality quartz exports from the US, and through industrial policy to increase alternative supply of slavery-free polysilicon.
<b>Trade adaptation strategies</b>	Evidence of reallocation, deflection and product transformation. Clear risk of sanctions evasion – enforcement strategy will be determinative.	Evidence of deflection which may shade into evasion. Some reallocation/social dumping. Enforcement strategy will be critical.	Evidence of trade reallocation and some deflection (e.g. via South East Asia). Dominant firms in the middle of the supply-chain are increasingly engaging in product transformation and supply-chain bifurcation – without giving up forced labour production for some products. This raises cross-subsidization concerns.
<b>Sectoral body conduct</b>	Sectoral bodies representing globalized firms push for limits on import controls. Standards-oriented bodies provide norm amplification. Chinese government responds by politicizing standards processes, creating alternative ‘local’ standards systems.	No activity evident.	Sectoral bodies’ policy stances respond to both positions in global value-chains and local regulatory signals. Globalized value-chains lead sectoral bodies to push for more open trade. Thin-film & ultra-low-carbon producers are more vocal in support of sanctions, as they may improve their competitive positions.
<b>Capital markets engaged?</b>	Increasingly, but primarily through private active engagement, including via IAHR. Some emerging shareholder proposal activity.	Some impacts of US financial sanctions on XPCC family firms, (e.g. removal from stock indices). Early signs of active engagement by IAST-APAC and IAHR. No shareholder actions to date.	Western investors remain invested in Chinese solar firms with ties to Xinjiang forced labour. Development finance bodies most engaged, with some signs of engagement by institutional investors, private equity. No signs of shareholder actions or delisting to date.

## Cotton

- The cotton sector has been central to both Western sanctions efforts and Chinese counter-measures. It is the sector in which Western sanctions are having the clearest effects.
- Around 1 in 5 garments made worldwide likely contains cotton made with Xinjiang forced labour.
- The XPCC has been central to the development of the Xinjiang cotton sector, and remains centrally involved, both as a producer and in partnership with manufacturing firms that have invested in the region over the last decade. Some of these have close ties to Zhejiang, where President Xi was Party Secretary from 2002-2007.
- Forced labour has been present throughout the sector's development, and seems central to its profitability, given the adverse cost structures the Xinjiang sector otherwise faces.
- Massive fiscal transfers of around USD 2.5 billion per year from Beijing have upgraded the sector over the last decade, supplementing cotton production with processing and also textile and garment manufacturing capabilities. Many firms involved have ties to forced labour, through both the VSETC and Labour Transfers schemes.
- Western sanctions are taking a toll. Xinjiang cotton inventories are climbing, and prices are dropping, as demand dries up.
- Yet it is unclear whether this is translating into policy change. Chinese counter-measures may actually be shrinking the space available to opponents of forced labour, in the short term.
- These Chinese counter-measures appear to have reduced Western brand retail sales in China, in some cases by around 20 to 24 per cent.
- Western sanctions may be working in part because the costs for Xinjiang producers to reallocate to new buyers are higher than the costs for Western importers and buyers to find new supply. This is a result of the structure of the global cotton market and the elasticity of supply.
- An EU import ban would strengthen these effects, as would the involvement of the Central Asian states that import significant quantities of Xinjiang cotton. Since they are also producers of cotton, this may be in their interest.
- Forensic evidence suggests around one sixth of cotton garments on US store shelves in late 2021 included Xinjiang cotton. Firms may be importing Xinjiang cotton unwittingly, or in defiance of US import bans.
- Changing risk-benefit calculations will depend on effective enforcement of the *Uyghur Forced Labor Prevention Act* (UFLPA), which itself depends on adequate resourcing, technology and penalties.
- Some firms are splitting their supply-chains in two ('bifurcation'), using Xinjiang cotton for most goods but not for goods bound for the US.
- Sectoral bodies have played roles that are both predicted and not predicted by existing scholarship. The predicted role involves efforts to reduce the impact of sanctions, to keep trade in globalized value-chains open. The un-predicted role involves serving as norm amplifiers, promoting respect for international labour standards.
- The latter role has led to geopolitical contestation, with China querying these groups' partiality and promoting local alternatives. This points to the risk of politicization of technical standards and global economic regulation.
- Some investors have begun actively engaging firms that may be buying Xinjiang cotton. But many Western investors remain invested in Chinese entities with close ties to the sector.
- The relative success of sanctions in placing a squeeze on Xinjiang cotton offers lessons about the conditions for success that can help us strengthen design and implementation in other sectors.
- The impact of sanctions would be increased by broadening the sanctioning coalition, for example by recruiting Central Asian countries whose own cotton producers are unfairly undercut by Xinjiang cotton produced through forced labour.
- However, the fact that economic impact has not yet translated into policy change, nor remedy for harmed workers, points to a need to strengthen target selection and consider the underlying theory of change.
- There are some firms involved in the Xinjiang cotton sector, such as the Ruyi Group, which may have more influence over relevant policy processes than those entities and individuals specifically targeted to date. These targets may also have significant interests offshore which may be vulnerable to sanctions.
- Western policy makers may need to grapple with the implications of supply-chain bifurcation. It may lead to sanctions' main effect being reduction of Western buyers' complicity with Xinjiang forced labour, rather than reducing that forced labour itself. It may also have the potential to accelerate broader economic and technical decoupling between China and the West.

## Tomatoes

- Xinjiang accounts for around 18 per cent of global trade by volume in processed tomato products such as tomato paste and tomato sauce.
- Much of this goes to Europe, especially Italy, where it is modified and re-exported to Western markets and buyers, including fast food retailers and agrifood giants such as KraftHeinz, Unilever, PepsiCo and Nestlé.
- A significant portion also goes to Africa and to the Middle East. Cheap Xinjiang exports have undercut West African production in recent years, leading to declines in local production and processing.
- Access to cheap and sometimes coerced labour has been central to that strategy of competition on cost.
- The XPCC has been central to tomato production and processing in the region, and ChalkiS Tomato Industrial Company, spun off from the XPCC Sixth Division, now accounts for 45 per cent of the African small can tomato sauce market, and 20 per cent of the European tomato paste market.
- COFCO Tunhe, a listed subsidiary of the massive state-owned enterprise (SOE) that Beijing sees as a cornerstone of Chinese food security, accounts for around 4 to 5 per cent of global supply of processed tomato products.
- The sector has long used forced labour: through prison labour, the VSETC system and the Poverty Alleviation through Labour Transfers programme.
- To date only the US has specifically targeted this sector, and there has been limited enforcement activity. Xinjiang tomatoes appear to still be entering North American markets, including through intermediary countries including Italy.
- There is only limited evidence of Western buyers ceasing to buy products containing Xinjiang tomatoes. (Marks & Spencer, Tesco and Kagome are exceptions proving the rule.)
- There is little evidence to date of sanctions significantly impacting firms in the Xinjiang tomato sector, of policy change, or of remedy for victims of forced labour in the sector.
- Sanctions have responded to evidence of ties to forced labour, rather than sought to impact those with influence in policy processes. There has been no clear differentiation of approach between XPCC firms and those with more direct influence in Beijing (e.g. COFCO Tunhe).
- US financial sanctions have however led to some firms with ties to the XPCC being dropped from global security indices. Beyond this, capital market engagement is limited, though some institutional investors are now beginning to ask consumer staples retailers about connections to the Xinjiang tomato sector.
- As more jurisdictions adopt import bans on Xinjiang tomatoes, trade will be reallocated to other markets where labour standards are not being enforced on imports. This social dumping may place local producers at risk, as it has in West Africa. Countries in Africa, Latin America and the Middle East could be potential recruits to the sanctioning coalition.
- Enforcement strategy will shape the effectiveness of import bans. Since some firms may be seeking to evade sanctions through trade 'deflection' (re-routing goods through intermediary countries) or outright document fraud, documentary enforcement may need to be supplemented by forensic technology.
- Sanctions could be made more effective if greater pressure was brought to bear by regulators and investors on the agrifood, consumer staples and fast food businesses that are the ultimate retailers of Xinjiang processed tomato products. One option would be to encourage them not only to avoid importing these products, but also to avoid using them overseas.
- Sanctions on COFCO may have a greater probability than those on XPCC-linked firms of creating costs for actors with influence over relevant policy processes in Beijing. But they may also meet with resistance in Beijing, since they may be perceived as an attack on China's food security.



## Solar

- China dominates global photovoltaic (PV) manufacturing. China-headquartered companies dominate at each stage of production, making 77 per cent of the world's polysilicon, over 97 per cent of polysilicon wafers, 83 per cent of solar cells, and 74 per cent of solar modules.
- Around 45 per cent of global polysilicon capacity is now located in Xinjiang. Since 2017, 91 per cent of new polysilicon production capacity worldwide has been developed in China, much of it in Xinjiang.
- Xinjiang polysilicon appears to be used in the supply of around 95 per cent of on-grid photovoltaic energy produced in the top 30 solar producing countries in the world.
- Forced labour appears to enter the PV supply-chain at several points connected to XUAR: in mining silica, refining it into polysilicon and possibly in downstream wafer and module manufacturing. Forced labour is provided through the Poverty Alleviation through Labour Transfer programme, and possibly (though not certainly) through the VSETC system.
- Xinjiang solar sector firms partner in several ways with the XPCC, which often owns and manages industrial parks and zones where these firms are located. Many of these are co-located with VSETC detention centres.
- Western sanctions on the Xinjiang solar sector are to date quite limited. The US is the only country to have directly targeted the sector, imposing import bans on products from a major silica provider (Hoshine) and export controls on Hoshine and 3 polysilicon firms (Daqo, East Hope and GCL).
- US Customs and Border Protection has reportedly detained hundreds of shipments of solar products, and this may have slowed imports into the US.
- The *Uyghur Forced Labor Prevention Act* (UFLPA) however now creates a rebuttable presumption that any solar product containing inputs from Xinjiang was made with forced labour.
- While Western industry actors warn of major disruptions worth billions of dollars in the US, there is little sign of concerted impact in Xinjiang. Prices for Chinese polysilicon are at 10-year highs.
- There are as yet no clear signs of policy change or remedy for victims of forced labour in the sector.
- Cost asymmetries from sanctions strongly favour Xinjiang producers and work against Western importers. It is more costly for Western buyers to find new, 'slavery-free' sources of supply than it is for Xinjiang producers to find new buyers of their products. New polysilicon producing facilities typically cost more than USD 500 million and take 18 months to bring online.
- There is evidence of trade reallocation, some trade deflection (via South East Asia), and rapid product transformation leading to supply-chain bifurcation. Dominant (Chinese) firms in the middle of the supply-chain are increasingly using their know-how, business relationships and access to capital to develop new, 'slavery-free' supply-chains to serve Western markets, without however giving up forced labour production for some products for other markets. This raises serious cross-subsidization concerns.
- Sectoral bodies' policy stances respond to both positions in global value-chains and local regulatory signals. Globalized value-chains lead sectoral bodies to push for more open trade. Thin-film & ultra-low-carbon producers are more vocal in their support for sanctions, since sanctions may improve their competitive positions.
- Western investors remain significantly invested in the Xinjiang solar sector. Development finance bodies are the most engaged in addressing forced labour risks, though there are some signs of engagement by institutional investors, private equity. But there are as yet no signs of shareholder actions or delisting efforts.
- Sanctions could be strengthened by adding a focus on high-quartz quality exports from the US, where Xinjiang polysilicon producers may be vulnerable and cost asymmetries favour the sanctioning coalition.
- Another option is to more deliberately target industry leaders with influence over policy makers (e.g. firms with ties to 'Zhejiang Clique' or those with ties to Deng Xiaoping's family and the PLA).
- The costs to Western business from solar sanctions could also be lowered through development of a coordinated, transnational industrial policy to increase alternative supply of slavery-free polysilicon, such as that discussed in *The Energy of Freedom?*
- Policy-makers will need to consider how to address supply-chain bifurcation. One option is to focus not only on restricting market access for *goods* made with forced labour, but also for *firms* that use forced labour (even if it is not for products being imported into or sold in that market).

## Strengthening Xinjiang sanctions

### Key findings from the analysis

- Of the three sectors studied – namely cotton, tomatoes and solar – the one most clearly impacted by Xinjiang sanctions is the cotton sector. Western sanctions appear to be depressing demand for Xinjiang cotton, and its price. At least one firm affected (though not directly targeted) by a US WRO and designated on the Entity List has lost hundreds of millions of dollars in revenues, and had to close factories and lay off workers outside China. Meanwhile, Western apparel brands have clearly lost market share in China as a result of Chinese counter-measures.
- For the solar sector, there is considerable anxiety around *potential* impacts from Xinjiang sanctions, with investors increasingly active behind the scenes, and US WRO enforcement causing some disruption and delays on imports. But the price of Xinjiang polysilicon is at 10 year-highs, suggesting no overall shortage of demand. The costs of Western sanctions may be falling more on Western importers than on Xinjiang producers.
- Finally, there is little sign of Xinjiang sanctions impacting the tomato sector to date, beyond withdrawal of some firms from global stock indices.
- In none of the sectors, however, have Western sanctions yet led to clear signs of policy change, nor of remedy being provided to victims of Xinjiang forced labour. The advent and enforcement of the *Uyghur Forced Labor Prevention Act* could change this situation, as could the adoption of an EU forced labour instrument.
- In all three sectors studied, target selection appears to have been driven primarily by information adduced to governments about the ties between individuals and entities and Xinjiang forced labour programmes. Targets do not appear to have been selected based on the influence they can wield over the government policies and practices that underpin Xinjiang forced labour.
- XPCC-connected firms and individuals have received the greatest focus. Other firms, which may in fact be more vulnerable to sanctions and may have greater influence over Beijing policy makers (such as Ruyi Group, COFCO Tunhe, and solar firms with ties to the Zhejiang Clique) have not yet been specifically targeted.
- In only 1 of the 3 sectors studied do market structure and cost asymmetries favour importers and buyers in sanctioning states, rather than Xinjiang producers and exporters. That is the cotton sector.
- In all three sectors, the sanctioning coalition could be enlarged by recruiting states whose local producers are vulnerable to Chinese social dumping – Central Asian states in the case of cotton, South Korea in the case of polysilicon, and West African and Latin American states in the case of tomatoes.
- Cost asymmetries in the solar sector seem to work directly against Western importers. This could be addressed by adding a sanctions focus on high-quality quartz exports from North Carolina, and by developing coordinated transnational industrial policy to develop alternative, slavery-free supply of polysilicon.
- The success of import bans such as the UFLPA will depend heavily on enforcement strategy and resourcing. All three sectors show signs of emergent sanctions evasion. Where possible, customs authorities may need to supplement document-based compliance with forensic approaches (DNA, genotype and isotopic testing).
- Sectoral bodies emerge as unexpectedly important players in the sanctions process. As sanctions theory predicts, their positions on sanctions are shaped by the commercial interests of their members. But this turns out to be a product not just of their members' position in global markets, but also of local regulatory choices – and bodies' positions on international norms such as labour standards. Multistakeholder groups have played a key role in norm amplification and shaping market expectations on labour standards.
- Yet this has also occasioned Chinese resistance, politicizing these bodies and encouraging the emergence of rival 'local' sustainability standards and assurance processes. There is a risk here of disputes over the Xinjiang forced labour 'narrative' spilling over into technical standards processes and international economic regulation more broadly, through debates on Environmental, Social and Governance (ESG) standards.
- There is a marked difference between Western policy on Xinjiang forced labour in *trade* and in *investment*. While there is a growing interest from Western policymakers in use of import and export controls to sever the connection between Western consumers and importers and Xinjiang forced labour, Western investors continue to operate with a relatively free hand. The significant leverage that both investments and capital market regulation afford for addressing Xinjiang forced labour has not yet been meaningfully wielded by policy makers, even if individual investors are beginning to actively engage firms with possible connections to Xinjiang forced labour.

### Why is this important?

- The findings of the study raise difficult questions about the *purpose* of Western sanctions in response to Xinjiang forced labour. Are they intended to reduce forced labour, or simply to reduce the contribution that Western consumption makes to Xinjiang forced labour? If the former, then significant adjustments in strategy and implementation may be required.
- Sanctions are however not being adopted in a strategic vacuum, but rather against the backdrop of growing strategic rivalry between the US and China. Decisions around sanctions will be made with an eye to their impact on this broader dynamic, and their potential contribution to costly economic decoupling between China and the West.
- For many, the inescapable conclusion is that China is simply ‘too big to jail’ – too large and powerful to effectively sanction – and thus the West must reconcile itself to China’s policies, or find non-coercive ways to persuade China to adjust them.
- Yet others see new technical and political possibilities for sanctions tradecraft, after the adoption of broad and powerful sanctions against Russia following its invasion of Ukraine.
- One key difference, however, relates to the role of the private sector. Western business has, to a remarkable extent, voluntarily withdrawn from business in and with Russia. Its willingness to withdraw from business with China, where many fortunes remain to be made, seems much less certain.
- Xinjiang forced labour thus stands in important ways as a test of the liberal character of international trade and finance. A successful defence of that character – and thus of human rights – will depend on finding ways to make Xinjiang sanctions work.
- The study lays out 10 Recommendations to the sanctioning coalition for strengthening Xinjiang sanctions.

### Recommendations on strengthening Xinjiang sanctions

#### Recommendation 1: Clarify the ask

- Sanctions literature makes clear that sanctions are most effective when they specify a precise and narrow policy change required to end sanctions. This is currently absent from Western country’s Xinjiang sanctions.
- The sanctioning coalition should develop, publish and consistently repeat a specific set of asks addressed to identified state and business actors in and beyond China.
- Narrow reliance on ILO forced labour norms and standards may cause legal complications, both because: 1) China is only newly party to the relevant Conventions, and 2) countries agreed over 20 years ago not to enforce these standards through unilateral trade measures such as import bans.
- This set of asks should encompass China’s obligations under:
  - the 1926 Slavery Convention (including its commitments not to enslave people, and to end compulsory labour),
  - the 2000 UN Protocol on Trafficking in Persons,
  - ILO Conventions Nos 111 (Discrimination (Employment and Occupation) and 122 (Employment Policy), as recently set out by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).
- It should also frame asks of business in terms of the UN Guiding Principles on Business and Human Rights.

#### Recommendation 2: Create a win-win narrative around sustainable development and fair trade

- In the past, efforts to tackle state-backed forced labour have proven most effective when they have combined sanctions with positive incentives for policy reform, and framed that as a win-win for both the sanctioning coalition and the target state.
- A win-win narrative could help overcome Chinese perceptions of Western positions on Xinjiang as a rear-guard action by hegemonic powers to stave off a rising rival.
- The sanctioning coalition should frame reform of policies on Xinjiang as a way for China to secure the sustainable development of the region, while avoiding the past mistakes of the West in relying on coerced labour.
- Growing evidence shows that reliance on forced labour negatively impacts sustainable development through 10 channels, ranging from reduced productivity and inter-generational poverty to increased risks of political instability and armed conflict. (See especially *Developing Freedom*.)
- Both the sanctioning coalition and China have an interest in addressing unfairness in the international trading system. Forced labour risks undermining support for free trade because it allows some producers to unfairly reduce the price of their goods, outcompeting foreign rivals. At the same time, unilateral import and export controls designed to protect markets from such unfair competition risk feeding a larger disenchantment with international trade.
- China has sent important if subtle signals that it is willing to address forced labour concerns through international trade dispute mechanisms.
- Efforts in sanctioning states to promote national self-sufficiency in the face of Chinese reliance on forced labour face some resistance, given the long-standing commitment in Western capitals to a liberal trading order.
- The sanctioning coalition should develop a win-win narrative that frames reform of China’s Xinjiang policies in terms of securing sustainable development and fair trade. This should be backed up by offers of support to China for such reforms, including technical assistance, expertise, diplomatic engagement and support, and international public and private financing.

#### Recommendation 3: Sanction entities, not just goods

- Most of the sanctions in place allow firms to continue operating in sanctioning coalition markets, even if they use Xinjiang forced labour.

- The import bans in place in the US and Canada work to prevent firms importing goods made with Xinjiang forced labour, but do not prevent those same firms operating in the US or Canada if they send Xinjiang forced labour goods to other markets.
- Western consumers may end up paying a premium for ‘slavery-free’ goods that firms use to cross-subsidize production of slave-made goods for other markets.
- This is already beginning to happen in the solar sector and may be happening in other sectors. Mid-supply-chain module and wafer manufacturers are using existing know-how, business relationships and access to capital to develop new ‘slavery-free’ production capacity, without giving up use of Xinjiang forced labour for other products.
- Policy makers can avoid this outcome by adjusting sanctions, including import bans, to prevent entities that use Xinjiang forced labour from operating in their markets. This requires supplementing a focus on forced labour goods with a greater focus on forced labour entities.

#### Recommendation 4: Select targets on vulnerability and influence, not market dominance

- Xinjiang sanction targets have emerged organically, including through the action of legislators, customs authorities and investigations by media, academics and civil society.
- While this has led to targeting of a small number of individuals responsible for implementing XPCC and XUAR policies producing forced labour, it has arguably not led to the targeting of architects of these schemes.
- Many of those targeted and otherwise affected are firms. The vulnerability of these firms to sanctions, and their influence over policy-makers, does not appear to have been a major factor in target selection or enforcement strategy.
- Some sectors that have been targeted may be sectors in which market structure works against sanctions effectiveness, because Western importers are more vulnerable to the costs imposed by sanctions than are Xinjiang producers and exporters. Solar is an example.
- Going forward, targets for sanctions and enforcement should also consider vulnerability and policy influence.
- This may mean targeting not only firms with ties to the XPCC but also SOEs and other firms with influence in Beijing, such as Ruyi Group, COFCO Tunhe and firms from Zhejiang.
- Different countries in the sanctioning coalition may need to focus on different targets, given different sources of leverage in their economic relationships with China. For example, European markets may have leverage in chili pepper and tomato markets and Japan over walnuts.

### Recommendation 5: Use capital market leverage

- Xinjiang is not highly export-dependent, with only around 10 per cent of GDP coming from exports. It is however investment dependent.
- Beijing has poured over USD 310 billion into Xinjiang between 2014 and 2019, and this does not include private investment. XPCC bond issuance rose from 3.4 billion yuan in 2018 to 50.3 billion yuan in 2021.
- Sanctions theory indicates that sanctions are more likely to work if targeted at scarce factors of production. In this case that would mean reducing returns to capital.
- Beijing sets policies to attract capital by increasing returns to capital – for example through corporate income tax reductions, waivers on import tariffs, and preferential access to land. This has succeeded in recent years in attracting major investments by Western companies including Dow Chemical, Tesla and Volkswagen.
- In most cases, nothing prevents Western firms investing in Xinjiang business outside a narrow set of dual-use, military and technology companies. 90 per cent of FDI into Xinjiang in recent years has gone to the mining sector, which is largely untouched by Xinjiang sanctions. Western investment advisors continue to sell Xinjiang as a source of competitive returns, particularly its technology and renewables sectors.
- Major institutional investors such as Vanguard, State Street, Blackrock, UBS and JP Morgan Chase hold investments in firms that have been reported to have connections to Xinjiang forced labour.
- So, too, do some Western policy makers, which may suggest they have perverse incentives when it comes to Xinjiang sanctions. Biden Administration climate envoy John Kerry was reported in late 2021 to have investments in LONGi, a solar firm whose products were detained by US CBP on suspicion of being made with Xinjiang forced labour, and YUTU Technology, listed on the US Entity List since 2019 due to connections to Xinjiang repression.
- Beijing has also courted Wall Street. Senior figures such as John Thornton, co-chair of the China-US Financial Roundtable, have engaged in discussions on Xinjiang with senior CCP figures.
- The sanctioning coalition could expand existing restrictions on investment ties to Xinjiang forced labour to sectors that are highly dependent on capital investment, such as fossil fuels, chemicals and energy.
- Policy makers should also consider how to use platform leverage, such as securities disclosure rules, ESG regulation and insurance coverage, to address forced labour concerns.
- In time, capital markets may also have a role to play in promoting the win-win narrative suggested in Recommendation 2, for example through

sustainability-linked financing initiatives.

### Recommendation 6: Expand the sanctioning coalition

- Sanctions are more likely to succeed if backed by a large number of states with significant leverage.
- At present the Xinjiang sanctions coalition is quite small.
- Xinjiang sanctions will have little overall effect if China can simply reallocate trade of Xinjiang forced labour goods to other markets.
- China is actively expanding free trade ties between Xinjiang and countries in Central Asia, South Asia, and South East Asia.
- The sanctioning coalition should counter this by encouraging countries who producers and exporters stand to lose from Chinese social dumping of Xinjiang forced labour goods.
- This includes cotton producers in Central Asia, tomato producers and processors in West Africa and Latin America, and polysilicon producers in South Korea.

### Recommendation 7: Strengthen import ban foundations and enforcement

- The sanctioning coalition should develop a common position on the international legal justification for import bans.
- Canada has relied on GATT Article XX(e) (prison labour). While this may apply to forced labour in the VSETC scheme, it is not clear if it would cover forced labour through the Poverty Alleviation through Labour Transfers programme.
- Other options include GATT Articles XX(a) (public morals), (b) (human life and health) and XXI(b)(iii) (emergency in international relations).
- Different justifications may create different requirements for how these bans are adopted. In some cases, sanctioning countries may need to consult in specific ways with affected parties (e.g. importing firms) before the ban is imposed.
- Effective enforcement will be critical to sanctions success. It will depend on resourcing and on smart resource allocation.
- Sanctions enforcing authorities may need to supplement use of documentary evidence with forensic technologies (such as DNA, genotype or isotopic analysis) or use of big data and artificial intelligence tools.

### Recommendation 8: Reduce the costs of sanctions compliance

- Debates over Xinjiang sanctions downplay the costs of compliance, beyond the costs for importers. These costs in fact include increased prices for consumers, loss of market-share in China for Western firms operating there, and risks to personnel.
- No government has policies in place to support firms incurring these costs, or to address consumer price increases.
- These gaps risk eroding confidence in and support for these policies, if left unaddressed.
- Governments can address these costs through improved access to information. This could help firms, especially SMEs, undertake due diligence, for example through sharing of information about supply-chains, or publishing information on firms connected to Xinjiang forced labour.
- Governments can also blunt the impacts of counter-measures, by providing Western firms export credit or trade facilitation support to help them grown business in new markets to offset lost market share in China as a result of Xinjiang sanctions compliance.
- Another option is to work with online platforms to blunt and prevent harassment and online boycotting in response to Xinjiang sanctions compliance.
- Finally, governments will need to reduce the costs to business of accessing alternative, slavery-free supply as they lose access to Xinjiang-connected suppliers. This will require industrial policy to foster investment and create the policy environment conducive to the rapid emergence of alternative supply, **for example in the solar sector.**

### Recommendation 9: Provide and enable remedy options

- To date Xinjiang sanctions have done little to provide or enable remedy for victims of forced labour.
- Some states appear to think it is not possible provide remedy for state-sponsored forced labour. The recent US government UFLPA Strategy suggests that “Corrective action in such cases may be limited to terminating the relationship with the supplier”.

- The European Parliament has called for the new EU forced labour instrument to require companies “responsible” for forced labour to “provide remediation to affected workers prior to import restrictions being lifted”.
- Emerging best practice suggests that the adequacy of remediation should be determined in consultation with relevant stakeholders, such as victim and community representatives and international trade unions.
- The sanctioning coalition could use sanctions violation fines and confiscated assets to compensate victims of forced labour and support data and evidence-gathering for future accountability processes

### Recommendation 10: Strengthen strategic coordination

- There has been limited coordination within the sanctioning coalition to date.
- While there has been coordination around a handful of sanctions targets, the timing of sanctions rounds and adoption of guidance to business, there is much more that could be done.
- The sanctioning coalition could strengthen information-sharing, especially as information increases through enforcement of new import bans.
- Coordination on the legal justification for these bans (see Recommendations 1 and 7) on the overall narrative framing Xinjiang sanctions (see Recommendations 2) and on guidance to business would also strengthen the consistency of messaging and the effectiveness of sanctions.
- There is also scope for closer coordination between public procurement, export credit and development finance institutions around due diligence and remedy in the context of Xinjiang forced labour.
- The sanctioning coalition should develop a mutual recognition system where inclusion of an entity or sanctions target on a shared Entity List triggers common sanctions across all participating jurisdictions.
- It could also develop a shared approach to remedy, for example creating a pooled fund that could pay out compensation to victims of Xinjiang forced labour or their families.
- Finally, the sanctioning coalition should develop industrial policy for accelerated growth of slavery-free supplies of specific goods, such a polysilicon, where importers and buyers will suffer significant costs due to lost Xinjiang supply.

# Introduction

## Can economic sanctions address Xinjiang forced labour?

The position of a growing number of Western governments would appear to be that they can. The *Uyghur Forced Labor Prevention Act* bans the import into the US of anything made in whole or in part with Xinjiang forced labour. The European Union is considering a similar ban, as are Australia and Canada. Overall, seven countries have imposed a variety of restrictions on trade, travel and investment to address forced labour in Xinjiang, and others are considering similar measures. Moreover, the breadth and potency of Western sanctions on Russia, following its invasion of Ukraine, suggests a new willingness on the part of Western governments to use a wide range of tools, including investment restrictions, to address serious violations of international law.

Yet the evidence suggests caution about the prospective impact of these Xinjiang sanctions. In the past, cooperative approaches – rather than coercive ones – appear to have had greater success in influencing Chinese governments’ human rights behaviour.<sup>1</sup> The Chinese government has developed a repertoire of informal counter-measures to block the impact of foreign sanctions,<sup>2</sup> which it appears to be drawing on to respond to Western sanctions relating to Xinjiang – including fomenting online and offline boycotts and harassment, strategic regulation and intimidation by security forces, and both formal and informal blacklisting. Western sanctions relating to Xinjiang – ‘Xinjiang sanctions’ – have developed in a relatively piecemeal and organic fashion, rather than according to a clear strategy for influencing Chinese government policy in Xinjiang.<sup>3</sup> Yet efforts to transform systems of state-backed forced labour have in the past proven successful when sanctions and trade embargoes have formed just one part of a broader, coordinated campaign of diplomatic, financial and civil society-led pressure.<sup>4</sup>

Xinjiang has also turned out to be an important site of production and processing in numerous global value-chains, notably cotton, tomatoes and solar panels. The West’s trade dependence on China – and in certain sectors specifically on Xinjiang – creates complex dynamics for effective sanctions design and implementation. In some sectors, the costs of Western withdrawal from Xinjiang may be higher for Western importers and their customers than they are for Xinjiang producers and exporters.

The literature on effective sanctions design suggests this is the opposite of the structure that is needed for success.<sup>5</sup> And Western investors’ incentives may also not align well with a policy of withdrawal from Xinjiang. For example the US fund manager, Vanguard, appears to have tripled its investments in Xinjiang between 2018 and 2021.<sup>6</sup>

This study aims to provide the most rigorous and comprehensive analysis to date of Xinjiang sanctions – what they comprise, how they have emerged and been adopted and implemented, how the Chinese government has reacted, how companies are responding, their impact, and the future outlook. This Part of the study introduces our research methods, the structure of this report, and telegraphs our key findings.

### Methods

The research for this study was undertaken over almost a year by a research team at the University of Nottingham Rights Lab, led by Professor James Cockayne, with funding from the UK Foreign Commonwealth and Development Office. The names of the other members of this team are withheld at their request.

Data was collected in several ways. First, the research team used open source data collection to develop three Xinjiang Sanctions datasets. Incorporating more than 12,000 datapoints, these datasets catalogue Government Measures, Chinese Counter-Measures and Corporate Responses relating to allegations of forced labour connected to Xinjiang Uyghur Autonomous Region (XUAR). The data sets are described in more detail in Part 2 of this report.

1 Drury and Li 2006.  
 2 Lim and Ferguson 2021.  
 3 Hendrix and Noland 2021.  
 4 Cockayne 2021.  
 5 See Part 3 of this study.  
 6 Fromer and Zhou 2021b.

The data sets, and the Coding Manual used in their compilation, are available for public search and download at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info). Second, we supplemented these datasets with ongoing and extensive media monitoring and published academic, thinktank and business analysis. Third, we supplemented this research with over a dozen interviews with insiders from government and private sector organizations deeply involved in analysis of and response to Xinjiang forced labour, both inside and outside China. These interviews were conducted under a strict ethics, security and confidentiality protocol approved by the University of Nottingham. The names of interview subjects are withheld for the protection of those interviewed.

### This report

This report provides a comprehensive overview of our research and its findings. Additional material, including Policy Briefs and the Xinjiang Sanctions datasets, is available for download on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info).

Part 1 of the report provides an introduction to Xinjiang forced labour. It describes the role that forced labour has played in the evolving governance strategies used by the Chinese Communist Party (CCP) for governing the north-west frontier province now known as Xinjiang Uyghur Autonomous Region (XUAR). It explains a shift in strategy from 2014 under the leadership of President Xi Jinping, with coercive labour subsequently occurring in the context of both so-called Vocational Skills Education and Training Centres (VSETCs), and in the context of Poverty Alleviation through Labour Transfers programmes. Some 2 to 2.5 million people appear to have been at risk of forced labour through these schemes in recent years.

Next, Part 1 considers the specific role of the Xinjiang Production and Construction Corps (XPCC) in the governance of Xinjiang – and in the emergence of large-scale, state-backed forced labour connected to Xinjiang. The study identifies a shift in the strategic role played by the XPCC, and in the methods used by Beijing to project power in Xinjiang through the XPCC. The XPCC is today a key element in the CCP's efforts both to integrate minority populations in Xinjiang into China's industrialized political economy, and to integrate Xinjiang into global production networks and capital markets.

Finally, Part 1 considers the legal characterization of coercive labour in and connected to Xinjiang. It considers whether Beijing's labour management policies for Xinjiang constitute or involve forced labour, slavery or enslavement, trafficking in persons or employment discrimination. It also considers the trade law implications of these different characterizations and what they mean for sanctions design and implementation.

Part 2 of the study explores the growing range of measures, counter-measures and responses to allegations of forced labour in and connected to Xinjiang. The first section considers over 300 legally binding government measures captured in the Xinjiang Sanctions Government Measures (XJS-GMS) dataset. These include import bans, asset freezes, travel restrictions, business guidance, export controls, and a range of other innovative measures. The study describes these measures, the sequence of their adoption, and identifies descriptive patterns and trends. This section also includes analysis of the current wave of import bans, including the *Uyghur Forced Labor Prevention Act*, and signs of growing interest amongst policy-makers in adopting capital market controls.

The second section considers Chinese counter-measures. This includes formal sanctions, captured in the Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset. It also includes consideration of a series of informal counter-measures deployed by the Chinese government to blunt and block the impact of Western sanctions: intimidation and harassment of audit firm personnel; online and offline boycotts of international apparel, technology and consumer staples businesses in China; and coordinated online information campaigns. The last section of Part 2 considers corporate responses, drawing on over 250 records in the Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset. It identifies important regional differences (China, the West, the rest of Asia) in these responses, suggesting that the struggle over Xinjiang forced labour is increasingly a struggle over control of both business information and broader narratives.

Part 3 of the study considers the impact of sanctions and counter-measures to date. It begins by highlighting key insights from the sanctions theory literature about the dynamics of economic sanctions adoption and implementation, and then applies these insights to existing Xinjiang sanctions, focusing on the cotton, tomato and solar sectors. For each sector, the analysis considers whether sanctions create greater costs for actors in the sending or target states, at whether and how those costs may translate to policy change, at how targeted actors are responding to the disruptions caused by sanctions, at the role of sectoral bodies, and at whether sanctions engage capital market leverage.

Part 4 synthesizes the key findings from the first three Parts of the study, and uses them to make a series of recommendations for strengthening Xinjiang sanctions to address forced labour.

# 1. Understanding Xinjiang forced labour

In order for sanctions to be effective, they must be based on an accurate understanding of the targeted behaviour, policy or practice. Without that understanding, sanction 'senders' cannot be confident of the effect of the sanctions they impose. In this first Part, we therefore consider the nature of alleged Xinjiang forced labour. Xinjiang forced labour differs from the forced and child labour addressed through supply-chains measures in many other contexts, because the coercion involved is not imposed on workers by employers, but by the state.

The discussion proceeds in three parts. First, we discuss how coerced labour fits within Beijing's evolving governmental strategy in the region it calls Xinjiang Uyghur Autonomous Region (XUAR) after the region's largest ethnic minority. Second, we consider the specific role of the Xinjiang Production and Construction Corps (XPCC, or *bingtuan* ('Corps')). Third, we consider the legal characterisation of these policies, since this has important implications for sanctions strategy.

## 1.1 Governing the frontier

Xinjiang – literally meaning 'new frontier' in Mandarin, so-named by the Qing Dynasty in the 18<sup>th</sup> Century – has long been perceived by rulers in eastern China as a gateway to Central Asia. If not effectively governed, the thinking goes, Xinjiang risks becoming a gateway to China's eastern 'mainland' for disruptive forces from the west. The region is often portrayed as a fluid buffer zone protecting the geographic and ethnic 'core' of Han China from the 'barbarian' forces of Central Asia and further west.<sup>7</sup> Understanding how and why the people of Xinjiang have been coerced in large numbers into work requires an appreciation of the Chinese state's evolving governmental strategy for managing these perceived risks, and Xinjiang's significance to Chinese nationalism. Forced labour emerges as a marker of the shifting frontier of state and Chinese Communist Party (CCP) power in the region.

### 1.1.1 From stabilisation to transformation

For many centuries, the strategic position of this region on the Silk Road brought prosperity and a certain cosmopolitanism. Today, that earlier history serves as an inspiration for the CCP's efforts to restore Xinjiang's fortunes as an important Eurasian trading post, including as a railway hub in the Belt and Road Initiative. But Xinjiang is presently amongst the poorest regions in China. With the rise of the West and maritime powers in the 18<sup>th</sup> Century, overland trade diminished

and power and wealth shifted east to China's littoral provinces. China's arid north-west fell into poverty and rule fragmented. Average per capita income in XUAR is now less than half that in eastern provinces.<sup>8</sup>

The CCP took time to establish its effective control over the region in the late 1940s and early 1950s. President Xi Jinping's father, Xi Zhongxun, was intimately involved in this effort, serving as political commissar and director of the Northwest Political and Military Affairs Bureau while Deng Xiaoping played the analogous role for the Southwest bureau. The Xinjiang Production and Construction Corps (XPCC, or *bingtuan*), discussed further below, was a central instrument in projecting Beijing's power in the region.

For the first 50 years, the CCP's governmental strategy for the region focused on stabilisation. Physical transformation of the region through large-scale reclamation of arid land went hand in hand with Sinification as poor Han agricultural workers were transferred into the region. As discussed further below, forced labour of local minorities did occur, especially in seasonal agriculture, and forced labour was also an aspect of the region's role in reform and re-education of predominantly Han prisoners transferred from other Chinese provinces. Yet forced labour was not seen as a tool for social transformation of the region's minority communities.

As China's eastern provinces began to open up and integrate with the global economy in the 1990s, Xinjiang lagged. Only in the late 1990s, with Jiang Zemin's *Open Up the West* campaign did the region begin a wholesale transformation away from a planned economy towards a more market-oriented system. Even then, however, the focus remained on macroeconomic development rather than social transformation. With Xinjiang far from the booming maritime trading ports in China's east, and a very minor contributor to overall Chinese GDP, the region remained a peripheral concern for Beijing.

<sup>7</sup> Cliff 2009, p. 85; Gaubatz 1996, p. 20; Waldron 1990, p. 42.  
<sup>8</sup> Hendrix and Noland 2021, p. 8.

The shift in Beijing’s governmental strategy for the region from stabilisation to wholesale social transformation arguably emerged in 2014, under the leadership of President Xi Jinping. It was the product of several factors. One was the growing focus on restoring overland trade and Chinese influence in Central Asia through the Belt and Road Initiative. Xinjiang’s position at China’s northwest border made effective control an important foundation for westward engagement by Beijing. Another factor was Beijing’s growing perception of a risk of violent separatism in XUAR, and the broader risks this posed for stability throughout the PRC. Uyghur, Kazakh and other non-Han ethnic groups have long chafed under the discriminatory effects of Beijing’s rule. On 5 July 2009, violent riots broke out between Muslim Uyghurs and Han Chinese in the regional capital Ürümqi (the so-called ‘7-5 incident’), the worst such unrest in modern Chinese history. In March 2014, an indiscriminate attack allegedly carried out by Uyghur separatists at the Kunming Railway Station left 31 dead and 143 injured.

These factors produced a new strategic approach to XUAR governance in Beijing. Since 2014, the CCP leadership has pursued a more aggressive strategy of social transformation for the region, seeking to integrate XUAR more closely into CCP-controlled economic and political circuits, connect it more profitably to global commerce – and pushing more openly for the assimilation of minority populations.<sup>9</sup> This has been achieved through investment in physical and security infrastructure, and through a coercive programme extending the frontier of Beijing’s power in both spatial and social terms – deeper into southern Xinjiang, into minority populations’ workplaces, homes and families, and even deeply into their religious and political thought.

This strategic course was set by President Xi Jinping less than three months after the Kunming attack. On 28 May 2014, at a critical CCP meeting on Xinjiang, President Xi laid out his vision in language that has since trickled down into subsequent Party pronouncements and regulations shaping the region.<sup>10</sup> Xi framed the governance of Xinjiang in terms of the Party’s larger strategic goals of national unity (and reunification), national security and national rejuvenation. Xi characterised stability in Xinjiang as the foundation for the stability of the entire nation and achievement of its long-term goals,<sup>11</sup> thereby making clear that effective governance of XUAR was no longer a peripheral concern, but rather a first-order strategic issue for Beijing.

Recognising this is critical for effective sanctions strategy. What drives CCP action in Xinjiang is not a narrowly economic or developmental, nor a purely commercial logic, but rather a political and strategic one.<sup>12</sup> Policy change in Xinjiang will therefore depend on political – and not only commercial or economic – considerations. This is critically important for how we think about the design and effect of sanctions. The ultimate goal of sanctions strategy for Xinjiang should not be to change commercial practice in how workers are managed, but rather to change state policy in how Xinjiang is governed, which is quite a different prospect. Changing corporate behaviour is the means, not the ends. Sanctions must be assessed in terms of both their economic as well as their political effect.

As leading scholar of CCP rule in Xinjiang Dr Adrian Zenz has noted, President Xi’s 2014 speech marked an important departure in the way Xinjiang was governed, from a focus on broad-based economic development to a more targeted focus on counterterrorism and stability maintenance.<sup>13</sup> Xi called for unwavering “use of the weapons of the people’s democratic dictatorship” to address violent terrorism.<sup>14</sup> In the years since, this has led to the emergence of a complex Orwellian system of both physical and digital repression, which combines oppressive policing and digital surveillance.<sup>15</sup> This system has extended the frontier of CCP power deep into the family and spiritual lives of people living in Xinjiang. The ‘*Becoming Family*’ (结对认亲) campaign, for example, has placed a million Han ‘guests’ into the homes and bedrooms of minority host families, without their consent, to monitor and report on their private lives and thinking.<sup>16</sup>

Against this background of state coercion, two specific policy infrastructures have interacted to force Uyghurs and other minority populations into involuntary work in their hundreds of thousands, or perhaps millions: 1) a ‘vocational training’ programme developed since 2014; and 2) a longer-standing ‘poverty alleviation’ programme.<sup>17</sup> The operation of each of these is discussed in turn.

### 1.1.2. ‘Vocational training’

In the last few years, Chinese authorities have constructed a contemporary ‘gulag archipelago’<sup>18</sup> or system of ‘concentration camps’<sup>19</sup> across Xinjiang. This is a prison-industrial complex incorporating dozens of residential ‘Vocational Skills Education and Training Centres’ (*zhiye jineng jiaoyu peixun zhongxin* 职业技能教育培训中心, or VSETCs).

The VSETC scheme has been developed against a backdrop of broader efforts to scale up Xinjiang’s residential education system<sup>20</sup> and vocational training.<sup>21</sup> The VSETC system was initiated by XUAR authorities in 2017, through a De-Extremification Regulation (新疆维吾尔自治区去极端化条例) that created a system of “centralized education” and “behavioural correction” in residential training centres.<sup>22</sup> Between 1 and 2 million people from Uyghur, Kazakh and other minorities may have been involuntarily detained in these detention centres.<sup>23</sup> However, the authorities indicate that the period of residential training in VSETCs has now passed, with “students” having “all graduated” and “[w]ith the help of the government... achieved stable employment”.<sup>24</sup>

Detention in the VSETCs is not formally punitive, based on suspicion of involvement in violence or criminal activity, but preventive, based on suspicion of “infection” with dangerous incorrect thinking such as separatism or religious extremism.<sup>25</sup> Yet there is growing and extensive evidence that the Centres are run as prisons, including practices of hooding, shackling and handcuffing, and shoot-to-kill orders directed at those attempting escape or causing security disturbances.<sup>26</sup> In addition to “transformation through education” classes aimed at “treating” people “contaminated” by exposure to separatist and potentially extremist thinking,<sup>27</sup> the VSETC system includes a significant focus on work in labour-intensive jobs such as apparel work, in factories located close to or inside the re-education centres.<sup>28</sup>

The government typically pays enterprises (both private and state-owned) a fee for each “trainee” or “graduate” so employed, and may also provide financial and logistical support, such as subsidised access to production facilities and provision of security services.<sup>29</sup> Lehr and Bechrakis suggest that at some such facilities in XUAR, costs may be 30 per cent lower than elsewhere in China, despite their remote location and historically low productivity and poor infrastructure.<sup>30</sup> The government has also actively encouraged employers, especially in cities and towns in eastern China that have ‘paired’ with urban centres in Xinjiang under earlier development policies, to hire the labour force ‘re-educated’ in the VSETCs – usually after they have ‘graduated’ – and also to open new operations in Xinjiang.<sup>31</sup>

The supply of cheap labour through this scheme has been a critical element in Xinjiang’s rapid industrial expansion over the last half decade. In late 2018, the main economic planning body for the region, the Xinjiang Reform and Development Commission, identified the VSETCs as a “carrier”, or load-bearer, of economic stability. Because of this “camp fix” Xinjiang had attracted “significant investment and construction from coast-based Chinese companies”,<sup>32</sup> especially in the garment and textile sector, where factory employment in XUAR grew by over 500 per cent between 2014 and 2020.<sup>33</sup>

The Chinese government represents these centres as a large-scale effort to develop the skills of disadvantaged minority peoples in XUAR,<sup>34</sup> to improve the “employability of workers” and promote “stable employment”.<sup>35</sup> First-hand testimony and policy documents, however, paint a different picture. They suggest that the VSETCs are brutal and dangerous ethnic internment camps, designed as a massive, preventive counter-extremism measure intended to pre-emptively fight separatism and religious extremism through “thought education”. They also suggest the VSETCs have become sites of significant attendant human rights violations, from sexual assault to torture.<sup>36</sup>

9 See Leibold 2019; Roberts 2020; Tobin 2020; Yan 2020; Milward and Peterson 2020.

10 See Central Office Bulletin 2014; Zenz 2021a, 2021e.

11 Central Office Bulletin 2014; Zenz 2021a, 2021e.

12 Zenz 2022b.

13 Zenz 2021, p. 8. See also Zenz 2022c for a discussion of how the focus on counter-terrorism and counter-extremism as a response to perceived threats in XUAR has arguably become self-fulfilling.

14 Central Office Bulletin 2014, p. 8.

15 Cain 2021.

16 Byler 2018. For a first-person account see Elimä 2021.

17 See especially Zenz 2021c, 2022b.

18 The term used by Aleksandr Solzhenitsyn to describe the system of forced labour camps in the USSR: Solzhenitsyn 1973. For comparison of the situation in Xinjiang to the gulag, see Akyol 2019; Wen and Auyesov 2018.

19 Kasikci 2019 argues the concentration camp is a better analogy than the gulag, because of the shared ‘preventive’ purpose, and the ethnically discriminatory nature, of both the centres in Xinjiang and those colonial concentration camps – neither of which characteristics the gulag shared. On the other hand, like the gulag, the Xinjiang centres see work as a path to reeducation and political and spiritual liberation; grimly, they share that in common with the discourse used to legitimise Nazi concentration camps, including the infamous slogan inscribed over the entrance to Auschwitz-Birkenau, *Arbeit macht frei*.

20 Central Office Bulletin 2014, p. 21.

21 State Council Information Office 2020, p. 3.

22 Zenz 2019a, 2021b.

23 Zenz 2019b; Zenz 2022d. Tobin et al. 2021 put it at between 1 and 2 million.

24 Xinhua 2019.

25 See Qiu 2017; Smith Finley 2019.

26 See especially Zenz 2022c; Khatchadourian 2021; Byler 2021.

27 Xinjiang People’s Congress 2018.

28 See Zenz 2019b; Tobin et al. 2021, pp. 15-18.

29 Byler 2021; Bunin 2020; Zenz 2019b.

30 Lehr and Bechrakis 2019.

31 Tao et al. 2019; Li 2018.

32 Xinjiang Reform and Development Commission 2018.

33 Murphy and Bhimani 2020.

34 ILO 2022.

35 Xinhua 2019, pp. 5, 11.

36 Smith Finley 2019; Killing and Rajagopalan 2020; Millward and Peterson 2020; Mauk 2021; Byler 2021; Uyghur Tribunal 2021; Zenz 2022c.

Within the workplaces associated with this prison-industrial complex, first-hand accounts describe payments of no or negligible wages, the inability to exit, markers of involuntariness in working conditions (such as close surveillance, oppressive supervision and production quotas), and penalties for non-compliance.<sup>37</sup> In some accounts, it is not only individuals suspected of transgressive thinking, but their families, who are forced to work in this complex as well.<sup>38</sup>

The forced labour of these workers may be lucrative for the commercial enterprises involved, but the central rationale for government investment is a political one. In this programme, forced labour is a mechanism for transforming workers' political consciousness.<sup>39</sup> The scheme owes something to the Maoist tradition of 'Reform through Labour' (*lǎodòng gǎizào*, 劳动改造), which was aimed at criminal rehabilitation, and 'Re-education through Labour' (*lǎodòng jiàoyǎng*, 劳动教养, or *laojiao* for short), aimed at political re-education.<sup>40</sup> The latter, which operated from 1957 to 2013, was a formalisation of an earlier CCP counter-revolutionary technique used to coerce dissidents into ideological and political conformism. It was also repeatedly singled out for expressions of concern and critique by UN human rights bodies, including the UN Working Group on Arbitrary Detention.<sup>41</sup>

### 1.1.3 'Poverty Alleviation'

Another essential element of the risks of forced labour in Xinjiang is the Poverty Alleviation through Labour Transfer scheme (*zhuan yi jiuye tuopin* 转移就业脱贫), which facilitates potentially coercive sectoral transfers of predominantly agriculturalist and nomadic ethnic populations into labour-intensive wage employment.<sup>42</sup> In Xinjiang, this involves mobilisation and transfer of hundreds of thousands, if not millions, of predominantly ethnic workers into jobs in nearby 'satellite' factories in rural villages and towns in Xinjiang, as well as in urban factories elsewhere in Xinjiang – and in facilities in other PRC provinces altogether.<sup>43</sup>

The scheme originates in broader, decades-old country-wide poverty alleviation plans aimed at addressing so-called "surplus rural labour" across western China, Xinjiang and to some extent Tibet.<sup>44</sup>

Since 2014, there has been a subtle but important shift in the approach taken to implement this and related poverty alleviation schemes, with a greater emphasis on the state directly enlisting the participation of big business. This has involved both offering incentives for investment in new production facilities in poor regions and affirmative action-style programmes placing workers from poor and marginalised groups in jobs with these companies.<sup>45</sup> This may reflect a broader shift in the relationship between the Party-state and business under President Xi across China, with the CCP taking a more assertive line in enlisting big business as an active partner in achieving social and political goals.<sup>46</sup>

Yet the scheme has taken on a different cast in Xinjiang over the last decade, differentiating it from broader poverty alleviation efforts undertaken elsewhere in the country. In his May 2014 speech on Xinjiang policy, President Xi argued that the government should "systematically expand the scale of transfer of Xinjiang ethnic minority people to China's interior provinces for education, employment, and residence".<sup>47</sup> Xi's approach was framed in the context of "ethnic interaction, exchanges and blending" to create resistance and "immunity" to "religious extremist thinking" and to promote Sinification. The CCP leadership linked the development of such "immunity" to work placements, asserting that work helps to ensure the unemployed do not "provoke trouble"<sup>48</sup> – a turn towards a more assimilationist approach in the implementation of poverty alleviation programming.<sup>49</sup>

By 2016 this had translated into an aggressive mass mobilisation of minority workers, especially from southern Xinjiang where Uyghurs form a majority, into labour-intensive industry, both in Xinjiang and elsewhere in China, especially in cotton-related sectors (garment and textiles) and agriculture.<sup>50</sup> This went beyond poverty alleviation programming undertaken elsewhere. A mid-2017 Regional Development and Poverty Alleviation Implementation Plan for southern Xinjiang called for 10,000 persons annually to be transferred to other provinces through Pairing Assistance (对口援疆),<sup>51</sup> as had already been contemplated by the CCP leadership in 2014.<sup>52</sup> By 2018, Xinjiang authorities were aiming to place at least 1 million workers into jobs in the textile and garment industries by 2023, with 650,000 coming from southern Xinjiang.<sup>53</sup>

Between 2018 and mid-2020, 221,000 people were transferred to work, in and from Xinjiang;<sup>54</sup> 117,000 were transferred under the Pairing Assistance scheme since 2014.<sup>55</sup> Zenz estimates 76,000 were transferred between 2017 and 2019.<sup>56</sup>

Such programming is not in and of itself necessarily contrary to international labour norms and standards. Many workers are keen to benefit from such state assistance and state-run employment promotion programmes operate safely worldwide. CCP claims that transferred labourers can increase their income are indeed supported by some evidence, and rural populations clearly do pursue wage employment outside of agriculture. Yet such schemes must guard against coercion, especially when adopted in the context of larger socio-cultural transformation and security efforts that include a history of displacement from the land.<sup>57</sup> Safeguards must be in place to protect against affirmative action policies pushing people into involuntary work.<sup>58</sup>

In Xinjiang, the opposite seems to have occurred. Implementation of the scheme in XUAR shows significant signs of coercion, including: active and intrusive efforts by teams of government officials to promote participation in the scheme and to meet official recruiting quotas; the presence of Han 'relatives' mandated to live temporarily within minority households who report to authorities; and coercive land transfers.<sup>59</sup> Video evidence from international media sources appears to confirm both involuntary entry to and inability to exit from work placements under this Poverty Alleviation scheme.<sup>60</sup>

Policy documents reinforce the perception that the scheme has operated to push Uyghurs and others into work, whether they like it or not. At the seminal May 2014 meeting that set subsequent policy for Xinjiang, Premier Li Keqiang made clear his belief that the root of poverty in Xinjiang is incorrect "thinking about employment" amongst minority groups, and that such incorrect thinking must be transformed through vigorous development of "labour-intensive industries that absorb more employment". Idle workers are specifically identified as ready recruits for extremists and other "evildoers", who must therefore be protected through absorption into the industrial workforce.<sup>61</sup>

Similarly, Xinjiang's 13th Five-Year Poverty Alleviation Plan from June 2017 called for the eradication of an outdated mindset of "waiting, relying, wanting". The plan emphasised that "curing poverty means to first cure ignorance and backwardness", setting out a system for early warning and workforce mobilisation down to the township and department level.<sup>62</sup> This policy orientation has trickled down to the local level, with one local government instruction adopted under the Poverty Alleviation scheme bluntly directing state agents to "[m]ake people who are hard to employ renounce their selfish ideas. Turn around their ingrained lazy, lax, slow, sloppy, freewheeling, individualistic ways so they obey company rules."<sup>63</sup> The aim is the development of a compliant industrial workforce, and the abandonment of notionally barbaric, backward lifestyles and traditions. Zenz argues that "in Uyghur regions, the past several years of Xinjiang's forced labor training and placement practice are now considered to form the bedrock of the region's future industrial and economic policy".<sup>64</sup> He argues that the government's focus is now increasingly on surveillance and monitoring of those who have been placed into commercial employment throughout China.<sup>65</sup>

### 1.1.4 Uyghur agency

Each of these programmes, alone, represents a significant risk of forced labour. Together, that risk is significantly multiplied. Zenz estimates that between 2 and 2.5 million people are at risk of coercive labour in Xinjiang as a result of these two programmes – VSETCs and Poverty Alleviation through Labour Transfers – operating in tandem.<sup>66</sup>

The Chinese government, however, insists that "[t]he fact that ethnic minority workers go out to work [i.e. participate in labour transfers] is entirely voluntary, autonomous and free."<sup>67</sup> Yet as Lehr and Bechrakis have observed,

*"It is unclear why Xinjiang's ethnic minorities, which historically have resisted the government's efforts to incorporate them in the manufacturing base, would now choose en masse to enter the workforce, particularly when they are paid below the minimum wage..."*<sup>68</sup>

37 Amnesty International 2021, 126-129; Byler 2021, 113-115; Vanderklippe 2019; McNeill et al. 2019; Deutsche Welle 2020.  
38 Amnesty International 2021, 128.  
39 Li 2018, pp. 150-152.  
40 See Fu 2005; Leibold 2018; Feng 2018; Buckley and Ramzy 2018.  
41 See Human Rights Watch 1998; UN Working Group on Arbitrary Detention 1997.  
42 Zenz 2022b. See also Laura Murphy's discussion in Tobin et al. 2021, pp. 18-23.  
43 Zenz 2021a, p. 20; Zenz 2021e.  
44 Zenz 2020c, 2021c.  
45 Fang, Li and Cliff 2022.  
46 See Chen 2016.  
47 "有序扩大新疆少数民族群众到内地接受教育、就业、居住的规模" in Central Office Bulletin 2014, p. 15.  
48 Central Office Bulletin 2014, pp. 20, 23; Zenz 2021a, 11; Zenz 2021e.  
49 Zenz 2021a, p. 11, and Zenz 2021e; and see Leibold 2016.  
50 Zenz 2020a, 2021c.  
51 Zenz 2022, p. 16.  
52 See the speech of Yu Xhengsheng in Central Office Bulletin 2014, p. 76. On Pairing Assistance see Morgret 2022.  
53 See Zenz 2019b.

54 SCIO 2020.  
55 SCIO 2020. The ITUC offers a lower figure, 80,000: see ILO 2022a p. 515.  
56 Zenz 2021c, p. 32.  
57 See UHRP 2016. Displacement from land and mobilization of low-skill, landless population into labour-intensive jobs are features of large-scale forced labour in other contexts, notably in Brazilian agriculture and the palm oil industry in Africa and South East Asia: see Cockayne 2021.  
58 Zenz 2021a, 2021e, 2022b.  
59 See Zenz 2021c, 2022b at pp. 13-18; Tobin et al. 2021, pp. 18-23; Sudworth 2021. On land transfers see also Luo and Andreas 2020.  
60 Sudworth 2021; Buckley and Ramzy 2020; Le Monde 2021.  
61 Central Office Bulletin 2014, p. 40.  
62 Zenz 2022a, p. 15; 2022b.  
63 Buckley and Ramzy 2019.  
64 Zenz 2022b.  
65 Zenz 2022b.  
66 Zenz 2022b.  
67 ILO 2022a p. 517.  
68 Lehr and Bechrakis 2019, p. 5; see also Hendrix and Noland p. 5; Zenz 2019c.

Workers know that if they refuse to participate in the Labour Transfers scheme, they and their family may wind up in so-called ‘vocational training’.<sup>69</sup> This fundamentally taints the voluntariness of their participation in the Labour Transfers scheme. Uyghur agency in work choices is reduced so far that their choices become essentially involuntary, a situation that McGuire and Laaser have described in the context of state-backed forced labour in Uzbekistan as “structurally forced consent”.<sup>70</sup>

When we are considering whether work amounts to forced labour, however, it is not just voluntariness at the point of entry, but *also* the conditions of work *and* the ability to exit that are relevant.<sup>71</sup> Systems of forced labour and modern slavery around the world have been assessed on the basis of their systemic effects on agency across the different dimensions of the employment experience.<sup>72</sup> Later in this Part, we consider what this means for the legal characterisation of these schemes. Initially, however, our focus is on how this affects Xinjiang governance.

The VSETC and Labour Transfers schemes operate together in Xinjiang to transform not only individual worker consciousness, but the agency of minority communities as a whole.<sup>73</sup> The connection between labour-intensive work, ethnic assimilation and political stability was laid out already in May 2014 in the speech of Yu Zhengsheng, then head of the Central Committee Xinjiang Work Coordination Small Group (中央新疆工作协调小组). He explained that economic development “must absolutely be subservient to social and long-term peace and stability”, continuing that:

*“For example, in Xinjiang, the requirements for the development of labour-intensive industries are particularly urgent. Although these industries may not contribute more to economic growth and taxation than other industries, they are particularly important for employment and for promoting exchanges and the integration of various ethnic groups.”*<sup>74</sup>

There is also evidence that assimilation and reduction of Uyghur population density may be a policy goal of large-scale Labour Transfers<sup>75</sup> and of broader Poverty Alleviation efforts in Xinjiang.<sup>76</sup>

Particularly since 2014, the Chinese state has put not only its security apparatus but also its financial muscle behind this strategy of transformation. Beyond the massive labour subsidies provided by both the Poverty Alleviation scheme and the VSETC system, the state subsidises new factory construction, the transport of goods made in XUAR to consumers in the east and salaries. It also provides tax incentives for big business to integrate into Xinjiang and invests in strategic economic infrastructure including railways and airports.<sup>77</sup> Between 2016 and 2020, Chinese State Owned Enterprises (SOEs) reportedly invested over USD 119 billion in XUAR, under instruction from Beijing,<sup>78</sup> and in some cases using domestic development finance mechanisms.<sup>79</sup>

### 1.1.5 Implications

The implications are significant.

First, we should understand Xinjiang forced labour not as a stand-alone phenomenon, nor even as a symptom of a larger, outdated command economy (as it was, for example, in Uzbekistan<sup>80</sup>), but rather as a symptom of a deliberate attempt to solve the notional ‘problem’ of ethnic separatism in Xinjiang by overwriting modern ‘Chinese’ thought habits and working patterns on top of the traditional lifestyle and thinking of Uyghur and other minority communities. This pattern of attack on a people and a community as a whole is why some consider Xinjiang forced labour a symptom of a broader strategy that, when understood as a whole, may amount to genocide.<sup>81</sup> The proper legal characterisation is discussed later in Part 1.

Second, there are also little-noticed – but critical – implications for sanctions design. One implication is that while both VSETC and Labour Transfer schemes produce coerced labour, they do so through distinct, if interacting, mechanisms, “using different forms of coercion, and for at least partially different purposes”.<sup>82</sup> This suggests that different actors, with different vulnerabilities and pressure-points, will be involved in implementing each scheme. The VSETC system involves a range of security-oriented actors to oversee internment and manage work placements. The Labour Transfer scheme does not place workers in detention, but rather places workers into commercial work contexts. Each scheme offers different entry-points for engagement and influence.

This suggests a need for sanctions targeting, signalling and incentives to be tailored to address each of these systems.

Third, understanding the different mechanisms in play has important implications for the due diligence expected under some of the government measures being adopted in response to Xinjiang forced labour, which we consider in the next part of the paper. For example, at present many allegations of ties between companies and Xinjiang forced labour rest on records indicating the company has been involved in the Poverty Alleviation through Labour Transfers schemes. Yet absence of evidence of such connections may not prove a firm’s lack of involvement in Xinjiang forced labour; the firm might still be involved through the receipt of VSETC ‘students’ or ‘graduates’, and through the involuntariness arising in their ongoing working conditions, such as the inability to leave roles due to state pressure.<sup>83</sup> With the VSETC cohort largely having ‘graduated’, effective due diligence will need to look for data on working conditions across diverse workplaces. As Adrian Zenz points out, this may be more difficult to ascertain than evidence of a firm’s participation in the Poverty Alleviation through Labour Transfers programme.<sup>84</sup>

Fourth, understanding coercive labour in Xinjiang as the product of the CCP’s political strategy, and not just its approach to economic development, helps explain the strength and nature of Chinese counter-measures discussed in Part 2 of this study. Companies that participate in western campaigns against Xinjiang forced labour may not be perceived in Beijing as simply signalling unhappiness with commercial employers’ labour management practices, but instead perceived as placing national security, unity and rejuvenation at risk. Framing Western actions on Xinjiang in this way activates historical memories of the ‘humiliation’ of China by Western imperialists in the 19th Century, stoking a nationalist response. That raises important questions about how such a narrative can be addressed. What reframing of action on forced labour could avoid such a response? We return to this question in Part 4 of the study.

Fifth, it is arguably the significant financial and policy support from Beijing that allows firms operating in XUAR to compete successfully on cost in international markets.<sup>85</sup> The coercion of workers into underpaid and subsidised jobs allows these firms to undercut foreign producers on price. Forced labour is at the heart of the growth of several sectors of the Xinjiang economy over the last decade.

This suggests that some of these policies may be susceptible to challenge under international trade law – an area we consider in section 1.3 below. First, however, we consider the key role of the XPCC in the transformation of Xinjiang over the last decade.

## 1.2 The Xinjiang Production and Construction Corps

One organisation has been central to CCP rule in Xinjiang: the Xinjiang Production and Construction Corps (新疆生产建设兵团 – *Xīnjiāng Shēngchǎn Jiànshè Bīngtuán*, or simply *Bīngtuán* – the ‘Corps’). In 2021, XPCC production reached USD 53.37 billion (up 8 per cent on the previous year), and its membership reached 3,485,100.<sup>86</sup> This represents around 25 per cent of XUAR GDP and 13 per cent of XUAR population.

This section introduces the XPCC and explains the various roles it has played in Xinjiang forced labour, leading to the XPCC being amongst the most popular targets for Xinjiang sanctions. (35 of the 318 government measures covered in the Government Measures dataset on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info) are XPCC entities or leaders.<sup>87</sup>) First, the XPCC’s origins and development are explained. The shifting form and function of the XPCC reflect Xinjiang’s changing political economy. Established as a settler garrison in 1954, the XPCC took on a corporate form in 1998 and attempted to adapt to XUAR’s insertion into the market economy. Since 2014, it has been an important instrument for Beijing in pursuing its securitised strategy of social transformation in XUAR, playing an important role in the VSETC prison-industrial complex. Second, the XPCC’s role in Xinjiang forced labour is unpacked. And third, implications for sanctions strategy are considered.

### 1.2.1 Origins

The XPCC was founded as a settler military garrison on the PRC’s north-western frontier in 1954, while President Xi’s father was the top CCP representative in the region.<sup>88</sup> Since the late 1940s, People’s Liberation Army (PLA) soldiers had been recruited to establish mechanised state farms and ranches in northern Xinjiang.<sup>89</sup> As the elder Xi favoured a separation of military and civilian affairs, the XPCC emerged in 1954 when it was agreed that the PLA should step out of a central role in planning and managing Xinjiang’s economic needs. 104,000 civilian PLA officers would split off to create a separate Xinjiang Production and Construction Corps to help stoke the region’s economic development.

69 Byler 2021; Tobin et al. 2021, pp. 13-15; Zenz 2019b.

70 See McGuire and Laaser 2018; and see Cockayne 2021.

71 See ILO 2012, p. 14; Zenz 2021c, p. 20.

72 See e.g. Cockayne 2021, which takes this approach in analyzing modern slavery systems in global value-chains for apparel, cattle, construction, cotton, fishing and palm oil.

73 Compare Zenz 2022b, p. 20.

74 Central Office Bulletin, p. 65, translated at Zenz 2021e, p. 20.

75 Zenz 2021c, 2021d.

76 ILO 2022a p. 516.

77 Murphy and Bhimani 2020; Confidential Research Interviews 1, 3, 7. For more on the subsidy scheme see

e.g. Xinjiang Wuqia County People’s Government Office 2018.

78 People’s Daily Online 2021. See generally Morgret 2022.

79 Haniffie 2020.

80 See Cockayne 2021.

81 See the discussion below in section 1.3.

82 Zenz 2022b, p. 3.

83 Zenz 2022b, p. 17.

84 Zenz 2022b.

85 Byler 2019.

86 XPCC Statistics Bureau 2022.

87 XJS-GMS v. 4.0, available at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info).

88 Seymour 2000; Zhu and Blachford 2015.

89 See Schwarcz 1963.



This XPCC would retain a residual military function and be available to complement the PLA in defence of the frontier against both foreign and domestic enemies.<sup>90</sup> When the Xinjiang Uyghur Autonomous Region (XUAR) was formally established in 1955, the XPCC was made to answer *both* local authorities and Beijing, which served as an insurance policy for the centre against potential separatism or splitism in XUAR.

As a settler garrison, the XPCC resembled Chinese traditional patterns of military agri-settlement to stabilise contested frontiers (屯田, *tuntian* and 屯墾, *tunken*).<sup>91</sup> Though separate from the PLA, the XPCC maintained a militaristic culture and organisation, including a commitment to autonomy from the local population. It was organised through 14 ‘Divisions’ and, today, 174 ‘Regiments’. The Corps lived largely apart from the local populace, carving out farms and towns in sparsely populated and inhabited areas of Xinjiang, particularly the north. This was billed as an effort to avoid competition with the local population for scarce resources.<sup>92</sup> Cotton, wheat, tomato, sugar beet, dates and grapes were planted on a large scale.<sup>93</sup>

Over time, these settlements developed into self-governing cities with their own hospitals, schools, prisons and theatres, with the XPCC beginning to resemble a “state within a state”<sup>94</sup> or, in the words of a traditional XPCC ditty, “an Army with no uniforms; a government that is taxed.”<sup>95</sup> Today, the XPCC has administrative authority over 10 cities, and an area of 70,000 square kilometres, contributing over USD 40 billion in GDP.<sup>96</sup> Regiments often own huge tracts of land contracted and worked by regimental farmers, with the regiment providing infrastructural support and maintenance. The XPCC has its own administrative structure, and fulfills governmental functions such as healthcare, policing, judiciary, and education for areas under its jurisdiction.<sup>97</sup> Regiments pay taxes and provide social infrastructure such as hospitals, clinics, schools and retiree support – hence the reference to “a government that is taxed”. Regiments also manage some aspects of social policy such as family planning, and militia training.<sup>98</sup>

The XPCC’s internal affairs, including the administration of its cities and reclaimed land, do not, however, operate within the jurisdiction of the XUAR authorities, but rather under the direction of leaders reporting to the central government. In this sense, the XPCC is less a “state within a state”, and more “the central state within the autonomous region” – a local instrumentality of the Party in Beijing. In most parts of China, the policies of Beijing are intermediated by provincial and local levels of government before taking effect on the ground. In Xinjiang, the XPCC is a powerful instrument that Beijing controls directly and without such intermediation.

Over time, schemes sponsored by Beijing and the XPCC induced large numbers of Han smallholder agriculturalists to migrate to XUAR from other provinces to join the XPCC and help it reclaim arid land. These schemes offered generous salaries, pensions and social infrastructure. Even today, the XPCC is around 87 per cent Han, while the overall population of XUAR is around 40 per cent Han (up from 3 per cent in 1949).<sup>99</sup> Many non-Han in XUAR consequently see the XPCC as integral to the process of Sinification of XUAR.<sup>100</sup> From the outset, the XPCC also helped construct strategic infrastructure in the region, including major highways and nuclear assets. And it retained a role as a reserve paramilitary force, which Beijing has used several times to suppress rebellions and uprisings. The XPCC has played a role in the security response to the ‘Ili-Tarbagatay’ uprising of 1962,<sup>101</sup> the Baren pro-independence disturbance of 1990,<sup>102</sup> religious freedom demonstrations in Ghulja in 1997,<sup>103</sup> and riots in Ürümqi in 2009.<sup>104</sup>

The apparent early success of this Corps model led to the emergence of 16 other regional ‘Production and Construction Corps’ in other provinces of PRC in the following years. However, many of these Corps, including the XPCC, struggled to maintain self-sufficiency, especially during the turbulence of the Cultural Revolution, and became increasingly dependent on financial support from Beijing. This may have been one reason why all the Corps were dissolved during that era, with the XPCC dissolution coming in 1975.<sup>105</sup> After the Soviet invasion of Afghanistan in 1981, Beijing’s concerns about the vulnerability of the north-western frontier revived.

The XPCC – and only the XPCC, not the other regional Corps – was revived in 1982,<sup>106</sup> with Deng Xiaoping making clear that the XPCC’s role in “maintaining local stability” (rather than any economic development rationale) was the critical factor in its restoration.<sup>107</sup>

The strategic role of the XPCC has been repeatedly emphasised by senior CCP leaders ever since. In 1998 the *Xinjiang Daily* paraphrased Jiang Zemin as saying:

*“Stability and development are the theme of Xinjiang’s work. While development is out of the question without stability, from a long-term point of view it will be very difficult to maintain stability without development. The Corps is an important force both for developing and building Xinjiang and for maintaining national unity and consolidating the unification of the motherland. Ethnic separatism and unlawful religious activities are the main dangers to the stability of Xinjiang, and we must take a clear-cut stand and resolutely combat them. This is a common task of the people of various nationalities in Xinjiang and the 2.38 million workers and staff of the Corps. Jiang urged comrades of the Corps to keep firmly in mind its historic mission, to be a model in production and construction, and a model in maintaining stability and unity.”*<sup>108</sup>

The strategic role of the XPCC is also reflected in its governance. The central government established a ‘leading working group’ for Xinjiang which has authority over both XUAR and XPCC. This group is based in Beijing and is headed by a member of the Central Politburo Standing Committee of the CCP. The only other province with a comparable governance structure in Beijing is Tibet.<sup>109</sup> The two highest posts in the XPCC (Political Commissar and Commander) are appointed by the central government in Beijing. The post of First Commissar of the XPCC has been held by the General Secretary of the XUAR CCP Committee. Similarly, each XPCC Division, within different XUAR prefectures, is headed by a First Commissar who is also the secretary of the local Party Committee. Unlike other Chinese local administrative units such as provinces or autonomous regions, where local government is separate from the Party organisation, XPCC has an integrated system.<sup>110</sup> And in the 10 cities it controls, XPCC leadership doubles as the city government; they are literally company (Corps, *Bingtuan*) towns, in which the prefectural government of XUAR is excluded from city management.<sup>111</sup>

XPCC’s economic planning operates separately from XUAR planning and is highly responsive to signals from Beijing. All of this serves to make the XPCC a powerful bridge between XUAR-based interests and Beijing.<sup>112</sup>

The paramilitary hierarchy of XPCC organisation facilitated the infrastructure projects involved in transforming arid into arable land, and worked well in the context of a national command economy.<sup>113</sup> But it also raised questions about whether the XPCC would be able to adapt to the competitive dynamics of a market economy.<sup>114</sup> To address that concern, in 1998, Beijing decided to incorporate the XPCC as a company – to give it a commercial avatar, and thereby better prepare it for China’s accelerating engagement with global markets.<sup>115</sup>

Like other regional governments, the XPCC set up a state-owned assets supervision and administration commission (‘SASAC’) to oversee its investments, with each Division developing its own commercial strategy. Most Divisions have harnessed their existing agricultural assets, with some setting up companies that have grown rapidly over the last two decades through export-led strategies. As a result, Xinjiang is now one of the largest producers of tomatoes and cotton in the world, which will be discussed further in Part 3. Over time, however, some Divisions also developed construction, light industrial and, more recently, heavy industrial interests. Today, the XPCC has 13 subsidiaries listed on Chinese stock markets, including in the cotton (Talimu Agriculture; Xinjiang Sayram Modern Agriculture), tomato (Xinjiang ChalkiS [sic] Tomato Products), plastics (Tuanye), electricity and fruit sectors. The XPCC is also estimated to hold majority stakes in more than 2,900 companies, and direct or indirect holdings in more than 862,000 companies across 147 countries, including the US, UK and Germany.<sup>116</sup> This includes companies with varying backgrounds: those that emerged out of the XPCC’s early agri-settlement efforts, such as the Second Division’s Xinjiang Guannong Fruit and Antler Group; XPCC services privatised during the 1990s, such as Xinjiang Baihuacun Gufen Youxian Company, which formed out of an XPCC food service provider; and companies such as the Eleventh Division’s Xinjiang Beixin Road and Bridge Group, which has become a major player in global infrastructure and construction services, with ventures not only in Shanxi, Henan, Jiangxi, Inner Mongolia and Chongqing, but also in roads and airports in Kyrgyzstan, Pakistan, Tajikistan and Algeria.<sup>117</sup>

90 Seymour 2000, pp. 172-173; Bao 2018.  
 91 Cliff 2009; Millward and Tursun 2004; SCIO 2003, p. 19; Seymour 2000, p. 188; Liu 1998. The contested nature of this rule is important. The XPCC itself points to this history of military-agricultural garrisons as evidence of territorial continuity in Han rule of the region, but the historical record shows significant variation in the presence and power of eastern Chinese actors in the region. See Zhu and Blachford 2016; Cliff 2009; UHRP n.d., pp. 5-6.  
 92 SCIO 2003.  
 93 Bai 2018.  
 94 Olesen 2014.  
 95 Seymore 2000, p. 171.  
 96 SCIO 2003; Bao 2010.  
 97 Cliff 2009.  
 98 Bao 2018.  
 99 McMillen 1981; Olesen 2014; Bao 2018.  
 100 Seymour 2000; Zhu and Blachford 2016.  
 101 Rossabi 2005, pp. 157-158; Seymour 2000, p. 173.  
 102 Dillon 2016.  
 103 Amnesty International 1999; Holdstock 2015, pp. 112-113.  
 104 Hao News 2011.  
 105 See Seymour 2000, p. 179.

106 Seymour 2000, p. 171; Bao 2018, p. 3;  
 107 Renmin Ribao 1998, p. 5.  
 108 Xinjiang ribao, 15 July 1998, pp. 1, 3, FBIS-CHI-98-25.  
 109 Bao 2018, p. 5.  
 110 Bao 2018, p. 6.  
 111 UHRP n.d., pp. 13-14.  
 112 Bao 2018, pp. 8-9.  
 113 Szadziewski 2011.  
 114 Compare Cliff 2009, p. 84.  
 115 Cliff 2009, p. 87 et seq.; Bao 2018.  
 116 Bate 2020a, 2020b; Bukharin 2021.  
 117 Bukharin 2021, p. 29.

The XPCC's shift towards commercial organisation has had both economic and political impacts. XPCC-owned companies have become major providers of low-cost housing in XUAR for Han migrants from other regions of China.<sup>118</sup> The arrival of hundreds of thousands of Han in-migrants who live largely apart from indigenous populations, has accelerated the process of Sinification of XUAR.<sup>119</sup> The expansion of the XPCC's industrial interests has also seen XPCC-tied companies becoming an important partner in the Poverty Alleviation Through Labour Transfers programme discussed above, and thus a major employer of minority "surplus rural labour".<sup>120</sup> And whereas before 1998 the XUAR and XPCC authorities operated in largely distinct spheres of influence, governing separate populations, since 1998 they have increasingly competed for control of economic assets, notably land and water.<sup>121</sup> With the XPCC a predominantly Han organisation, and the XUAR government offering greater diversity of representation, that competition has arguably further stoked ethnic tensions in the region.

### 1.2.2 Forced labour

While the XPCC's form has remained the same since 2014, its function in Xinjiang's political economy has developed once again, in part as a response to growing ethnic tensions. One way to understand this is to consider the change in the XPCC's connection to forced labour.

Writing in 2009, Cliff argued that the XPCC's commercial incorporation, which was accompanied by an expansion of its judicial power over its members, had created a clearer separation from the XUAR authorities and freed the XPCC to develop from "a rural, military organisation... obliged to provide costly non-profit-making social services and pursue contradictory objectives into an urbanised and civilianised corporation with few or no social and military responsibilities."<sup>122</sup> He continued, with great foresight:

*"Effectively dispensing with the Autonomous Region government as an intermediary in this way has provided a compliant and streamlined political environment in Xinjiang and, combined with the social and economic transformations that are an intended consequence of the bingtuan's expansion into Southern Xinjiang, will create a stable platform from which China can project influence into Central Asia. The form of organisation that is able to most effectively act as a conduit for central power in Xinjiang and carry out large construction projects in the Autonomous Region is a state-controlled corporation that has a high degree of coercive control over a civilian labour force but is unencumbered by social responsibilities to these people. The bingtuan's movement towards this form of organisation means that it is becoming less insular and less military but no less controlled."*<sup>123</sup>

In the long decade since Cliff made this prediction, the XPCC has indeed offered both policing and commercial channels for Beijing to execute its policy of social transformation in Xinjiang. In the process, the XPCC's relationship to forced labour in Xinjiang has shifted in subtle but important ways.

During its first 45 years, the XPCC's primary connection to forced labour was through seasonal harvest work on XPCC regimental farms. In an arrangement similar to that used in some Central Asian command economies, the XUAR operated a modernised system of *corvée* labour, mandating annual participation of over a million students aged roughly 6 to 15 in the harvest of cotton, sugar beet, tomatoes, chilli peppers and other agricultural products.<sup>124</sup> Many of these students worked in XPCC farms. As in Uzbekistan,<sup>125</sup> these forced and child labourers were given a daily quota and were fined if they fell short. 10-year-old children were typically required to collect 50 kilograms of tomatoes in a day, and they could only avoid this if their families paid the fine covering the full quota, which created strong incentives for corruption.<sup>126</sup> As the XPCC moved into industrial sectors over the last three decades, XPCC-family factories and facilities became destinations for minority workers, particularly through the Poverty Alleviation through Labour Transfers programme.<sup>127</sup>

A second connection to forced labour developed as the XPCC began to provide carceral services to other PRC regions, taking those regions' (largely Han) prisoners for a fee.

Many of these were political prisoners, and were subjected to the *laojiao* forced labour system, including coerced labour in important infrastructure projects (such as the construction of missile and nuclear installations, and in uranium mining) as well as on XPCC farms and production facilities. This appears to have included forced labour in coal production, which has been critical to the rock-bottom electricity prices in the region that have attracted heavy industry in recent years, including polysilicon producers – discussed further in Part 3.<sup>128</sup> The Xinjiang Public Security Bureau – which is amongst the most widely sanctioned entities in the XJS-GMS dataset – was at the heart of this 'prison business'.<sup>129</sup>

This carceral infrastructure and expertise, combined with interests in light industry and manufacturing, has underpinned the XPCC's important role in the development of the VSETC prison-industrial complex over recent years.<sup>130</sup> This has included a role in the construction of internment camps<sup>131</sup> that can be traced back to President Xi singling out the XPCC as a regional stabiliser in his May 2014 remarks. Calling it a "melting pot of all ethnic groups", Xi further praised the XPCC as "a demonstration zone for advanced productive forces and cultures" – i.e. new industry.<sup>132</sup> The industrial parks with which VSETCs are co-located often involve XPCC entities as owners, builders or partners in commercial ventures. The Corps also seem to play a supporting role in the system of oppressive policing and surveillance that operates outside the detention camps, including the programme of intrusive home visits.<sup>133</sup> As we saw earlier, the Poverty Alleviation through Labour Transfer programme and the VSETC system combine to displace large numbers of ethnic minority workers from traditional lifestyles on the land into factory work, particularly in southern Xinjiang, where the XPCC has also sought to expand its reach.<sup>134</sup>

### 1.2.3 Costs and benefits

There are two potential readings of the XPCC's success in adapting to the market economy era. These different readings point to different conclusions about the how sanctions should be designed to discourage the XPCC's involvement with Xinjiang forced labour.

In one reading, the XPCC has thrived in the market economy, becoming a mechanism for XUAR's insertion into global commerce. XPCC has become a key player in China's cotton production and exports, in agriculture more broadly, and more recently has branched into other sectors such as cement, electronics and solar.

It has also become a vehicle for financial engagement, with 13 listed subsidiaries and over 862,000 direct and indirect holdings in Chinese and offshore companies, as well as an active player in bond markets (which are discussed further in Part 2).

This reading suggests that the XPCC has evolved over the last 20 years into a conglomerate profit centre for the CCP and for Chinese industry. In this reading, the XPCC is something like a 21<sup>st</sup> Century East India Company. It extracts value from Xinjiang's natural resources and labour and capitalises them through insertion into global trade and finance networks. XPCC-linked forced labour should thus be considered as a Chinese analogue to the now-outlawed colonial use of forced and *corvée* labour. The international brands, buyers and investors that profit from the artificially low cost of this labour are critical to the sustainability of the system, and thus, if sanctions induce them to withdraw from that system, the XPCC's profitability can be significantly reduced.

In an alternative reading, however, the XPCC's adaptation to a global market economy has not been such a commercial success as the scale of its corporate activity might suggest. Burdened by governmental responsibilities over large territorial tracts, cities and millions of people, including a huge cohort of pensioners, the XPCC is instead portrayed as a major cost-centre for Beijing, which has to cover around 90 per cent of XPCC's budget.<sup>135</sup> In this reading, the XPCC's export and commercial ventures are better viewed either as loss mitigation measures or through a non-commercial lens. Forced labour may be profitable for the firms using it, for the investors in those firms, as well as for the consumers of goods priced below true cost – but only because such a business model is underwritten by massive transfers from China's public purse. The rationale for those transfers is therefore not strictly an economic or commercial one, but rather a strategic and political one, centred around stabilisation and effective control of XUAR.

One XPCC insider, for example, has argued that the XPCC is "highly dependent on central government for financial and political support", particularly to cover a huge pension bill and handouts to Han migrants and their dependents from other PRC provinces.<sup>136</sup> "The centre" [i.e. Beijing], he claims,

*"does not have high hopes for the future profitability of XPCC. It nevertheless continues to support XPCC with these enormous subsidies, demonstrating the centre's view of the continuing strategic importance of XPCC".*<sup>137</sup>

118 Cliff 2009; UHRP n.d.; UHRP 2016.

119 Cliff 2009; UHRP n.d.

120 Zenz 2021c.

121 Bao 2018, p. 9.

122 Cliff 2009, p. 88.

123 Cliff 2009, p. 94.

124 CECC 2006, 2008, 2011.

125 For a detailed discussion of the system of forced labour in Uzbekistan and how it was transformed, see Cockayne 2021.

126 Cliff 2009, n. 17.

127 See Zenz 202a.

128 UHRP n.d.; UHRP 2016.

129 Seymour 2000; Confidential Interviews 3, 6.

130 Seymour and Anderson 1998, pp. 45-70; Seymour 2000, pp. 186-187; Doman 2018; Yi 2019; Millward and Peterson 2020.

131 See Zenz 2019a, Table 1.

132 Liu 2014; Bao 2018, p. 13; Central Office Bulletin 2014.

133 Bukharin 2021; Cheng and Geng 2018; UHRP n.d., pp. 19-21.

134 Bao 2018, p. 13; Mao and Cui 2017. See also Cliff 2009.

135 Bao 2018. This appears to have been the case for at least two decades – see Seymour 2000.

136 Bao 2018, pp. 4-5.

137 Bao 2018, p. 8. See also Bao 2010.

Likewise, Tom Cliff argues that the XPCC has always been “economically inefficient [and] more or less on the verge of collapse, yet it has to date always been resuscitated by central government subvention”, because of its strategic utility.<sup>138</sup>

Which of these two readings is more accurate? This is an important question for developing and executing effective sanctions strategy targeting the XPCC.

If the first reading is correct, and the central logic underpinning Beijing’s support for the XPCC is indeed an economic or commercial one, then by reducing the XPCC’s profitability Xinjiang sanctions might induce Beijing to explore a different business model for XPCC production, or even different governance approaches in Xinjiang. However, if the second reading is correct, then Beijing may be willing to swallow reduced XPCC profits resulting from sanctions, especially if it considers the political benefits derived from the XPCC’s commercial activity to outweigh the economic costs.

The answer seems to be that different actors within the complex political economy of the PRC perceive the XPCC in different ways, since they have different interests that the XPCC may serve in different ways. The two rationales co-exist. For the CCP’s top-level leaders, Xinjiang and the XPCC are strategic concerns. This has especially been the case since 2014, when President Xi placed security concerns at the heart of the CCP’s strategy for Xinjiang. In the years since, it is not only the XPCC but also big business more broadly that has been enlisted as an instrument for Xinjiang’s social transformation.<sup>139</sup> The state has seen this as a literal investment opportunity, with the State-owned Asset Supervision and Administration Commission (SASAC), which oversees PRC SOEs, announcing already in 2013 that it would “vigorously support” the XPCC.<sup>140</sup> For others, though, such as both Chinese and foreign businesses, even as the XPCC may play these security and governance functions, they encounter it primarily as a commercial venture, and thus as a field within which they can advance their own commercial, financial and professional interests.

Understanding which actors perceive the XPCC in which way will be important for effective sanctions design and execution. How actors perceive the XPCC will influence how they understand the costs and benefits of different sanctions measures. For example, XPCC-linked companies controlled by specific XPCC Divisions, or managed by a Divisional SASAC, may respond as much to local interests of Divisional managers and Party officials, as to centralised policy-setting from Beijing.

This is known as “horizontal management”.<sup>141</sup> In such cases, influencing XPCC involvement in forced labour might depend as much on targeting and influencing the incentives of these local officials, as on influencing actors in Beijing. For that reason, sanctions design may need to consider how Xinjiang sanctions work in different economic sectors and supply chains. This issue is considered further in Part 3.

### 1.3 Legal considerations

Effective sanctions strategy depends on clear signalling of the behaviour or policy that must be changed, and what must be done to ‘cure’ the underlying problem. The sanctions that governments have adopted in response to China’s Xinjiang policies (discussed in the next Part of this study) are premised not on those policies being unwise but rather on them being unlawful, suggesting that if the policies are brought into line with China’s legal obligations, the sanctions will be lifted.

The Chinese government, however, contests the premise. It argues that the policies and programmes discussed in the previous sections are legal, providing vocational training and employment support to disadvantaged minorities who are ultimately free to make their own, voluntary choices about work.<sup>142</sup> The government asserts that there is no evidence of forced labour – on the contrary, it suggests, forced labour leads to criminal prosecution.<sup>143</sup> The policy of labour transfer, the government argues, “protects human rights through development”,<sup>144</sup> and the VSETC initiative reflects “China’s implementation of international counter-terrorism and deradicalization initiatives”.<sup>145</sup>

So what exactly is the violation of international norms that Xinjiang sanctions seek to remedy? There are two approaches to answering this question.

The first is to assess the entire context of state action in and relating to XUAR, especially how it relates to the governance of Uyghur, Kazakh and other minorities. Research and first-hand testimony have documented a wide array of apparent human rights violations associated with the campaign of social transformation undertaken in XUAR since 2014, including physical and sexual assault, forced sterilisation, enforced disappearance, torture, and violations of rights to privacy, family life and religious freedom.<sup>146</sup>

The scale and severity of the impacts of these policies on XUAR’s minority populations has led some legal analysts to conclude that these policies have produced crimes against humanity.<sup>147</sup> Some analysts, and several legislatures, have further concluded that aspects and impacts of these policies support a characterization of genocide.<sup>148</sup>

Characterizing the CCP’s policies and practices in XUAR in this way has significant implications for sanctions strategy – both in terms of ends, and in terms of means. With respect to *ends*, it makes clear that the behavioural change that sanctions should seek to induce is one of state policy, not simply business conduct, and that the policies and practices in question stretch well beyond workforce management to include issues of freedom of religion, rights of property, the right to enjoy a family life and more. With respect to *means*, this legal characterization brings into play a range of non-economic, especially international criminal, accountability mechanisms, which, however, lie beyond the scope of this study.<sup>149</sup>

It is therefore a second approach to answering this question that is the focus of this study. Rather than taking the first, expansive approach, this study focuses on the question of whether the treatment of Uyghur and other minority workers constitutes ‘forced labour’. Even this narrower question has, to date, proven surprisingly complex for external observers to answer, yet it is a critical one for effective sanctions design and implementation. Many governments and businesses have obligations and commitments to prevent, address and remedy forced labour, and there has been a recent turn by governments (discussed in Part 2) to use trade and related measures to address forced labour in and beyond Xinjiang. In the sections that follow, we consider whether the conduct and policies discussed in sections 1.1 and 1.2 are properly characterized as violating international norms against forced labour – or other related norms – and what that means for sanctions strategy, including reliance on trade restrictions.

#### 1.3.1 Forced labour

The first challenge in answering this question is to establish the yardstick against which the CCP’s policies and practices can properly be measured. ‘Forced labour’ is the most commonly cited concern. The concept of ‘forced labour’ is well delineated in international law, notably in the International Labour Organization’s (ILO) Forced Labour Convention No. 29 of 1930 (C29) and the Abolition of Forced Labour Convention No. 105 of 1957 (C105).

Under C29, forced or compulsory labour is “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”<sup>150</sup> C105 prohibits states from making use of forced labour for, among other reasons: political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; and as a means of racial, social, national or religious discrimination.<sup>151</sup>

What conduct does this standard prohibit, in practice? This has been helpfully explained by the ILO, which has set out 11 forced labour ‘indicators’ that can be used to assess whether forced labour is present in a particular work context.<sup>152</sup> They comprise: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. Whether these conditions are present is a factual or empirical question. Forced labour does not require all 11 indicators to be present; rather, the presence of one or more indicators points to the existence of prohibited forced labour.

The indicators have been used to assess the presence of forced labour in sectors and economies around the world, from Uzbek cotton to Thai fishing.<sup>153</sup> Academic and thinktank studies<sup>154</sup> as well as audit organizations<sup>155</sup> have applied these indicators to the Xinjiang workforce policies discussed above, identifying evidence of a pattern of abuse of vulnerability, restriction of movement, isolation, intimidation and threats, withholding of wages, abusive working and living conditions, and some evidence of physical and sexual violence and excessive overtime. All of this suggests the presence of forced labour. Different indicators may be present for each of the VSETC and Poverty Alleviation through Labour Transfers programmes, and indeed for different individual work contexts. However, reliable and safe assessment of the presence of these indicators of forced labour is increasingly unfeasible in XUAR and other parts of the PRC, due to the Chinese government’s hostility towards and intimidation of people who cooperate with such fact-finding efforts (discussed below in Part 2).

138 Cliff 2016, p. 70.  
 139 Cliff 2009, p. 84.  
 140 SASAC 2013.  
 141 Sayari 2020c.  
 142 SCIO 2020, pp. 6, 8, 12; Global Times 2020a, 2020b; ILO 2022.  
 143 Global Times 2020a; SCIO 2020, pp. 12-13.  
 144 SCIO 2020, pp. 12-13.  
 145 SCIO 2019.  
 146 Mauk 2021; Murphy and Elimä 2021; Byler 2021; Tobin et al. 2021; Uyghur Tribunal 2021; Millward and Peterson 2020; Zenz 2020b, 2021c; Smith Finley 2019; Killing and Rajagopalan 2020.

147 Amnesty International 2021; Human Rights Watch 2021; Macdonald et al. 2021; Lim 2021; and see the analysis by Rosenberg in Zenz 2021c, Appendix B.  
 148 Uyghur Tribunal 2021; Macdonald et al. 2021; UK Foreign Affairs Committee 2021. The EU Parliament recently characterized the situation as involving “crimes against humanity and ... a serious risk of genocide”: European Parliament 2022b.  
 149 See Lim 2021; Millward and Peterson 2020.  
 150 Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55, entered into force May 1, 1932, Art. 2.  
 151 Abolition of Forced Labour Convention (ILO No. 105), 320 U.N.T.S. 291, entered into force Jan. 17, 1959. Art. 1.  
 152 ILO 2012.  
 153 See e.g. ILO 2020a, 2022b.  
 154 Lehr and Bechrakis 2019; Xu et al. 2020; Zenz 2021c.  
 155 Confidential Interviews 1, 2, 3, 5.

This significant practical difficulty aside, the importance of C29 and C105 is that they set a clear and accepted yardstick for all actors to assess the existence of forced labour. For states importing goods made in whole or in part in XUAR, reference to C29 and C105, and to the ILO's Forced Labour Indicators, provides a reliable and objective basis for assessment of whether any goods are subject to forced labour import bans. For example, the US' import control measures, which will be discussed in Part 2, incorporate this standard. When the country adopted a Withhold Release Order allowing the detention of cotton and tomato products from Xinjiang,<sup>156</sup> US Customs and Border Protection explained that this was based on an investigation identifying 6 of the 11 ILO forced labour indicators.<sup>157</sup>

It is important, however, to distinguish between standards used by an importing state, and those formally applicable *within* the state where the goods are made. This is where things get more complicated from a legal perspective. China has recently indicated that it *will* ratify C29 and C105.<sup>158</sup> Once it has done so, the legal basis for assessing production conditions against the C29 and C105 forced labour standard will be clear. But it may take some time for the ratification to take effect, and for the foreign commercial and government partners to be assured that those conventions are being effectively enforced. For the moment, the status quo in which China is *not* party to or enforcing those conventions holds. Absent treaty ratification, the question arises how or why China can be expected to respect the forced labour prohibition crystallised in C29 and C105.

One approach would be to hold China to the C29 and C105 forced labour standard on the basis that widespread state practice indicates that states believe that the forced labour prohibition they capture has become customary international law. In the past, some leading jurists have concluded that the prohibition has indeed found its way into customary international law. For example, an ILO-empowered inquiry led by the former Chief Justices of Barbados and including the former Chief Justice of India concluded in the late 1990s that this was the case.<sup>159</sup> The Canadian Supreme Court has also concluded that the prohibition on forced labour is a peremptory norm of international law, a particularly strong form of customary international law which permits of no derogation.<sup>160</sup> However, there is also evidence suggesting that states may not agree. For example, many European states have signalled support for the European Parliament's withholding of ratification of the EU-China Comprehensive Agreement on Investment until China ratifies C29 and C105.

If China were already bound through custom by the standard in C29 and C105, that ratification would arguably be merely symbolic.

Another possibility is that China has agreed to abide by some other obligation that incorporates the forced labour standard by reference. This may indeed be the case. The 1998 ILO Declaration on Fundamental Principles and Rights at Work, which China supported, recognises an obligation on states, arising from the very fact of ILO membership, and explicitly "even if they have not ratified the Conventions in question", to respect, promote and realise 4 fundamental principles and rights at work. This includes "the elimination of all forms of forced or compulsory labour". The Declaration was intended as a standards-promoting tool, allowing the ILO to provide support to states not meeting these international labour standards through a process of expert and intergovernmental monitoring, reporting and technical cooperation.

However, the fine print limits the impact of this commitment. The 1998 Declaration obliges China to "respect, promote and realize" the principle of elimination of all forms of forced or compulsory labour – not simply to eliminate it. This appears to create an obligation of conduct (i.e. to *work to eliminate* forced labour) rather than an obligation of result (i.e. the *actual elimination* of forced labour). An expert ILO official explained in 1998, for example, that the Declaration

*"does not mean that the Conventions the ILO has adopted to develop these principles [such as C29 and C105] will be extended to member States which have not ratified them. It means rather that States have an obligation to pursue the realization of the principles in ways appropriate to their own situation, and to report regularly on how they do so."*<sup>161</sup>

The phrasing "ways appropriate to their own situation" leaves China plenty of wiggle room. Yet almost 25 years after the adoption of the 1998 Declaration, it is unpersuasive to suggest that policies that appear to *promote* coercion and involuntariness in the management of minority labour forces – like those discussed in previous sections – meet even this low obligation-of-conduct standard.

There are also important procedural implications arising from the 1998 Declaration, which suggest that sanctions designers should hesitate before relying on the 1998 Declaration as the basis for trade restrictions. The text suggests that the proper mechanisms through which to address concerns about non-compliance with the fundamental principles and rights at work are the intergovernmental and expert reporting, monitoring and technical cooperation bodies of the ILO – rather than the mechanism of unilateral trade or other sanctions. Article 5 specifically cautions against the use of trade instruments, stating that "labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes". Inclusion of this commitment not to invoke the Declaration as a basis for disruptive trade measures was key to the political deal that secured developing countries' support for the World Trade Organization.<sup>162</sup> This is important to understand in the sanctions strategy context, as it points to the potentially disruptive second-order effects of relying on trade measures as a means to enforce international labour standards – a point explored further below.

Given the limits that reliance on the 1998 Declaration would thus impose, we need to consider whether there may be *other* legal standards against which the PRC's coercive workforce management practices can be usefully assessed, and whether these may offer useful legal bases for sanctions.

### 1.3.2 Slavery

Another possibility is that China's labour management policies in Xinjiang violate obligations relating to the international prohibitions around slavery. The prohibition of slavery is articulated in the 1926 Slavery Convention, a treaty to which China has been party since 1937.<sup>163</sup> The prohibition has also been recognized by the UN's top judicial body, the International Court of Justice, as a peremptory norm of customary international law that any member of the international community may enforce against any other (*erga omnes*).<sup>164</sup>

This is not to suggest that China's policies provide for chattel slavery – that is, for the legal right of ownership of people – but that is not the relevant test. As a party to the 1926 Slavery Convention, China is committed to bringing about the complete abolition of slavery, which is defined as the condition or status of a person over whom "any or all of the powers attaching to the right of ownership" are exercised (Arts 1(1), 2). As decisions of international, regional and superior domestic courts have shown, this encompasses not only the exercise of *de jure* rights of ownership, but also *de facto* conduct involving powers analogous to those exercisable under formalized slavery institutions.<sup>165</sup>

What are those powers? A 1953 report of the United Nations Secretary-General provides a non-exhaustive list, including: the ability to 'purchase' or transfer individuals; absolute control over how an individual or their labour is used; the product of the labour being considered that of the 'master', and inadequate or no compensation being provided for such labour; the inability to exit the situation voluntarily; transmission of this status to descendants.<sup>166</sup> More recently, the Inter-American Court of Human Rights has explained that the concept of "powers attaching to the right of ownership"

*"must be understood in the present day as the control exercised over a person that significantly restricts or deprives him of his individual liberty with intent to exploit through the use, management, profit, transfer or disposal of a person. This control is usually obtained and maintained through means such as the violence, deception and/or coercion."*<sup>167</sup>

In a subsequent case, the same Court made clear that in assessing whether these powers have in fact been exercised, it is not only physical but also psychological control that must be assessed. A perpetrator's threats and use of social power and political position to intimidate and coerce the victim may be evidence of the exercise of powers of ownership, if the victim's situation as a result is one of "absolute defencelessness".<sup>168</sup>

156 See XJS-GMS M#097, and also M#113.  
157 US CBP 2021.  
158 Lau 2022.  
159 ILO 1998, para. 203.  
160 *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 (CanLII).  
161 Swepston 1998, p. 1234.

162 See Swepston 1998.  
163 Slavery Convention 1926, 6 LNTS 253 (entered into force 9 March 1927)  
164 *Case Concerning the Barcelona Traction Light and Power Co.*, (Belg. v. Spain) [1970] I.C.J. 32.  
165 See ICTY, *Prosecutor v. Dragoljub Kunarać, Radomir Kovać and Zoran Vuković*, Case IT-96-23-T & IT-96-23/1-T (ICTY, 12 June 2002), para. 117; European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application no 25965/04 (ECtHR, 7 January 2010, final 10 May 2010), para. 281; *Prosecutor v. Taylor*, SCSL-03-01-T, Special Court for Sierra Leone Trial Chamber, Judgment of 18 May 2012, para. 446; Inter-American Court of Human Rights, *Trabajadores de la Hacienda Brasil Verde v. Brasil*, case no 318 (IACtHR, 20 October 2016), paras 269-270; ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgment pursuant to Article 74 of the Statute, 7 March 2014 (Katanga TC Judgment), para. 976; Extraordinary Chambers in the Courts of Cambodia, *Prosecutor v. Kaing*, 001/18-07-2007-ECCC/SC, Appeal Judgment, 3 February 2012, paras. 117-162; High Court of Australia, *R v Tang* [2008] HCA 39, (2008) 237 CLR 1. And see Allain 2009, esp. at pp. 258-275.  
166 UN ECOSOC 1953.  
167 Inter-American Court of Human Rights, *Trabajadores de la Hacienda Brasil Verde v. Brasil*, case no 318 (20 October 2016), para. 271.  
168 Inter-American Court of Human Rights, *López Soto y otros v. Venezuela*, case no 379 (26 September 2018), para. 180. See also *R v Tang* [2008] HCA 39; (2008) 237 CLR 1, 18, 20 (Gleeson CJ), noting that the exercise of control is a question of degree.

Have these powers been exercised in the context of China's VSETC or Poverty Alleviation through Labour Transfers programmes? Again, this is a factual question that must be answered with reference to specific cases, programmes or perhaps companies. Some of the available evidence points to the exercise of such powers, but there are also aspects of the evidence that do not align neatly with this characterization, at least in the context of the enterprise-worker relationship.

For example, while government bodies advertise the services of Uyghur and other minority workers under the Poverty Alleviation through Labour Transfers scheme, the resulting work placements differ from classic slave transfers or even the renting out of slaves or indentured servants. Employers do not pay the government for access to these workers – in fact, they may receive transfers from the government for taking these workers on, in the form of tax credits and wage subsidies.<sup>169</sup> There is also no clear evidence to date that these employers can thereafter sell or transfer these workers on to third parties, which is a classic indicator of a power of ownership. Likewise, employers seem constrained in how they can use these workers, by parameters agreed with the government. Employers stress that they pay fair wages.<sup>170</sup>

However, many of the powers of ownership *do* line up with alleged treatment of workers *by the state*, especially in the VSETC context. It is the state that determines whether and when Uyghur and other minority individuals can exit the VSETC scheme, and the employment that flows from it. It is the state that determines where workers are employed and when and where they are transferred. It is the state that determines whether these individuals' descendants (and living family members) are treated in the same way. It is the state that controls not only the labour power, but the broader social, political and economic personhood of these victims.

There is a case that the VSETC system, in particular, may give rise to conditions tantamount to or constituting state-backed enslavement. There are several precedents for characterizing large-scale state-backed prison-industrial systems in these terms, including the US Military Tribunal prosecutions of Farben, Flick and Krupp executives,<sup>171</sup> the UK War Crimes Court trial in Hong Kong of Japanese Nippon Mining Company executives for slave mining on Formosa during World

War II,<sup>172</sup> and detailed recent United Nations inquiries into state-backed enslavement in North Korea<sup>173</sup> and Eritrea<sup>174</sup>. These last two inquiries, in particular, have made clear that the central factual question for determining whether any given case amounts not just to forced labour but to enslavement is the *de facto* condition of the juridical personality of the victim. The extraction of forced labour can amount to enslavement if it is accompanied by aggravating circumstances that effectively destroy the juridical personhood of the victim.<sup>175</sup> In such cases, universal jurisdiction may be activated; and there may be a strong case (discussed further below) for use of unilateral trade measures by *any and all* states, to enforce the peremptory norm against slavery.

Beyond the VSETC, Article 5 of the 1926 Slavery Convention may also be relevant to the legal characterisation of the Poverty Alleviation through Labour Transfers programme. Article 5 commits all signatories to “endeavour progressively and as soon as possible to put an end to the practice” of compulsory labour. China accepted this commitment in 1937. 85 years seems adequate time to achieve the progressive cessation of compulsory labour. And in the meantime, while compulsory labour continues, Article 5 commits parties to pay adequate remuneration for this labour and to avoid “the removal of the labourers from their usual place of residence”. It is questionable whether the Poverty Alleviation through Labour Transfers programme meets these commitments.

All of this suggests that there may be a strong case for states to frame the violations arising from China's management of Xinjiang workforce not just in terms of ‘forced labour’, but also in terms of ‘slavery’, and the obligations relating to ‘compulsory labour’ that arise from China's 85 year old commitment to the 1926 Slavery Convention. Citing that Convention also opens up potential new pathways for enforcement. Article 7 gives the Secretary-General a role in handling communications with the parties, which might afford an opportunity for UN engagement with China about the latter's compliance with the terms of the Convention, including its Article 5 commitments. Article 8 further creates jurisdiction for the International Court of Justice and/or Permanent Court of International Arbitration, through which other parties to the Convention might bring suit.

### 1.3.3 Human trafficking

The Slavery Convention is not the only treaty that might be relevant. Another possibility could be to query whether China's policies align with its commitments under the so-called ‘Palermo Protocol’ – the United Nations Protocol on Trafficking in Persons, which accompanies the UN Convention against Transnational Organized Crime.<sup>176</sup> As a party to the Palermo Protocol, China has committed “to prevent and combat trafficking in persons” (Article 9). This is defined in Article 3(a) as:

*“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs...”*

Many of these requirements seem to fit the established characteristics of VSETC and the Poverty Alleviation through Labour Transfers programmes. Both seem to involve “recruitment, transportation, transfer... or receipt of persons” involving the means of “threat or use of force or other forms of coercion... [or] the abuse of power or of a position of vulnerability”. Whether this then amounts to prohibited trafficking in persons seems to turn on whether these activities are undertaken *for the purpose of exploitation*. That requires a factual assessment of the perpetrator's intent, though exploitation need not be the sole or even dominant purpose. China, of course, emphatically denies that the purpose of these programmes is exploitation, but rather argues that they are undertaken for legitimate public policy purposes, such as vocational training, counter-terrorism, and poverty alleviation. The discussion in section 1.1 suggests that even if these are purposes of these programmes, there is significant documentary evidence that Chinese state officials know and intend for the minority workers recruited, transported, transferred and received into these programmes to be compelled to work.

At one level, recourse to the Palermo Protocol may seem to add little to the analysis of whether the PRC's policies and programmes in Xinjiang are lawful, since it ultimately turns on the question of whether they involve forced labour, slavery or some other form of exploitation. But seen from the perspective of sanctions, China's commitment to the Palermo Protocol is in fact significant. If the policies in question do give rise to forced labour or slavery and were undertaken in a manner that indicates that they were ‘for that purpose’, then China can be held not only to its international commitments relating to forced labour and/or slavery, but also those relating to human trafficking. That includes its Palermo Protocol commitment to prevent and punish these activities. Given the ways these programmes operate, this would mean not only holding commercial actors accountable, but also state officials. Moreover, as with the 1926 Slavery Convention, recourse to the Palermo Protocol could open up new avenues for intergovernmental consideration of these issues, whether through litigation (Article 15) or through intergovernmental review in the Convention's Conference of Parties.

### 1.3.4 Employment discrimination

The workforce management policies discussed in section 1.1 also raise serious questions about China's compliance with international labour standards relating to employment discrimination. In 2020, the International Trade Union Confederation (ITUC) complained about China's Xinjiang policies to the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). Originally established in 1926, the CEACR is a committee of 20 eminent jurists appointed by the Governing Body for three-year terms, to examine reports by governments about their implementation of ILO treaty obligations, as well as to consider certain complaints presented by workers or employers. The ITUC complaints query whether the PRC's policies align with China's obligations under the Discrimination (Employment and Occupation) Convention No. 111 of 1958 (C111), and the Employment Policy Convention No. 122 of 1964 (C122).<sup>177</sup>

169 Zenz 2019b; Tobin et al. 2021, p. 22.

170 See e.g. the company responses in XJS-CRS.

171 *U.S. v. Krauch, et. al, The LG. Farben Case, in VIII Trials of War Criminals before the Nuremberg Military Tribunals (1952); The Flick Case, in VI Trials of War Criminals 1192 (1952); and U.S. v. Krupp, IX Trials of War Criminals (1952).*

172 Ramasastry 2002.

173 UN Human Rights Council 2014.

174 UN Human Rights Council 2016a, paras 64-68 and 2016b, paras 191-223.

175 UN Human Rights Council 2014, para. 1048; Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3-10, 2002, article 7 (2) (c), footnote 10; *Prosecutor v. Kunarac et al*, IT-96-23/IT-96-23/1 [ICTY Trial Chamber], Judgment of 22 February 2001, para. 541; *Prosecutor v. Kunarac et al*, IT-96-23-A, 12 June 2002, ICTY Appeals Chamber, para. 117; *Prosecutor v. Taylor*, SCSL-03-1-T [SCSL Trial Chamber], Judgment of 26 April 2012, para. 448.

176 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), UN General Assembly Resolution 55/25, Annex II, U.N. Doc. A/45/49 (2001).

177 ILO 2022.

Under C111, parties commit in Article 2 to

*“pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”*

They also commit to consult employers’ and workers’ organizations in the development of that policy. As a party to C122, China has committed to declare and pursue a policy designated to promote “freely chosen employment”, which must aim to give each worker “the fullest possible opportunity” to access jobs “irrespective of race, colour, sex, religion, political opinion, national extraction or social origin” (Article 1).

In its observations in response to the ITUC complaints, the CEACR expressed its “deep concern” at China’s “policy directions”, including concern at

*“the methods applied, the impact of their stated objectives and their (direct or indirect) discriminatory effect on the employment opportunities and treatment of ethnic and religious minorities in China.”*<sup>178</sup>

The CEACR expressed specific concern about the racial profiling involved in the VSETC system and its segregation of minority workers from others, calling for reform of the VSETC system so that it focuses on vocational training, not counter-extremism.<sup>179</sup> It cautioned against “biased approaches towards the traditional occupations engaged in by certain ethnic groups, which are often perceived as outdated, unproductive or environmentally harmful” and warned that such biases “continue to pose serious challenges to the enjoyment of equality of opportunity and treatment in respect of occupation” under C111.<sup>180</sup> The CEACR also contested the Chinese government’s legitimization of these policies through reference to poverty alleviation, observing that

*“at the heart of the sustainable reduction of poverty lies the active enhancement of individual and collective capabilities, autonomy and agency that find their expression in the full recognition of the identity of ethnic minorities and their capability to freely and without any threat or fear choose rural or urban livelihoods and employment.”*<sup>181</sup>

This is why, CEACR observes, China’s commitments

*“not only require the Government to pursue full employment but also to ensure that its employment policies do not entail any direct or indirect discriminatory effect in relation to recruitment, conditions of work, opportunities for training and advancement, termination, or any other employment-related conditions, including discrimination in choice of occupation.”*

The CEACR very clearly concludes that despite the ‘poverty alleviation’ rhetoric, the PRC’s employment policies for Xinjiang do not meet that requirement. On the contrary, the CEACR observed

*“that the employment situation of Uyghurs and other Muslim minorities in China provides numerous indications of coercive measures many of which arise from regulatory and policy documents. The Government’s references to significant numbers of “surplus rural labour” being “relocated” to industrial and agricultural employment sites located inside and outside Xinjiang under “structured conditions” of “labour management” in combination with a vocational training policy targeting de-radicalization of ethnic and religious minorities and at least in part carried out in high-security and high-surveillance settings raise serious concerns as to the ability of ethnic and religious minorities to exercise freely chosen employment without discrimination. Various indicators suggest the presence of a “labour transfer policy” using measures severely restricting the free choice of employment. These include government-led mobilization of rural households with local townships organizing transfers in accordance with labour export quotas; the relocation or transfer of workers under security escort; on-site management and retention of workers under strict surveillance; the threat of internment in vocational education and training centres if workers do not accept “government administration”; and the inability of placed workers to freely change employers.”*<sup>182</sup>

Based on this analysis, the CEACR called on the PRC to take a number of remedial steps to meet its commitments under C111 and C122, including provision of detailed information about the operation of the VSETC training programme, how the labour market measures in XUAR were developed, and changes to the VSETC programme so that it is not delivered through segregated, high security centres but in “publicly accessible institutions”.<sup>183</sup>

As this study later explores in greater detail, large-scale forced labour systems have in the past been most successfully transformed where international actors have brought various forms of leverage to bear, while coordinating their signalling regarding the desired change in conduct. The detailed requests made by the CEACR constitute an important agenda for changing the policies and systems in China’s workforce management policies, which other actors could help to support.

### 1.3.5 Trade law

As Part 2 will discuss further, many of the measures that governments have adopted in response to allegations of Xinjiang forced labour involve restrictions on trade. This raises the question whether the legal characterisation of these policies and their impacts – that is, whether they are characterised as involving forced labour, slavery, human trafficking, employment discrimination or something else – will affect the viability or success of these measures in any way. The answer is that it may.

Much of the contemporary system of global trade, including the World Trade Organization (WTO), is built on the foundation of the 1994 General Agreement on Tariffs and Trade (GATT). GATT Article III requires members to treat foreign enterprises that have entered the local market in the same way they treat local enterprises. This requires treating imports the same as ‘like’ domestic products – that is, products with which those imports compete due to shared physical characteristics, tariff classification, end uses, and consumer perception. GATT Articles XI and XX allow deviation from these principles in certain circumstances. The question is whether any of those circumstances apply here, permitting states to restrict trade.

One possibility is GATT Article XX(e), which contains the only specific mention of ‘labour’ in the GATT, creating an exception to the principles described above “relating to the products of prison labour”. Canada cited this provision when it notified WTO members of a new measure it had adopted to prevent the import of

goods made in whole or in part with forced labour,<sup>184</sup> implementing a commitment made in a recent US-Canada-Mexico Trade Agreement.<sup>185</sup> As Article XX(e) has not been directly interpreted in any trade dispute settlement process, however, it is unclear whether such an expansive reading of Article XX(e) – treating ‘prison labour’ as covering all ‘forced labour’ – would survive legal challenge.<sup>186</sup> In the case of Xinjiang, while forced labour in the VSETC system might be said to involve ‘prison labour’, it is less clear whether the Poverty Alleviation through Labour Transfers system, which relies less on physical immobility and more on social control, can properly be characterized as ‘prison labour’. The exact meaning of that term therefore remains unclear.

There is no other reference to enforcement of labour standards in the GATT, which is no accident. The Havana Charter of the proposed International Trade Organization (ITO), a central plank of the post-WWII international economic architecture proposed by John Maynard Keynes (and distinct from the later World Trade Organization (WTO)), included a section on labour standards recognizing that “unfair labour conditions, particularly in production for export, create difficulties for international trade.”<sup>187</sup> When it became clear, however, that the US Senate would not ratify the Havana Charter, on the grounds that it interfered with domestic issues (especially relating to labour), the initiative was abandoned. Liberal democracies shifted their approach, building the GATT with a narrower initial focus on tariff liberalization. Some countries, including the US, subsequently sought to introduce a “labour clause” in GATT negotiations, but again retreated, opting instead for a weaker study process within the GATT rather than a binding treaty provision.<sup>188</sup>

As efforts to enlarge the GATT accelerated after the end of the Cold War, efforts within western democracies to integrate protection of labour standards into global trade once again gained steam. Developing countries grew concerned that industrialized countries could use labour standards enforcement as a smokescreen for protectionism, undermining low wage growth models and emerging markets’ comparative advantage.<sup>189</sup> The dispute reached a peak at the WTO’s first Ministerial Conference in Singapore in 1996. Whereas Norway and the US pushed for a WTO work programme to address the relationship between trade and improving labour standards, developing country members (which did not yet include China) pushed back.

178 ILO 2022a pp. 518, 520.  
179 ILO 2022a p. 520, 687.  
180 ILO 2022a p. 687.  
181 ILO 2022a p. 688.  
182 ILO 2022a pp. 688-689.

183 ILO 2022a pp. 689.  
184 WTO 2021.  
185 Agreement between the United States of America, the United Mexican States, and Canada, 1 July 2020, available at <https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/index.aspx?lang=eng>.  
186 See Diller and Levy 1997; Shang and van Limberghen 2017.  
187 See UN 1948, Article 7(1). The Charter was signed by 56 countries in 1948, but never entered into force, after the US – having led its negotiation – decided not to ratify it.  
188 Cimino-Isaacs 2021; Alben 2001; Watson 1994.  
189 VanGrasstek 2013.

Ultimately, Ministers adopted a Declaration committing to a narrow set of internationally recognized ‘core’ labour standards, including a prohibition on forced labour.<sup>190</sup> The ball was then passed over to the ILO, which adopted the 1998 Declaration on Fundamental Principles and Rights at Work, discussed in section 1.3.1 above – including its Article 5 admonition to states not to seek to enforce those principles through trade measures, but only through ILO mechanisms. A stable settlement of the ‘labour standards’ question seemed to have been reached.

At the Seattle Ministerial Conference in 1999, which saw protesters on the streets pushing loudly for greater attention to the social impacts of free trade, the earlier pattern re-emerged. The US Trade Representative, Charlene Barshefsky, warned that “over time” the WTO’s failure to “recognize the link between trade and labor... will weaken public support for global trade”.<sup>191</sup> But when President Clinton warned that trade sanctions could be used to enforce labour rights, developing countries dug in.<sup>192</sup> With the battle for a binding treaty provision once again seemingly lost, industrialized economies settled instead for a procedural fix: a working group to decide whether to create a formal working party within the WTO to study these issues, or a body operated jointly by international organizations, such as the ILO.<sup>193</sup> At the Doha Ministerial Conference in 2001, held just a couple of weeks before China’s WTO membership commenced, the pattern played out yet again. And again, developing countries ensured that Ministers simply affirmed the Singapore Declaration while indicating that labour standards should be enforced through the ILO, not the WTO.

This debate has lain relatively dormant for two decades, although there is no reason to think that the underlying interests or positions have shifted significantly. On the contrary, when the US recently moved to have forced labour issues considered in WTO negotiations on fisheries trade, China, supported by other countries including India and Russia, blocked the move, arguing that the WTO had no mandate to address forced labour, and that “the introduction of forced labour into WTO will lead to a series of systemic problems”.<sup>194</sup>

One major change over the last two decades has, however, been the development of international trade dispute settlement mechanisms. Yet these mechanisms have proven reluctant to enforce labour standards. A 2017 expert panel ruling in a Central American Free Trade Agreement dispute did however address this issue.

The panel held that although a country had committed in a regional trade agreement to enforce labour laws, its failure to do so did not result in trade diversions or distortions or affect trade flows, and so it was not open to an importing party to use the producer country’s failure to enforce labour laws to deviate from its own commitments under the regional trade agreement.<sup>195</sup> Similarly, a 2021 expert panel ruling in a dispute between the EU and Republic of Korea held that the panel enjoyed jurisdiction in a dispute about Korea’s non-enforcement of labour laws only because the relevant trade agreement included specific language committing the parties to respect for labour standards *beyond* ‘trade-related aspects of labour’.<sup>196</sup> The implication of that ruling is that without such additional labour-specific language, enforcement of labour standards is not covered by traditional free trade deals such as the GATT.

Nonetheless, researchers have contemplated several ways in which respect for labour standards might be achieved through enforcement of *other* provisions of the GATT, beyond Article XX(e).<sup>197</sup> Given the uncertainty regarding the support that Article XX(e) will provide for Xinjiang sanctions, these arguments are worth considering, not least to understand what approach to framing these trade measures might best equip them to survive legal challenge.

Some researchers suggest that a state’s tolerance of or support for forced labour and other violations of international labour standards may amount to the provision of illegal subsidies to exporting firms.<sup>198</sup> Exports based on these subsidies may constitute illegal ‘dumping’, illegally undermining domestic firms. Where the importing states can establish as a matter of fact that their domestic industry suffers material injury, they may under certain conditions be permitted to apply *temporary* restrictions on trade in those goods (GATT Articles VI and XIX). This is an interesting possibility in the Xinjiang context, given the significant evidence that both the VSETC and the Poverty Alleviation through Labour Transfers involve significant subsidies from Beijing to enterprises in XUAR, and evidence of how these subsidies have allowed Chinese firms to undercut foreign polysilicon and tomato producers, driving them out of the market (discussed further in Part 3 of this study). Some officials in sanctioning states also make occasional rhetorical references to forced labour giving Chinese exporters an unfair advantage on cost.

Yet to date, the sanctions imposed in response to alleged Xinjiang forced labour (discussed in Part 2 below) have not been based on the kind of investigation mandated by the GATT as a precondition for adoption of such temporary restrictions in response to illegal dumping.

Another possibility is to look to GATT Article XX(b). This permits trade restrictions necessary to protect “human, animal or plant life or health”. However, existing jurisprudence has interpreted Article XX(b) to permit measures with *domestic*, not extra-territorial effect – that is, measures a country adopts to protect its own consumers and environment, not to protect people outside its borders as measures intended to protect Uyghur and other communities in Xinjiang would.<sup>199</sup>

A more promising route might lie through GATT Article XX(a), which permits trade restrictions that are “necessary to protect public morals”.<sup>200</sup> Dispute resolution bodies tend to afford countries a large margin of appreciation in determining what they consider to be a moral issue.<sup>201</sup> A country’s position can be established through reference to parliamentary and policy processes, and relevant ILO and human rights treaties.<sup>202</sup> Unlike the ‘life or health’ exception in Article XX(b), Article XX(a) appears to permit trade measures responding to moral concerns relating to foreign production processes: the WTO Appellate Body upheld a European Article XX(a) ban on products made by killing seals,<sup>203</sup> and the US relied on Article XX(a) for a 1997 ban on import of goods made overseas through child labour.<sup>204</sup>

For such a measure to be covered by Article XX(a), certain factors must be present. First, the country adopting the measure must first take certain steps to engage affected parties to explore WTO-consistent alternatives.<sup>205</sup> Only through such consultation and negotiation can it be shown that a ban is in fact ‘necessary’ to achieve the stated public policy goal.<sup>206</sup> States may need to give parties affected by a ban the opportunity to be heard, hear arguments against the measure, and give a written decision.<sup>207</sup> This may have important implications for *how* Xinjiang sanctions are *imposed*. States may need to consider whether such steps have been taken in relation to Xinjiang forced labour, before relying on Article XX(a) as a justification for those measures.

Second, the country adopting the measure must establish that as a matter of fact the society in that country sees the concerns raised by the production process *as a moral issue*. This may have important implications for how Xinjiang sanctions are *framed*. It may be important to emphasise the moral outrage in the country imposing the measure. Given the strength of the taboos around ‘slavery’ and ‘genocide’ – especially in Western democracies – it may therefore be legally prudent to frame the underlying concern not simply in terms of employment discrimination or even forced labour, but in terms of enslavement and genocide.

A similar conclusion emerges from consideration of GATT Article XXI, which provides a ‘security’ exception, clearly allowing action to address certain foreign security risks. Article XXI sets out a number of specific situations in which this exception may be invoked.<sup>208</sup> Some jurisdictions have relied on Article XXI to restrict trade in conflict minerals. This relies on Article XXI(c), which permits parties to discharge their “obligations under the United Nations Charter for the maintenance of international peace and security”, since these conflict minerals measures draw on sanctions imposed by the UN Security Council. In response to Russia’s invasion of Ukraine, some countries have invoked Article XXI and the resulting violation of the UN Charter as a basis for imposing trade restrictions, even in the absence of a binding decision of the UN Security Council.<sup>209</sup> This suggests that the absence of statements from the UN’s peace and security bodies may not be a bar to reliance on Article XXI to address security concerns arising from Xinjiang.

Yet prior instances of reliance on Article XXI have all involved armed conflict or terrorism. However, Article XXI(b)(iii) permits a party to take “any action which it considers necessary for the protection of its essential security interests... taken *in time of war or other emergency in international relations*” (emphasis added). Would GATT Article XXI stretch to something that does not involve armed conflict, *per se*, but may involve some other emergency in international relations – such as genocide, crimes against humanity, or state-imposed slavery?

190 WTO 1996.  
 191 Elliott and Freeman 2003, p. 73.  
 192 Summers 2001, p. 61.  
 193 VanGrasstek 2013, pp. 390-391.  
 194 Office of the USTR 2021; Kanth 2021.  
 195 CAFTA-DR Panel Report, *In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR*, adopted 14 June 2017.  
 196 Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement, *Report of the Panel of Experts*, 20 January 2021. Available at [https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf).  
 197 See generally Harris and Moon 2015; and see Joseph 2011.  
 198 See for example Shaffer 2019 and Meyer 2019.

199 Panel Report, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, WTO Doc WT/DS246/R (1 December 2003) [7.210].  
 200 See generally Charnovitz 1998; Joseph 2011, Chapters 2, 4, esp. pp. 109-110; McBeth 2010.  
 201 Appellate Body Report EC—Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R (Mar. 12, 2001), para. 172.  
 202 See Appellate Body Report, EC — Seal Products, WTO Docs WT/DS400/AB/R and WT/DS401/AB/R; see also *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO docs. WT/DS285/R (10 November 2004) (Report of the Panel) and WT/DS285/AB/R, AB-2005-1 (7 April 2005) (Report of the Appellate Body).  
 203 Appellate Body Reports, EC—Seal Products, WT/DS400/AB/R, WT/DS401/AB/R, 22 May 2014; see also Conconi and Voon 2016.  
 204 See Wu 2008, p. 223.  
 205 Appellate Body Report, United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, 311, 317-18, 343-57, 367-72 (Apr. 7, 2005).  
 206 See especially Report of the Appellate Body, China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-visual Entertainment Products, 336-37, WT/DS383/AB/R, AB-2009-3 (Dec. 21, 2009).  
 207 Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, 158, WT/DS58/AB/R (Oct. 12, 1998), paras. 165, 180-184.  
 208 See generally Murrill 2018; WTO 1995, pp. 599-610; WTO 2021; Oke 2021.  
 209 WTO 2022.

A 2019 WTO Panel ruling in a case between Russia and Ukraine is instructive. The Panel ruled that there were both subjective and objective elements to the requirements of Article XXI, and defined “other emergency in international relations” as

*“a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state. Such situations give rise to particular types of interests for the Member in question, i.e. defence or military interests, or maintenance of law and public order interests.”*

The Panel also indicated that Article XXI(b)(iii) must be “understood as eliciting the same type of interests as those” addressed by other limbs of Article XXI(b), which deal with arms and war materiel. “[P]olitical or economic differences between Members are not sufficient, of themselves, to constitute an emergency in international relations.”<sup>210</sup> However, this is not to say that a political dispute stopping short of armed conflict cannot rise to the required level. The recent tension between Saudi Arabia and Qatar, which produced a suspension of diplomatic and economic ties between the countries, was recently held by a dispute resolution panel to rise to the requisite level.<sup>211</sup>

A violation of peremptory norms such as the prohibitions on genocide and slavery is arguably not a question of mere “political or economic difference”, but rather a question of “maintenance of law and public order interests”. The ‘emergency’ character of a breach of the norm of the prohibition of slavery is reflected in the fact that it is not simply a *jus cogens* prohibition, but one that, since it is owed *erga omnes* creates a right of action by every other international actor.<sup>212</sup>

However, reliance on Article XXI(b)(iii) also requires that the measures adopted serve to protect the “essential security interests” of the imposing state. According to the panel in the Russia-Ukraine dispute

*“‘Essential security interests’, which is evidently a narrower concept than ‘security interests’, may generally be understood to refer to those interests relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.”<sup>213</sup> (emphasis added)*

The emphasis here on an imposing country’s own population, territory and internal public order might seem to suggest that the protection of foreign minorities is not an ‘essential security interest’ covered by this provision. Nevertheless,

*“[t]he specific interests that are considered directly relevant to the protection of a state from such external or internal threats will depend on the particular situation and perceptions of the state in question, and can be expected to vary with changing circumstances. For these reasons, it is left, in general, to every Member to define what it considers to be its essential security interests. [... States are not] free to elevate any concern to that of an ‘essential security interest’. Rather, the discretion of a Member to designate particular concerns as ‘essential security interests’ is limited by its obligation to interpret and apply Article XXI(b) (iii) of the GATT 1994 in good faith.”<sup>214</sup>*

Indeed, as the panel in the Saudi Arabia-Qatar dispute noted in a footnote “an assessment of whether or not certain security interests are ‘essential’ or not is not one that a WTO dispute settlement panel is well positioned to make”.<sup>215</sup> States can anticipate a significant margin of appreciation from trade dispute resolution mechanisms in assessing their good faith determinations of their essential security interests warranting activation of GATT Article XXI.

It thus seems arguable that a trade measure adopted in response to slavery in Xinjiang might be justified under GATT Article XXI(b)(iii). The same cannot be said with the same degree of confidence for a trade measure adopted in response to forced labour (let alone employment discrimination) in Xinjiang. While the existence of moral outrage in the society of the country imposing the measure in response to such conduct is a factual question to be established empirically, traditionally the international community has not treated breaches of the prohibitions on forced labour as questions of security or emergencies in global public order in the same way that it has treated the prohibition of slavery.

### 1.3.6 Implications

Even absent China ratifying the ILO’s C29 and C105 relating to forced labour, there are strong indications that China’s policies in relation to employment of minority workers in and from Xinjiang are giving rise to violations of China’s commitments under:

- the 1998 ILO Declaration on Fundamental Principles and Rights at Work;
- the 1926 Slavery Convention;
- the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons (‘Palermo Protocol’);
- the ILO Discrimination (Employment and Occupation) Convention No. 111 of 1958 (C111), and
- the ILO Employment Policy Convention No. 122 of 1964 (C122).

Exactly which violations arise in which cases will require effective fact-finding and due diligence. As we shall see in the next Part of the study, that is becoming increasingly difficult to execute, as a result of Chinese government counter-measures. Nonetheless, in designing and executing Xinjiang sanctions, it is useful to clarify the exact violations they seek to address, and to think about how different narrative and rhetorical framings may affect the legal justifications underpinning trade-based sanctions.

A clear legal characterization of the underlying violations that must be cured can help with both effective signalling and effective targeting. Clarity about what exactly is wrong with China’s Xinjiang policies will help send a clear signal about what needs to be cured in order for sanctions to be terminated or lifted. Likewise, such clarity also helps with identification of the individuals and entities responsible for the conduct in question – and thus clarifies the audience or target for the signal in question.

For example, based on the review above, there are aspects of the detention programme and compulsory labour associated with the VSETC programme that may amount to state-backed enslavement, in violation of China’s 1926 Slavery Convention commitments. Sanctions aimed at addressing these violations would logically be targeted at the individuals, enterprises and organizations that participate in this detention and associated forced labour. In contrast, the concerns arising from this Convention in relation to the Poverty Alleviation through Labour Transfers appear to be limited to China’s Article 5 commitment to progressively address compulsory labour, and, in the meantime, to ensure compulsory labourers are adequately remunerated and not transferred away from their place of residence. Sanctions seeking to address violations of the 1926 Slavery Convention arising from the Poverty Alleviation through Labour Transfers programme would need to focus on those elements, and the actors involved in those aspects of the programme. For this reason, it may be useful for governments adopting Xinjiang sanctions to be more explicit in naming the norms they consider their sanctions are seeking to enforce.

Second, clear legal characterization also shapes the potential channels through which these signals can be sent and leverage can be exercised. One critical point that emerges from this discussion is that there is considerable uncertainty about whether Xinjiang sanctions that restrict trade will survive a challenge through existing trade dispute mechanisms, given how they have been adopted, and the lack of clarity on which GATT provision they are based on. Countries adopting sanctions should take care in how they frame their concerns, since this may affect how these measures are later assessed if or when challenged.

210 Russia – Measures concerning traffic in transit, Report of the Panel, WT/DS512/R, 5 April 2019.

211 Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights, Report of the Panel, WT/DS567/R, 16 June 2020.

212 Case Concerning the Barcelona Traction Light and Power Co., (Belg. v. Spain) [1970] I.C.J. 32.

213 Russia – Measures concerning traffic in transit. Report of the Panel, WT/DS512/R, 5 April 2019, para. 7:130.

214 Ibid., paras 7:131-7:134.

215 Saudi Arabia – Intellectual Property Rights, para 7.281, footnote 826.



Significantly, the survey above suggests that framing these concerns in terms of ‘forced labour’ may constrain responses in a number of ways. First, until China’s ratification of C29 and C105 is complete, its obligations to ensure respect for the international prohibition on forced labour may be limited to an obligation of conduct, not result. Second, framing concerns in terms of ‘forced labour’ (and employment discrimination) may work *against* the claim that states are entitled to take unilateral trade measures. Instead, the interpretation of the GATT that prevails in trade dispute resolution circles suggests that enforcement of labour standards should be handled through the ILO. By using trade sanctions to address ‘forced labour’ concerns, states may risk reigniting a larger debate between industrialized and developing countries over the enforcement of labour standards through trade instruments, distracting from efforts to address the specific concerns in Xinjiang.

The survey also suggests that there may be several good reasons to frame concerns in Xinjiang in terms of slavery, human trafficking, in some cases enslavement as a crime against humanity, and possibly genocide. These include: access to a larger set of GATT provisions to underpin unilateral trade measures, including Articles XX(a) (public morals) and XXI (security); shifting the focus of remediation from coercion in the workplace to the larger context of state coercion; and access to additional dispute resolution channels (the UN Secretary-General, ICJ and PCIA, and the Conference of the Parties for the UN TOC Convention).

These are not, however, mutually exclusive options. As Part 4 discusses further, the greatest prospect of success may come from creating and using leverage through multiple channels. What may be needed is a targeted approach that matches concerns about specific aspects of China’s policies and programmes to specific normative shortcomings, identifies specific remediation needed to bring China’s policies and programmes into conformity with its international obligations, and uses the relevant international channels to deliver that signal. Figure 1 summarizes insights from this section into these questions of norms and remediation.

Figure 1. Norms and remedies that could underpin Xinjiang sanctions

Norm	Application to Xinjiang workforce management policies			Remedial considerations			
	Labour standards	Slavery	Human trafficking	Genocide, CAgH	Instrument	Remedy sought	Other considerations
<b>International criminal law</b>		Genocide Crime against humanity of enslavement			ICJ Universal jurisdiction	Prosecution Reparations	
<b>ILO C29 and C105</b>	Prohibition on forced labour				ILO mechanisms	Cessation of forced labour	China in process of ratifying.
<b>1998 Declaration on Fundamental Principles and Rights at Work</b>	Promote and realise the principle of elimination of forced or compulsory labour				ILO mechanisms	Cessation of policies promoting forced or compulsory labour	Art. 5 admonition against invocation for protectionist trade purposes
<b>1926 Slavery Convention</b>		Art 2(b) complete abolition of slavery. Art. 5 remuneration and non-transfer of compulsory labour			Art 7 UNSG communication role Art 8 ICJ/PCIA dispute settlement	Rectification of VSETC to conform with Art 2 Rectification of Poverty Alleviation through Labour Transfers to conform with Art 5	China party since 1937
<b>Peremptory norms of international law</b>		Prohibition of slavery		Prohibition of genocide	State cooperation, cessation of aid, ICJ	Cessation of violation of peremptory norm	Enforceable erga omnes. See ILC 2022.
<b>Palermo Protocol</b>			Obligation to prevent and punish		UN TOC Convention of Parties ICJ	Cessation of trafficking Punishment	Depends on demonstration of intent ('purpose of exploitation')

Continued overleaf...

Norm	Application to Xinjiang workforce management policies				Remedial considerations		Other considerations
	Labour standards	Slavery	Human trafficking	Genocide, CAgH	Instrument	Remedy sought	
ILO C111 and C122	C111 Art 2 – Non-discrimination in employment  C122 Art 1 – Freely chosen employment					Rectify VSETC system to address segregation, focus on vocational training, public access to training centres, address biases against minority lifestyles  Ensure participation of affected workers in design of employment policies	Additional details of remedial steps provided in CEACR report (ILO 2022).
GATT Art. XX(a) (public morals)	Public moral outrage at production based on violations				Import ban		Procedural requirements
GATT Art. XX(e) (prison labour)	Forced labour				Import ban		Cited by Canada in WTO notification
GATT Art. XXI (security)		Prohibition on slavery as an essential security interest		Prevention of genocide, CAgH as an essential security interest	Restrictive trade measures	Cessation of conduct identified	Unclear whether ‘emergency in international relations’ present

## 2. Western sanctions, Chinese counter-measures and corporate responses

Part 1 of this study considered how to understand and characterize China’s management of minority workers in Xinjiang. Drawing on three new datasets developed over more than a year for this study and for public use, Part 2 describes three sets of responses that China’s approach in Xinjiang have elicited: first, sanctions measures imposed by foreign – and almost exclusively Western – countries; second, China’s own counter-measures adopted in response to those Western sanctions; and third, corporate responses. Discussion of the net impacts of these responses follows in Part 3.

### 2.1 Terms and methods

Our focus here is on responses to allegations that China’s management of Xinjiang’s minority workforce has generated forced labour (or other violations of international law) through the VSETC and Poverty Alleviation through Labour Transfers programmes, as discussed in Part 1. In describing this recent history of responses, it is useful to distinguish between three related but distinct concepts.

First, ‘responses’. This term is used to encompass all the acts, omissions and speech reacting to allegations of Xinjiang forced labour. ‘Responses’ is a deliberately wide term, including everything from trade measures and asset freezes to corporate rhetoric. This Part of the study considers ‘responses’ from three main sources: governments outside China (primarily in Western countries), the Chinese state, and corporations.

Second, ‘sanctions’. Sanctions are binding measures imposed by one actor to cause another (the ‘target’) harm or costs, with the purpose of changing the target’s behaviour, policies or practices.<sup>216</sup> Following existing sanctions literature, the study limits this term to the responses of states – not corporate entities. The study also limits the concept of sanctions to legally binding measures, excluding mere political speech and also, as explained later, informal measures intended to put pressure on third parties to achieve a change in behaviour.<sup>217</sup> Corporate responses to alleged forced labour may include speech, changes in policies or practice such as heightened due diligence, or a range of other actions.

These are not sanctions, because they do not necessarily impose a harm or loss on a third party to change behaviour – and they are not imposed by states. The corporate responses we are interested in are responses both to the fact (and allegation) of Xinjiang forced labour, and indeed responses to sanctions imposed by states.

Sanctions often make reference to a rule or norm, but their objective is not to punish or create accountability for *past* conduct, but rather to influence *future* conduct. For that reason, our analysis of Xinjiang sanctions does *not* incorporate efforts to hold officials legally accountable for past harms, whether through civil or criminal proceedings.

Third, ‘measures’ and ‘counter-measures’. These are the instruments and actions used to impose or implement ‘sanctions’, or to otherwise impose costs intended to induce behavioural change (including through informal approaches that do not fall within our concept of ‘sanctions’). Put another way, ‘sanctions’ refers to the decision to impose binding harm or costs; ‘measures’ are the instruments and means through which those harms or costs are imposed; and ‘counter-measures’ are measures responding to sanctions.

<sup>216</sup> Compare Drury 2005, p. 17.

<sup>217</sup> Compare Lim and Ferguson 2021. This is discussed at more length in section 2.3.3 below.

Our analysis draws on three original datasets of responses, developed for this study through analysis of open-source reporting in English and Chinese over more than a year. These three datasets are available for public inspection, search and download at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info). They are:

- the Xinjiang Sanctions Government Measures (XJS-GMS) dataset, which includes measures proposed or adopted by official government bodies in response to alleged forced labour in Xinjiang Uyghur Autonomous Region. Measures in this dataset are denoted M#001, M#002 etc. Version 4.0 of the dataset, on which this analysis is based, includes 318 measures and over 3,800 datapoints;
- the Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset, which includes counter-measures initiated by the People's Republic of China. Measures in this dataset are denoted CM#001, CM#002, etc. The current version of this dataset includes 55 counter-measures, and over 600 datapoints; and the Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset, which collates open source information regarding certain corporate responses to alleged forced labour in XUAR. Responses in this dataset are denoted by reference to the company name of the entry in the dataset. The version of this dataset at the time of writing (v1.0) includes data on over 250 companies from over 20 countries, and over 8,000 datapoints.

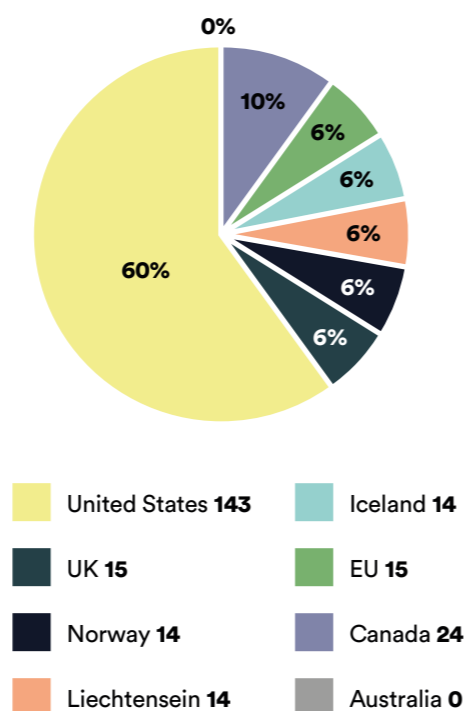
These datasets are regularly updated. A detailed Coding Manual for each dataset is also published through the Xinjiang Sanctions website. The analysis presented here relies on the versions of each dataset current as of June 2022.<sup>218</sup> In addition, the study draws on a series of 12 confidential interviews with insiders from government, business and civil society, both inside and outside China. These interviews were conducted under a strict ethics protocol approved by the University of Nottingham. In accordance with that protocol, and in the interests of interview subjects' safety and security, they have been granted anonymity. Interviews are referred to simply by a non-sequential interview number.

## 2.2 Western Government measures

### 2.2.1 Overview of the XJS-GMS dataset

At the time of writing (June 2022), the Xinjiang Sanctions Government Measures (XJS-GMS, version 4.0) dataset documents 318 measures. 239 of these were in force, 43 proposed but had not yet entered into force, and 36 expired. Figure 2 provides details of measures in force, by jurisdiction. The United States is the source of most of these measures, accounting for 143 (60 per cent) of all those in force. Canada is the source of 24 (10 per cent), the UK and EU 15 each (6 per cent), and the EU's EFTA partners Iceland, Liechtenstein and Norway 14 each (6 per cent).<sup>219</sup> Of the 43 measures formally proposed at one time or another and not yet expired, the EU was the source of 15, whereas Australia, with no measures in force to date, had 5 proposed measures under consideration.

Figure 2. Measures in force by jurisdiction



The pace at which new measures have emerged has accelerated steadily since 2018. Figure 3 shows this evolution over time (reflecting both measures that were adopted and those that were proposed but not adopted, since this provides a better indication of legislative and executive activity, even if some efforts did not lead to binding measures). The subsequent sections of this text explore how and when these various measures were proposed and adopted, providing detailed context and explanation.

Figure 3. Year-on-year activity on Xinjiang forced labour measures

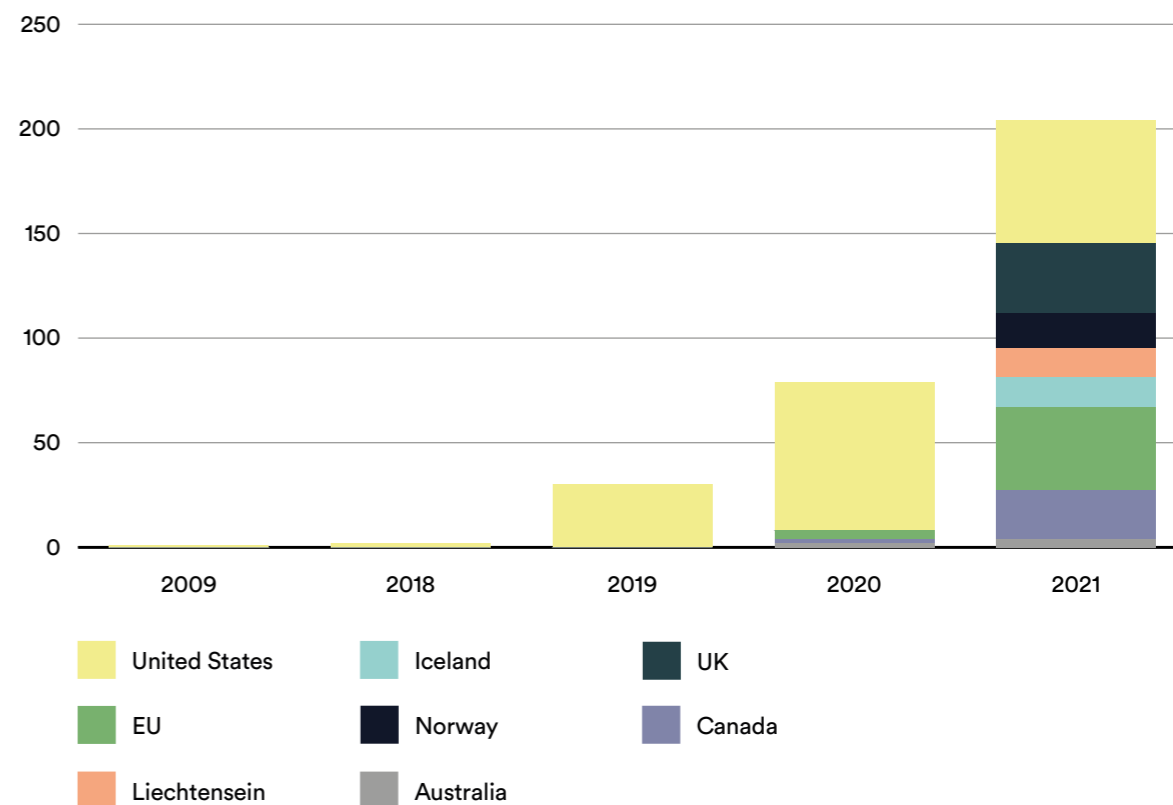


Figure 4 provides a breakdown of measures in force (4.a) and proposed (4.b), by sanctions type. As it shows, asset freezes and travel sanctions are the most widely adopted measures. The US has adopted 82 import and export control measures (at the time of writing). Yet while there is growing media attention to trade measures addressing forced labour, the only other jurisdiction with such measures actually in place at the time of writing is Canada. Figure 4 also suggests that there is an increasing exploration of 'other' sanctions types. These include a range of innovative efforts to create and use leverage, ranging from requiring exporting businesses to sign an 'integrity declaration' (M#106, Canada), to restrictions on public procurement (M#214, US), to capital market sanctions and investment restrictions.

<sup>218</sup> These are: versions 4 for the XJS-GMS and XJS-CCM datasets, and version 1 for the XJS-CRS dataset.  
<sup>219</sup> Switzerland may also have measures in place.

Figure 4. Measures by type

Figure 4.a – Measures in force, by type

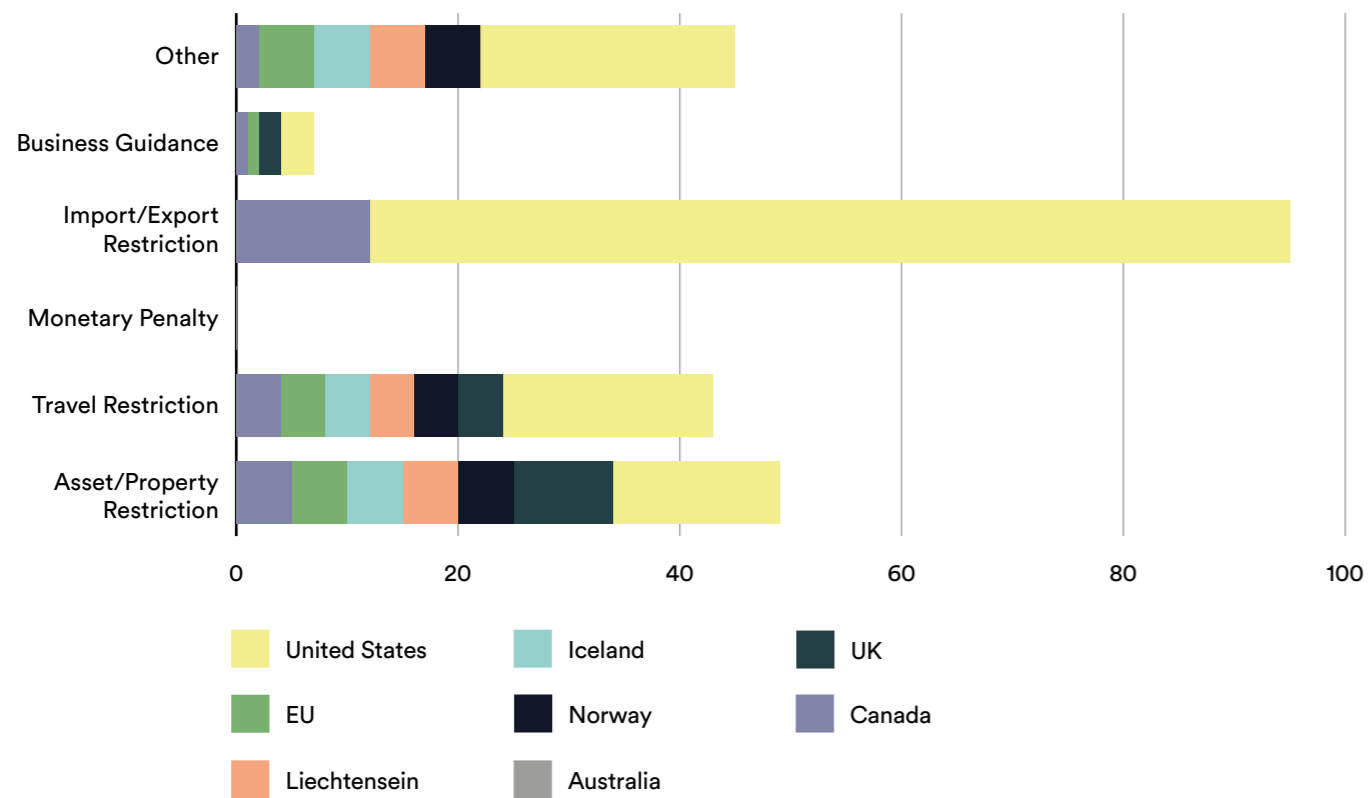
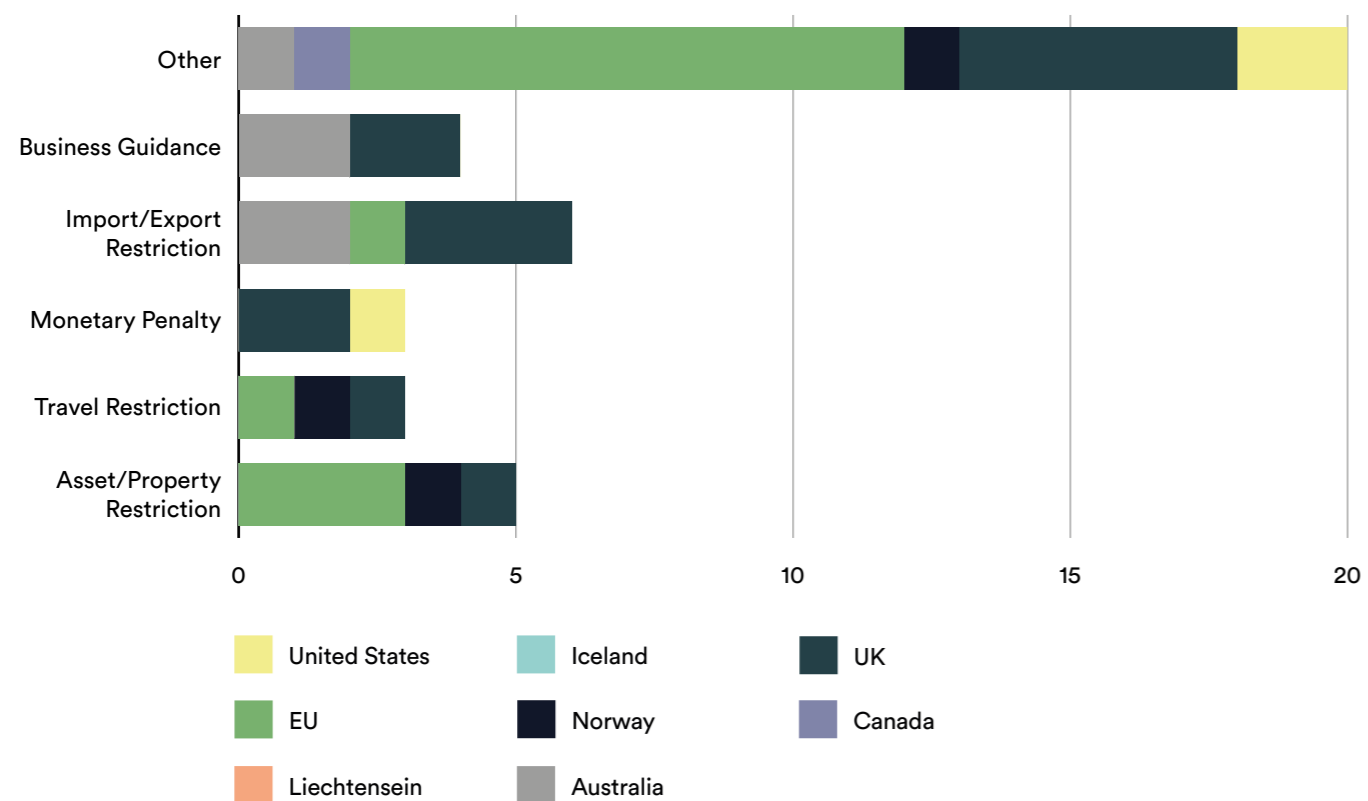
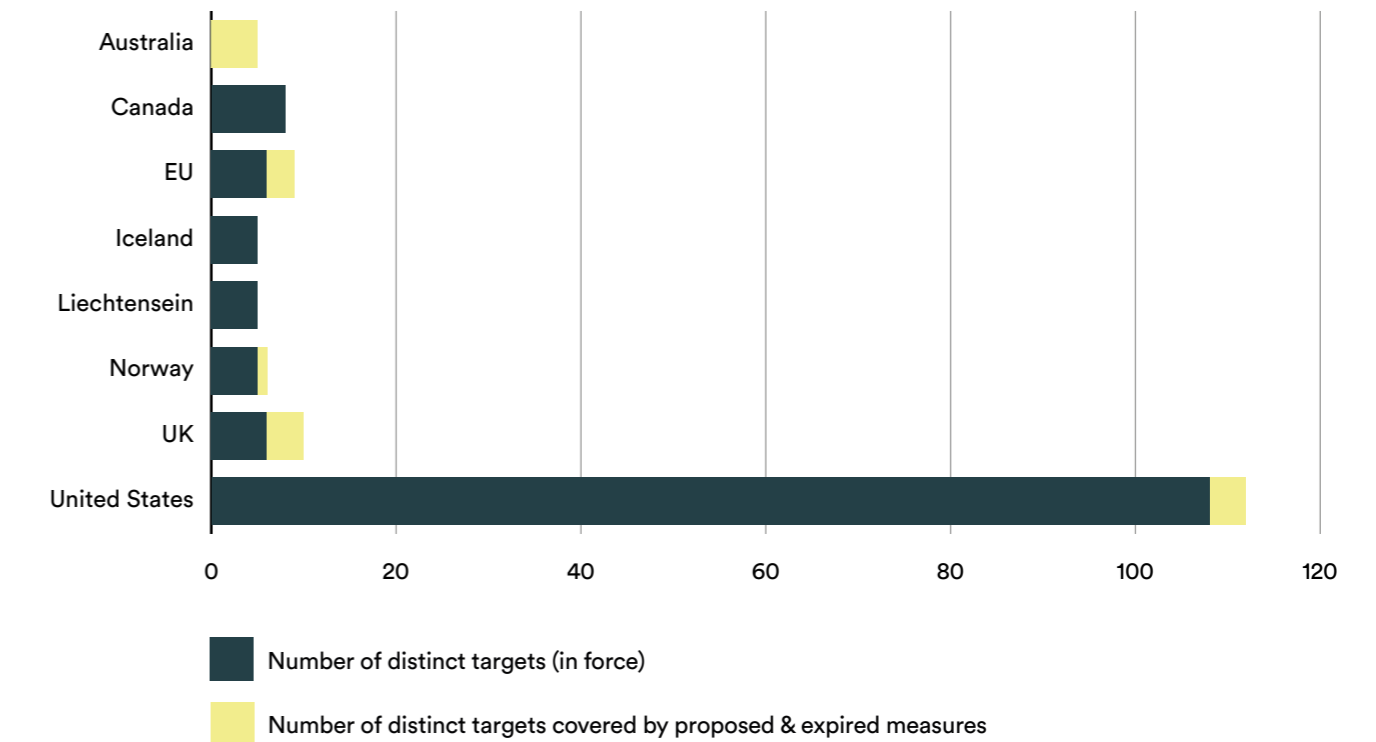


Figure 4.b – Measures proposed, by type



Another difference amongst the jurisdictions adopting measures in response to Xinjiang forced labour relates to the spread of sanctions targets. Coordinated measures from Canada, the EU and its EFTA partners, the US and UK are targeted at just 4 individuals centrally involved in the repression detailed in Part 1 of this study: CHEN Mingguo (陈明国), WANG Junzheng (王君正), WANG Minshang (王明山) and ZHU Hailun (朱海仑). These measures account for 36 per cent of all measures adopted. The Xinjiang Production and Construction Corps (新疆生产建设兵团) and related entities account for another 18 measures (8 per cent of all those in force). In contrast, while the US has sanctioned several other key individuals such as CHEN Quanguo (陈全国), HUO Liujun (霍留军), PENG Jiarui (彭家瑞), SUN Jinlong (孙金龙), Shohrat Zakir and Erken Tuniyaz, other jurisdictions have not sanctioned any of these individuals. In fact, while the US' measures are directed at 108 targets, other jurisdictions have much narrower target sets, as Figure 5 shows very clearly.

Figure 5. Number of distinct targets by jurisdiction



The sections that follow describe these various measures and how and when they were adopted. Later sections turn to Chinese counter-measures and corporate responses.

### 2.2.2 2018-2019: the US takes aim with trade measures

The first legally binding measure addressing alleged forced labour in Xinjiang was the 2009 addition of Chinese cotton by the US Department of Labor to its official list of goods produced by child or forced labour.<sup>220</sup> Inclusion in this list has a narrow effect – raising awareness, and restricting certain US government procurement activities. It was only in 2018 that the US turned its sanctions sights in earnest on the problem of Xinjiang forced labour, with the adoption of two trade orders directing the detention of certain Chinese toys and garments on the grounds that they were reasonably believed to be made in whole or in part with forced labour.<sup>221</sup>

From that point on, trade restrictions have been at the heart of the Xinjiang sanctions conversation. The US has had a legislative framework in place since 1890 for exclusion of foreign imports made with forced labour. It is now encapsulated in section 307 of the *Tariff Act* of 1930 (19 U.S.C. §1307), which empowers US Customs and Border Protection (CBP) to exclude certain goods made with forced labour, whatever their overseas provenance.<sup>222</sup> Between 1930 and 2016, however, the impact of this framework was limited by the ‘consumptive demand’ clause – a provision indicating that the ban on forced labour goods would not be enforced where US consumptive demand for the goods in question could not be met by domestic supply. The provision was repealed in 2016 by the adoption of the *Trade Facilitation and Trade Enforcement Act* (TFTEA), opening the path to a significant increase in enforcement activity.<sup>223</sup>

The current regime permits CBP (which sits within the Department of Homeland Security) to detain any shipment of goods that CBP believes with “reasonable suspicion” to have been made in whole or in part with forced labour. This involves port of entry authorities withholding the release of those goods into the US market, which is why the directions from CBP to treat certain goods in this way are known as ‘Withhold Release Orders’ (WROs). CBP can act on its own initiative, or after receiving information shared with it – even anonymously – by members of the public. CBP then investigates these allegations, using the ILO forced labour indicators discussed in section 1.3 above as a framework for assessing whether there is ‘reasonable suspicion’ the goods were in fact made in whole or in part with forced labour.

An importer hit with a WRO can either reroute the shipment to a foreign market or seek to persuade CBP that the goods were not in fact made with forced labour. This can be achieved by providing information and documents within 90 days that demonstrate requisite due diligence. If, however, CBP issues a ‘Finding’ that the goods have (conclusively) been made with forced labour, it can seize (i.e. confiscate) the cargo in question. Where it finds ‘probable cause’, it can pursue civil penalties. CBP also shares intelligence with the Department of Homeland Security’s investigative bodies, which can bring criminal investigations into cases referred by CBP.<sup>224</sup> No prosecution yet appears to have been undertaken relating to import of forced labour goods from Xinjiang.

Despite the potential strength of this framework since the 2016 repeal of the consumptive demand clause, enforcement has been limited by resourcing. Between 2016 and 2018 only USD 6.3 million worth of forced labour goods were seized – around 0.0016 percent of the estimated USD 400 billion in such goods believed to enter the U.S. market each year, according to the non-profit Human Trafficking Institute. And as of early 2019, just 6 of CBP’s 62,450 personnel were charged with enforcing section 307 of the *Tariff Act*.<sup>225</sup> At the time of writing in mid-2022 this has risen to around two dozen personnel in headquarters,<sup>226</sup> and is now ramping up further. Congress’ FY 2022 omnibus appropriations bill provided USD 27,495,000 to facilitate compliance with the *Uyghur Forced Labor Prevention Act* (discussed further below in section 2.2.4), which builds on the *Tariff Act*. CBP has sought USD 70,309,000 to add to its enforcement personnel, technological capability, training and other activities to implement the Act.<sup>227</sup>

As resources have expanded, so have detentions. In the period from October 2020 to May 2021, for example, CBP reported targeting more than 1,200 shipments containing cargo worth more than USD 400 million suspected to be made by forced labour, with USD 275 million worth of those goods detained in 674 shipments, and the remainder rerouted to third markets.<sup>228</sup>

Figure 6 below details this rapid growth:

**Figure 6. Growth in WROs and detentions under s307 of the Tariff Act**

	FY 2018	FY 2019	FY 2020	FY 2021	1 Oct 2021 – 31 Jan 2022
Number of WROs	2	6	13	7	5
Shipments detained under WROs	6	12	314	1,469	1,120
Value of cargo detained under WROs (USD million)	0.218	1.2	49.8	486	227

Source: US CBP 2022.

In May and October 2019 the US further signalled its seriousness about taking action to address Xinjiang forced labour by imposing visa restrictions on certain Chinese officials believed to be centrally involved in the policies producing that forced labour.<sup>229</sup> The focus nonetheless remained primarily on trade controls, though now shifting from import bans to export controls. In October 2019, 28 named entities were added to the US Department of Commerce Bureau of Industry & Security’s Entity List (the ‘Entity List’), pursuant to §744.11(b) of the US Export Administration Regulations.<sup>230</sup> These entities were all thought to be involved in, or benefiting from, the forced labour programmes discussed in Part 1 of this study. They included the XUAR People’s Government Public Security Bureau, the XPCC Public Security Bureau, a range of public security entities and half a dozen corporate entities, all alleged to be involved in “the implementation of China’s campaign of repression, mass arbitrary detention, and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the XUAR”.<sup>231</sup>

Whereas the *Tariff Act* and WROs impact imports, the Entity List is an export control regime. It catalogues foreign organizations for which Americans must acquire government permission (a ‘license’) on a case by case basis before providing said organizations certain goods or services. The Entity List also impacts third party non-US persons, through the ‘foreign direct product rule’. This allows the US to restrict provision of certain American goods and services to third party foreign persons that do not voluntarily comply with the restrictions on provision of goods and services to designated entities on the Entity List. In other words, the rule creates a strong incentive for foreign entities to voluntarily comply with the export ban (which is mandatory for Americans), to avoid themselves being subject to such a ban.

This is the rule used for example by the US government to make foreign chipmakers’ access to US-made semiconductor manufacturing equipment and design tools dependent on their ceasing doing business with Huawei. The Entity List is for this reason influential with a range of foreign entities, including financiers, insurers and shippers.

### 2.2.3 2020-2021: enlisting business and foreign partners

2020 and 2021 brought a significant expansion of both the coalition of actors targeting Chinese entities in response to Xinjiang forced labour, and the arsenal of measures deployed.

The first significant expansion was a US turn in June-July 2020 to financial and travel restrictions targeting leading Chinese officials involved in Xinjiang forced labour. This began with Congress’ almost unanimous adoption of the *Uyghur Human Rights Policy Act*, signed into law by President Donald Trump on 17 June 2020.<sup>232</sup> The Act required various US officials to monitor and report on repression in Xinjiang, and provided the authority under which key officials were subsequently subjected to targeted financial and travel sanctions.

Financial sanctions are imposed in the US through the Department of Treasury’s Office of Foreign Assets Control (OFAC), which adds people to a centralized list of Specially Designated Nationals and Blocked Persons – known as the SDN List. This list currently includes more than 6,000 entities, primarily alleged terrorists, organized criminals such as drug traffickers, and officials and beneficiaries of certain authoritarian regimes and military juntas. Addition to the list leads to US banks and financial institutions freezing assets; restrictions on access to US visas, which are handled through the State Department; and bans on dollar-based transactions, even outside the US. Non-compliance can expose US entities to strict liability, criminal penalties and other ‘secondary sanctions’, including civil penalties in the millions of dollars.<sup>233</sup>

220 See XJS-GMS M#001. The link to Xinjiang was confirmed in correspondence with relevant US government authorities.  
 221 M#002 and M#003.  
 222 See generally Syam and Roggensack 2020.  
 223 P.L. 114-125, 24 February 2016.  
 224 Fields 2019.  
 225 Fields 2019.  
 226 Interview 2.  
 227 Merkley et al. 2022.  
 228 US CBP 2021b.

229 M#004, M#005.  
 230 See XJS-GMS M#006-M#033.  
 231 For full details see XJS-GMS M#006-M#033.  
 232 Pub. L. 116-145, § 6, June 17, 2020, 134 Stat. 651. See XJS-GMS M#035-#037.  
 233 See Sanctions Compliance & Evaluation Division OFAC 2012. For details of civil penalties see <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

Four individuals, plus the Xinjiang Public Security Bureau, were added to the SDN list in July 2020.<sup>234</sup> Travel sanctions, which are administered by the State Department under E.O. 13818, the *International Emergency Economic Powers Act* and the *Global Magnitsky Human Rights Act*, were also imposed on the same individuals.<sup>235</sup>

The turn to export controls and financial sanctions signalled a willingness on the part of the US government to enlist private sector actors in efforts to change Chinese government policy and conduct on Xinjiang. This was further reinforced by a Xinjiang Supply Chain Business Advisory, which was issued jointly by the Departments of Commerce, State, Treasury, and Homeland Security on 1 July 2020.<sup>236</sup> The Advisory highlighted supply chain risks related to Xinjiang forced labour, drawing particular attention to:

- the provision of surveillance goods, services, or technology (e.g., cameras, tracking technology, biometric devices) that may be deployed in Xinjiang;
- relying on labour or goods sourced in Xinjiang or from factories in China that may utilize forced labour from Xinjiang; and
- assisting with the construction of internment facilities used to detain Muslim minority groups, and/or manufacturing facilities that are located nearby these internment camps.

The Advisory cautions that third-party audits alone may not be a reliable source of information on whether human rights abuses exist, and that businesses should consider collaborating with industry groups to share information on risks in the region. Significantly, the Advisory is not limited to *upstream* supply-chain risks – i.e. the risks of forced labour in the production of goods or services supplied to US businesses. It also draws attention to *downstream* risks, encouraging companies to perform reasonable due diligence before themselves supplying companies with goods and services, in order to ensure that US businesses are not potentially supporting Chinese customers that may be involved in human rights abuses in Xinjiang. This warning was given immediate urgency when, on 22 July 2020, the US government adopted 20 export control measures, targeting 11 companies providing surveillance and biotechnologies used in the VSETC and broader Xinjiang social control programmes.<sup>237</sup>

Late July saw another wave of travel and asset freezes, before a new set of WROs targeted at companies exporting garments and apparel, hair products, computer technology and cotton followed in August and September.<sup>238</sup> In September 2020, the US Department of Labor added gloves from China to its list of goods produced by child labour or forced labour.<sup>239</sup> At the end of September, the US government issued guidance relating to transactions involving foreign government end-users for products or services with surveillance capabilities.<sup>240</sup> In November, the US government placed China in Tier 3 of its annual Trafficking in Persons (TIP) report, restricting the ability of government entities to provide certain types of non-humanitarian, non-trade-related assistance.<sup>241</sup> This was followed, at the end of November, by a dramatic escalation: the issuance of a WRO covering all cotton and cotton products originating from the XPCC.<sup>242</sup>

On 13 January 2021, US Customs and Border Protection (CBP) went even further, issuing WRO 43. The broadest trade measure to that point, it covered any and all cotton and tomatoes produced in Xinjiang Uyghur Autonomous Region, as well as downstream products.<sup>243</sup> CBP moved rapidly to enforce this region-wide (but product-specific) WRO, detaining apparel shipments the next day, requiring affected companies to complete detailed questionnaires relating to supply-chain tracing and controls and to submit supplier recruitment policies, factory audit reports, purchase orders, inland and export freight forwarding notes and bills of lading.<sup>244</sup> In enforcing these provisions, CBP has reportedly even asked importing companies to share copies of cotton pickers' timecards, as evidence of labour force management practices.<sup>245</sup> CBP has made clear that it may request information to demonstrate the provenance and custody of goods all the way back along the supply-chain to the production stage.<sup>246</sup> Yet because WROs involve detention of goods at the border, and are enforced through decentralized action by port authorities, the evidence that importers must present can depend on the discretion of CBP officials at the border. We study the impact of these measures in detail in Part 3.

It was around this time – late 2020 – that a small informal coalition of countries willing to take action in response to Xinjiang forced labour also began to emerge.

There had been signs of engagement for the prior six months. July 2020 saw the first measures taken by a country other than the US, with Canada introducing an import restriction on goods made with forced labour, by amending its Customs Tariff.<sup>247</sup> Although this implemented a general commitment made earlier in the renegotiation of the North American Free Trade Agreement (now the US-Mexico-Canada Trade Agreement), growing concerns about Xinjiang forced labour were clearly a motivating factor.<sup>248</sup> In December 2020, two new jurisdictions entered the mix. In Australia, an independent Senator, Rex Patrick, acting with signals of support from China hawks in the major political parties, introduced a bill proposing the creation of an import ban for goods made with Uyghur forced labour.<sup>249</sup> In Europe, the European Parliament adopted a Resolution proposing requirements around corporate due diligence, withdrawal from commercial relationships and asset restrictions, as well as a refusal to ratify the EU-China Comprehensive Agreement on Investment until China respects international labour standards.<sup>250</sup>

A more coordinated push occurred in January 2021. On 12 January 2021, Canada released detailed business guidance setting out expectations and requiring signature of an 'Integrity Declaration' before exporters could receive support from the Canadian Trade Commissioner Service.<sup>251</sup> On the same day, the UK government also released business guidance, and proposed to introduce new export controls, monetary penalties and public procurement rules discouraging engagement with entities linked to Xinjiang.<sup>252</sup> (At the time of writing, those proposals remain just that; in early 2022 allegations emerged that the National Health Service was procuring material from firms tied to Xinjiang forced labour<sup>253</sup> and, as a consequence another legislative proposal has been introduced specifically to address such risk.<sup>254</sup>)

China responded forcefully to this wave of coordinated sanctions, adopting 28 sanctions of its own on Western targets. These, and other subsequent Chinese counter-measures, are discussed further below in section 2.3.

The most significant round of Xinjiang sanctions occurred in the last week of March 2021, just two months after President Biden took office. This week alone accounts for more than a quarter of all measures adopted to date. On 22 March, Canada, the EU, UK, US and the EU's EFTA partners adopted 96 travel and financial restrictions between themselves, nearly all of them targeting the same 4 individuals – Zhu Hailun (朱海仑), Wang Junzheng (王君正), Wang Minshang (王明山), Chen Mingguo (陈明国) – plus the XPCC Public Security Bureau.<sup>255</sup> These were all key actors in XUAR and XPCC leadership in the period during which the policies generating forced labour discussed in Part 1 of this study were adopted and implemented.

Yet still Western actors searched for more leverage. In March, a UK Parliamentary Committee proposed a range of new measures, including a review of directors' liability rules.<sup>256</sup> Responding to Chinese sanctions imposed on a number of Members of European Parliament (MEPs) (see section 2.3 below), the European Parliament adopted a resolution in May 2021 proposing a range of new measures involving, public procurement, mandatory due diligence, identification of entities involved in human rights abuses, strengthened screening of inbound (foreign) investment and an import ban.<sup>257</sup> In June 2021, a report from an Australian parliamentary committee responding to the bill introduced the previous year suggested a similar range of measures, including business guidance, an import ban and due diligence requirements.<sup>258</sup> In the US, the Senate renewed study of a legislative proposal percolating since 2020, to amend the *Securities Exchange Act* of 1934 to require annual reporting on import activity pertaining to XUAR, with oversight from the Securities and Exchange Commission as well as the Government Accountability Office.<sup>259</sup> Yet none of these proposals have, at the time of writing, made it into force.

234 See M#045-M#048, M#053.  
 235 See M#042-M#044, M#049-M#052.  
 236 See US Department of State et al. 2020, and see M#041. Note that M#041 is expired, as this Advisory of July 2020 has been replaced by an updated version – see US Department of State et al. 2021, also M#261.  
 237 XJS-GMS M#054-M#073.  
 238 M#080-M#086.  
 239 M#271-M#278.  
 240 M#094.  
 241 M#096.  
 242 WRO 42, see M#097.  
 243 M#112.  
 244 Birmingham 2020; Interview 8.  
 245 Interviews 5, 8.  
 246 US CBP 2022b.

247 S.C. 1997, c. 36, Section 132(1)(m)(i.1). See XJS-GMS M#040.  
 248 Interviews 6, 9.  
 249 M#098.  
 250 M#099-M#103.  
 251 M#104-M#107.  
 252 M#108-M#111.  
 253 The UK Independent Anti-Slavery Commissioner wrote to UK department heads in November 2021 seeking information about UK public procurement. For the resulting correspondence see Crates 2022.  
 254 See M#319, Amendment 48C to the Health and Care Act 2022, in version 4.1 of the dataset, now available through [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info).  
 255 Canada: M#118-M#131, M#209-M#213; EU: M#132-M#145; Iceland: M#146-M#159; Liechtenstein: M#160-M#173; Norway: M#174-M#190; UK: M#191-M#203, M#215-M#218; US: M#204-M#208;  
 256 M#113-M#117.  
 257 M#219-M#226.  
 258 M#227-M#229.  
 259 M#314-M#316.

The spring and summer of 2021 brought the expansion of the US’ campaign to a new sector: solar panels. In May 2021 the *Keep China Out of Solar Energy Act* (S. 1062) was introduced into the Senate, in part in response to concerns relating to forced labour in polysilicon production, which will be discussed further in Part 3. In June, CBP imposed a new WRO, this time targeting Hoshine Silicon Industry Co., a key supplier of silica, a critical feedstock for the global solar panel supply-chain.<sup>260</sup> This was accompanied by the addition of Chinese polysilicon to the Department of Labor forced labour list, and the addition of Hoshine and 3 connected polysilicon companies to the Entity List. Notably, these entities and goods have not yet been targeted by other jurisdictions. Nevertheless, as we explore further in Part 3, the Hoshine WRO does appear to have impacted the solar panel supply-chain. This led CBP to issue guidance in March 2022 laying out procedures by which importers could access an ‘advance ruling’ on an import and expedited processing.<sup>261</sup>

In the summer of 2021, G7 leaders drew attention to Xinjiang forced labour concerns in the Communiqué issued at the conclusion of their annual summit, which was held in Carbis Bay in the UK. The Communiqué noted the leaders’ concern about “state-sponsored forced labour of vulnerable groups and minorities, including in the agricultural, solar, and garment sector”, and committed to take coordinated action, including through trade measures, to address these concerns.<sup>262</sup> Parliamentary voices continued to advance proposals for further action, including, in the EU, financial and travel sanctions and an outward investment ban,<sup>263</sup> and, in the UK, import bans and positive corporate due diligence obligations.<sup>264</sup> The US expanded its restrictions on technology exports,<sup>265</sup> the XPCC was added to the Entity List,<sup>266</sup> and the EU and US provided coordinated businesses guidance on forced labour risk in their operations and supply-chains.<sup>267</sup>

There have been minor adjustments to these sanctions since. The EU renewed some of its existing sanctions measures in December 2021,<sup>268</sup> while the US added several new officials from the XUAR and XPCC upper echelons to its sanctions list,<sup>269</sup> after some of the CCP officials it had earlier sanctioned received promotions to even more senior roles outside XUAR, including in Tibet. The US also added several new technology companies to the OFAC list.<sup>270</sup>

### 2.2.4 2022: Towards coordinated import bans?

The final major episode in the adoption of Western sanctions to date is the emergence of a push for coordinated import bans boycotting *all* exports from Xinjiang. At the centre of this effort is the almost unanimous adoption in December 2021 by the US Congress of the *Uyghur Forced Labor Prevention Act* (‘UFLPA’), which became operational on 21 June 2022.<sup>271</sup>

The UFLPA creates a rebuttable presumption that section 307 of the Tariff Act applies to *any and all* goods made in whole or in part in XUAR. The effect is to create a region-wide embargo on imports into the US of goods made by supply-chains originating in or passing through XUAR. For that reason, it represents a source of potentially major disruption for many industries and companies. Numerous companies, including Nike, Coca Cola, Apple, Gap, Campbell Soup, Kraft, JinkoSolar, BP and HSBC lobbied Congress while the bill was being considered.<sup>272</sup> Some officials within the Biden Administration voiced concern about the potential disruptions and increased costs the UFLPA would visit on sensitive supply-chains, such as those in the solar energy sector, as well as its knock-on impacts on inflation.<sup>273</sup> Yet the bill ultimately passed through Congress in December 2021, with just one person in both houses of Congress voting against it, and it was signed into law by President Biden on 23 December 2021.<sup>274</sup>

The UFLPA is notable both for its trade provisions’ expansive scope and the heightened evidentiary standard required to rebut the Act’s presumptive prohibition on all imports from the XUAR.<sup>275</sup> The rebuttable presumption created by the act applies not only to anything ‘mined, produced, or manufactured’ in Xinjiang, but *also* to goods produced by certain entities operating directly or indirectly in Xinjiang and using forced labour elsewhere in China. A cross-departmental Taskforce – the Forced Labor Enforcement Task Force (FLETF) – is charged with identifying relevant entities, including those that work with the XUAR government to recruit, transport, or receive forced labour from the XUAR as well as entities that participate in “poverty alleviation” and “pairing assistance” programs in the XUAR.

The UFLPA also sets a higher standard of proof to rebut the presumption than the regular standard under the Tariff Act. The UFLPA allows importers to overcome the presumptive ban on imports if CBP determines that:

1. the importer of record has:
  - a. fully complied with all due diligence and evidentiary guidance under the Act, along with any associated implementing regulations; and
  - b. completely and substantively responded to all CBP inquiries seeking to ascertain whether the goods were produced with forced labour; and
2. “clear and convincing” evidence shows that the goods were not produced wholly or in part with forced labour.

The FLETF is required to issue guidance on the “due diligence, effective supply chain tracing, and supply chain management measures” expected of companies in order to meet the first limb of the test above. This guidance was published on 21 June 2022, building on the guidance already issued by the US government.<sup>276</sup> The second limb of the test for exemption from the ban – requiring ‘clear and convincing’ evidence the goods were *not* made with forced labour – deliberately sets the bar higher than the Tariff Act, making it harder to escape the ban on imports. This draws on language used by Congress in blocking imports of forced labour goods from North Korea in the *Countering America’s Adversaries Through Sanctions Act* (CAATSA).<sup>277</sup>

To ensure transparency and accountability, each time CBP determines that an exception to the ban is warranted, it must submit a public report to Congress within 30 days, identifying the goods and the evidence upon which the determination is based.<sup>278</sup>

The FLETF is also required to prepare both a list of high-priority sectors subject to the CBP enforcement, and a sector-specific enforcement plan for each of these high-priority sectors. The sectors must (under the UFLPA itself) include cotton, tomatoes and polysilicon. As required by the Act, the FLETF conducted a series of consultations in the first months of 2022, including a public notice and comment process, to develop an enforcement strategy for the UFLPA and section 307 of the Tariff Act more broadly, which was published on 17 June 2022.<sup>279</sup>

The consultation received 181 written comments as well as oral testimony.<sup>280</sup> Chinese companies, in their submissions, largely denied any connection to forced labour.<sup>281</sup> US and other Western business submissions tended to argue for implementation arrangements that will ease the regulatory burden on importers. Proposals included expedited importation and fast-track procedures, expansion of existing ‘trusted trader’ arrangements, a phase-in of the rebuttable presumption, and signals from CBP to importers about which sectors and supply-chains would be prioritized for enforcement.<sup>282</sup> Corporate submissions also sought to limit the scope of the UFLPA’s effect by seeking to have CBP interpret the Act in a way that would apply it only to goods made in XUAR itself. Yet in May 2022, following the consultation, CBP wrote to importers, reminding them that

*“It is incumbent upon you as an importer to apply due diligence, effective supply chain tracing, and supply chain management measures to ensure that such imports are free from any goods mined, produced, or manufactured wholly or in part with forced labor from the People’s Republic of China, especially from [Author: but not, that is, limited to] the XUAR.”*<sup>283</sup>

Though the Tariff Act, on which the UFLPA rests, seems on its face to prohibit the import of goods made ‘in part’ with forced labour, some corporate submissions to the Task Force argued for a ‘de minimis’ exception of the UFLPA, which would exempt final products with a ‘minor’ input of forced labour.<sup>284</sup>

260 M#230.  
 261 US CBP 2022d.  
 262 G7 2021.  
 263 M#237-M#239.  
 264 Proposals of the UK Foreign Affairs Committee, see M#240-M#245.  
 265 M#246-#259.  
 266 M#231-M#236.  
 267 M#260, M#261. The UK updated its own earlier guidance (M#108) in August 2021 (M#269).  
 268 M#279-M#292.  
 269 M#293-M#296, M#298, M#299.  
 270 M#297, M#300-M#307.  
 271 See M#308-M#313, and also M#262-M#268 (expired).  
 272 Those lobbying Congress are required to disclose under s. 5 of the Lobbying Disclosure Act of 1995. For records, see <https://www.opensecrets.org/federal-lobbying/lookup?lobbying-search-input=Uyghur+Forced+Labor+Prevention+Act>.  
 273 Swanson et al. 2021; Cockayne et al. 2022.  
 274 *Uyghur Forced Labor Prevention Act* (Public Law No: 117-78). See M#308-M#313.

275 See generally Gibson Dunn 2022.  
 276 See US CBP 2022f, and 2022d. For the earlier guidance see M#041 and M#261.  
 277 See US DHS 2021.  
 278 Pub. L. 117-78 § 3(c).  
 279 See US CBP 2022e.  
 280 The comments are available at US DHS 2022; the testimony is transcribed in US DHS 2022c.  
 281 See e.g. China Chamber of International Commerce 2022.  
 282 See eg AAFA et al. 2022.  
 283 US CBP 2022c.  
 284 E.g. AAFA et al. 2022, p. 14-15.

Other submissions pushed for CBP to recognize third party audits as evidence of ‘due diligence’ required by the UFLPA, despite the barriers to effective audit created by Chinese counter-measures, which will be discussed in section 2.3 below.<sup>285</sup>

Worker and civil society groups took a different tack in their submissions to the FLETF consultation. They stressed that the forced labour for which business sought exceptions, exemptions and phased enforcement was already illegal under international law, and indeed under US law through the Tariff Act of 1930. They argued that the ‘clear and convincing evidence’ requirement deliberately sets a bar higher than it normally is under section 307 of the Tariff Act. Many of these submissions also argued that safe and reliable audits are not currently feasible in Xinjiang, and that ‘due diligence’ expectations should be aligned with other relevant standards to which the US has committed, such as the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>286</sup> The UFLPA Strategy published in June 2022 adopts this position, indicating that “audits, including third-party audits, are not alone sufficient to demonstrate due diligence and may not be a credible source of information for indicators of forced labor in Xinjiang”.<sup>287</sup> Similarly, following the prevailing interpretation of the UNGPs, the UFLPA Strategy notes that due diligence requires remediation of indicators of forced labour, and since “[s]ome abuses, including PRC-sponsored forced labor, may be impossible to fully remediate... [c]orrective action in such cases may be limited to terminating the relationship with the supplier.”<sup>288</sup>

The adoption of the UFLPA was also accompanied by a series of other steps in the US suggesting the US is settling in for the long haul on Xinjiang sanctions. The UFLPA amends the *Uyghur Human Rights Policy Act* of 2020 to underscore that travel and financial sanctions may be imposed due to “[s]erious human rights abuses in connection with forced labor” related to the XUAR – something not previously explicit under that Act. Moreover, the UFLPA requires the President to report to Congress within 180 days, and then annually, identifying non-U.S. persons subject to travel and financial sanctions under this new provision. A new ‘UFLPA Entity List’ will be published online, and regularly updated by US government agencies.<sup>289</sup>

2022 also saw a growing cross-sectoral push for a more comprehensive use of trade measures to address Xinjiang forced labour. In January 2022, the US Trade Representative announced the development of a broader trade strategy to combat forced labour, not only through import bans but through the full use of trade instruments, including in bilateral and multilateral contexts.<sup>290</sup> The Canadian Parliament moved to consider an import ban,<sup>291</sup> and Mexico is also developing legislative options. Moreover, both states committed to adopt provisions analogous to the Tariff Act in a 2018 tripartite trade deal with the US. The Australian Parliament continued to consider a forced labour import ban, with the newly elected Labor government signalling during the May 2022 federal election campaign that it would move to adopt such a ban.<sup>292</sup>

Perhaps most significantly, in terms of the potential impact on overall trade flows, the EU moved forward with consideration of *both* mandatory human rights due diligence legislation<sup>293</sup> and a legislative instrument allowing the exclusion of goods made with forced labour from the European market. This was a response to President Von der Leyen’s September 2021 call for a forced labour instrument,<sup>294</sup> although European Commission departments have not yet agreed on how this should be implemented.<sup>295</sup> Nevertheless, the European Parliament expressed its views in a Resolution adopted on 9 June 2022,<sup>296</sup> which stresses that adoption of this instrument is a “political priority of both Parliament and the EU as a whole”.<sup>297</sup> Calling attention specifically to the situation in Xinjiang,<sup>298</sup> the Resolution

*“calls for a new WTO-compatible trade instrument to complement the corporate sustainability due diligence rules, banning the import and export of products made or transported by forced labour and which should be complemented with measures for intra-EU trade...”*<sup>299</sup>

The Resolution specifically calls for the trade instrument to be “based on the best practices of countries with similar legislation in place such as the US and Canada”.<sup>300</sup> It proposes that

*“the new instrument should allow for bans on forced labour products from a particular site of production, a particular importer or company, those from a particular region in the case of state-sponsored forced labour and those from a particular transport vessel or fleet.”*<sup>301</sup>

Following the US Tariff Act template, the draft proposes that

*“under the new EU instrument, public authorities, on their own initiative or acting on information they have received, should detain goods at the EU border when they consider that there is sufficient evidence that these goods were made or transported with forced labour,”*

with the importer being able to rebut the presumption through the presentation of evidence based on ‘ILO standards’.<sup>302</sup> The Parliament’s proposal follows the US template in proposing that such goods could be seized following findings by relevant public authorities based on ‘sufficient evidence’ that the goods were in fact made or transported with forced labour, or if the goods have come from a particular region where state-imposed forced labour is prevalent.<sup>303</sup>

The text also suggests that the resulting instruments would build in important but subtle ways on the US practice. The text makes clear that the ban should apply *not only* to goods being imported into the EU, but also to goods made within the EU and “intra-EU trade”, and makes clear that any EU ban must be designed so as to comply with the WTO law.<sup>304</sup> The Committee’s proposed Resolution also suggests that seizure should be possible if the “goods have come from a particular region where state-imposed forced labour is prevalent”, and that “the seized cargo would be released if the company can prove that no forced labour had been used or that remediation had taken place and that indicators of forced labour are no longer present”.<sup>305</sup> This approach, with its explicit focus on remediation, builds on emerging US CBP practice in implementing WROs outside Xinjiang.<sup>306</sup>

The draft Resolution also contains provisions calling for the development of coordination and information-sharing arrangements within the EU, and with other partners;<sup>307</sup> and for the use of public and private investment to develop additional forced labour-free production capacity in affected supply-chains.<sup>308</sup>

### 2.2.5 Looking ahead: capital market sanctions

While import bans have become a major focus for policymakers in several jurisdictions, one option that has received relatively limited attention in the discussion of Xinjiang sanctions is the use of capital market sanctions, such as restrictions on investment in equities, debt, derivatives, options, swaps and other financial instruments. This is somewhat surprising, given that studies suggest financial sanctions are generally more effective than trade-based sanctions.<sup>309</sup>

Financial sanctions are currently the second most common measure adopted by governments in response to Xinjiang forced labour (see section 2.2.1 above), but most of these are limited to imposing asset freezes and banning banking transactions. Their potential application and extension to securities and debt transactions has not been a major focus of policy debate. Some of the measures already in place do, however, restrict equity or debt investing, and there are some signs of interest in such measures, namely in government-issued guidance relating to risks arising from doing business in Xinjiang. The UK Parliament’s Foreign Affairs Committee, for example, has called for a ban on UK firms and public sector bodies investing in or partnering with companies known to be associated with the repression in Xinjiang.<sup>310</sup>

There are several reasons to consider the role that capital market sanctions might play in addressing Xinjiang forced labour.

First, the potential leverage that this might generate over CCP policy. The CCP has recently emphasized its intent to continue to grow both domestic and foreign investment in Xinjiang, and the appointment of Ma Xingrui as the top CCP official for the region, after he previously oversaw the growth centre in Shenzhen, also suggests that Beijing is looking to further integrate Xinjiang into the global economy.<sup>311</sup> China needs foreign capital for the region’s continued economic development, and here Wall Street’s collective leverage is clear.

285 See eg US CIB 2022, p. 15.

286 See eg HTLC 2022; GLJ-ILRF 2022; AFL-CIO 2022; and the oral testimony of Prof. Laura Murphy in US DHS 2022c, pp. 191-194.

287 US CBP 2022e, p. 44.

288 US CBP 2022e, p. 45.

289 US CBP 2022e.

290 US Trade Representative 2022.

291 *Bill S-204, An Act to amend the Customs Tariff (goods from Xinjiang)*, 1st session, 44th Parliament, 2021.

292 ALP 2022.

293 European Parliament 2021.

294 Von der Leyen 2021.

295 Birmingham 2022; see also Aarup 2021; Kahn 2021.

296 European Parliament 2022.

297 European Parliament 2022, see esp. preambular para. O.

298 European Parliament 2022, preamble.

299 European Parliament 2022, para. 1.

300 European Parliament 2022, para. 1.

301 European Parliament 2022, para. 3.

302 European Parliament 2022, para. 4.

303 European Parliament 2022, para. 5.

304 *Ibid.*, paras O, 1.

305 European Parliament 2022, para. 5, and see para. 8.

306 *Ibid.*, paras 5, 8.

307 *Ibid.*, paras 9-14.

308 *Ibid.*, para. 15.

309 Hufbauer et al. 2007.

310 See XJS-GMS M#245.

311 Bloomberg News 2022a.



In August 2021, at the height of the COVID crisis, John Thornton, co-chair of the China-US Financial Roundtable, executive chairman of Barrick Gold Corp and a former Goldman Sachs president, met Chinese Vice-Premier Han Zheng in Beijing, discussing Xinjiang amongst other issues. Thornton then reportedly travelled to Xinjiang for a full week. While he was in Xinjiang, his CCP counterpart reportedly encouraged Thornton to get US lawmakers to recognize that CCP policies in XUAR were counterterrorism efforts akin to the US' post-9/11 response.<sup>312</sup> Clearly, Beijing sees Wall Street as a key intermediary and actor in its broader bilateral relationship with the US and, by extension, the West.

Second, there is growing interest from the global financial sector in addressing modern slavery.<sup>313</sup> With growing regulatory attention to forced labour risks in capital markets, it may be hard for firms that are, for example, reporting on modern slavery risk exposure, to avoid considering and taking action on Xinjiang forced labour.

Third, there is a new appetite for use of capital market sanctions after the Russian invasion of Ukraine. The use of coordinated capital market sanctions in response to Russia's invasion of Ukraine demonstrates both Western willingness to use capital market sanctions in response to breaches of *jus cogens* norms (such as the prohibition on aggression, or indeed on slavery), and their potency.<sup>314</sup> There has been some general consideration in Western capitals of the potential for outbound investment screening and controls in bilateral relations with China, but these tend to focus on limiting investment in sectors that are critical to national security, rather than on human rights or forced labour grounds.<sup>315</sup> And there are concerns that imposing broad outbound investment controls might lead China to adopt a reciprocal response, and accelerate financial decoupling more broadly.<sup>316</sup> There does, however, appear to be growing interest in this option in US Congress.<sup>317</sup>

Finally, the leverage offered by investment and capital market controls may be growing. The period during which Xinjiang forced labour has emerged coincides with a massive integration of Chinese companies into global capital markets. U.S. holdings of Chinese securities have surged 57.5 percent from USD 765 billion in 2017 to as much as USD 1.2 trillion in 2020.<sup>318</sup> This has been driven in part by the inclusion since 2018 of Chinese stocks into the international indices provided by MSCI, FTSE Russell and S&P Dow Jones. These indices are tracked by investors around the world

with around USD 8 trillion in assets, especially through passively managed Exchanged Traded Funds (ETFs),<sup>319</sup> and this trend looks set to continue. Blackrock, the world's largest asset manager, has called for equity portfolio allocations into China to grow by two to three times in years ahead.<sup>320</sup>

There is also now a more receptive strategic climate for considering the need for capital controls than there was in years past. A number of 'investor protection' concerns have emerged in recent years as a result of the exceptionally favourable terms on which Chinese companies have been afforded access to global capital markets over the last two decades. When listing in the US, for example, Chinese companies are not subject to the same transparency and disclosure requirements as their foreign counterparts, receiving exemption from a variety of financial and audit requirements administered by the Public Companies Accounting Oversight Board (PCAOB), on the grounds that the Chinese government considers the business information in question to be a state secret. This extraordinary arrangement was a part of the deal agreed with Beijing in the late 1990s to begin to integrate the Chinese economy more effectively into global capital circuits. The difference in treatment of Chinese firms deepened after the Enron scandal in the early 2000s, when American firms were subjected to heightened disclosure under the Sarbanes-Oxley legislation, while Chinese firms have remained exempt from the same requirements since May 2013.<sup>321</sup> In recent years, this has led to a series of disputes around auditing of Chinese companies, and to Congress unanimously adopting the Holding Foreign Companies Accountable Act (HFCAA) in December 2020. The HFCAA requires the delisting from U.S. exchanges of any Chinese company that fails within three years to come into compliance with the audit rules from which they had previously been exempted.

Complications have also emerged around the Variable Interest Entity system – the use of offshore companies (typically in the Cayman Islands) through which Western investors have purchased exposure to Chinese companies without those companies violating Beijing's foreign ownership limits.<sup>322</sup> Beijing has become increasingly nervous about these arrangements, which are particularly common in the Chinese tech sector, as Western governments have begun to assert greater control over Western firms doing business with Chinese firms – again, especially in the tech sector.

This is important context for understanding China's concerns about the 'long-arm reach' of US audit and due diligence measures, and the counter-measures it has adopted, which will be discussed in section 2.3 below.

These trends point to the potential for capital markets to emerge as another flashpoint in disputes between China and the West over Xinjiang forced labour. Indeed, investor relations have already taken centre-stage in EU-China relations, with the EU Parliament refusing to move forward with the EU-China Comprehensive Agreement on Investment until Beijing makes progress on forced labour concerns, specifically with respect to Xinjiang.<sup>323</sup> With Beijing moving in April 2022 to ratify ILO C29 and C105, as the EU Parliament had demanded, MEPs will be watching its efforts to implement those Conventions closely.

This section of the study therefore considers what government measures are in place, where are signs of voluntary action by investors – and where there may be gaps. The Xinjiang Sanctions Government Measures (XJS-GMS) dataset reveals that there are a few measures relating to capital markets that have been considered and adopted. Several governments have issued guidance to business about the risks of involvement with entities connected to Xinjiang forced labour, with the European Union guidance mentioning investors in passing, and the US Business Advisory containing 28 explicit discussions of investment risk.<sup>324</sup> The US guidance pays particular attention to Chinese surveillance technology companies, because (as discussed further below) some of these entities have been formally sanctioned by the US government. The US guidance thus encourages considering divestment. It also encourages foreign investors into the US to consider risks associated with Xinjiang forced labour when doing their own due diligence on those investments.

One of the challenges for investors is the difficulty of understanding whether firms they are investing in are in fact connected, through either their operations or supply-chains, to Xinjiang forced labour. The US Congress has thus considered, in several different bills, the possibility of requiring periodic disclosure by listed companies of connections to Xinjiang, as an investor protection.<sup>325</sup> The European Union's Sustainable Corporate Governance initiative, which may lead to

mandatory human rights disclosure rules for business and also encompasses sustainable finance disclosure rules, may also strengthen investor access to relevant market information. Yet many financial institutions have resisted efforts to clarify the application of due diligence, disclosure and remedial expectations to their business practices and service offerings. For example, UBS Group successfully denied any due diligence responsibilities under the OECD Guidelines on Multinational Enterprises when an NGO group brought a complaint to a Swiss government body about UBS holding securities of Hikvision, a surveillance technology firm implicated in Xinjiang repression,<sup>326</sup> on behalf of clients.<sup>327</sup> Nevertheless, a subsequent paper from the United Nations Office of the High Commissioner for Human Rights – likely a more authoritative source of insight into the relevant norms – takes a contrary position to that offered by the Swiss government body.<sup>328</sup> This suggests that commercial banks purchasing and holding securities on behalf of clients, even on a merely depository basis, do have human rights due diligence and disclosure obligations. UK lawmakers may take note, given that some of them have raised similar concerns about HSBC's holding of XPCC-linked securities – with some even calling for sanctions on the bank.<sup>329</sup>

Development finance is emerging as another theatre in which this controversy is increasingly playing out. Analysts have identified at least 11 different projects funded by multilateral and bilateral development finance institutions (DFIs) in Xinjiang since 2017.<sup>330</sup> It has been reported that the International Finance Corporation (IFC), the private sector lending arm of the World Bank Group, has loans and equity investments of almost half a billion dollars in companies operating in XUAR.<sup>331</sup> Commentators have criticized the due diligence involved in approving and monitoring these investments, and called into question their conformity with the IFC's Performance Standards.<sup>332</sup> A bipartisan group of US legislators even wrote to the World Bank President David Malpass earlier this year, expressing their concerns.<sup>333</sup> A similar letter was sent to the US' bilateral private lending arm, the US Development Finance Corporation (DFC), about whether a DFC-backed project in India would finance slave-made solar panels.<sup>334</sup> In Germany, in mid-2022 a government financing arm denied Volkswagen investment guarantees in China due to concerns around the carmaker's operations in Xinjiang.<sup>335</sup>

312 Wong 2021.  
313 See FAST 2019.  
314 RWR Advisory Group 2021.  
315 Bauerle-Danzman 2022.  
316 Hanemann et al. 2022.  
317 O'Keeffe et al. 2022.  
318 USCC 2021, p. 243.  
319 USCC 2021, p. 260.  
320 Patterson and Goodman 2021.  
321 RWR Advisory Group 2021.  
322 See Shi 2013.

323 See M#103, M#222, M#205, M#239.  
324 The EU guidance is detailed at XJS-GMS M#260, and the US at M#261 (replacing the guidance detailed in M#040). The guidance provided by Canada (M#105) and the UK (M#108) is ambiguous. The UK Independent Anti-Slavery Commissioner has however pushed for greater attention to the role of investors: see Crates 2021.  
325 A draft provision with this effect was removed during the negotiation of the UFLPA. But similar provisions are now before Congress in at least two bills under consideration: H.R.1187 and H.R.2072.  
326 See IPVM Team 2022.  
327 Society for Threatened Peoples vs UBS Group AG, Complaint submitted to the Swiss National Contact Point, 22 June 2020, Complaint Summary, available at [https://www.gfbv.ch/wp-content/uploads/summary-ncp-complaint-ubs\\_final.pdf](https://www.gfbv.ch/wp-content/uploads/summary-ncp-complaint-ubs_final.pdf); and National Contact Point of Switzerland 2021.  
328 UN OHCHR 2021.  
329 Boscia 2022.  
330 Murphy, Salcito and Elimä 2022, pp. 12-13.  
331 Murphy, Salcito and Elimä 2022.  
332 Murphy, Salcito and Elimä 2022; Salcito 2021.  
333 Merkley et al. 2022. The letter draws on Murphy, Salcito and Elimä 2022.  
334 Rubio et al. 2021.  
335 Agence France-Presse 2022. See also Lau 2022 for the background.

All of this suggests some interest from legislators in the potential leverage offered by capital market controls, for inbound, outbound and domestic investment. But only in the US does that interest appear to have translated into bespoke binding measures. These measures operate through and alongside the US financial sanctions framework discussed earlier, which provides for asset freezes and property restrictions. The framework operates to force divestment by US persons from any entity on the SDN List – and from entities in which an SDN-Listed entity owns a 50 per cent or greater interest. With the XPCC on the list, this could, in theory, have a potentially significant impact, given the diverse nature of the XPCC’s holdings. And indeed, by August 2020, after US Treasury’s Office of Foreign Assets Control (OFAC) made this expectation of divestment clear,<sup>336</sup> several major institutional investors announced that they would remove certain Chinese stocks from their offerings. Yet the impact of these measures is questionable. Whereas FTSE Russell, one of the main index providers, announced it was dropping six Chinese stocks from two different indices,<sup>337</sup> analysts suggest that the XPCC owns a 50 per cent or more share of at least 2,873 companies.<sup>338</sup>

Indeed, this limited impact may have been one of the spurs for the Trump Administration to expand capital market controls beyond the SDN List in November 2020, with Executive Order 13959. E.O. 13959 prohibited U.S. investors from holding the securities of companies identified by the U.S. Department of Defense as “Communist Chinese Military Companies” (CCMCs). This created a new list, beyond the SDN List controlled by Treasury, which drew on a provision in place but not acted upon since its adoption in 1999. Inclusion in this new list made it illegal to invest not only in the company itself, but *all* its subsidiaries – even if the parent company owned less than 50 per cent of the subsidiary, which is important as the SDN List applies only to 50% +1 subsidiary. E.O. 13959 also made clear that the prohibition applied to both active and passive investments, including index funds such as exchange-traded funds (ETF).

E.O. 13959 had the immediate effect of inducing delisting from the New York Stock Exchange of the three largest Chinese telecom companies. However, it did not pertain to Xinjiang, and weaknesses in its drafting led to implementation difficulties in certain markets – notably, derivatives.<sup>339</sup> Moreover, Chinese companies began to successfully challenge their designation on this CCMC list in US courts.<sup>340</sup> Many commentators consequently expected the Biden Administration to abandon this approach. Instead, the Administration adapted the approach – and applied it to the Xinjiang forced labour context.

On 3 June 2021, the Biden Administration adopted E.O. 14032, replacing the CCMC list with the Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) list, which is maintained by OFAC (within Treasury), not by the Department of Defense. E.O. 14032 also cast a wider net than the CCMC list, with at least nine companies listed on the basis that their technology is involved in the repression in Xinjiang.<sup>341</sup> Like E.O. 13959, E.O. 14032 applies to subsidiaries of listed entities even if the parent owns less than 50 per cent, while the earlier ambiguity around application to derivatives and other publicly traded securities – such as futures, options, swaps and depository receipts – has also been addressed. E.O. 14032 also clearly applies to securities held through exchange-traded funds, index funds, and mutual funds – and, once a designated security is incorporated, to the fund itself. There is no *de minimis* threshold under which transactions involving funds that hold underlying prohibited securities are permitted. However, in a last-minute move before E.O. 14032 came into force, the Biden Administration permitted US holders of these securities to continue to hold them and collect dividends, but not buy or sell them.<sup>342</sup>

There are *some* signs that all these measures taken together are beginning to induce changes in investor behaviour. While investors have strong incentives to limit the visibility of their actions on Xinjiang forced labour, there are some examples of investor action in the public domain. Pental Group, a global investment manager, has described how, after conducting heightened due diligence and engagement, it chose to end a long-time investment in a certain (unnamed) apparel stock, due to concerns over Xinjiang forced labour.<sup>343</sup>

The Yale endowment’s Advisory Committee on Investor Responsibility is also reported to be exploring divestment from Chinese companies on human rights grounds.<sup>344</sup> Congress is considering a proposal to prevent University endowments investing in companies with ties to Uyghur forced labour.<sup>345</sup> Investor Alliance for Human Rights, whose members have over USD 10 trillion in assets under management, has issued an Investor Expectations document relating to Xinjiang, which calls for value-chain mapping, steps to disengage from business relationships with suppliers connected with human rights harms in and from XUAR, and public disclosure of efforts to achieve this and enable remedy.<sup>346</sup> It has also published practical guidance for investors,<sup>347</sup> and coordinated engagement on Xinjiang by 52 institutional investors with over USD 5 trillion AUM,<sup>348</sup> engaging at least 63 companies across 9 sectors.<sup>349</sup> Active engagement also extends to other investors such as Trillium Asset Management (an ESG specialist fund),<sup>350</sup> and around 30 of the institutional investor members of Investors Against Slavery and Trafficking Asia-Pacific, who have over USD 5 trillion assets under management.

However, this move towards investor engagement has focused on quiet discussions between investors and the companies they invest in, making it impossible to assess scale or impacts. More visible engagement, for example through shareholder actions, is less common – but is also now emerging. Xinjiang-related shareholder actions calling for various forms of due diligence and reporting have received between 33 per cent and 47 per cent support in annual meetings of Apple, Disney and Nike in the last year.<sup>351</sup> In June 2022, Volkswagen’s anchor shareholder, the German state of Lower Saxony, joined Germany’s most powerful union boss – who also sits on the carmaker’s supervisory board – to call for the company to address Xinjiang human rights concerns and consider divestment.<sup>352</sup> Lower Saxony owns 12 per cent of the company.

Yet these actions have so far been limited to Western companies. Though Western institutional investors have voting rights in Chinese listed companies, they have not yet used them in any significant way to address Xinjiang forced labour. In fact, there is evidence that American mutual funds have instead voted to *endorse* Chinese companies’ ongoing involvement with labour transfer programmes.<sup>353</sup>

What are then the net effects of these various measures and voluntary initiatives? The answer seems to be that while investors are *beginning* to perceive risks associated with investing in entities connected to Xinjiang sanctions, this does not yet translate into a clear downward pressure on capital flows. The limited restrictions in place at present focus on public capital markets, omitting venture capital and private equity. Moreover, even where the restrictions do complicate US investor engagement, any resulting loss of capital seems to be offset by global investors, or intermediaries acting for US clients.<sup>354</sup> Patterson and Goodman suggest that pension and sovereign funds in Australia, Canada, New Zealand, Norway and the UK are all invested in Chinese firms designated by the US as off limits for US investors.<sup>355</sup> US investors may also not be heavily impeded by these restrictions – the US fund manager, Vanguard, for example, appears to have tripled its investments in Xinjiang between 2018 and 2021,<sup>356</sup> and some of these investments are even in its ESG offerings:

*“One Vanguard ESG fund includes four Xinjiang companies, one of which has boasted in annual reports of ‘maintaining stability in South Xinjiang’, working to ‘strengthen the ideological re-education of transferred workers’, and providing ‘vocational training’ to nearly 2,000 people in the region, terminology that rights groups say is a red flag for suspected human rights abuses.”<sup>357</sup>*

The limited impact of capital market controls can also be seen at the individual company level. SenseTime, China’s largest facial recognition firm, has been on the Entity List since October 2019 (M#009) and the NS-CMIC list since December 2021 (M#297),<sup>358</sup> yet none of this has prevented it from raising significant funds, including through a USD 740 million IPO on the Hong Kong stock market in late December 2021. Most of these funds likely came from non-US investors, but it is possible that some US investors also participated, relying on a potential loophole in the way that SenseTime was listed on the NS-CMIC list. Such US investors reportedly include Fidelity International, Qualcomm, Silver Lake Partners and IDG Capital.<sup>359</sup>

336 See XJS-GMS M#079.  
 337 FTSE Russell 2020.  
 338 Bukharin 2021.  
 339 Treanor and Avergun 2021.  
 340 See United States District Court for the District of Columbia. Memorandum Opinion. Luokung Technology Corp. v. Department of Defense, available at [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2021cv0583-33](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2021cv0583-33); and United States District Court for the District of Columbia. Memorandum Opinion. Xiaomi Corporation v. Department of Defense, available at [https://cdn.vox-cdn.com/uploads/chorus\\_asset/file/22367849/xiaomi\\_v\\_us\\_dept\\_of\\_defense.pdf](https://cdn.vox-cdn.com/uploads/chorus_asset/file/22367849/xiaomi_v_us_dept_of_defense.pdf).  
 341 SenseTime Group (M#297), Cloudwalk Technology (M#300), Dawning Information Industry (M#301), Leon Technology (M#302), Megvii Technology (M#303), Netposa Technologies (M#304), Xiamen Meiya Pico Information Co. (M#305), SZ DJI Technology (M#306), Yitu Limited (M#307). The full NS-CMIC list is available at <https://www.treasury.gov/ofac/downloads/ccmc/nsmiclist.pdf>.  
 342 See FAQs 1046-1048 on the OFAC website, at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/added/2022-06-01>.  
 343 Pental Group 2022, pp. 15-16.

344 Mousavizadeh 2022.  
 345 Kine 2022.  
 346 IAHR 2022.  
 347 IAHR 2020b.  
 348 Kerber and Waldersee 2021.  
 349 For a list of those engaged to 30 March 2022 see <https://investorsforhumanrights.org/sites/default/files/attachments/2022-04/XUAR%20Companies%20%283.30.2022%29%20-%20UPDATED.pdf>.  
 350 Copley and Rack 2021.  
 351 Saldanha 2022.  
 352 Miller 2022.  
 353 Fromer and Zhou 2021b.  
 354 USCC 2021, p. 268.  
 355 Patterson and Goodman 2021.  
 356 Fromer and Zhou 2021b.  
 357 Fromer and Zhou 2021b.  
 358 XJS-GMS M#009 and M#297 respectively.  
 359 Bhuiyan 2022.

This continued Wall Street investment in Chinese firms linked to Xinjiang forced labour and other human rights harms is why Senator Marco Rubio recently wrote that “[m]any well-meaning Americans may inadvertently be propping up a genocidal regime because Wall Street does it for them”.<sup>360</sup> The same conclusion seems valid for investors outside the US. The few capital market measures that are in place are clearly full of holes and have developed in a piecemeal and patchwork fashion.

One of the most obvious holes relates to bond markets. Globally, bond markets are over twice as large as equity markets. But consideration of the human rights responsibilities of bond issuers and debt investors is very recent and remains rare, with a particular focus on sovereign bonds – where there is growing evidence that human rights risk may be material.<sup>361</sup> This is a glaring omission in discussion of methods for addressing Xinjiang forced labour, because many of the entities involved in implementing Beijing’s policies in Xinjiang appear to rely significantly on debt financing through the bond market.

The majority of this debt is sold within China. Traditionally off limits to foreign investors, the Chinese bond market is now the second largest in the world – worth over USD 14 trillion, with a large share of that issued by local government entities, and a growing presence of Western institutional investors in the last 3 to 4 years.<sup>362</sup> Despite some concerns about their long-term performance prospects, these bonds are increasingly being added to foreign bond indices, driving even greater uptake. FTSE Russell added Chinese bonds to its World Global Bond Index in March 2021, weighting them at around 6 per cent of the index. With USD 2.5 trillion tracking the index passively worldwide, this is a major driver of uptake. Likewise, JPMorgan and Bloomberg Barclays now include Chinese bonds in their indices.

XPCC family firms appear to rely increasingly on capital markets to supplement subsidies, fiscal transfers and off-budget support from Beijing. *South China Morning Post* reports an over 10-fold steady rise in XPCC’s bond issuance between 2018 and 2021, from 3.4 billion yuan to 50.3 billion.<sup>363</sup> The average debt ratio at XPCC-controlled SOEs was 72 per cent in late 2020, with total liabilities at almost 393 billion yuan according to the XPCC SASAC.<sup>364</sup> But a default by an XPCC-linked company in 2018 – the first public default by a Chinese government-linked holding company – sent waves through the debt market, signalling that Beijing’s willingness to bail out XPCC-related entities was not infinitely elastic.<sup>365</sup>

What is the solution to the limited impact to date of these capital market controls? The goal must be a less piecemeal approach. One way to achieve this could be to tie various sanctions lists together (even within a single jurisdiction, such as the US), so that inclusion on one triggers the others, which is an approach taken with cross-debarring by multilateral development banks.<sup>366</sup> Another option might be to expand designations under the NS-CMIC to include a broader swath of conduct (including forced labour), and to have other jurisdictions adopt analogous capital market controls.<sup>367</sup> A third possibility is to encourage securities regulators everywhere to require disclosure of listed firms’ actual or potential connections to Xinjiang forced labour. While this is being actively considered in the US, it does not yet appear to be under consideration in London, Tokyo, Frankfurt or other major equity trading centres.

The bias of government measures at present towards trade bans, rather than investment and capital controls, also points to a deeper challenge. The integration of Chinese entities into global capital markets poses a range of regulatory challenges for liberal democracies, given the ability of the Chinese government to instrumentalize even non-state firms in service of larger social and strategic objectives.<sup>368</sup> Global investment regimes do not offer governments the same defences that may be available through import and export controls. Yet the unintended – and perhaps unexpected – result is that it is currently individual firms and investors that bear the risk of exposure to Chinese counterparts with ties to forced labour – and of associated political risk. Assessing that risk exposure requires moving beyond the firm- and stock-level analysis to which most investors are accustomed, and instead understanding system-level risk. China’s current approach in Xinjiang uses a commercial ecosystem to deliver strategic results for the government. This poses risks – such as risks of forced labour – not readily evident at the level of individual entities or transactions.<sup>369</sup>

Capital market controls thus represent the best option for governments to provide efficient signals to markets on how to avoid becoming entangled with system-level risks. Without such controls, individual firms and investors will continue to bear the brunt of the risks being crystallized – and of resulting political controversies and regulatory cross-winds. To understand how this may play out, we need to turn to China’s counter-measures, which pose growing risks for foreign business operating in China.

### 2.3 Chinese counter-measures

When the UN High Commissioner for Human Rights Michelle Bachelet visited China in May 2022, President Xi Jinping cautioned that human rights must not become an “excuse to interfere in the internal affairs of other countries”.<sup>370</sup> “It seems that the United States and the United Kingdom and other countries don’t care about the truth at all, but want to use the visit of the high commissioner for human rights to hype the so-called ‘Xinjiang issue’ and smear China,” the foreign ministry’s spokesperson, Wang Wenbin, told reporters.<sup>371</sup>

For some in the CCP, the West’s Xinjiang sanctions cross a red line, and cannot go without response. As we saw in section 1, the CCP’s coercive labour policies in Xinjiang are an expression of a larger strategy of governance.

This involves transforming rural minority communities and transferring minority individuals into industrialized work in Xinjiang and elsewhere in China.<sup>372</sup> Whatever China’s commitment to ILO standards and international human rights norms, Western sanctions aimed at changing these policies are perceived by the CCP as an interference in domestic governance. It is, from Beijing’s perspective, a particularly *dangerous* interference, given Xinjiang’s historical role (as Beijing sees it) as a gateway through which external forces can enter and disrupt the Chinese body politic. Seen from this perspective, Xinjiang sanctions are not just about promoting respect for labour standards, but rather part of a historical continuum of Western disruption of Chinese sovereignty and autonomy. That continuum encompasses not only sanctions in response to the Tiananmen Square massacre, but also Western military interventions in China in the 19<sup>th</sup> Century, the concession system forced on China through a series of ‘unequal treaties’ by Western powers, and a broader pattern of Western ‘national humiliation’ of China.<sup>373</sup>

From the CCP’s perspective, defending against Western disruption requires not just securing economic growth but proactive efforts to counter the narrative of Xinjiang genocide and forced labour, which the CCP calls the ‘lie of the century’.<sup>374</sup> China’s efforts to counter Xinjiang sanctions represent an effort to uproot foreign ideology before it takes root. In his seminal May 2014 speech on Xinjiang, President Xi specifically cautioned that China should not be allowed to go the way of Yugoslavia – with rising living standards and economic development failing to ensure regime stability because of the penetration of destabilizing ideas and influence.<sup>375</sup>

Xinjiang sanctions are thus seen as a strategy for continuing Western hegemony in international affairs. This quiet part was said out loud in April 2022, when Chinese Minister of Foreign Affairs Wang Yi wrote in the *People’s Daily*, the CCP mouthpiece, that unilateral “sanctions mean chaos”, representing “bullying” that must be opposed as a “hegemonic encroachment on sovereignty”.<sup>376</sup> Similarly, President Xi stressed in his remarks to High Commissioner Bachelet in May 2022 that “there is no need for a ‘teacher’ who commands other countries”.<sup>377</sup> For Beijing, a vigorous response to Xinjiang sanctions appears to be seen as a necessary step towards Beijing’s goal of ‘national rejuvenation’.

360 Rubio 2021.  
361 PRI 2022; Ritchie 2022; Fletcher 2021.  
362 Holmes and Lancaster 2019; Cheng 2021.  
363 Yeung 2021.  
364 Yeung 2021.  
365 Wildau 2018.  
366 See USCC 2021, p. 241.  
367 Compare RWR Advisory Group 2021.

368 USCC 2021, p. 240.  
369 Compare USCC 2021, p. 270.  
370 Davidson 2022.  
371 Davidson 2022.  
372 Zenz 2022b.  
373 See Wang 2012; Wang 2003.  
374 Global Times 2021g.  
375 Central Office Bulletin 2014, p. 7.  
376 Ng 2022.  
377 Davidson 2022.

### 2.3.1 Chinese sanctions on foreign entities

While China’s willingness to use economic coercion is well studied,<sup>378</sup> China is a newcomer to *formal* targeted sanctions. It has long opposed such unilateral measures, having repeatedly been on the receiving end of Western sanctions. The US had sanctions in place against the PRC from the establishment of CCP rule in 1949 until 1972 – for much of that time taking the form of a broad trade embargo following Chinese intervention in the Korean War.<sup>379</sup> Other Western countries imposed sanctions following the Tiananmen Square Massacre in 1989. It is, however, only with the uptick in sanctions against China during the Trump Administration, including (but not limited to) Xinjiang sanctions, that China has been spurred to develop a formal sanctions infrastructure of its own. As described in more detail below, this infrastructure is aimed both at blocking Western sanctions and at allowing China to impose its own tit-for-tat sanctions.

The first effort involved the creation of a Chinese blacklist, the Unreliable Entity List (‘UEL’), targeting foreign entities. In May 2019, the US government added Huawei to its Entity List (not over Xinjiang concerns, but broader national security concerns). The Chinese government responded by announcing it would create its own sanctions list. On 18 September 2020, the U.S. Commerce Department implemented an Executive Order to restrict the use of WeChat and TikTok apps in the United States. One day later, on 19 September 2020, China’s Ministry of Commerce (MOFCOM) published its *Provisions on the Unreliable Entity List*.<sup>380</sup>

As a list-based regime with licensing and delisting mechanisms, the UEL resembles list-based sanctions mechanisms in other jurisdictions, such as the US Entity and SDN Lists. Like its foreign precedents, the UEL empowers the authorities to restrict travel, finance and access to and use of assets, ostensibly with the aim of altering targets’ conduct. The UEL Provisions establish an inter-agency ‘Working Mechanism’ led by MOFCOM, with the power to investigate certain foreign entities (enterprises, organizations or individuals). It can investigate and list entities that engage in activities that endanger China’s national sovereignty, security or development, or those engaged in activities which – by suspending normal transactions outside of normal market trading principles, or applying discriminatory measures – cause serious damage to the legitimate rights and interests of Chinese enterprises, organizations and individuals. Many of these terms are undefined, and the rules governing such investigations and listings are unclear; the Provisions allow for immediate listing “if facts are clear”.<sup>381</sup>

If an entity is placed on the UEL, it can be subject to import and export controls or bans, investment controls or bans, travel and transport controls or bans, controls or revocation of work permits or residency qualifications, monetary penalties, and ‘other necessary measures’. Chinese entities must obtain permission, on a case-by-case basis, to do business with entities on the UEL list. While the Provisions target foreign entities, it remains somewhat unclear how they apply to Chinese subsidiaries of foreign organizations.

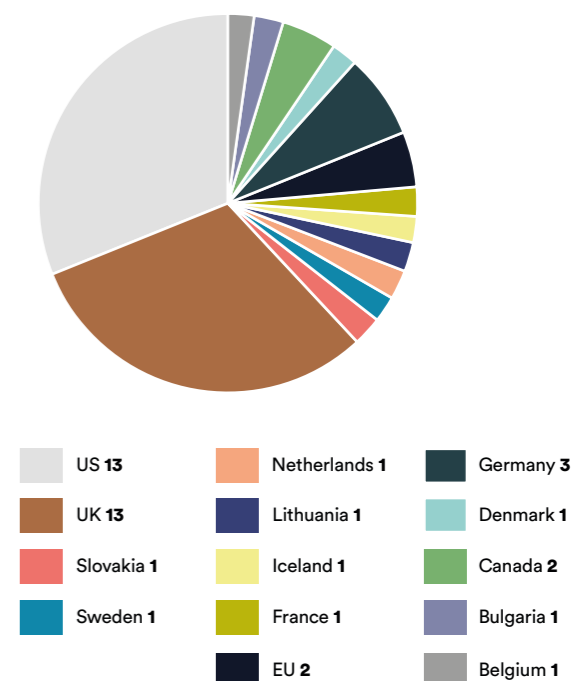
In 2021 China adopted 42 targeted sanctions on foreign individuals and entities, apparently using this new sanctions infrastructure.<sup>382</sup> These 42 sanctions, which are captured in the Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset (available on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info)), arrived in two episodes, each responding to a volley of sanctions from the West.

On 20 January 2021, a week after coordinated measures by Canada and the UK<sup>383</sup> and the US adoption of a region-wide WRO relating to Xinjiang,<sup>384</sup> China imposed travel and financial sanctions on 10 US nationals seen as leading China ‘hawks’, including Mike Pompeo, Peter Navarro, John Bolton, Robert O’Brien, Kelly Craft, and Steve Bannon. The announcement of these counter-measures described these targets as “anti-China politicians in the United States” who

*“out of their selfish political interests and prejudice and hatred against China and showing no regard for the interests of the Chinese and American people, have planned, promoted and executed a series of crazy moves which have gravely interfered in China’s internal affairs, undermined China’s interests, offended the Chinese people, and seriously disrupted China-U.S. relations.”*<sup>385</sup>

This did not produce any clear shift in US policy. Instead, as we saw in section 2.2.3 above, in March 2021, the US, UK, EU, Canada and EFTA countries responded with the largest single round of Xinjiang sanctions, which accounts for around a quarter of all Xinjiang sanctions to date. China was prepared, in turn responding in subsequent days with 32 further sanctions targeted at a diverse group of officials, thought-leaders, and institutions – not only from the US, but also from Belgium, Bulgaria, Denmark, the European Parliament, France, Germany, Lithuania, Netherlands, Slovakia, Sweden and the UK.<sup>386</sup> Figure 7 below shows the number of Chinese sanctions targets by jurisdiction.

Figure 7. Chinese sanction targets by jurisdiction



The diversity and content of this target list raised important questions about China’s sanctions strategy. The target list for the March 2021 round of sanctions from Beijing included both individuals and entities vocal on Western China policy, such as the MEPs Reinhard Bütikofer and Raphael Glucksmann; UK politicians Tom Tugendhat and Iain Duncan-Smith, Nusrat Ghani and Baroness Helena Kennedy and the China Research Group; the Political and Security Committee of the Council of the European Union; the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in the Canadian Parliament. But the list also included independent academics (Adrian Zenz and Jo Smith Finley) and research groups and bodies (Mercator Institute for Chinese Studies, Uyghur Tribunal) and lawyers (Geoffrey Nice, Jónas Haraldsson of Iceland, and Essex Court Chambers) who, while vocal and visible, did not have any clear control over government policy. Some Western commentators also queried what impact these sanctions could really have in practice.<sup>387</sup> Few, if any, of these individuals and entities have any significant assets within Chinese jurisdiction (or denominated in RMB) and many may have limited expectations of visiting China.<sup>388</sup> So what did the Chinese sanctions expect to achieve?

378 See e.g. Norris 2022; Kastner and Pearson 2021; Macikenaite 2020; Mingjiang 2017;  
 379 These sanctions were backed by the UN during the period of hostilities on the Korean Peninsula.  
 380 PRC MOFCOM 2020. See XJS-CCM C#001-C#007.  
 381 Ibid.  
 382 The public record does not make clear whether the sanctions announced were imposed through the UEL mechanism described above.

383 XJS-GMS M#104-M#108 (12 January 2021).  
 384 XJS-GMS M#112 (13 January 2021).  
 385 XJS-CCM C#009-C#018.  
 386 C#019-C#050.  
 387 See e.g. O’Brien 2021.  
 388 Extradition from third countries to China may however be a concern. See Yan 2022.

The answer is revealed by examining the rationales offered by the Chinese government when announcing the sanctions. These refer to the targets' role in spreading "rumours", "lies" and "disinformation", as well as in "interfer[ing] in China's internal affairs". Moreover, the rationales characterize Chinese sanctions as a necessary move to "defend China's national sovereignty" and security.<sup>389</sup> This frames the problem which Chinese sanctions respond to as a question of information and narratives. What China seeks is not simply that Western countries drop their sanctions, or even that they cease their efforts to change Chinese policy – but also an end to the spread of 'rumours', 'lies' and 'disinformation' about Xinjiang. China's stance of opposition to Xinjiang sanctions is perhaps most straightforwardly spelled out in an editorial in the *Global Times*, a CCP-supporting tabloid, from 23 December 2021: "What we need to do is to make it increasingly expensive for companies [and other foreign entities] to offend China so their losses outweigh their gains."<sup>390</sup> [emphasis added] This is an ambitious goal – and one with significant implications for other aspects of China's response to Xinjiang sanctions.

### 2.3.2 Formal anti-sanctions measures

The CCP has become increasingly concerned in recent years about foreign powers' use of sanctions and long-arm jurisdiction, and their potential impact in China. Alongside the effort to develop an infrastructure for adopting its own unilateral sanctions, the Chinese government has since 2020 developed a variety of new formal tools and informal strategies designed to blunt and block Western sanctions. This section considers the formal counter-measures (including another MOFCOM Order and the Anti Sanctions Law), before the next section describes China's use of informal measures (including intimidation of audit firms, a boycott of Western apparel brands, and threats to Intel and Walmart).

Over the last few years, the CCP has adopted a series of 'blocking statutes' to blunt the impact on Chinese entities of a range of foreign policies and legislative regimes. These include October 2018 and March 2020 measures prohibiting parties in China from unilateral cooperation with foreign civil and criminal investigations, as well as an Export Control Law that provides the basis for the Chinese government to take reciprocal measures against countries that damage China's national security through export control measures.<sup>391</sup> In adopting the Export Control Law, the Chinese authorities warned against the emergence of "cliques", or "small circles of export control, violating true multilateralism", that are "using state power to interfere in normal trade and market transactions", "abusing export controls as ... hegemony" while "fabricating reasons out of thin air".<sup>392</sup> Together, these instruments aim at equipping the Chinese government to deter and penalize cooperation with foreign government actions perceived to be detrimental to Chinese business and government interests – such as the US Entity List discussed earlier.

This is the context in which China adopted two anti-sanctions instruments in 2021.<sup>393</sup> The first arrived in January 2021. MOFCOM Order No. 1 of 2021 provides 'Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures'.<sup>394</sup> These Rules were further entrenched through the adoption of a formal Anti Sanctions Law in June 2021, which is not limited to foreign *extra-territorial* measures, but also to those operating domestically (i.e. within the adopting country).<sup>395</sup> Together, these instruments aim to blunt and block the effect of foreign sanctions or other measures "unjustifiably" applied against Chinese nationals.<sup>396</sup> The Rules allow Chinese government officials to issue orders prohibiting companies from complying with foreign laws, rules and judgments.<sup>397</sup> They also set up the prospect of multinational companies being forced to choose between compliance with the US or other foreign rules (and market access) and Chinese rules (and market access).<sup>398</sup>

The Law, which largely tracks the Rules, makes clear that the motivation for the countermeasures is to "oppose hegemonism and... any country's interference in China's internal affairs under any pretext and by any means". While opposing unilateral sanctions, the Law asserts China's right to adopt "counter-measures" in response to illegal measures by foreign powers.<sup>399</sup> These may be targeted at any individual or organization directly or indirectly participating in the formulation, decision, and implementation of discriminatory restrictive measures against Chinese citizens and organizations, or interfering in China's internal affairs.<sup>400</sup> The Law also makes it illegal (seemingly without territorial limit), for any organization or individual to "implement or assist in the implementation of discriminatory restrictive measures taken by foreign countries against Chinese citizens and organizations".<sup>401</sup> Even more remarkably, the Law allows action not just against these people or organizations, but also:

- spouses and immediate family members;
- senior managers or controllers of organizations falling within the law's scope;
- organizations in which individuals falling within the law's scope serve as senior managers;
- organizations that controlled or participated in the establishment and operation of an organization within the law's scope.<sup>402</sup>

The Law authorizes China's State Council to impose travel and asset sanctions on any of these people, to prevent persons within China from entering into "transactions, cooperation or activities" with them, or to take "other necessary measures".<sup>403</sup> The Law also provides for secondary rule-making to establish further counter-measures.<sup>404</sup> There does not appear to be any system of appeal, though the State Council can alter these countermeasures if "circumstances" change.<sup>405</sup> Individuals and organizations within China that do not comply with these counter-measures are to be dealt with "in accordance with the law".<sup>406</sup>

The Rules also have a number of features drawn directly from the UK, EU and Russian precedents aimed at circumventing the long-arm reach of US sanctions.<sup>407</sup> Similar to the EU precedent in particular, the Chinese Rules create an obligation for Chinese persons to report foreign measures affecting them within 30 days – and penalties for failure to comply.<sup>408</sup> They also create a right for Chinese citizens or firms to sue for compensation in Chinese courts if they are economically harmed by a company's adherence to covered foreign laws, measures or rulings.<sup>409</sup> The Rules also provide for state support to entities that suffer losses as a result of *not* complying with such foreign laws.<sup>410</sup>

Together, the Rules and the Law give Chinese authorities almost unfettered scope to order Chinese citizens and firms – apparently including Chinese subsidiaries of foreign firms – not to comply with foreign laws that restrict normal business operations with targeted Chinese entities.<sup>411</sup> To date, the Law does not appear to have been *formally* invoked. However, when set against the backdrop of continued and unpredictable Chinese state intervention in a range of industrial sectors, and the recent history of arrests of foreign nationals, the Rules and the Law have created a perception of heightened risk amongst foreign economic actors present in China.<sup>412</sup> As enforcement includes recovery of damages through asset seizures, foreign firms operating in China could be expropriated for complying with the US or other third-party laws, including Xinjiang sanctions.<sup>413</sup>

389 See the rationales detailed in C#009-C#050.

390 *Global Times* 2021b.

391 See SCIO 2021.

392 The timing of these comments is notable, coming soon after Australia, Denmark, Norway, and the United States issued a joint statement that linked their export control measures with human rights, suggests Chinese authorities

See generally Lovely and Schott 2021.

394 PRC MOFCOM 2022. See XJS-CCM C#008.

395 PRC National People's Congress 2021. XJS-CCM C#051-C#055.

396 See PRC MOFCOM 2022, Art. 2.

397 *Ibid.*, Art. 7. See XJS-CCM C#008.

398 Rennemo 2021.

399 Anti Sanctions Law, Art. 3.

400 *Ibid.*, Arts 3, 4. See XJS-CCM C#051-C#055

401 Art. 12.

402 Art. 5.

403 Art. 6.

404 Arts 10, 13.

405 Arts 7, 8.

406 Arts 11, 14.

407 See *Protection of Trading Interests Act* (1980) (UK); and Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, p.1). The Russian precedent is mentioned in Chen and Liu 2021.

408 Arts 5, 13.

409 PRC MOFCOM 2022, Art. 9.

410 *Ibid.*, Art. 11.

411 Lovely and Schott 2021.

412 Interviews 2, 8.

413 Hendrix and Noland 2021, p. 13.

The Chinese Rules and Law thus create new risks for foreign businesses operating in China, including the possibility that they could be forced to choose between Chinese and US markets in future.<sup>414</sup> Foreign banks, in particular, expressed concern about the difficult position this could put them in, which led to a decision in August 2021 to delay application of the law to Hong Kong.<sup>415</sup> In October 2021, Hong Kong's government signalled that this delay would be open-ended.<sup>416</sup> But the shadow of the Law hangs over foreign businesses operating in China, creating a strong disincentive to do anything that would draw attention of the Chinese authorities – such as making public statements about Xinjiang forced labour. As section 2.4 explores further, this appears to have translated into a significant chilling effect in corporate responses to Xinjiang forced labour.

Although the Chinese Rules and Law draw on the UK and EU precedents, the Chinese regime operates quite differently to those schemes. For example, while the EU rules operate to exempt EU entities from a published, narrow list of US actions, the Chinese regime is deliberately open-ended, applying to any and all “unjustifiable” foreign measures. Since it is Chinese authorities that will determine whether such measures are “unjustifiable”, the Law works to amplify official leverage over foreign firms. Similarly, while EU firms appear happy to take the risk of not notifying authorities (as the EU system formally requires), with notification being an exception, rather than the rule, entities operating in China are much less likely take such risks. This is for two reasons. Firstly, because of the more assertive and intrusive approach taken by Chinese regulators to regulate corporate conduct than that taken by European regulators. Secondly, because while European firms often rely heavily on access to US markets – giving them a strong incentive to comply with the US's long-arm rules and ignore the EU rules – Chinese firms are likely to be less dependent on US revenues, making them less likely to choose compliance with US rules over compliance with Chinese rules.<sup>417</sup>

Showdowns have nonetheless largely been avoided in the US-EU case, because both sides have generally forborne to enforce key parts of the relevant regimes, while European firms have foregone business with entities sanctioned by the US.<sup>418</sup> Will this same forbearance hold in the Xinjiang context? The answer clearly depends on whether the Chinese government considers that activating these counter-measures would be useful in the context of specific bilateral (i.e. state to state) relationships or disputes. The regime affords Chinese authorities almost unfettered discretion to target firms from trade partners that “run afoul of China diplomatically”.<sup>419</sup> And unlike the EU blocking regime, the Chinese Law also provides for striking back at foreign actors, making it less a blocking mechanism and more a counter-acting regime.<sup>420</sup> Hong Kong SAR Chief Executive Carrie Lam welcomed the law as giving the US and others “a taste of their own medicine”, and Chinese state media described it as having “a deterrent effect in the face of Western-led hegemony”.<sup>421</sup> Hendrix and Noland conclude that the regime would likely “be a central Chinese policy instrument in a Xinjiang-related trade war”.<sup>422</sup>

### 2.3.3 Informal measures

While the CCP does not appear to have formally acted on the provisions in the Rules and the Anti Sanctions Law to date, there is growing evidence of it taking *informal* measures intended to blunt the impact of Xinjiang sanctions. This section introduces the idea of informal counter-measures and the emerging literature exploring them, before describing and analyzing three episodes of Chinese informal counter-measures in response to Western Xinjiang sanctions.

Lim and Ferguson define informal sanctions as

*“the deliberate, government-directed disruption of market transactions involving economic actors from a target state to further a political or strategic objective, through means that are not enshrined in official legal frameworks for sanctioning or publicly acknowledged as coercive sanctions”.*<sup>423</sup>

What Lim and Ferguson label informal ‘sanctions’, this study labels informal ‘measures’ (or counter-measures), since in this study sanctions are limited to *formally* binding measures (as explained in section 2.1 above).

While Russia has turned to informal sanctions on several occasions,<sup>424</sup> China is perhaps the leading exponent of this form of economic coercion. China has used informal economic measures on numerous occasions over the last decade to impose costs on other parties in pursuit of strategic and political objectives. Such episodes include Chinese restrictions on exports of rare earths to Japan in 2010 following Japanese detention of a Chinese fishing boat captain;<sup>425</sup> restrictions on Norwegian salmon imports following the awarding of the 2010 Nobel Peace Prize to a Chinese dissident;<sup>426</sup> measures aimed at punishing states for engaging the Dalai Lama;<sup>427</sup> and measure restricting imports from Australia following political disputes between PRC and Australia.<sup>428</sup>

As Lim and Ferguson point out, “the potential range of market disruptions” that might be termed informal (sanctions) measures “is limited only by one’s imagination”. Nonetheless, they identify three types evident in practice, namely strategic regulation, informal blacklisting and boycott fermentation. *Strategic regulation* involves the strategically motivated, targeted application by government officials of existing laws that regulate commerce, to impose costs on economic actors.<sup>429</sup>

*Informal blacklisting* involves informal government directions to domestic commercial actors to change their market behaviour, for example by refraining from engaging with a target state’s economic interests. No laws are invoked (unlike strategic regulation), and costs are imposed indirectly – not by the state, but by changes in behaviour of domestic economic actors.<sup>430</sup> *Boycott fermentation* involves state-instigated commercial boycotts of targeted entities, for example through use of state media.<sup>431</sup>

Our research identified three new and previously unstudied episodes of Chinese informal measures in response to Western Xinjiang sanctions. We describe these three episodes below, identifying which type(s) of informal measures were involved in each case, and highlighting two other aspects of these episodes – the availability of regulatory mechanisms, and opportunistic efforts by other commercial actors to exploit resulting market disruptions. The key features of these episodes are summarized in Figure 8.

Figure 8. Features of Chinese informal measures in response to Xinjiang sanctions

	Strategic regulation	Informal blacklisting	Fomenting consumer boycotts	Regulatory availability	Opportunism
<b>Apparel brand boycotts</b> (March-April 2021)	Admin fines; threatened graft investigation	Celebrity influencers and online platforms blacklist firms	State media, Chinese Communist Youth League instigation	Yes – through online and offline means	By domestic brands, Japanese brands
<b>Intimidation of audit firms</b> (April 2021 and beyond)	Yes – legal basis unclear		Not retail facing, but may have chilled foreign clients’ willingness to hire these firms	Yes – possibly through the Anti-Sanctions Law	Support for development of domestic audit industry
<b>Threats to Intel and Walmart</b> (December 2021)	Threatened graft investigation	Celebrity disendorsement	Walmart boycott – but not Intel	Yes – through online means and the CCDI	Intel: push for domestic capacity; Walmart: foreign opportunism (e.g. Carrefour)

414 Lovely and Schott 2021.  
 415 Mitchell 2021.  
 416 Lam 2021.  
 417 Lovely and Schott 2021, p. 8.  
 418 An important exception is *Bank Mellat v Islamic Finance Group*, Case C-124/20, Judgment of the Court (Grand Chamber), European Court of Justice, 21 December 2021.  
 419 Lovely and Schott 2021; Tang 2021; Hendrix and Noland 2021.  
 420 Tang 2021.  
 421 Chen and Liu 2021.  
 422 Hendrix and Noland 2021.  
 423 Lim and Ferguson 2021.

424 Morris et al. 2019; Doraev 2015.  
 425 Gholz and Hughes 2019.  
 426 Chen and Garcia 2016.  
 427 Fuchs and Klann 2013.  
 428 Ferguson and Lim 2021.  
 429 Lim and Ferguson 2021; Ferguson 2021.  
 430 Lim and Ferguson 2021.  
 431 Lim and Ferguson 2021.

### 2.3.3.1 Apparel brand boycotts

The first round of Chinese informal measures responding to Xinjiang sanctions took place in late March 2021, when Western apparel brands became the target of state-orchestrated online vilification and consumer boycotts.

In mid-2020, Western brands responded to a coordinated civil society call to action with commitments to remove Xinjiang cotton from their supply-chains.<sup>432</sup> Amongst those making such a commitment was Swedish retail brand H&M, which terminated a relationship with a Xinjiang yarn producer. These commitments received limited attention in China at the time.<sup>433</sup> That changed suddenly in March 2021, immediately after the major round of sanctions adopted by the US, UK, Canada, EU and EFTA partners described in section 2.2.3 above, which Western brands and industry associations applauded. “All stakeholders must play an active role to bring the current genocide to an end,” wrote the American Apparel and Footwear Association, Footwear Distributors and Retailers of America, National Retail Federation, Retail Industry Leaders Association and the United States Fashion Industry Association:

“For our part, the business community has spent the last two years working to end any nexus with Xinjiang or with Uyghurs trafficked to other parts of China in order to undercut one component of the campaign of oppression against Uyghurs — forced labor. And we continue to work with the U.S. government and Congress to implement an effective and enforceable strategy to address forced labor in and related to Xinjiang.”<sup>434</sup>

The Chinese government’s response was swift and harsh. “I don’t think a company should politicize its economic behaviour,” said Xu Guixiang, a Xinjiang government spokesman, at a news conference. Elijan Anayat, another Xinjiang government spokesman, argued that the Western brands’ “real purpose [was] to disrupt security and stability in China.”<sup>435</sup> H&M in particular quickly became a target.<sup>436</sup> “Can H&M continue to make money in the Chinese market? Not anymore”, warned Xu. “To rush into this decision and get involved in the sanctions is not reasonable.

It’s like lifting a stone to drop it on one’s own feet,” he said.<sup>437</sup> The state broadcaster CCTV also criticized H&M for “a miscalculation to try to play a righteous hero.” H&M, CCTV said, “will definitely pay a heavy price for its wrong action.”<sup>438</sup>

These warnings were quickly amplified by key social media influencers. After senior Chinese diplomat Yang Jiechi told reporters that “the Chinese people won’t accept” Xinjiang sanctions, the Communist Youth League of China (CYLC) posted on its Sina Weibo account calling for a boycott of Western brands.<sup>439</sup> The CYLC has emerged in recent years as a key online influencer, signalling CCP preferences to online audiences.<sup>440</sup> The CYLC forms a key node in a complex ecosystem of online networks that Chinese authorities have constructed since 2020 to shape the information environment, narratives and broader discourse on Xinjiang. This ecosystem comprises CCP officials, state and regional media assets, outsourced influence-for-hire operators, social media influencers and covert information operations, including automated social media accounts and fake Uyghur accounts. Together, this ecosystem pushes a Chinese government narrative on Xinjiang amongst diaspora and broader international audiences, through Twitter, Facebook, YouTube and TikTok and other platforms such as Weibo. These propaganda ecosystems flood online information spaces with multilingual content at opportune moments, and sometimes recruit Western social media influencers.<sup>441</sup> Chinese authorities, such as the CCP’s United Front Work Department, appear to fund creation of content distributed through these networks.<sup>442</sup> Moreover, Chinese state bodies are effective in influencing online search results to shape narratives on Xinjiang.<sup>443</sup>

Visual content often plays an important role in CCP boycott fomentation. In the wake of the March 2021 round of Western sanctions, H&M became a meme target for official Chinese sources. As Figure 9 shows, the official H&M logo (9.a) became the object of parody, with the letters H and M repurposed to stand for a variety of Chinese terms – *huang miu* (ridiculous) (9.b.); *mo hei* (smears); and most successfully, at least in terms of its virality, *mian hua* (cotton) in the hashtag #我支持新疆棉花 (#I support Xinjiang cotton) (9.c).

H&M was not the only brand that came under attack. The nationalist *Global Times* urged readers to “resolutely criticize those like H&M that make deliberate provocations”, with Nike, Adidas and other leading Western brands all being affected.

Figure 9. Online anti-H&M memes from March-April 2021

Figure 9.a The original H&M logo



Figure 9.b ‘Absurd’ – CCTV 2021



Figure 9.c ‘Xinjiang cotton’ People’s Daily, 25 March 2021



432 Paton and Ramzy 2020.  
 433 Zhong and Mozur 2021.  
 434 AAFA et al. 2021.  
 435 Lee and Cadell 2021.  
 436 See Liu, Fan and Yang 2021; and see Goodman, Wang and Paton 2021.  
 437 Lee and Cadell 2021.  
 438 CCTV 2021.  
 439 Tu 2021; Friedman and Paton 2020.  
 440 Zhong and Mozur 2021.  
 441 See Ryan, Bogle, Zhang et al. 2021; Ryan, Bogle, Ruser et al. 2021.  
 442 Zhang et al. 2021.  
 443 Brandt et al. 2022.

This involved not only fomenting retail boycotts, but also informal blacklisting, as the CCP induced other market players to stop doing business with Western apparel brands. More than 40 Chinese celebrities rescinded endorsement contracts with foreign apparel brands including Nike, Adidas, Burberry and Uniqlo.<sup>444</sup> This generated a significant consumer backlash against these firms, as celebrity influencers have significant capacity to shape consumption tastes in China, where more than half of all retail sales now occur online.<sup>445</sup> Given how celebrities are governed in China, with the CCP both disciplining them and using their celebrity status to extend its own cultural and social capital, this was almost certainly a move encouraged – or at least approved – by the Party.<sup>446</sup> Indeed, celebrity renunciation of firms that are seen as deviating from the Party line on Hong Kong, Taiwan and other issues is not uncommon.<sup>447</sup> Huang Xuan, a Chinese actor who had a men’s wear endorsement contract with H&M, posted a statement saying he would quit the deal, adding that he opposed “slander and creating rumours” as well as “any attempt to discredit the country.” Another H&M brand ambassador, the singer and actress Victoria Song renounced H&M saying that “national interests are above all else.”<sup>448</sup>

A similar pattern of informal blacklisting was apparent in the treatment of Western apparel brands by major online retail, mapping and advertising platforms. Within days of the signals from Chinese officials, H&M was dropped from Chinese mapping apps,<sup>449</sup> and Nike and Adidas apps and ads were removed from Huawei and Xiaomi smartphones.<sup>450</sup>

There were also a few signs of strategic regulation. The Spanish fast-fashion retailer Zara was fined for production and sales of ‘unqualified items’, and Adidas was fined for violation of advertising content management regulations. The fines involved were small, but Chinese media such as *Global Times* drew national attention to the fines, linking them specifically to the “continued backlash in the Chinese market over recent months as they are among western retailers that have shot themselves [in] the foot [by] boycotting cotton sourced from Xinjiang over groundless forced labor claims.”<sup>451</sup>

*Global Times* later described a significant rise in Chinese sportswear brand revenues and profits as a result of Chinese consumers switching to these brands “to voice support for Xinjiang cotton amid Western relentless slander and crackdown”. Western brands were “‘paying the price’ for their mistakes in colluding with anti-China forces”, the state-backed media outlet opined.<sup>452</sup> Outside observers concluded that the timing of this backlash towards Western apparel brands pointed to the invisible hand of the Chinese government, although the Chinese government denied this. “These foreign companies refuse to use Xinjiang cotton purely on the basis of lies,” spokesman for China’s Ministry of Foreign Affairs, Zhao Lijian, said at a news briefing. “Of course this will trigger the Chinese people’s dislike and anger. Does the government even need to incite and guide this?”<sup>453</sup>

How did different firms react? Western brands took notice.<sup>454</sup> Many deleted online statements indicating their intent to withdraw from Xinjiang due to forced labour risks, and others became more reluctant to discuss or address Xinjiang forced labour issues (as section 2.4 on corporate responses will explore further).<sup>455</sup> Chinese firms, on the other hand, proactively proclaimed their support for and use of Xinjiang cotton, and cleverly capitalized on the rally-round-the-flag campaign by rushing to market new “products targeted at local consumers—from sweaters emblazoned with Chinese characters to sneakers inspired by the Forbidden City.”<sup>456</sup> Moreover, even some foreign firms have been keen to exploit this opportunity, with certain European and Japanese firms promoting their use of Xinjiang cotton to Chinese audiences.<sup>457</sup>

Over time, these efforts seem to have had a material impact, with Adidas and Nike reporting 24 and 20 percent drops in sales in China in the last fiscal year.<sup>458</sup> A quantitative analysis by Bloomberg described the social media storm of March 2021 as

*“a crucial inflection point in sneaker and sportswear sales, allowing domestic brands to dethrone Western giants for the first time. Nike and Adidas... were sent on a downward trajectory in sales that has not yet bottomed out.”*<sup>459</sup>

### 2.3.3.2 Intimidation of audit firms

The second episode of informal Chinese counter-measures responding to Xinjiang sanctions emerged in April 2021. This involved strategic regulation of firms performing the workplace audits on which many Western firms rely to meet certification and regulatory requirements in Western markets.

Corporate representatives describe a steady “escalation of secrecy” around working conditions in Xinjiang from around mid-2019.<sup>460</sup> During secure interviews for this study, workers and managers involved in labour audits in Xinjiang and elsewhere in China reported escalating intimidation and harassment of interview subjects by Chinese state authorities since reporting about Xinjiang forced labour began in 2018.<sup>461</sup> They also reported clear signs, starting from around mid-2019, of interview subjects being coached and/or threatened.<sup>462</sup> Some reported that since 2020 interview subjects became increasingly 红脸 (*hóngliǎn*) – ‘red faced’, i.e. flushed or flustered – when asked, even obliquely, about discrimination in the workplace or the treatment of minority workers.<sup>463</sup> The pandemic has also forced many auditors to interview online, rather than in person, which has made subjects even less willing to discuss sensitive issues like this.<sup>464</sup>

The problem became markedly worse from around April 2021, following the January 2021 adoption of the blocking Rules contained in MOFCOM Order No. 1 of 2021, as well as the major round of Western Xinjiang sanctions in late March 2021.<sup>465</sup> Attention seemed to have shifted from interference with the workers and managers interviewed by audit firms, to a more direct intimidation of audit firms and their workers. In April 2021, at least seven people in China who work with or for Verité, a US-based supply-chain audit firm that has provided labour management audits of operations in China for many years to major international brands such as Disney and Apple, were interrogated by Chinese authorities over several days. Moreover, the firm’s local affiliate, Shenzhen Verité, was shut down.<sup>466</sup>

Interviews conducted for this study further point to several raids on other audit firms that have not been publicly reported, involving interrogation of personnel and confiscation of documents and assets.<sup>467</sup> Some interviewees reported material damage to their offices, and one reported personnel receiving death threats.<sup>468</sup> Several interviewees also expressed growing concern for the safety of Chinese employees and their families.<sup>469</sup> One interviewee reported a wide circle of contacts and associates of staff being harassed and intimidated, including even childhood friends.<sup>470</sup> CCTV, China’s main state broadcaster, has reportedly run footage of interviews with workers from raided firms “recanting” their views on Xinjiang.<sup>471</sup> The U.S. State Department has voiced concern over reports of supply-chain auditors being threatened, harassed and subjected to constant surveillance.<sup>472</sup> Firms have adopted a range of internal security measures, including use of codewords to refer to Xinjiang and Uyghurs, removing Chinese nationals from work on files with potential connections to Xinjiang, and heightened cybersecurity measures.<sup>473</sup>

This intimidation, interviewees reported, is by no means limited to audit efforts *within XUAR* – which in fact have all but ceased – but rather extends to any engagement, anywhere in China, that might be understood as exploring use of Xinjiang forced labour. Several interview subjects indicated that labour audits across China are now essentially avoiding this issue altogether.<sup>474</sup> The word “Uyghur” is studiously avoided”, said one such interviewee,<sup>475</sup> while any discussion of the menu that workers are served (since many Uyghurs prefer halal meals), or of ethnic distribution to accommodation, leads those being audited to “shut down” communication.<sup>476</sup> Several interview subjects said that it is now essentially impossible to prove, through workplace or social audits, that a firm in China is *not* using Xinjiang forced labour.<sup>477</sup>

444 Song 2021; Associated Press 2021.  
 445 Friedman and Paton 2021; Cramer-Flood 2021.  
 446 On celebrity governance in China see Xu and Yang 2021. On the roles of state entities and popular forces in enforcing a nationalist line online, see Burcu 2022.  
 447 Friedman and Paton 2021.  
 448 Paton 2021.  
 449 Woo 2021; Tu 2021.  
 450 Chen 2021.  
 451 *Global Times* 2021c.  
 452 *Global Times* 2022.  
 453 Zhong and Mozur 2021.  
 454 Interview 7.  
 455 Interviews 1, 2, 6, 7.  
 456 Hong, Saito and Leung 2022.  
 457 See the record for **Ryohin Keikaku Co., Ltd.** (inc. MUJI) in the Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset; and see Tan and Okutsu 2021.  
 458 *Global Times* 2022.  
 459 Hong, Saito and Leung 2022.

460 Stevenson and Maheshwari 2022.  
 461 Interviews 1, 2, 6, 8, 10, 11.  
 462 Interviews 2, 6, 8, 9, 11, 12.  
 463 Interviews 1, 4, 11.  
 464 Interview 4.  
 465 Interviews 4, 6.  
 466 Allen-Ebrahimian 2021; Wei, Xiao and Moss 2021.  
 467 Interviews 1, 2, 6.  
 468 Interviews 6, 7.  
 469 Allen-Ebrahimian 2021; Interviews 1, 2, 8.  
 470 Interview 6.  
 471 Interviews 1, 2.  
 472 Allen-Ebrahimian 2021.  
 473 Interviews 1, 2, 4.  
 474 Interviews 4, 6, 7, 10.  
 475 Interview 7.  
 476 Interview 6.  
 477 Interviews 1, 2, 6, 7, 11.



This ‘strategic regulation’ through intimidation of auditors and their interview subjects must be understood as part of a larger repertoire of intimidation, harassment and coercion aimed at actors involved in addressing Xinjiang forced labour. Chinese authorities and online trolls have hacked, doxxed, harassed, blackmailed, sued and otherwise sought to discredit a range of voices drawing attention to Xinjiang forced labour, from the Uyghur Tribunal<sup>478</sup> to individual researchers such as Adrian Zenz<sup>479</sup> and Vicky Xiuzhong Xu, lead author of the influential ASPI Report, *Uyghurs for Sale*.<sup>480</sup>

### 2.3.3.3 Threatening Intel and Walmart

The third episode of informal sanctions followed at the very end of 2021, immediately following the passage of the *Uyghur Forced Labor Prevention Act* (UFLPA) through US Congress. This time, the targets were Intel, the leading computer chip maker, and Walmart, the iconic US big box retail brand.

In an annual letter to suppliers in mid-December 2021, Intel warned that it had been “required to ensure that its supply chain does not use any labour or source goods or services from the Xinjiang region”, following restrictions imposed by “multiple governments”.<sup>481</sup> As soon as the UFLPA was enacted in late December, Chinese authorities criticised Intel for its aforementioned statement, and called attention to online criticisms by Chinese citizens.<sup>482</sup> This was significant, as China was Intel’s largest market by revenue from 2018 to 2020. The chip maker generated USD 20.9 billion in sales from China and Hong Kong in 2020, which accounted for about a quarter of its annual revenue, and nearly 10 per cent of the company’s properties, factories and equipment are located in China.<sup>483</sup>

Intel apologized, but China’s foreign ministry said that “accusations of forced labour in Xinjiang are lies concocted by anti-China American forces” aimed at destabilising China and hindering its development.<sup>484</sup> A similar pattern as that seen earlier in the apparel brands boycott began to play out. On China’s Twitter-like Weibo, singer Karry Wang said he would no longer serve as brand ambassador for Intel, adding in a statement that “national interests exceed everything”.<sup>485</sup> When Intel ‘removed’ the reference to Xinjiang from its 2021 supplier letter, Beijing softened its tone, announcing that Chinese ‘netizens’ had welcomed the move – and that this provided a good example for Walmart to follow.<sup>486</sup>

At the same time as Intel was being targeted, Walmart was being accused by both social media users and official government media of having removed Xinjiang’s abundant agricultural produce from its shelves, with the Communist Youth League of China (CYLC) calling for a consumer boycott.<sup>487</sup> Walmart has over 400 stores in China, many of them operating as membership-based ‘Sam’s Clubs’, and generating around USD 11 billion in annual revenue. Weibo hashtag “Sam’s Club card cancellation” went viral, with over 470 million hits. This was followed by the Chinese anti-corruption agency, the Central Commission for Discipline Inspection (CCDI) threatening strategic regulation, warning Walmart of “bad consequences” that would flow from the “stupidity and shorted-sightedness” of boycotting Xinjiang products.<sup>488</sup> The CCDI said the chain should respect China’s position on Xinjiang if it wanted to “stand firm in the Chinese market”. Going further, the CCDI deliberately tied the episode back to the apparel brands boycott of April 2021, accusing H&M, Intel, and Walmart of collaborating with “western anti-China forces” to destabilize Xinjiang by suppressing and boycotting products from the region. “These Western companies, which once boasted that they were free from political interference, have slapped themselves in the face with their own actions,” the CCDI warned.<sup>489</sup>

Sensing Walmart’s potential weakness, both local and foreign competitors sought to capture market-share. Alibaba Group pushed for local consumers to switch to its Hema supermarket chain, whereas Carrefour SA, the French firm, sought to bandwagon on nationalist sentiment by staging a “Carrefour Xinjiang Fine Goods Festival”. Its local social media featured photos of apples, walnuts, cotton socks and towels for sale on store shelves, with bright yellow labels reading, “I’m from Xinjiang.”<sup>490</sup>

### 2.3.4 Making sense of Chinese counter-measures

Taking these various formal sanctions and informal counter-measures efforts together, we can infer several important things about how China is responding to Xinjiang sanctions, some of which are captured in Figure 8 above.

The first relates to sanctions goals and how they shape target selection. In the area of formal sanctions, the Chinese government has made clear that its objective is not just to see the West drop Xinjiang sanctions, but to vanquish the entire ‘Xinjiang forced labour’ narrative. This may explain why many of those targeted by Chinese sanctions are researchers and political actors with limited influence over policy, but significant roles in constructing and promoting the Xinjiang forced labour narrative. It may also explain why the imposition of informal measures such as boycott fomentation seems to depend on an entity’s rhetorical position on that narrative. When Intel removed a reference to this narrative from its letter to suppliers, for example, Beijing apparently suspended its efforts to foment a boycott of Intel products – and instead encouraged Walmart to follow suit.

Lim and Ferguson suggest that ‘regulatory availability’ also helps explain target selection for informal counter-measures. They argue that informal measures rely on plausible deniability,<sup>491</sup> so targets will only be selected where there is some regulatory mechanism available through which the state can impose costs on the target, while maintaining plausible deniability. The episodes of informal measures studied here seem to offer three important insights into how this can work.

First, these episodes suggest that formal and informal measures can work together to increase regulatory availability. The adoption of the Rules in MOFCOM Order No. 1 and the Anti Sanctions Law created a regulatory shadow enabling Chinese authorities to engage in informal intimidation and harassment. In this way, formal measures may increase regulatory availability for informal measures. Lim and Ferguson argue that informal sanctions seem less likely to be used by states governed by the rule of law, since rule of law limits arbitrary discretion, increases transparency and reduces the room for use of regulatory tools for political purposes. In this instance, China’s use of legal forms may have expanded its regulatory discretion – pointing to the fact that China’s legal system is characterized more by rule *by* law than by rule *of* law.

Second, Beijing’s counter-measures in these episodes point to the important role that online and social media intermediaries can play in informal measures. The Chinese government treats online influencers as cut-outs in delivering plausibly deniable measures imposing costs on a range of targets, from individual researchers such as Vicky Xu and Adrian Zenz through to major corporations such as H&M and Walmart. This points to a need for Western governments to develop strategies to prevent and mitigate such online intimidation and harassment, in order to lower the costs that Beijing can impose for supporting the Xinjiang forced labour narrative. But online intimidation is not *always* the weapon of choice. Where social media profile or online brand is not a key asset for an entity – as it is not for many audit firms, for example – the Chinese government has focused less on this approach, and more on traditional, offline means of strategic regulation, such as raids and interrogations. Use of online counter-measures may be more likely where a target’s online presence, brand or reputation is a critical business or professional asset.

Third, while the Chinese government has argued that the social media campaigns against Western apparel companies, Intel and Walmart were autonomous and self-starting, it has also not been afraid to link that backlash to actors’ positions in relation to the Xinjiang forced labour narrative. On one hand, Beijing has sought to maintain plausible deniability for any *operational* role in encouraging and orchestrating the brand boycotts or informal blacklistings of firms by celebrity influencers, apps and online platforms. On the other hand, it is not afraid to portray this backlash as a spontaneous but laudable popular reaction to the West’s Xinjiang narrative. In other cases of informal ‘sanctions’ (such as those discussed by Lim and Ferguson), the sanctioning country has tended to deny that the measures in question are a response to the target entity’s trigger conduct. The plausible deniability in those cases extended not only to the state’s involvement, but also to the causal connection between trigger conduct and response. In this instance, however, China’s strategic goal of countering the Western narrative on Xinjiang would not be served by denying this substantive link. Instead, Chinese authorities have made clear that it is the narrative itself that is the problem, while simultaneously arguing that the choice to respond through boycotts and blacklists is one that was voluntarily made by patriotic citizens, netizens and organizations – not one responding to signals or pressures from the CCP.

478 Cockerell 2021.  
 479 Global Times 2021f.  
 480 Kuo and Shih 2021; Yang 2021; Johnson 2021; Zheng et al. 2021.  
 481 Reuters 2021.  
 482 Hu 2021; GT staff reports 2021b.  
 483 Global Times 2021e.  
 484 Reuters 2021.  
 485 Reuters 2021.  
 486 Global Times 2022b.  
 487 Lin 2021; GT staff reports 2021.  
 488 Lin 2021b.  
 489 Lin 2021b.  
 490 Lin 2021.

491 Lim and Ferguson 2021.

The dynamic of these episodes may also reveal something about the limits of Chinese counter-measures. The selection of high profile US firms such as Intel and Walmart may have been intended to send a signal that China was willing to confront even such heavy-hitters to address its concerns around the Xinjiang sanctions narrative. However, its willingness to relent in January 2022 from imposing serious costs on Intel, once Intel amended its supplier letter, can be interpreted in two ways. One interpretation is that this shows that the Chinese government's objective was limited to ending Intel's alignment with or contribution to the Xinjiang forced labour narrative. Another interpretation is that the cessation of pressure was not a result of China achieving its intended goal, but rather its unwillingness to further provoke Intel, given Chinese dependence on Intel products. If the latter interpretation is correct, this offers an important insight into Beijing's strategic vulnerability to Western sanctions touching semiconductors and computer chips.

Indeed, a close study of the evidence offers signs that Intel was selected as a target in part because of the strategic significance of semiconductor supply-chains. Having seen Washington impose sanctions on Hoshine, the major Chinese supplier of silica (a necessary component of both the solar panel and semiconductor supply chains),<sup>492</sup> Beijing may have been concerned about the risk of Xinjiang sanctions spreading to this critical industry. This is supported by *Global Times*, which, when first drawing attention to Intel's supplier letter and the offending passage on Xinjiang, argued that

*“to suppress China, the US is not only asking its allies to have a greater binding force but also attempting to coerce major US companies into taking sides. Washington is using technology ‘decoupling’ as a grip in its comprehensive strategy to contain and suppress Beijing. This includes semiconductors, which are seen as the most important and sensitive commodity and has become the main focus... The most important point that the incident reminds us of is that we must speed up the process of producing home-made chips in China. An important reason why Intel dares to offend China over the Xinjiang-related affairs is that it holds the monopoly of the global chip market. What we need to do is to make it increasingly expensive for companies to offend China so their losses outweigh their gains.”*<sup>493</sup>

The signal here appears to be that the expansion of Xinjiang sanctions from polysilicon and silica to the adjacent supply-chain of semiconductors (which also rely on silica, though incorporated into polysilicon of a higher purity than that used in solar panels), would be vigorously resisted. This may hold important insights for Western target selection – a point to which we return in Part 4.

Finally, these episodes may offer useful insights about *opportunism*. Here, opportunism relates to the increased ability of informal agents to deviate from the instructions of principals, given the principals' need for the maintenance of informality and deniability. As Lim and Ferguson point out, this may not only involve a refusal to undertake the activity that imposes costs on targets, but also – in the opposite direction – a willingness by some informal agents to exceed their instructions in doing so:

*“those who stand to benefit from disrupted exchange with target industries may do the opposite, using the cover of discreet instructions and/or broader political tensions to maximize political capital or economic rents vis-à-vis competitors from the target country. They may embrace proposed disruption and potentially advocate for—or indeed carry out—more disruptive activity, exacerbating the overall impact of the informal sanctions campaign in ways central authorities may not necessarily intend.”*<sup>494</sup>

Indeed, we see several examples of just this dynamic playing out in the events described in this section, for example Alibaba seeking to capitalize on Walmart's difficulties, or Chinese apparel brands seeking to capture increased market-share while Western apparel brands were tarnished in March-April 2021. In this case, however, it is not only firms from the sanctioning state (China) that have engaged in opportunism, but also foreign firms (Japanese apparel brands and French supermarket chain Carrefour), by attaching their brands to pro-Xinjiang sentiments.

## 2.4 Corporate responses

A complete picture of Xinjiang sanctions and their impacts requires consideration not only of Western government measures and Chinese counter-measures, described in sections 2.2 and 2.3 above, but also of corporate responses. This section provides an overview of these responses, with more detail emerging in the analysis of specific sectors in Part 3.

Our overview draws on two approaches to gathering evidence, namely open source analysis of corporate statements and documents, and confidential interviews subject to a strict ethics protocol. Using open source material, over the last year we compiled the Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset, which is available on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info). The dataset includes over 8,000 datapoints relating to 256 companies, headquartered in 21 different countries: Canada (2), China (123) + Hong Kong SAR (11), Denmark (1), Finland (1), France (4), Germany (14), India (9), Indonesia (1), Ireland (1), Italy (3), Japan (15), South Korea (4), Netherlands (2), Pakistan (2), Spain (3), Sweden (3), Taiwan (3), Turkey (1), UK (9), and the US (44). It incorporates commercial data, indications of the companies' ties to entities targeted by Western sanctions, and detailed verbatim reproductions of company statements (or where relevant, actions) relating to Xinjiang forced labour and responses to it. The dataset is regularly updated. Our analysis here draws on version 1.0 of this dataset, which was up to date as of June 2022.

The data is drawn from English and Chinese-language statements and reports relating to selected entities that have been connected at one time or another to alleged forced labour in XUAR, or that play an important role in a supply-chain that has been connected in such way.<sup>495</sup> In version 1.0 of the XJS-CRS, we focused on companies in the agriculture, cotton, and polysilicon (solar, electronics and transport) supply-chains, as well as companies otherwise linked to Xinjiang forced labour, e.g. through mention or targeting by government measures included in the XJS-GMS dataset. dataset includes official statements and actions responding to allegations concerning Xinjiang forced labour. Full details of our coding protocols are available in a Coding Manual on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info).

Unlike the XJS-GMS and XJS-CCM datasets, this dataset does not aim to be comprehensive. Our sample is not in any sense statistically representative, as many companies taking steps in response to alleged forced labour may not publicize them, out of concern for worker and stakeholder safety, risks to their own reputation or legal exposure, or for other legitimate reasons. Yet some suggestive patterns do emerge from the data.

First, there is a discernible regional variation in companies' general positions on the Xinjiang forced labour narrative – that is, whether they acknowledge the fact of these concerns, or deny them. Perhaps unsurprisingly, given the environment described in section 2.3, Chinese and Hong Kong companies have been more frequently recorded denying the fact of Xinjiang forced labour or concerns around it. At least 15 of the Chinese companies in our sample used the hashtag #我支持新疆棉花 (#I support Xinjiang cotton) on their social media. Companies headquartered in Western countries (as well as in Japan and Hong Kong) have been more often recorded publicly acknowledging concerns around Xinjiang forced labour. Nevertheless, the most common corporate response strategy, across all three contexts, is silence. This pattern is evident in Figure 10 below.

Many foreign firms appear to fear that speaking out will imperil their operations and endanger their personnel in China. The evidence suggests that the 2021 Chinese counter-measures, which were discussed in the previous section, worked to change corporate cost-benefit calculations on aligning with the Xinjiang forced labour narrative, with some Western companies that made statements in 2020 supporting efforts to address forced labour in Xinjiang removing them in 2021 following the counter-measures efforts described in section 2.3 above.<sup>496</sup> Scott Nova, executive director of the Worker Rights Consortium, told *The New York Times* that some brands had given him informal commitments to leave China but on the condition that the information remains private.<sup>497</sup> Audit firms, in particular, have adapted the way they approach discussion of these issues (see section 2.3.3.2 above).

492 See M#230.  
493 Global Times 2021e.  
494 Lim and Ferguson 2021.

495 The rationale for inclusion of each company is provided in the dataset.  
496 Friedman and Paton 2021; Forced Labour Fashion 2021.  
497 Stevenson and Maheshwari 2022.

Figure 10. Regional variations in corporate responses to Xinjiang forced labour concerns

Figure 10.a – Number of responses

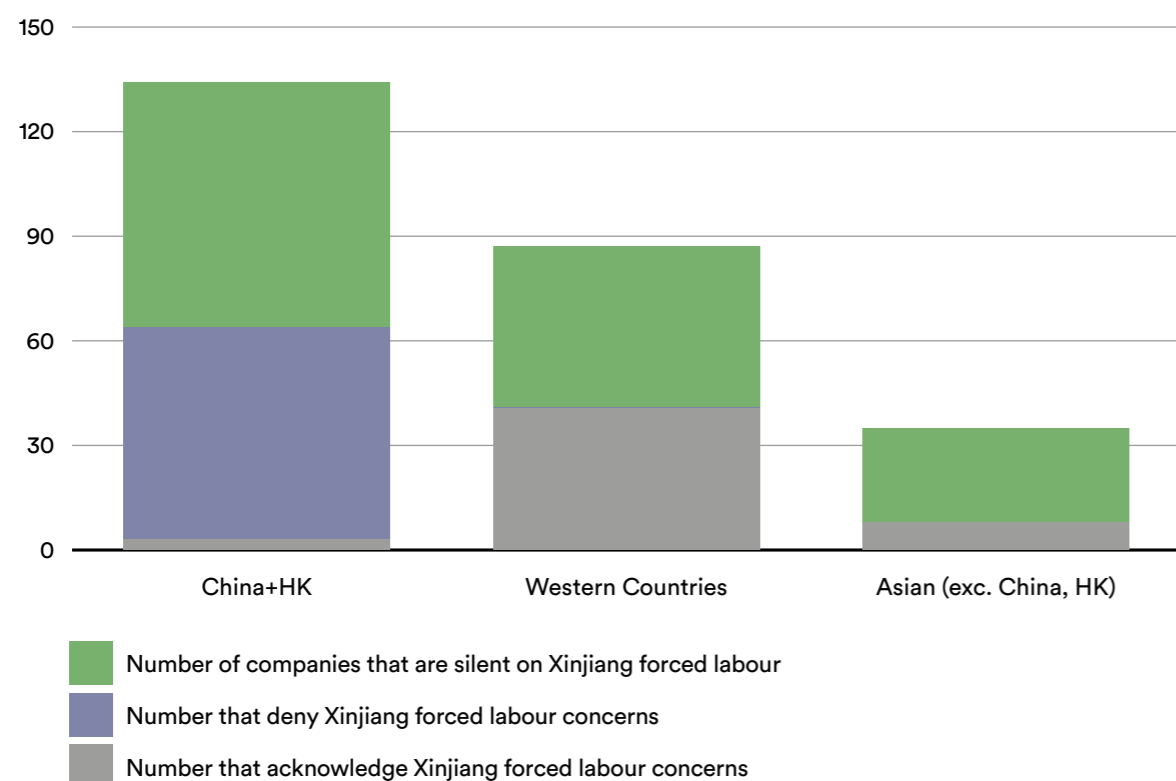
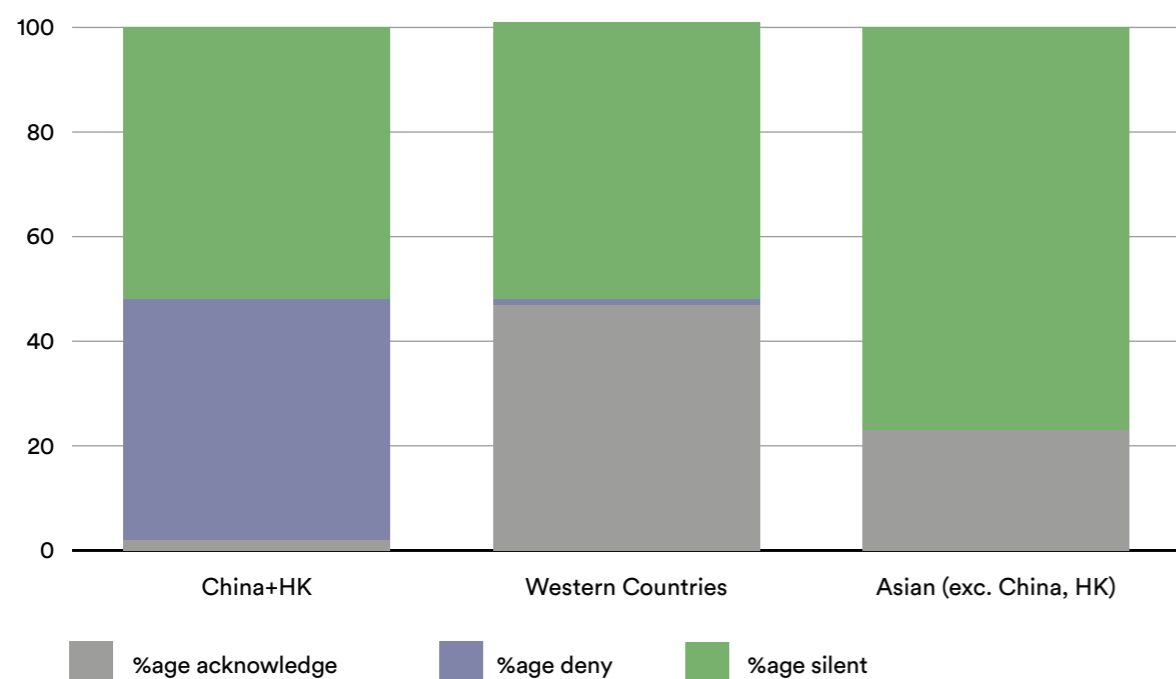


Figure 10.b – Percentage of responses



Second, Chinese company responses captured in XJS-CRS show signs of coordination amongst companies, and probably with Chinese authorities, in the preparation of these responses. There is a similarity in the structure and content of the statements of Chinese companies affected by Western sanctions, particularly where those companies defend their labour management practices, pay arrangements, accommodation and working conditions.<sup>498</sup> Several companies in the IT sector have also adopted very similar language and structure in statements about US sanctions, suggesting a level of coordination.<sup>499</sup> This may indicate the use of a common template, third party advisor or simply coordination or learning amongst these entities.

The choice of language by Chinese companies also suggests a deliberate alignment with official CCP statements casting the Xinjiang forced labour narrative as a deliberate lie, with Chinese companies describing the US position as ‘ignoring the facts’<sup>500</sup> or ‘slander’.<sup>501</sup> Moreover, in 2021 some companies started providing ethnic minority workers to offer personal testimony attesting to good treatment by their employers, at events run by the Chinese authorities to dispute and counter the Western narrative on Xinjiang.<sup>502</sup>

The XJS-CRS dataset further provides detailed information about steps companies acknowledge having taken to identify, address and remediate Xinjiang forced labour in their operations and supply-chains. While some Chinese companies claim to have undertaken additional due diligence after allegations of forced labour were raised (and, unsurprisingly, found no evidence of forced labour), the most detailed responses about due diligence and remediation come from Western companies. Recurring elements include raising awareness with own personnel and suppliers, cascading due diligence requirements to suppliers through contracts and codes of conduct, cooperating with external experts to strengthen risk analysis, as well as cooperating with peers to share information and develop good practices.<sup>503</sup> Many emphasize the need for improved traceability in supply-chains.<sup>504</sup>

Some have worked collaboratively to map value-chains, and a small number have committed to publish supply-chain sourcing data,<sup>505</sup> while others are moving to make use of technical fixes such as use of DNA and chemical isotope tracing.<sup>506</sup> Many Western companies refer to participation in collaborative and multistakeholder initiatives in their sectors, including the Better Cotton initiative (BCI), Fair Labor Association (FLA), Ethical Trading Initiative (ETI) and Solar Energy Industries Association (SEIA), as evidence that they are working to address forced labour concerns. The activities of these associations will be described in more detail in Part 3.

Interestingly, despite the growing barriers to effective auditing described in section 2.3 above, many companies – from China, Western countries and Asia – have relied at one point or another on third-party workplace audits, including those conducted *in* Xinjiang, as a basis for determining that their goods do not include components made with forced labour.<sup>507</sup> 63 companies, or about 56 per cent of all the companies speaking on the issue, mention third-party audits in one way or another. Korean and Japanese firms, in particular, are seemingly continuing to rely on audits conducted within Xinjiang<sup>508</sup> or, in some cases, on supplier self-reporting.<sup>509</sup> The XJS-CRS includes available ownership information; notably, several of these Asian firms that are relying on self-reporting and audits conducted in Xinjiang are owned in part by major Western investors, including BlackRock and the Norges Bank Investment Management (NBIM), a Norwegian sovereign fund, which raises questions about the role of investors in shaping corporate conduct on due diligence, and reliance on audits.

498 See the XJS-CRS entries for Changji Esquel Textile Co., Ltd. 昌吉溢达纺织有限公司, Hopson Silicon Industry (Shanshan) Co., Ltd. 合盛硅业 (鄯善) 有限公司, Nanchang OFilm Technology Co., Ltd. 南昌欧菲光电技术有限公司, Nanjing Xinyi Cotton Textile Printing and Dyeing Co., Ltd. 南京新一棉纺织印染有限公司 and Xinjiang GCL New Energy Materials Technology Co., Ltd. 新疆协鑫新能源材料科技有限公司  
 499 Shenzhen Huaantai Intelligent Technology Co., Ltd. 深圳市华安泰智能科技有限公司, Yuncong Technology Group Co., Ltd. 云从科技集团股份有限公司, Leon Technology Co., Ltd. 立昂技术股份有限公司, Xiamen Meiya Pike Information Co., Ltd. 厦门市美亚柏科信息股份有限公司  
 500 Aksu Huafu Color Spinning Co., Ltd. 阿克苏华孚色纺有限公司, Hopson Silicon Industry (Shanshan) Co., Ltd. 合盛硅业 (鄯善) 有限公司, Xinjiang Beidou Tongchuang Information Technology Co., Ltd. 新疆北斗同创信息科技有限公司, Xinjiang Daqo Energy Co., Ltd. 新疆大全新能源股份有限公司, Zhejiang Dahua Technology Co., Ltd. 浙江大华技术股份有限公司  
 501 Joeone Co., Ltd. 九牧王股份有限公司, Xinjiang East Hope Nonferrous Metals Co., Ltd. 新疆东方希望有色金属有限公司, Xinjiang GCL New Energy Materials Technology Co., Ltd. 新疆协鑫新能源材料科技有限公司, Xinjiang Daqo Energy Co., Ltd. 新疆大全新能源股份有限公司  
 502 Nanchang OFilm Technology Co., Ltd. 南昌欧菲光电技术有限公司, Hopson Silicon Industry (Shanshan) Co., Ltd. 合盛硅业 (鄯善) 有限公司, Yili Zhuowan Garment Manufacturing Co., Ltd. 伊犁卓万服饰制造有限公司  
 503 See the XJS-CRS entry for Siemens AG as an exemplar.  
 504 See e.g. LONGi Green Energy Technology Co., Ltd. 隆基绿能科技股份有限公司.  
 505 VF Corporation.  
 506 E.g. Marks and Spencer Group plc.  
 507 See e.g. the XJS-CRS entries for: Abercrombie & Fitch Co., Adidas AG, Aldi Nord, Aldi Süd, Alstom SA (inc. Bombardier), Amazon, ASDA Stores Ltd., Changji Esquel Textile Co., Ltd. 昌吉溢达纺织有限公司, Fast Retailing Co., Ltd. (inc. Uniqlo Co., Ltd.), Hitachi, Ltd., HP Inc., Hugo Boss AG, Jianguo Jinchuang Holding Group Co., Ltd. 江苏今创控股集团有限公司, Lacoste S.A., Lenovo Group Co., Ltd. 联想集团有限公司, Microsoft, MinebeaMitsumi, Inc., New Look Retailers Ltd., Nike Inc., Nokia Corporation, Panasonic Corporation, Puma SE, Ryohin Keikaku Co., Ltd. (inc. MUJI), Skechers USA, Inc., TDK Corporation, Victoria's Secret & Co.  
 508 Ryohin Keikaku Co., Ltd. (inc. MUJI); TDK Corporation; Uniqlo Co. (Fast Retailing Co.)  
 509 Japan Display Inc., LG Electronics Inc.

Other companies have made changes to their use of audits, usually in combination with a decision to exclude products from Xinjiang from their supply-chains.<sup>510</sup> Understandably, some companies are quiet about this.<sup>511</sup> In other cases, the XJS-CRS dataset points to companies terminating relationships with suppliers after they have been targeted for sanctions. For example, Apple terminated a relationship with O-Film Group on this basis. But companies may not always feel compelled to do this. Indeed, a complaint lodged with US CBP alleges that Apple has continued to do business with other firms implicated in Xinjiang forced labour.<sup>512</sup>

Another recurring feature of these corporate responses is the minimalist approach many of them took, which was illuminated further through the confidential interviews undertaken for this study. One interview subject, who has worked closely with Western brands operating in China for over two decades, described it as a “legalist” approach, with firms wanting to know “how much due diligence is enough”. This person emphasized that firms remain driven by a profit-maximization logic in how they handle the question of Xinjiang forced labour.<sup>513</sup> This translates into a reluctance to develop new supply options, unless strictly necessary, because, as another interviewee put it, “[t]he competency and volume of production in PRC is hard to reproduce elsewhere.”<sup>514</sup> Corporate actors are well aware that those firms that *have* chosen to move supply-chains out of Xinjiang have had to bear real short-term costs, not only from developing new supplier arrangements, but also in some cases from having to phase out certain products.<sup>515</sup>

Nevertheless, companies are reluctant to discuss these challenges or their potential solutions openly. Instead, many of their responses point to the need for governments to play a more proactive role, providing clearer guidance to companies on what effective due diligence can look like, or how governments will mitigate the costs to business from supply-chain relocation. Some Western businesses and industry associations argue explicitly that because Xinjiang forced labour is a product of government policy, business cannot solve it – and so it should be left to governments to address.<sup>516</sup> Others report that governments have proven reluctant to provide this kind of guidance.<sup>517</sup> Companies also warn about the growing risks arising from the variation in due diligence obligations across different jurisdictions, which not only increases compliance costs, but may also be encouraging some firms to consider regulatory arbitrage. Jurisdictions with the lowest standards risk becoming dumping grounds for goods made with forced labour.<sup>518</sup>

Finally, what these responses *do not* describe is also telling. While some corporate actors, such as the Fair Labor Association, and EvenTide (a private equity firm), have called on companies to develop timebound transition plans for exiting Xinjiang supply-chains, there is little evidence of concerted efforts by companies to do so, certainly not at a sectoral level. For many companies, despite the rhetoric and growing activity around governmental measures, the risks associated with Xinjiang forced labour have not yet crystallised, and the limited prospect of the risks being realised has not yet led to major shifts in the companies’ business plans or models. For many businesses, as several interview subjects told us, it appears to remain “largely business as usual”.<sup>519</sup> In the next Part we dive deeper into three sectors – cotton, solar and tomatoes – to examine more closely whether this is in fact the case.

### 3. The impacts of Xinjiang sanctions

Historically, sanctions have failed more often than they have succeeded in inducing changes in the behaviour or conduct of those they target.<sup>520</sup> They are more likely to succeed when the state that is targeted (the ‘target’<sup>521</sup>) is small, democratic and weak; when a broad cross-section of states or a large share of a particular global market is involved in the sanctioning coalition imposing or ‘sending’ the sanctions; and when the targeted policy or behaviour is an economic (not a political) position that is not a core value or position for the ruling regime in the target state.<sup>522</sup> None of those conditions hold in this case. China is large, central to the global economy, and a strong autocracy. Only 7 jurisdictions have adopted sanctions (although one of these is the EU, which in effect brings the count to over 30 countries). And, as explained in Part 1, the CCP sees its policies in Xinjiang as a matter of vital national security.

All of this suggests that it will be challenging to use sanctions to address Xinjiang forced labour. Good sanctions design and implementation will be essential, and it is hence the focus of this Part of the study. Having introduced the problem of Xinjiang forced labour (in Part 1), and considered government, Chinese and corporate responses (in Part 2), we now consider the dynamics and impacts of Xinjiang sanctions. This provides a series of insights which form the basis for recommendations for strengthening Xinjiang sanctions (in Part 4).

The impact of Xinjiang sanctions to date is not immediately obvious. Some evidence suggests they are having little impact on those they target. Wang Junzheng, the XPCC’s Communist Party Committee chief, and one of the 4 key individuals targeted by multiple countries to date, was promoted in October 2021 to the top Party role in the Tibet Autonomous Region. Investment in Xinjiang appears to have grown over the last 3 years, as have the export of goods from labour-intensive industries such as those targeted by Western sanctions.<sup>523</sup> Prefectures that have been a focus of poverty alleviation and Labour Transfer efforts appear to have enjoyed some of the highest increases in foreign export volumes.<sup>524</sup> Yet if we dig deeper, the evidence begins to look more complex.

Prices for Xinjiang cotton have reduced significantly in recent months, perhaps in anticipation of the UFLPA coming into force and the potential adoption of a European forced labour instrument.<sup>525</sup> Direct trade between XUAR and the United States declined 61.3 per cent year on year to mid-2021, while trade with the EU rose 131 per cent year on year, and trade with the UK rose 192 per cent.<sup>526</sup> In the same year, XUAR exports to Vietnam rose 109 per cent – which some see as a sign that Vietnam may be one of several states being used to reroute Xinjiang exports to markets where sanctions are now in place, disguising or ‘laundering’ the provenance of those exports.<sup>527</sup>

This contradictory evidence suggests the need for a more detailed analysis of sanctions dynamics, and a framework for understanding the differentiated effect of sanctions. The first section of this Part therefore draws on an extensive review of sanctions literature to provide that framework. Five questions are identified to provide a framework for understanding the dynamics and impacts of Xinjiang sanctions. Using these 5 questions, the remainder of the Part then considers the dynamics of Xinjiang sanctions in 3 distinct sectors, namely cotton, tomatoes and solar.

510 See the XJS-CRS entries for Industria de Diseño Textil, S.A. (inc. Zara SA), Ikea Limited and Primark.  
 511 Interviews 1, 2, 4, 5, 8, 10, 12.  
 512 Kuppersmith 2021.  
 513 Interview 3.  
 514 Interview 7, also Interview 5.  
 515 Stevenson and Maheshwari 2022.  
 516 Interviews 7, 8.  
 517 Interview 5.  
 518 Interviews 5, 6, 8.  
 519 Interviews 3, 7, 8, 12.

520 Clifton Morgan et al. 2014.  
 521 Following convention in the sanctions literature, this study terms the state where sanctions are imposed the ‘sender’, and the state of the entity the sanctions are directed at the ‘target’. These terms can also be used as adjectives, so that a firm in the sending state is a ‘sender firm’ or ‘sender importer’, for example.  
 522 Pape 1997; Drury 2005; Hufbauer et al. 2007; Hendrix and Noland 2010; Peksen 2019.  
 523 Birmingham 2021.  
 524 Zenz 2022b.  
 525 Ji et al. 2022.  
 526 Exports to the EU rose 109 per cent compared to the same time in 2019, suggesting the rise was no mere artefact of pandemic volatility. Birmingham 2021.  
 527 Murphy et al. 2021.

While Xinjiang exports a variety of products into a wide range of global markets, from chili peppers and walnuts to wind turbines and beryllium,<sup>528</sup> these 3 sectors (cotton, tomatoes and solar) have been a particular focus of Xinjiang sanctions activity and enforcement to date, and have been declared as priority sectors for enforcement of the *Uyghur Forced Labor Prevention Act* (UFLPA). To understand how sanctions are playing out in each sector, the study draws on detailed open source analysis, the Xinjiang Sanctions datasets introduced in Part 2, and confidential interviews.

### 3.1 Understanding sanctions dynamics

Over the last 4 decades, scholars have developed a rich body of insights into the dynamics of economic coercion, including formal economic sanctions. This began with studies on the sources and means of coercive economic power,<sup>529</sup> and later developed into detailed studies of the dynamics and effectiveness of formal<sup>530</sup> and informal<sup>531</sup> economic sanctions. Scholars have recognised that sanctions may be imposed not only for instrumental purposes – that is, in order to change the behaviour of the target – but also for expressive or demonstrative purposes – in order to satisfy a domestic audience in the sender state, establish the sender’s reputation for resolve or defend an international institution or norm.<sup>532</sup>

The ‘effectiveness’ of sanctions has been a central and ongoing controversy within the literature. One of the most comprehensive studies found that sanctions lead targets to conform their behaviour as sought by the sender only around one third to one half of the time that sanctions are threatened or imposed.<sup>533</sup> Some studies have even suggested that under certain conditions, sanctions may risk increasing autocratic states’ use of repression.<sup>534</sup> Moreover, assessing impacts and effectiveness is complicated by the difficulty of identifying the intended purpose of any given sanction measure.<sup>535</sup>

As a result, sanctions scholarship has enquired not only into *whether* sanctions work, but also *how* they work. The result is a rich empirical and theoretical literature, offering a wide array of insights unpacking how sanctions are imposed, implemented and impact different actors. This section of the study does not seek to summarise that massive literature. Instead, it draws on this literature to identify five distinct questions that can be used to understand the dynamics of Xinjiang sanctions in specific sectors.

#### 3.1.1 Strengthening policy opponents

Even if sanctions are imposed for expressive or demonstrative purposes – that is, to send signals to domestic or international audiences about the sender’s policy position or resolve – they are typically *framed* in instrumental terms. Indeed, in many cases their actual purpose *is* instrumental: that is, they seek to induce some change of policy or conduct by the target, often in order to conform with some international norm or standard.

In order to induce a change in the target’s policy or conduct, sanctions need to affect the policy – and by extension, the political – dynamics of the targeted state.<sup>536</sup> One of the central questions of sanctions design over the last century has therefore been how to target sanctions so that they induce policy change in the target state, without doing unnecessary harm to those without influence over policy. Over time, policy makers’ answer to that question, and thus sanctions practice, has shifted. Early sanctions design was based on the belief that trade embargoes and economic isolation would induce governments to change their policy position, either through their own governmental initiative or under pressure from their own citizens or constituents. There is indeed robust evidence suggesting a correlation between large costs for the target and sanctions success.<sup>537</sup> Since the 1990s, however, policy makers have sought more surgical, targeted ways to use sanctions to achieve policy change, without imposing collateral harms on the often relatively powerless populace in target states. This produced the shift to so-called ‘smart’ sanctions, which are highly targeted financial, travel and other sanctions that try to change the incentives and positions of specific actors with influence over the target country’s policy-making.<sup>538</sup> However, empirical evidence suggests that targeted sanctions are generally less successful at generating policy concessions than comprehensive embargoes, because they do not impose sufficient costs.<sup>539</sup> This may be one reason why policy makers may now, with the broad-based sanctions against Russia following its invasion of Ukraine, be turning back to a broader embargo-style strategy.

Even if the costs imposed on targets by sanctions are high, if they fall on groups that have little influence over policy, the sanctions are unlikely to succeed.<sup>540</sup> Target selection is hence critical not only as a question of legitimacy but also as a question of effectiveness. Scholars have identified that sanctions are more effective where they have different effects on supporters and opponents of the targeted policy – that is, where they strengthen the position of opponents of the targeted policy, relative to the position of supporters of the policy.<sup>541</sup> If poorly designed, sanctions may actually *strengthen* the position of those supporting the policy, for example by allowing them to generate a patriotic rally-round-the-flag effect,<sup>542</sup> or by using sanctions-induced scarcity to extract rents, offer patronage, and reward loyalty.<sup>543</sup> Sanctions may provide the cover for a target regime to push foreign actors out of a market, giving domestic supporters the opportunity to acquire their vacated market share. This is one way to interpret the patriotic response induced by China’s informal countermeasures punishing Western apparel companies in 2021 (discussed in Part 2).

In a related finding, scholars have concluded that sanctions are less likely to succeed if targeted at autocracies than at democracies, and at single party regimes and military juntas than single-personality regimes (i.e. dictatorships).<sup>544</sup> Both democratic systems and single-personality regimes within target states offer opportunities for sanctions to unsettle political equilibria, leading to a rebalancing that may involve jettisoning the offending conduct or policy. In more institutionalized autocracies, there are fewer entry-points for sanctions to generate such disruption, and rulers tend to be better at accessing alternative resources with which to secure continued loyalty and compliance. More institutionalized regimes also appear to have better control of information apparatus and political discourse, allowing them to frame sanctions as an external attack on the nation as a whole. Again, we may see this dynamic at play in China, where the CCP has been diligent in portraying Xinjiang sanctions as an effort to humiliate and ‘slander’ China as a whole.

Scholars have also identified that the impact of sanctions within the target state is mediated by the sending state’s exposure to international markets and prior factor endowments. In countries with open trade regimes, owners and intensive users of the abundant factor of production (capital, labour or land) tend to hold economic power, which is why in countries with open trade orientations, trade sanctions are more likely to be effective if they decrease real rates of return to the abundant factor of production. In countries or sectors which are more closed, it is those who control scarce factors that hold greater economic power, and in order to succeed sanctions will need to reduce real rates of return to scarce resources.<sup>545</sup> While economic power does not necessarily correlate to political power, this tends to suggest that sanctions may need to vary depending on such prior factor endowments. In China, where trade is relatively open and labour is the abundant factor of production, trade sanctions may therefore need to operate to reduce real rates of return to labour in order to be successful. However, China’s capital markets are relatively closed, suggesting that *capital market* sanctions (discussed further below) may need to reduce real rates of return to capital in order to be successful through this vector. That means reducing returns to Xinjiang investments.

In examining the operations of the Xinjiang sanctions regime, therefore, the first question to ask is: *Will the sanctions strengthen opponents of the targeted conduct or policy?*

528 Bukharin 2022.  
 529 Keohane and Nye 1977; Baldwin 1985.  
 530 Kirshner 1997; Blanchard and Ripsman 1999; Drezner 2000, 2011; Allen 2005; Hufbauer et al. 2007; Early and Cilizoglu 2020.  
 531 See especially Lim and Ferguson 2022.  
 532 Galtung 1967; Renwick 1981; Leyton-Brown 1987; Lundborg 1987; Tsebelis 1990; Mack and Kahn 2000; Elliott 2010; Peterson 2013; Jones and Portela 2020.  
 533 Clifton Morgan et al. 2014.  
 534 See esp. Peksen 2009.  
 535 Jones and Portela 2020.  
 536 Lektzian and Patterson 2013.  
 537 Barbieri 1996; Hufbauer et al. 2007; Akoto et al 2020.  
 538 Cortright and Lopez 2002; Drezner 2011; Schott 2021.  
 539 Drezner 2015.

540 Kirshner 1997; Blanchard and Ripsman 1999, 2013; Mack and Khan 2000; Lektzian and Souza 2007.  
 541 Kaempfer and Lowenberg 1988; Kaempfer et al. 2004.  
 542 Galtung 1967; Pape 1997; Weiss 1999.  
 543 Fayazmanesh 2003; McLean and Whang 2014; Pospieszna et al. 2020.  
 544 Marinov 2005; Escribà-Folch and Wright 2010, 2015; Peksen 2019.  
 545 Lektzian and Patterson 2013.

### 3.1.2 Exploiting cost asymmetries

Sanctions create winners and losers. These winners and losers are not only within the target state. They also include other players in the market in which a targeted firm or sector operates, including competitors and importers located within the sending state itself.<sup>546</sup> Consequently, while early sanctions studies looked at how senders could maximize costs for targets,<sup>547</sup> later studies recognized that sanctions success depends not only on the costs imposed on targets, but also the costs imposed on actors within sending states, or those otherwise influential over sending state policy-makers (such as foreign owners).<sup>548</sup>

How sanctions play out is a strategic process, depending both on relative costs and benefits as between the players, as well as on signalling between them. Sanctions succeed when the sender perceives the costs as low relative to the gains flowing from the target's compliance, and the target perceives the costs of sanctions as high relative to the costs associated with compliance.<sup>549</sup> If information was perfect, sanctions would never be imposed, because sender and target could identify the level of sanction at which such conditions were met and adjust costs and policy to that equilibrium point. The fact that sanctions are imposed thus implies that one of the parties is wrongly estimating the other's costs, or their willingness or ability to endure the resulting costs.<sup>550</sup> Sanctions are, in that sense, a test of what Keohane and Nye term the parties' 'vulnerability'.<sup>551</sup>

Well-designed sanctions will therefore be designed to exploit cost asymmetries: situations in which the target is vulnerable relative to the sender. The target's 'exit costs' – i.e. the costs of developing a new supplier, market or product to replace lost business from the sanction sender – must be high relative to those of the sender.<sup>552</sup> This requires an assessment of each of the microfoundations of vulnerability – meaning parties' capabilities and options, taking into consideration market structure.<sup>553</sup> Are there other nations or business partners willing to keep trading with the target, and do they have demand that can fill any void left by the sanction sender? How elastic is that demand? Even if there is adequate latent demand to fill the sanction sender's void, can the target reorganise sufficiently quickly and cost-effectively to meet that demand, or will third parties use the resulting market disruption to outcompete the target and take its market share?<sup>554</sup>

Demand elasticity may depend on whether the goods in question are homogenous or highly differentiated. Homogenous goods tend to be more easily substituted, while differentiated goods may be harder to substitute. Trade theory suggests that for a homogenous good with high substitution elasticity – such as mineral commodities and some agricultural commodities – only a coalition of sanction senders that account for more than half of the market for that good can influence the terms of trade.<sup>555</sup> Another question that may therefore be relevant when considering cost asymmetries, is what portion of the global market for specific goods the sanctioning coalition represents.<sup>556</sup> Empirical evidence supports the hypothesis that increased market share in the sanctioning coalition increases the chances of success.<sup>557</sup> Xinjiang sanctions may thus face challenges here, since the sanctioning coalition currently includes neither Islamic states,<sup>558</sup> nor the Central Asian states that receive over 75 per cent of all direct international exports from Xinjiang.<sup>559</sup> (We return to this concern in Part 4.)

The involvement of international institutions (and the multilateralization of sanctions) is also positively and robustly correlated to sanctions success.<sup>560</sup> Western countries have not attempted to institute sanctions on Xinjiang through the United Nations Security Council, since China enjoys a blocking veto within the body, although there are some signs of a slow but steady growth in support for statements of concern in other UN forums.

Trade structure also appears to be relevant to sanctions effectiveness. Scholars differentiate between *intra-industry trade*, where similar products from within the same industry are exchanged, and *inter-industry trade*, where goods from one industry tend to be traded for goods from another. If the trade relationship between a sanction sender and a target is, prior to the imposition of sanctions, characterized by a high proportion of intra-industry trade, targets tend to have more options for replacing lost sender custom through domestic production or third-party business. If the relationship has a higher proportion of inter-industry trade, then targets can be vulnerable to sanctions imposed on strategically important goods.<sup>561</sup>

All of these factors point to a common question – the second in our analytical framework: *Do sanctions exploit cost asymmetries?*

### 3.1.3 Trade adaptation strategies

Whether or not sanctions seek to exploit such asymmetries, firms and states involved in sanctions processes enjoy agency. They can make their own choices about how to respond to sanctions. These will be shaped by incentives created by their strategic and policy environment, including market structure, but firm-level choices still matter. So the third question we can ask to understand sanctions dynamics is: *What trade adaptation strategies will result from these sanctions?*

Trading firms (whether in target, sender or third states) have three options for dealing with the costs imposed by sanctions, as recently explained by Ferguson, Waldron and Lim:

- trade reallocation – selling sanctioned products to alternative international or domestic markets,
- trade deflection – circumventing sanctions via intermediaries, and
- product transformation – altering production processes to produce and sell different products or similar products not covered by sanctions.<sup>562</sup>

*Trade reallocation* depends on a variety of factors such as access to alternative destination markets, which may be a function of both firm-level capabilities and inter-state trade negotiations, as well as access to bridging capital and supply networks. Both sides of the trading relationship matter.<sup>563</sup> If the sanction sender's market represents a large proportion of global demand, targeted exports may have few reallocation options.<sup>564</sup> If the portion of demand for target exporter goods in the sanction-sending state is low, and product homogeneity is high, then reallocation is more likely. The more homogenous the product, the more seamless reallocation into alternative markets appears to be.<sup>565</sup>

On the supply side, if supply is inelastic, then as the sanction sending state drawing on supply from new (third country) suppliers will create gaps elsewhere to which the targeted exporter can then reallocate.<sup>566</sup> However, the targeted exporter may have to compete with other, potentially new, market entrants, so reallocation may depend on firm-level factors shaping their competitive advantage, such as human capital, access to financial capital and access to supplier networks. Market entry is likely to be harder the more differentiated a product is;<sup>567</sup> though, equally, new entrants may face greater start-up costs and barriers to entry. In such circumstances, sanctions may need to be supplemented by industrial policy intended to rapidly create new sources of supply on which sanctions senders can draw.

When will *trade deflection* emerge as firms' preferred adaptation strategy? Where there is scope to avoid (or comply with) sanctions by re-routing supply through a third country. Although this may in some circumstances be legal, it nevertheless mirrors the decision logic of illegal sanctions evasion and circumvention of tariffs and trade measures, which have been explored by significant scholarly literatures.<sup>568</sup> The greater the importing firm's dependence on the targeted product or entity, the more likely it is to encourage the exporter to engage in trade deflection, other things remaining equal. But other things are *not* necessarily equal, since the sanctioning state can in fact change importing firms' cost perceptions by increasing the burden on importers (for example by adopting a rebuttable presumption that goods from a certain firm or region are tainted by forced labour, as both WROs and the UFLPA do), by increasing the probability of enforcement, or by increasing penalties.

546 Chen and Cooper Drury 2000, p. 5.  
 547 See eg Doxey 1980, pp. 77-79; Drury 1998, p. 508; Hofbauer et al. 2007.  
 548 Farmer 2000; Lim and Ferguson 2022.  
 549 Eaton and Engers 1999.  
 550 Kaempfer and Lowenberg 2007, p. 891.  
 551 Keohane and Nye 1977; Chan and Cooper Drury 2000, p. 9.  
 552 Peterson 2014; Peksen and Peterson 2016; Lim and Ferguson 2022.  
 553 Dashti-Gibson, Davis, and Radcliff 1997; Drury 1998; Bapat et al. 2013; Peksen and Peterson 2016; Ferguson, Waldron and Lim 2022.  
 554 Kaempfer and Lowenberg 2007.  
 555 Gardner and Kimbrough 1990.  
 556 Martin 1992; Kaempfer & Lowenberg 2000; Bapat and Clifton Morgan 2009.  
 557 Kaempfer and Lowenberg 2007; Alexander 2009.  
 558 Wani 2021.  
 559 SCMP 2021.

560 Bapat et al. 2013; Peksen 2019.  
 561 Akoto et al. 2020.  
 562 Ferguson, Waldron and Lim 2022, p. 3.  
 563 Gholz and Hughes 2021.  
 564 Ferguson, Waldron and Lim 2022, p. 6.  
 565 Ferguson, Waldron and Lim 2022.  
 566 Ferguson, Waldron and Lim 2022;  
 567 Wittwer and Anderson 2021.  
 568 See e.g. Kaempfer and Lowenberg 1999; Ferrantino, Liu and Wang 2012; Rotunno, Vézina & Wang 2013; Early 2015; Haidar 2017; Liu and Shi 2019.

This has two direct implications. First, domestic enforcement budgets and strategies are a significant determinant of sanctions effectiveness, as well as of sanctioned exporters' choice between reallocation, deflection and product transformation.<sup>569</sup> This in turn means that regulatory design that lowers the cost of enforcement (i.e. makes it more replicable and scalable) will increase the chance of effectiveness. Enforcement strategies that rely on costly, in-depth, case-by-case investigation and analysis may not succeed in deterring deflection or evasion. Sanctioning states thus have a strong incentive to enlist others – third countries, and the private sector – in compliance and enforcement activity. This is why financial sanctions rely heavily on bank compliance programmes, which are incentivized through very heavy fines for banks that fail to meet requisite standards. Similarly, the design of the UFLPA and its associated enforcement strategy<sup>570</sup> seems intended to enlist American business in defraying the costs of sanctions compliance and enforcement. Nonetheless, enforcement strategies may need to vary from product to product. For example, it may be harder for customs agents to determine the origin of homogenous products which can be admixed, than of highly differentiated products which are often packaged and labelled.<sup>571</sup>

Second, to be effective, sanctions enforcement in the sender state must impose higher costs on a firm than sanctions 'non-enforcement' efforts in the target state.<sup>572</sup> China's formal and informal counter-measures (discussed in Part 2), seem to represent effective 'non-enforcement' arrangements that make some Western firms – especially those exposed to the costs China can impose, for example through informal boycotting of retailers – hesitant to comply with Western sanctions. Policy actors in sanctions sending states may need to consider ways to blunt the impact of these Chinese counter-measures, for example by encouraging online platforms to take action to impede online harassment.

Finally, *product transformation* involves physically changing what is being produced for sale, so that it falls outside or can be passed off as falling outside the sanctioned category of goods. Whether this is feasible may depend on market conditions within the target state and firm-level factors. It may also depend on product adjacency – whether production can easily be adapted to create an output the market (and foreign regulators) recognizes as different. This is a question of both input substitutability and market demand for these adjacent products.<sup>573</sup>

'Product transformation' is, in a sense, what Xinjiang sanctions in fact drive at: encouraging the CCP and producers to transform products by changing the policy environment that makes forced labour a product input for goods made in Xinjiang or with labour from Xinjiang. But we can also imagine forms of product transformation that do not in fact involve compliance with Western sanctions, for example changes in production and manufacturing processes designed to pass off one sanctioned good (i.e. goods from a particular producer) as another (i.e. goods from another producer).

In sum, as Ferguson, Waldron and Lim explain, different market conditions are likely to encourage different target firm adaptation strategies:

- for reallocation: the sender state's concentration in global demand, the elasticity of global supply and the homogeneity of the sanctioned product;
- for deflection: the target entity's concentration in global supply, the elasticity of sender-state firms' demand and the sender's enforcement capacity; and
- for transformation: the substitutability of target firms' production inputs and global demand for adjacent products.<sup>574</sup>

### 3.1.4 Sectoral body conduct

Much of the sanctions literature treats the state as the primary unit of analysis. But the literature has also generated a number of insights that point to the importance of understanding the political economy of sanctions at the sectoral level. Sectoral and industry groups emerge as key players in the imposition of sanctions, working either to generate positive externalities through acquiring sanctions protection and imposing costs on foreign competitors, or to block sanctions when they may create new costs for the sector.<sup>575</sup> This picture is complicated by the emergence of transnational business coalitions and global value chains, where sanctions may impact the same value-chain – or even the same firm – differently at different points, depending on the geography of value-adding processes.

However, precisely because of this transnationality, sectoral bodies may be able to change the dynamics of bargaining and signalling between the parties. States are more likely to adopt sanctions, and less likely to comply with them, if they expect future conflict.<sup>576</sup> Signals from third parties that are trusted by both parties to the dispute may be important in disrupting the adversarial spiral that can easily set in, and transnational sectoral groups may be able to help change the parties' expectations of future conflict by giving them each an interest in a shared cooperative venture or collaborative resolution. This may require both the reframing of narratives, to focus on shared interests and actions, and provision of positive incentives for engagement and trust-building. Some of the most successful efforts to tackle state-backed forced labour at scale have, in fact, involved just such a role for industry bodies, for example in the transformation of Uzbekistan's cotton sector.<sup>577</sup>

Consequently, the fourth question in our analytic framework is: *What role do sectoral bodies play?*

### 3.1.5 Capital market leverage

Finally, scholars are increasingly examining the relatively recent turn by states towards the use of financial and capital market sanctions. This turn appears to be driven by a belief that these sanctions can generate economic costs similar to those of broader-based trade sanctions, but with fewer negative externalities.<sup>578</sup>

Three insights from this emerging literature stand out for our study of Xinjiang sanctions. First, both import bans and investment restrictions appear to put downward pressure on the stock markets of targeted states, as investor uncertainty about future export growth drags down stock prices. However, this appears to depend on whether exporters can find substitute export markets (trade reallocation) or financing (what we might call financing substitution).<sup>579</sup> Lower stock prices mean higher costs of capital, while financing substitution itself may be a sign that target firms have been forced to find (more expensive) sources of finance than were available from the sending state.

Second, while there is evidence that the imposition of (various types of) sanctions reduce future investment flows more broadly (and not just stock prices),<sup>580</sup> it also appears that domestic investors in sender states tend to engage in what we might call 'investment deflection' – rerouting outward investment flows to states that can provide an indirect conduit to the sanctioned economy.<sup>581</sup> This is also likely to mean increased capital costs for recipient (target) firms, because sender state investors will seek to pass on the costs of working through an intermediary, but the increase may be lower than it would be if foreign investors exited these investments altogether.

Together, these two effects point to the fifth question we can ask to understand sanctions dynamics: *Do sanctions make use of capital markets leverage?*

Yet this emerging sub-literature also points to one final consideration arising from the use of financial sanctions and capital market controls, namely their systemic effects. Financial sanctions have been a powerful weapon for the US because of its dollar hegemony and global capital markets' ultimate reliance on the US banking system.<sup>582</sup> The danger is that by cutting off actors from this system, as the US has recently done on an unprecedented scale in response to Russia's invasion of Ukraine, the West may create incentives for those most vulnerable to such exclusion to seek to develop alternative financial systems, thereby diluting the potency of the financial sanctions weapon.<sup>583</sup> There is, in other words, a risk of systemic decoupling that we should also factor into our analysis of Xinjiang sanctions. This is a concern to which we return in Part 4.

Before we discuss such system-level effects, however, we must first consider the sector-specific dynamics and relationships that shape vulnerability and how sanctions play out.<sup>584</sup> Different sectors are subject to different market dynamics, have different relationships to the state and to capital markets, and – in the case of Xinjiang – have different workforce and thus forced labour risk profiles. The remainder of this Part of the study examines the dynamics of Xinjiang sanctions with respect to three sectors, namely cotton, tomatoes and solar panels, before a final discussion identifies the insights that emerge across these three sectors.

569 See generally Krasner 1977; Betz 2019; Early and Preble 2020; Early and Peterson 2021.  
 570 See US CBP 2022e.  
 571 Ferguson, Waldron and Lim 2022, p. 7.  
 572 Clifton Morgan and Bapat 2003.  
 573 Ferguson, Waldron and Lim 2022, p. 7.  
 574 Ferguson, Waldron and Lim 2022.  
 575 Drury 2001; Lim and Ferguson 2022.

576 See Drezner 1998, 1999, 2001.  
 577 Cockayne 2021.  
 578 See Torbat 2005; Shagabuddinova and Berjikian 2007; Eckert 2008; Loeffler 2009; Zarate 2013; Drezner 2015.  
 579 Barry and Kleinberg 2015.  
 580 Malnight 2017.  
 581 Barry and Kleinberg 2015.  
 582 Drezner 2015.  
 583 Drezner 2021.  
 584 Ferguson, Waldron and Lim 2022, p. 19.

### 3.2 Cotton

The cotton sector, including production, processing, and garment, textile and apparel manufacturing, has been at the centre of Western sanctions efforts in response to Xinjiang forced labour. Cotton, garment and textile products and firms have been the focus of both sanctions activity and the Chinese counter-measures described in Part 2 above. This is also the sector in which the impacts of Xinjiang sanctions have been most visible and costly to date. This section explains the sector's connections to forced labour, the sanctions that have been adopted and the dynamics of those sanctions' impacts – including cost asymmetries, impacts on policy influencers, how the trade in Xinjiang cotton is adapting, the unexpected role of sectoral bodies, and the emerging role of capital markets.

#### 3.2.1 Xinjiang's cotton sector

Around one in five garments currently manufactured worldwide likely contains cotton made with Xinjiang forced labour.<sup>585</sup> Xinjiang produced 91 per cent of all cotton grown in China in 2021,<sup>586</sup> and China is the second largest cotton producer in the world.<sup>587</sup> Cotton production has been central to the PRC's development strategy for XUAR since the 1950s. For much of this time, cotton farming was a major focus of the land reclamation and Sinification processes led by the XPCC, with the government sponsoring Han migration from other provinces to support XPCC projects. Today, around 40 per cent of XUAR production is XPCC controlled, mainly in northern Xinjiang.<sup>588</sup> As of 2020, 110 XPCC regiments (Divisional sub-units) grew cotton.<sup>589</sup> They often contract local farmers to provide cotton: more than half of Xinjiang's farmers (of whom over 70 per cent are from an ethnic minority) grow cotton. Cotton is a major source of income for farmers,<sup>590</sup> many of whom long operated under quota and monopsony arrangements forcing them to sell to XPCC at fixed rates.<sup>591</sup> In the 1990s, land liberalization policies led to many Uyghurs being forced to sell their land to prominent farmers or Han Chinese with close ties to the CCP, often leaving dispossessed farmers ("surplus rural labour") to turn to waged work, and vulnerable to indebtedness and exploitation.<sup>592</sup> Industrial cotton farming has thus been central to the process of proletarianization – and the strategy of stabilization – at the heart of the CCP's economic development strategy for Xinjiang.

Over the last decade, that strategy has evolved to focus not just on primary production but also related and secondary industry. The CCP has worked to upgrade Xinjiang's cotton processing (ginning and spinning) capabilities, and to jumpstart local textile, garment and manufacturing industry. By 2019, over 80 per cent of all of China's cotton processing companies were present in Xinjiang. The sector may now employ as many as 600,000 people in Xinjiang.<sup>593</sup> The CCP's official plan since 2014 has been to draw more than 1 million people into the textile industry in XUAR by 2023, with almost two thirds coming from southern Xinjiang, where Uyghurs form a majority.<sup>594</sup> The aim may be to connect the region to Central Asia through Belt and Road Initiative-based exports; much of the region's raw and unprocessed cotton exports go to Central Asian and Russian markets.<sup>595</sup>

Massive fiscal transfers have underwritten this industrial upgrading strategy. Since 2014, Beijing has directly subsidized cotton production in Xinjiang, setting a price floor. If the market price drops below that floor, the government makes up the difference through direct payments. Over USD 2.1 billion was paid out to local producers in 2018-2019.<sup>596</sup> Separate subsidies worth around USD 450 million per year reportedly support seed purchases, transport of cotton from Xinjiang to mills in the south and east of China, and capital equipment purchases.<sup>597</sup> The government has also adopted a range of market and trade policies designed to protect the industry, from high tariff walls to production quotas.<sup>598</sup> This government support has been critical to the dramatic rise in the number of cotton, textile, and garment factories operating in the Xinjiang, from 680 in 2014 to over 3,500 in 2019.<sup>599</sup> The government has also fostered private investment into XUAR by firms from eastern China through pairing schemes and significant tax and administrative concessions.<sup>600</sup> For example the Hundred Villages Thousand Factories programme paired enterprises in Zhejiang province (where President Xi was Party Secretary from 2002 to 2007) with the Aksu area of Xinjiang. This led to the development of over 120 projects including a major industrial park.<sup>601</sup>

Xinjiang's place today in China's textile, garments and apparel sector can be illustrated through the recent history of some of the top Chinese firms in the sector. For example, Ruyi Group is China's largest textile and garment firm. It began as a state-owned enterprise (SOE), before being privatized two decades ago. Over the last decade it has developed into a vertically integrated producer and purveyor of textile and garments, with operations in China, Japan, Australia, New Zealand, India, Pakistan, the UK, Germany, and Italy. Its subsidiary Shandong Ruyi participates in the Hundred Villages Thousand Factories pairing programme mentioned above, and it has been tied to Uyghur forced labour for several years.<sup>602</sup> A Ruyi subsidiary, SMCP, has been under investigation by French prosecutors for concealing forced labour and for "crimes against humanity" in Xinjiang since July 2021.<sup>603</sup> Meanwhile, Lu Thai, one of the largest shirt manufacturers in the world, has moved significant spindle capacity into Xinjiang from eastern Chinese provinces since 2018, responding to incentives from government. This has reportedly involved significant hiring of ethnic minority "surplus rural labour" within the framework of China's poverty alleviation programming.<sup>604</sup>

The Xinjiang cotton sector seems always to have relied on various forms of forced labour for its viability.<sup>605</sup> Local authorities historically impressed large numbers of minority and child workers, from the age of roughly 9 years old, into harvest "work-study" and "help with agriculture" programmes that involved seasonal cotton harvesting.<sup>606</sup> While elementary school children were exempted starting in 2006, XUAR authorities continued to require middle-school age and older children to participate.<sup>607</sup> The XPCC has historically been a key player in this arrangement and may have also played a role in the use of prison labour in the cotton sector.<sup>608</sup>

The connection between the sector and forced labour has tightened since 2014 with the emergence of the new governance strategy for Xinjiang, which was discussed in Part 1 of this study. Whereas many workers from outside XUAR had previously travelled to the region for the annual harvest, the new policy involved local governments aggressively recruiting local workers.

Local governments were given numerical targets for people to recruit from "surplus labour" into industrialized jobs, particularly in the cotton, textile and apparel industries, with financial and other rewards and penalties being attached to these targets.<sup>609</sup> Between 2014 and 2018, some 350,000 cadres were mobilized each year to visit minority households throughout Xinjiang and convince them to work in these industries.<sup>610</sup> From 2017, the process of transfer of minority workers from their homes in Xinjiang to assigned workplaces – both inside Xinjiang and beyond – was increasingly centrally organized, with government cadres physically supervising the transfer of small groups of workers along dedicated transfer routes.<sup>611</sup>

Zenz estimates that in 2018, some 570,000 people were pushed into cotton picking.<sup>612</sup> A recent geospatial analysis found that between 2015 and 2020 cotton harvest and milling areas in Xinjiang were increasingly militarized through the construction of walls and guard towers.<sup>613</sup> Further down the value-chain, textile, garment and apparel companies that had invested in the region were among the workplaces to which workers were assigned through the Labour Transfers scheme. Many have subsequently boasted about their use of surplus rural labourers as a contribution to government poverty alleviation efforts and as a form of 'social responsibility'.<sup>614</sup> The VSETC system (discussed in Part 1) was also brought into play, with manufacturing facilities being built near internment camps, and accounts of detainees being forced to work within them – with a subsidy paid to the facility operator.<sup>615</sup> Some 'graduates' of VSETCs have also been placed into work placements in cotton-related apparel and garment manufacturing sectors, including in factories outside Xinjiang.<sup>616</sup> And the mass internment of Uyghur and other minority males in the VSETC system has increased pressure on females left behind to participate in the cotton harvest and the Labour Transfers scheme, in order to increase household incomes.<sup>617</sup>

585 UK FCDO 2021.  
 586 Ji et al. 2022.  
 587 GT staff reporters 2021c.  
 588 Goldkorn 2020.  
 589 China News Network 2021.  
 590 SCMP 2021b.  
 591 Bao 2018.  
 592 Cliff 2016; Radio Free Asia 2016; Byler 2018; US CBP 2022e, p. 20; Murphy, Salcito and Elimä 2022, p. 26; Murphy et al. 2021, pp. 11-12.  
 593 SCMP 2021b.  
 594 See Byler 2019; XUAR Government 2018; Zenz 2019b, 2021e.  
 595 Lehr and Bechrakis 2019, p. 2.  
 596 ICAC 2019.  
 597 Interview 5.  
 598 Research and Markets 2019.  
 599 Murphy et al. 2021.  
 600 Lehr and Bechrakis 2019, p. 9; Zenz 2019b; Morgret 2022.  
 601 Lehr and Bechrakis 2019.

602 Xu et al. 2020; CEFLUR 2020.  
 603 Reuters 2021c.  
 604 Han et al. 2019; Lu Thai 2019, p. 51;  
 605 See especially Zenz 2020a.  
 606 See the US Department of Labor citation for 'China – Cotton' in the List of Goods Produced by Child Labor or Forced Labor, available at [https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods-print?items\\_per\\_page=25&combine=cotton](https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods-print?items_per_page=25&combine=cotton). See also CECC 2008, 2011.  
 607 PRC Central Government Portal 2006.  
 608 Han et al. 2019.  
 609 See generally Xu et al. 2020; Hendri  
 610 Zenz 2020a.  
 611 Zenz 2020a, pp. 16-17.  
 612 Zenz 2020a.  
 613 UK FCDO 2021.  
 614 See the many corporate statements in XJS-CRS.  
 615 Zenz 2019b; Murphy et al. 2021, p. 17; US CBP 2022e, p. 19; see also the accounts of survivors in the Xinjiang Victims Database, and the discussion thereof in Murphy et al. 2021.  
 616 Murphy et al. 2021; US CBP 2022e.  
 617 Radio Free Asia 2017.



Access to underpaid, coerced labour has been critical to making ginning, spinning and textile and apparel manufacturing viable in XUAR, given otherwise adverse cost structures, including the distance to market and low productivity rates.<sup>618</sup> Indeed, the government has explicitly permitted companies in Xinjiang to pay minorities below the minimum wage.<sup>619</sup> The incorporation of large numbers of minority workers into the industry has also served the CCP's larger governmental ends in Xinjiang – seeking to govern both people's outer and inner lives. Within these industries, researchers have identified

*“indicators of forced labor, including the restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive working and living conditions. Workers are also subjected to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and threats to family members. Further, some workers have been subject to military-style management, government indoctrination, and are paid below the minimum wage.”*<sup>620</sup>

Zenz argues that displacement of workers from dispersed rural settings into centralized work settings facilitated government surveillance, while also helping to transform minority workers' thoughts and habits around work.<sup>621</sup> The children of workers transferred away from home to work in the cotton harvest or in other industrial roles were institutionalized into state care promoting Sinification while simultaneously weakening minority cultural heritage.<sup>622</sup>

It is perhaps unsurprising, therefore, that the cotton sector and adjacent industries such as textile and apparel manufacturing have been frequent targets for Western countries' Xinjiang sanctions. The XJS-GMS dataset records a wide variety of measures adopted, primarily by the US, against cotton sector-related targets. Examples include US Withhold Release Orders directed at specific firms,<sup>623</sup> as well as Entity List designations<sup>624</sup>; industry-wide measures<sup>625</sup>; and sanctions targeted at specific entities and individuals.<sup>626</sup>

Anecdotal reports suggest that these measures, particularly those disrupting imports and exports, have cast a shadow over the sector. As US Congress began taking action to restrain exports, there was a rush of exports of John Deere cotton-picking machinery to Xinjiang. US CBP has reportedly detained import shipments of goods made by multiple brands, including Uniqlo and Skechers, for potentially containing Xinjiang forced labour.<sup>627</sup> Canada, too, has detained a shipment.<sup>628</sup>

Many in the sector saw the experience of Changji Esquel Textile Co. Ltd (溢达纺织有限公司) as offering a salutary lesson. In 2019 Esquel, which is the world's largest maker of woven cotton shirts and headquartered in Hong Kong, had over 35,000 employees operating in China, Sri Lanka, Vietnam and Mauritius. It ran a joint venture cotton farm with the XPCC in Kashgar since 1998, as well as several mills in Xinjiang. In 2019 and 2020 it was reported to have been a user of Uyghur labourers organized through the Poverty Alleviation through Labour Transfers programme.<sup>629</sup> Esquel denies this.<sup>630</sup> Esquel was amongst the earliest firms to be designated on the US Entity List in relation to Xinjiang, in July 2020.<sup>631</sup> By its own account (offered in a later lawsuit), the impacts of this designation were significant. The company was prevented from receiving equipment and spare parts from the US for its spinning mill and consumer laptops. It soon lost customers including US brands Michael Kors, Nike, Gap Inc., PVH (including Calvin Klein and Tommy Hilfiger) and others such as French brand Lacoste, representing a loss of hundreds of millions of dollars in revenue. It also lost cotton suppliers from Australia and the US, a Japanese textile machinery supplier, a Swiss testing equipment supplier, and two US IT suppliers, and it was forced to close its factories in Mauritius (which had focused on manufacturing for the US market), costing over USD 10 million in severance payments, and over 7,000 jobs worldwide. Esquel appealed its Entity List designation, but lost.<sup>632</sup> In December 2021 the company further became a focus in a criminal complaint brought in the Netherlands by the European Center for Constitutional and Human Rights against brands sourcing Xinjiang cotton via Esquel. Related complaints had already been lodged in France and Germany.<sup>633</sup>

Many in the apparel industry took notice of Esquel's experience.<sup>634</sup> Yet it remained unclear for much of 2021 whether this would translate to a larger slowdown in trade of Xinjiang cotton, as some evidence began to suggest.<sup>635</sup> Some observers suggested that Western brands were beginning to walk away from Xinjiang cotton – and even to reconsider exports from China more broadly, given the risks of Xinjiang cotton being found in goods made elsewhere in the PRC.<sup>636</sup> Yet over the course of 2021, China's exports of home textiles – many made with Xinjiang cotton – rose year on year by almost 50 per cent, spurred by pandemic stimulus packages in the West that drove a rise in the consumption of home goods.<sup>637</sup>

The adoption of the UFLPA at the end of 2021, and talk of a European import ban, appear to have led many firms to decide in favour of risk avoidance. By June 2022, the prices Xinjiang cotton and yarn producers could secure were down around 30 per cent, while Xinjiang cotton inventories were up 50 per cent over a year earlier. Many downstream clients, especially those focused on foreign markets, appeared to be abandoning Xinjiang cotton.<sup>638</sup> Others were also steering a wide berth, as the complexity of the supply-chain suggested it would be difficult for many importers and retailers to accurately assess whether they were in fact importing Xinjiang cotton, absent significant upgrades in traceability capabilities. Yet the regulatory approach taken in the US WROs and UFLPA required them to know the provenance of all inputs to their goods. With cotton traded as a commodity and supply from different sources intermingled during production, this created a strong incentive for garment, textile and apparel firms with ties to the US market to take a precautionary approach.<sup>639</sup> At the same time, however, for those firms with retail or brand exposure in China, the Chinese government's willingness to exert both formal and informal pressure, including strategic regulation, blacklisting and boycotts (as discussed in Part 2 above), created a significant concern. Many firms appear to have concluded that the way to minimize risks in the short terms was simply to stay quiet and remain out of the spotlight.<sup>640</sup>

618 Lehr and Bechrakis 2019, p. 7.  
 619 Li 2018; Lehr and Bechrakis 2019.  
 620 US CBP 2022e.  
 621 Zenz 2020a.  
 622 Zenz 2020a, p. 16.  
 623 M#003 – WRO 33 on Hetian Taida Apparel Co.; M#080 – WRO 36 on Hero Vast Group; M#083 – WRO 39 on Baoding LYSDZ Trade and Business Co., Ltd.; M#084 – WRO 39 on Yili Zhuowan Garment Manufacturing Co., Ltd.; M#086 – WRO 40 on Xinjiang Junggar Cotton and Linen Co., Ltd.; M#097 – WRO 42 on XPCC cotton.  
 624 See e.g. M#054 – Aksu Huaifu Textiles; M#056 – Changji Esquel Textile Co. Ltd; M#062 – Hetian Taida; M#069 – Nanjing Synergy Textiles Co. Ltd.  
 625 M#001 – US DoL listing; M#112 – WRO 43 on all XUAR cotton; M#273, 275 and 278 – US DoL List (cotton, garments and apparel); M#308 – UFLPA; M#314 and 316 – disclosure rules proposals.  
 626 M#133 and M#137 and M#141 and M#280, 284, 288, 291, 292 – EU sanctions on Wang Junzheng, including for his working overseeing forced labour in cotton fields; M#134 and M#139 and M#143 – EU sanctions on Zhu Hailun; M#144 and M#145 – EU asset freeze on XPCC Public Security Bureau, including for links to cotton sector forced labour. The same for Iceland (M#147, 151, 155, 158, 159), Liechtenstein (M#161, 165, 169, 172, 173), Norway (M#175, 179, 183, 186, 187).  
 627 Reuters 2021b; Burley 2021; Reyes 2022;  
 628 Chase 2021.

629 Dou and Deng 2019; Xu et al. 20  
 630 See <https://www.esquel.com/news/correcting-record-about-esquel%E2%80%99s-presence-and-operations-xinjiang>.  
 631 See XJS-GMS M#056.  
 632 See generally Xu Klein 2021; and *Changji Esquel Textile Co. Ltd. v. Raimondo and United States*, Court No. 1:21-cv-01798 (D.D.C.) Esquel's complaint is available at [https://www.thefashionlaw.com/wp-content/uploads/2021/07/gov.uscourts.dcd\\_233078.1.0.pdf](https://www.thefashionlaw.com/wp-content/uploads/2021/07/gov.uscourts.dcd_233078.1.0.pdf). The decision rejecting the appeal is at <http://docs.chinatradermonitor.com/esquel-opinion.pdf>.  
 633 ECCHR 2021.  
 634 Interviews 1, 2, 3, 7, 11.  
 635 Hayashi 2021.  
 636 Barrett and McGregor 2021.  
 637 Zhou 2021.  
 638 Ji et al. 2022.  
 639 Interviews 1, 2, 7.  
 640 Interviews 2, 3, 6, 11.

### 3.2.2 Do sanctions strengthen opponents of forced labour?

Western sanctions on Xinjiang cotton clearly made Chinese policy actors feel threatened, eliciting the significant counter-measures and pushback against the ‘Xinjiang forced labour’ narrative described in Part 2. The CCP clearly remains concerned that this narrative could delegitimize its governmental strategy in Xinjiang – and weaken its governmental authority more broadly. Yet this does not necessarily mean that the sanctions are working to strengthen the position of actors within PRC that *oppose* forced labour. If anything, the draconian counter-measures described in Part 2, including intimidation and harassment of those involved in workplace audits, as well as the Anti Sanctions Law itself, suggest that the space for overt opposition to CCP policies in Xinjiang may currently be shrinking.

Indeed, Western sanctions do not seem designed to promote Chinese opponents of these policies. To date, the targets of Xinjiang sanctions that have ties to the cotton sector appear to be both specific entities with connections to forced labour, and actors (especially in the XPCC and the XUAR government) that have played an important role in the implementation of policies generating forced labour in the sector. In this sense sanctions have been more responsive than preventive, with both target selection and sanctions types responding to ties to forced labour rather than being concerned with building and wielding leverage over those with the ability to effectively oppose forced labour.

What is more, most of the sanctions appear intended to reduce the connections between Western business actors (especially importers and consumers, but also exporters and suppliers) and Xinjiang forced labour. They do not necessarily seem to aim at ensuring remediation of forced labour within Xinjiang, let alone provision of effective remedy to those already harmed by forced labour in the production of Xinjiang cotton. Most sanctions imposed to date have focused on import and export controls, with limited use of investment bans, or asset freezes, travel bans or financial sanctions targeting industry leaders who might have influence with the Party leadership. Yet China’s textile and apparel industries are now so globalized that it would not be difficult to identify cotton sector targets for such targeted sanctions, if the sanctioning coalition sought them. For example, the Ruyi Group, mentioned earlier and reported to have used Xinjiang forced labour, owns British high-end clothing manufacturer Aquascutum and has controlling interests in both the US-based The Lycra Company and in Cubbie Station, Australia’s largest cotton farm (co-owned with one of Australia’s largest banking groups).<sup>641</sup> Moreover, Ruyi’s President, ‘Jerry’ Qiu Yafu, who was also a Deputy to the Tenth National People’s Congress (2003-2007) (signalling his connections to Beijing policy makers), appears to own substantial real estate assets overseas.

### 3.2.3 Do sanctions exploit cost asymmetries?

Sanctions theory suggests that sanctions will be most effective when sending states and their firms can find alternative business partners at relatively low cost, while sanctioned states and firms face high costs in finding alternative business partners. These conditions appear to hold, with some caveats, in relation to the Xinjiang cotton sector, suggesting there is a relatively good prospect of these sanctions having the intended economic impact.

For targeted exporters, the loss of lucrative Western markets represents a real cost. The US is easily the largest importer of cotton and cotton-mixed products in the world, both by value and weight.<sup>642</sup> Chinese demand for cotton does not yet come close to absorbing domestic supply. While it may be feasible for producers and exporters to reallocate trade to alternative markets (as will be discussed in the next section), this inevitably involves price reductions and thus revenue losses.<sup>643</sup> It is important, however, not to overstate this impact, since much raw and spun cotton is exported from Xinjiang to Central Asia and to Russia – countries that are not participating in the sanctions coalition. The same is true of yarn and thread exports, which go to manufacturing centres in Bangladesh, Vietnam, The Philippines, Indonesia and Cambodia, as well as emerging African manufacturing hubs such as Nigeria and Togo.<sup>644</sup>

For sender importers – that is, importers in sanction-sending states – there is also a price to be paid for abandoning Xinjiang cotton. Around a third of US apparel imports come from China. The US receives hundreds of thousands of shipments each year,<sup>645</sup> which makes the scale and cost of the UFLPA enforcement challenge clear, and it may take time for alternative supply at that scale to emerge. Nevertheless, cotton is relatively homogenous and supply is relatively elastic. There are already signs that the gap left by Xinjiang cotton in the US market may be being met by increased production from other sources in Asia.<sup>646</sup>

### 3.2.4 How are targets adapting?

How are targeted entities – and the broader sector – adapting to this situation? Early evidence suggested that some might not be adapting at all. According to ne forensic survey in late 2021, 16 per cent of cotton clothes on US store shelves still contained Xinjiang cotton.<sup>647</sup> Researchers reported in May 2022 that Xinjiang cotton could still be found in clothes sold by Adidas, Puma and Hugo Boss.<sup>648</sup> Interviews for this study suggest that some firms are opting to continue sourcing from China on cost grounds, willing to accept the risks posed by UFLPA enforcement, until the probability of being subjected to enforcement action becomes clearer now that the law is in force (as of 21 June 2022).<sup>649</sup> Enforcement strategy and resourcing will thus be a central determinant of sectoral adaptation – and sanctions effectiveness.

There is also, however, evidence of the emergence of all three of the trade adaptation strategies predicted by the economic coercion literature (see section 3.1.3 above).

First, we find signs of trade reallocation. Xinjiang producers report having to find new buyers for their products, because some downstream buyers are no longer willing to take products that use Xinjiang cotton. This has reportedly led to a 30 per cent drop in orders for some Chinese garment manufacturers.<sup>650</sup> Yet the general manager of the Huafu Fashion yarn factory in Xinjiang told reporters in 2021 that after its first ever loss in 2020, the company had rebounded by shifting to domestic orders.<sup>651</sup>

641 Smyth 2019.

642 Murphy et al. 2021, p. 24.

643 Ji et al. 2022.

644 Murphy et al. 2021.

645 Lehr and Bechrakis 2019.

646 Ji et al. 2022.

647 Stevenson and Maheshwari 2022.

648 Oltermann 2022.

649 Interviews 3, 7, 11.

650 Ji et al. 2022.

651 Moritsugu and Kang 2021.

Trade reallocation appears to be central to the PRC government's adaptation response for the sector. Through the counter-measures described in Part 2, the CCP has sought to encourage Chinese consumers to shift away from Western brands and towards Chinese producers. Indeed, a researcher at the Chinese Academy of International Trade and Economic Cooperation, writing in the government-backed *China Daily*, argued at the time of these counter-measures that

*“Western countries, companies and NGOs will never succeed in destroying China's cotton and textile industry by banning cotton and textile imports, because China can adjust the supply chains by encouraging cotton growers in Xinjiang and textile manufactures to sell their products in domestic or other foreign markets, while continuing to export cotton produced outside Xinjiang to the US. This may cause some problems for Chinese companies, but China can overcome those problems.”*<sup>652</sup>

This further points to the second emergent adaptation strategy: product transformation. Chinese garment and textile manufacturers are seeking to sort their supply-chains into two bifurcated lines, with Xinjiang cotton used for goods destined for Chinese consumption and markets that do not impose forced labour controls, while other sources of cotton are used for goods destined for Western markets that do impose such controls.<sup>653</sup> This requires firms to transform part of their production to draw on new cotton sources, and to ensure that they can effectively segregate (and document the segregation) of input cotton. Consequently, Chinese imports of cotton from other sources – notably Brazil and the US – have increased markedly over the last two years.<sup>654</sup>

Finally, we also find evidence of some trade ‘deflection’ – that is, circumventing sanctions via intermediaries. The existing apparel supply-chain lends itself to such arrangements, given its highly globalized nature. Numerous analysts have suggested that Xinjiang cotton is reaching the US market through manufacturing processes in Bangladesh, Vietnam, Thailand and other jurisdictions.<sup>655</sup>

Xinjiang cotton producers have discussed being able to evade US import controls while those controls remain based on documentary evidence, rather than DNA, genotyping or isotopic analysis, which again highlights the critical nature of enforcement in determining the impact of these sanctions:

*“Currently, as long as you have the written proof, products containing Xinjiang cotton can still be sold to the US, unless one day they start to refuse exporters' written proof and strengthen random testing, then things will be different.”*<sup>656</sup>

### 3.2.5 What role are sectoral bodies playing?

As discussed above, sanctions theory suggests that local producers can be drivers of the adoption of sanctions, because they create tariff or non-tariff protections offering local producers positive externalities. But the cotton, textile and apparel sectors are amongst the most globalized sectors in the world, and trade theory tells us that firms that are integrated into global value-chains are more likely to favour open trade. We see this reflected in the position of major firms and sectoral bodies connected to this sector, as well as in the policy positions staked out in response to the UFLPA and the proposed EU forced labour instrument. These call for streamlining of import control processes, the use of a ‘trusted importer’ program, delayed enforcement, and establishment of a *de minimis* exception that would allow importers of products with minor amounts of suspected materials to avoid the necessity of a full audit and investigation.<sup>657</sup>

However, sectoral bodies have also played another key role in Xinjiang sanctions that the trade and sanctions literature has not yet examined closely, and that seems to run counter to the expectation of promoting open trade. We can describe this role as ‘norm amplification’. Sectoral standards bodies have been critical amplifiers of the relevance of international labour standards to the Xinjiang cotton sector. As a consequence, their role in standards promotion and enforcement has become a site of narrative and regulatory competition between China and Western powers, in a manner that reflects earlier experiences around environmental and labour standards certification in the palm oil sector, where South East Asian producers have contested the legitimacy of international certification systems on sovereignty grounds.<sup>658</sup>

Sectoral groups were drawn into the Xinjiang cotton controversy in 2019, when their members began reporting concerns around forced labour in cotton production and manufacturing in Xinjiang. Several of these bodies, including the Fair Labor Association (FLA), which emerged in the late 1990s out of a task force created by President Bill Clinton following a series of child labour and sweatshop scandals in the apparel and footwear sector, began examining the issues with their members and expert advisors.<sup>659</sup>

The Better Cotton Initiative (BCI) was one such body. It is a multistakeholder governance initiative that grew out of a 2005 World Wildlife Fund roundtable. BCI works with actors along the cotton supply-chain to promote respect for certain environmental and labour standards, including through training and certification (‘licensing’) of producers. Until the autumn of 2019, the XPCC was one of its implementing partners, and 20 per cent of BCI-licensed cotton came from XUAR. Roused by its members, in March 2020 BCI suspended licensing and assurance activities in XUAR over “persistent allegations” of forced labour and initiated a review, involving representatives from member retailers, civil society groups, workplace labour specialists and other relevant actors, including the FLA.<sup>660</sup> In October 2020, based on their findings, BCI expanded this suspension to cover all activities in Xinjiang. However, Chinese companies not blocked by US sanctions could remain BCI Members and users of the Better Cotton Platform,<sup>661</sup> and there is seemingly nothing preventing BCI Members from selling Xinjiang cotton, as some appear to continue to do.<sup>662</sup>

In late March 2021, when the Chinese government initiated a series of counter-measures directed at apparel companies (as discussed in Part 2), BCI's Shanghai office broke with BCI headquarters in Switzerland and announced that it had conducted its own review, which revealed no evidence of forced labour in Xinjiang. The CCP-aligned *Global Times* argued that the BCI was a tool of Western interests, having, for example, received funding from USAID, as well as having only one Chinese firm on its 10-person board. It also criticized BCI for engaging with civil society actors such as the Uyghur Human Rights Project.<sup>663</sup>

Chinese actors responded to this vilification of BCI by proposing their own standards certification systems. The Weilai (Future) Cotton project was initiated in Xinjiang as “an attempt to fight against forced labour allegations surrounding” Xinjiang cotton. Zhao Yan, a coordinator for the initiative, told the *South China Morning Post* that the mounting international backlash against Xinjiang cotton has helped crystallise the project: “We have been living with Switzerland's standards (BCI) for years, but the country doesn't even produce cotton. Now it is time to form our own national standards.”<sup>664</sup> Meanwhile, the China Cotton Industry Association (CCIA), which the First and Seventh Divisions of the XPCC helped to establish in 2016, formed a China Cotton Sustainable Development Programme, “aiming to build a homegrown independent sustainable standard and certification system to counter the West's dominance that has posed serious threat on China's cotton industry.”<sup>665</sup> At the same time, the CCIA partnered with local brands, such as 361°, to promote purchasing of Xinjiang cotton as a patriotic act and boost brand image amongst local consumers.<sup>666</sup>

652 Mei 2021.  
653 Ji et al 2022; Interviews 3, 4, 6, 9, 11.  
654 Cozzens 2021; Just Style 2021.  
655 Murphy et al. 2021; US CBP 2022e, p. 14; Goodman et al. 2021.  
656 Zhou 2021.  
657 See the discussion in Part 1. See also AAFA et al. 2022 setting out the position on the proposed EU instrument.  
658 On the palm oil sector see Cockayne 2021.

659 Interviews 2, 3.  
660 Remington 2020; Interviews 2, 3.  
661 BCI 2020.  
662 See Bukharin 2021, pp. 23-24.  
663 Liu et al. 2021.  
664 Apparel Resources News Desk 2021.  
665 Li 2021.  
666 See <http://cotton-ccia.com> and Xinhuanet 2021.

### 3.2.6 Are capital markets engaged?

Although cotton firms have not been explicitly targeted by capital market sanctions such as the US NS-CMIC scheme discussed in Part 2, global investors are increasingly asking questions about companies' connections to Xinjiang cotton. Investor Alliance for Human Rights has actively engaged a long list of firms on this issue, including Adidas, Burberry, Fast Retailing Co., Gildan Activewear, H&M, Hermès, Hugo Boss, Inditex, Kering, Kohl's, Levi Strauss, Lululemon, LVMH, Muji, Nike, Puma, PVH, Ralph Lauren, Skechers, Target, Under Armour and VF Corp.<sup>667</sup> In 2020, the investment manager Domini started engaging Nike on its concerns, and in 2021 27 per cent of Nike shareholders voted in support of a proposal initiated by Domini that would require Nike to take additional action to address Xinjiang forced labour concerns.<sup>668</sup> Some firms have also begun to pre-emptively de-risk. The shirt maker Lu Thai, for example, divested itself of its majority stake in its Xinjiang subsidiary in late 2021, apparently in an effort to reduce its regulatory and liability risk exposure.<sup>669</sup> Yet many Western investors remain invested in publicly listed Chinese entities with apparent connections to the Xinjiang cotton sector, including Lu Thai, which continues to purchase from the region.

### 3.2.7 Discussion

Even as the UFLPA is only newly in force, and before the adoption of a proposed European forced labour instrument, Western sanctions appear to be squeezing the Xinjiang cotton sector. By encouraging downstream buyers to avoid products that may contain Xinjiang cotton, the sanctions are forcing upstream producers to sell at a lower price to firms that will sell into other markets. It is unclear as of yet whether this is leading to overall trade reallocation, or simply to trade deflection, but the resulting trade sorting does appear to be producing some supply-chain bifurcation. For sanction sender importers, the costs of finding new sources of supply are relatively low, given cotton's relative homogeneity and the elasticity of supply. Nevertheless, international brands may be hedging, with some may be using non-Xinjiang cotton for products sold into sanctioning markets such as the US, while continuing to use Xinjiang cotton for sales in China and in other markets outside the sanctioning coalition. Existing sanctions do not prohibit or penalize this – a lacuna that policymakers may need to address if they want to maximize the effectiveness of these sanctions.

It is also unclear whether the economic impacts that are emerging from Western sanctions on Xinjiang cotton are translating into pressure for policy change within China. While the sanctions may cause Xinjiang cotton sector actors real costs, they do not necessarily advance the position of actors opposed to the use of forced labour within the sector. Indeed, the Chinese government has actively resisted the Xinjiang forced labour narrative taking hold in the sector, including through the counter-measures discussed in Part 2 of this study. As a result, the space within China for opponents of forced labour policies in the Xinjiang cotton sector may be shrinking in the short term – at least when it comes to the space for public commentary on these issues that does anything other than reject the Western narrative.

This narrative competition between Western sanctions senders and the CCP is now beginning to spill over into the domain of technical standards and certification, as Chinese actors push back on sectoral and multi-stakeholder efforts to enforce international labour standards. Moves to create a 'local' certification system suggest that issues around social sustainability in the global cotton, textiles, garment and apparel value-chains could become one front in a larger emerging struggle over potential economic decoupling between Western economies and China. Nonetheless, even if this trend is present, it has not yet translated into the withdrawal of Western capital from the cotton sector, nor to capital market gatekeepers such as securities regulators and stock exchanges using their platforming power to block Xinjiang cotton sector firms' access to capital markets. Active engagement and shareholder action is only now beginning to emerge, with few signs of Western divestment at any scale from Chinese firms in this sector.

To date, Western sanctions on the Xinjiang cotton sector have seemingly emerged more as an effort to respond to concerns about Western consumers' and suppliers' connections to goods made with forced labour than as part of a proactive strategy to create and use leverage to induce policy change within China. This is reflected both in target selection and in the types of sanctions that dominate, where import and export controls have been the main focus. So far, there is no evidence of serious attempts by policymakers to address the question of how to use this leverage to secure remedy for the workers harmed by forced labour in the sector, which suggests that Western policymakers' primary focus to date has been to cut the connection between Western consumption and Xinjiang forced labour, rather than to create leverage to prevent and remedy it. Beyond a small group of XPCC leaders, the sanctioning coalition has not yet turned to targeted sanctions directed at the foreign assets of Xinjiang cotton sector entities or individuals with potential influence over policy makers, despite the fact that these are not difficult to identify. Nor have serious efforts been made to expand the sanctioning coalition, for example by involving the Asian states to which much Xinjiang cotton is exported, which could signal an expansion of focus beyond Western consumption, to a more strategic focus on creating strategic leverage for prevention and remediation.

## 3.3 Tomatoes

### 3.3.1 Xinjiang's tomato sector

Five countries together account for around 80 per cent of global processed tomato exports: Italy (43 per cent of the export market by value), China 14 per cent, Spain (10 per cent), the US (7 per cent) and Portugal (5 per cent).<sup>670</sup> Processed tomato goods account for around one fifth of global tomato production. Within China, Xinjiang accounts for about 70 per cent of tomato production, and for around 18 per cent of global trade by volume in processed tomato products such as tomato paste and tomato sauce.<sup>671</sup>

The supply-chain for processed tomato products is relatively simple, and the goods in question – such as tomato paste and tomato sauce – are relatively homogenous. Tomatoes are grown, harvested, processed, then exported. Tomato product importers often transform the product – for example by adding water and salt to turn a triple concentrate into a double concentrate – and then resell (and often re-export) the product under a retail brand.

Over the last two decades Chinese firms' strategies have focused on competing on cost. Access to cheap, and in some cases coerced, labour has been central to that strategy. CCP control, including through the XPCC, has facilitated this. Two of the largest producers of processed tomato products in the world are Chinese firms with intimate ties to the CCP and deep roots in Xinjiang.

The first of these is COFCO (China Oil and Foodstuffs Corporation), a state-owned conglomerate that brings together entities established during the Mao era, when it was the only company authorized to import and export agricultural products. Its subsidiary COFCO Tunhe, which specializes in sugar and industrial tomato production, is the world's second largest tomato processor, owning over 5,000 ha of tomato plantations and over 15 tomato processing plants, 11 of which are in Xinjiang. These produce drums and barrels of paste that the company sells to agrifood giants such as Kraft Heinz, Unilever, Nestlé, Kagome, Del Monte, PepsiCo, and McCormick, the world leader in seasonings and spices.<sup>672</sup> COFCO Tunhe alone accounts for around 4 to 5 per cent of global supply of processed tomato products, and over the last decade its parent, the COFCO Group, has become one of the top 5 agricultural commodity traders globally. COFCO Group is seen by Beijing as a strategically important firm underpinning Chinese food security – a perennial concern for China's rulers.<sup>673</sup> COFCO Tunhe is part owned by a variety of Chinese banks and private investment and equity vehicles. Some Western investment is also present: for example, as of 31 January 2022, Vanguard owned 0.07 per cent of its stock.<sup>674</sup>

The second major firm is ChalkiS [sic] Tomato Industrial Company, a spin-off from the XPCC. The company provides around 3 per cent of global supply, and owns around 20 tomato processing facilities in XUAR and neighbouring provinces. Founded in 1994, it listed on the Shenzhen Stock Exchange in 2000, with the largest equity owners being XPCC firms and Xinjiang investment vehicles with close relationships to the CCP.<sup>675</sup> Its board also includes many individuals with ties to the XPCC. In recent years the company has developed downstream brands which account for 45 per cent of the African small can tomato sauce market and 20 per cent of the European tomato paste market. Its success in Africa has contributed to the displacement of tomato processing industry in parts of the continent.<sup>676</sup>

667 IAHR 2022b.  
668 Domini Impact Investing 2021.  
669 See Murphy et al. 2021.

670 Data from the Observatory of Economic Complexity.  
671 See Dong 2019; Branthôme 2021; Fanzares and Ren 2021; IMARC 2021.  
672 Malet 2017; Agazzi 2020.  
673 Dupraz-Dobrias 2021.  
674 See Yahoo! Finance for ownership data.  
675 See <https://stock.us/stock/sz/000972/holders/top10>.  
676 Agazzi 2020.

The Xinjiang tomato sector evolved out of the agricultural reclamation projects pursued by the XPCC in the 20<sup>th</sup> Century. During the 1990s, the Sixth Division spun off ChalkiS, while the Eighth Division spun off Xinjiang Tianye Co and the Second Division produced Xinjiang Guannong Tomato. These firms' transformation into global players has been actively promoted by Beijing in several ways. The CCP has created a favourable regulatory environment for investment in production in Xinjiang by firms in eastern China, including the 'Pairing Assistance' scheme. It has also organized and supported the transfer into Xinjiang of human capital in the form of party cadres and agricultural technicians. Beijing has mobilized an industrial policy package to attract labour-intensive and resource-oriented firms into special industrial zones in Xinjiang, and activated banking, investment, development finance and export credit mechanisms to support export growth and foreign expansion.<sup>677</sup>

State organs and the quasi-governmental nature of the XPCC have been central to the construction of these enterprises, allowing them to develop monopsonistic power, with poor farmers being coerced into growing tomatoes and selling to these firms, under the threat of penalty including fines, asset confiscation and detention.<sup>678</sup> Over recent decades the CCP has scaled up, modernized, and commercialized Chinese agriculture by placing it under the direction of large commercial enterprises known as 'dragonhead' (also known as 'leading' or 'flagship') enterprises (*longtou qiye* 龙头企业). Under the 'enterprise plus farmer' (*qiye jia nonghu* 企业+农户) development model, these dragonhead firms contract villagers and rural smallholders to produce certain crops, using the company's technology, equipment, quality control, processing and marketing platforms.<sup>679</sup> While this can increase household incomes, similar agricultural development arrangements in other parts of the world have led to chronically unequal bargaining power, reductions of producer and farmer agency and a rise in indicators of involuntariness and coercion in work.<sup>680</sup> Something similar may be apparent in Xinjiang. Dragonhead firm and Party officials have at times worked together to coerce farmers and smallholders out of traditional cultivation methods and patterns, into contract farming of new crops, including tomatoes.<sup>681</sup>

The development model is perceived by some as innately favouring the large-scale, extractive mode of production favoured by Beijing, at the expense of the small-scale production and lifestyles traditionally favoured by Xinjiang's ethnic communities,<sup>682</sup> and there are reasons to believe that the resulting land dispossession has been a driver of minority unrest and inter-ethnic conflict in Xinjiang.<sup>683</sup>

The agribusiness model that has developed in Xinjiang, producing these tomato product exporting powerhouses, relies on access to cheap, low-skilled agricultural and factory labour. Historically, the XPCC and commercial ventures hired local workers – many of them from ethnic minorities – at scale in the summer months, for the harvest season.<sup>684</sup> As discussed in the previous section on cotton, this also involved some *corvée* and involuntary labour, including schoolchildren.<sup>685</sup> These schemes were marked by many indicators of involuntariness and lack of consent common in agricultural forced labour, such as daily production quotas and children working in the fields alongside their parents.<sup>686</sup> More recently, these firms appear to have participated in the Poverty Alleviation Through Labour Transfers scheme.<sup>687</sup> A 2020 press release from COFCO Tunhe indicates that it worked with local governments to employ Uyghurs as a way to promote "national unity."<sup>688</sup>

Nevertheless, both state and industry actors deny there is any forced labour in the Xinjiang tomato sector. Li Shixin from Xinjiang Yanyangtian Tomato Products Co. wrote to the US Department of Homeland Security earlier this year arguing that "the accusation of 'forced labor' in Xinjiang is made out of thin air and has no factual basis", since "production has already been fully mechanized" and "[p]eople in Xinjiang... work voluntarily".<sup>689</sup> Yet internal documents examined for this study confirm that COFCO mechanization in southern Xinjiang (where Uyghur presence is greatest) is at best 70 per cent.<sup>690</sup>

### 3.3.2 Do sanctions strengthen opponents of forced labour?

To date, only the US has made Xinjiang's tomato sector a focus of its sanctions target selection and enforcement efforts. The measures it has put in place combine import bans and financial sanctions, with some limited capital market effects.<sup>691</sup> FTSE Russell, for example, has removed several tomato sector firms from its China indices on the basis that they are owned by the XPCC and thus subject to US Office of Foreign Assets Control (OFAC) restrictions.<sup>692</sup> But the list of those removed does not, notably, include COFCO Tunhe, which is not covered by US financial sanctions on the XPCC – although COFCO Tunhe's Xinjiang tomato production became subject to US import restrictions under the UFLPA. Other jurisdictions have generally not targeted the sector. The goods may be subject to import bans imposed elsewhere, for example the import ban in place in Canada, but that ban does not yet seem to have been enforced against tomato imports.<sup>693</sup> There are limited signs of importers in other jurisdictions voluntarily exiting relationships with Xinjiang tomato exporters – examples include Marks & Spencer and Tesco in the UK, and Kagome in Japan.<sup>694</sup>

What impact, if any, are these limited sanctions likely to have on the proponents and opponents of forced labour in Xinjiang's tomato sector, within China's relevant policy processes? The answer may be slightly different in relation to COFCO and the XPCC-linked firms in the sector.

ChalkiS and the other XPCC-affiliated tomato processing and export firms are products of the commercialization of the XPCC over the last two decades (as discussed in Part 1). Their growth no doubt relies on their access to low-cost labour, and to the XPCC's quasi-governmental control over farmers and landholders in Xinjiang. ChalkiS sources tomatoes from both state-owned farms and from local contractors, with townships and village leaders often involved in guaranteeing supply, in a manner similar to the 'dragonhead' or 'leading enterprise' model discussed above.<sup>695</sup> When ChalkiS sought to expand in 2004 by purchasing Le Cabanon, a French produce processing company, it could not replicate the cost structure that had made it so successful in Xinjiang, and the venture failed.<sup>696</sup> Sanctions on these XPCC-connected firms are likely to send a clear signal to both policy and market actors that firms using forced labour will be targeted.

But this begs the question why COFCO has *not* yet been targeted, and whether the failure to target it in any specific way risks muddying that signal, giving reassurance to proponents of forced labour.

COFCO is a very different beast than the other firms in the Xinjiang tomato sector. It is not an offshoot of the XPCC, but rather an instrument of the central state apparatus in Beijing. As China's largest food and agriculture company, it has revenues of around half a trillion dollars, with total profit in 2020 of more than USD 12 billion. It has been listed in the Fortune Global 500 for most of the last quarter of a century. With support from Beijing, in the last two decades it has developed into a multinational conglomerate pursuing a "whole supply-chain" strategy – that is, it is not only focused on domestic production and exports, but also on foreign production, processing, logistics and transportation. As a result, the company now owns and/or operates ventures in dozens of countries, including sugar cane plantations in Brazil, grain silos in Ukraine, soybean processing facilities in multiple Latin American countries, a sugar mill in Australia, and its own global transport fleet. Currently, its sights seem to be set on expansion in Central Asia. Some of this global expansion has been supported by loans of over USD 175 million from the International Finance Group, the World Bank's private sector lending arm.<sup>697</sup> Since 2017 its international trading headquarters has been located in Switzerland.<sup>698</sup>

COFCO is thus not just a commercial venture, but also a strategic tool for ensuring China's food security, a perennial concern for China's rulers, given the disproportion between the country's share of global population and its share of global arable land. COFCO's leadership, which includes officials who have held senior state managerial and CCP positions, has publicly acknowledged this function.<sup>699</sup> Sanctioning COFCO – or even one of its subsidiaries, such as COFCO Tunhe – is thus likely to send a stronger signal of Western resolve to Beijing than sanctions that have been imposed to this point. It might also increase the prospect of impacting actors with influence over the policy processes in Beijing (relating to agrarian development, poverty alleviation, and Xinjiang governance) that are creating the conditions leading to forced labour. However, precisely because Beijing sees COFCO as a strategically important firm, it is more likely to perceive any sanctions directed at COFCO as an attempt to disrupt security and stability in China more generally.

677 Song et al. 2019; Cockayne 2021.  
 678 Wu et al. 2014; Szeto et al. 2021.  
 679 Luo et al. 2017. **The 'dragonhead' concept comes from the traditional dragon dance. The dragonhead benevolently leads the followers (the farmers) to their destination (the market).**  
 680 See, for example, the discussion of the palm oil sector in Cockayne 2021.  
 681 Luo et al. 2017; compare Lingohr 2007.  
 682 Cappelletti 2020.  
 683 Cliff 2016.  
 684 Wu et al. 2014.  
 685 CECC 2006, 2008, 2011.  
 686 Wu et al. 2014.  
 687 Zenz 2020a.  
 688 Szeto et al. 2021.  
 689 Li 2022.  
 690 COFCO 2021. On mechanization rates see further Murphy et al. 2021, pp. 12-13.

691 See XJS-GMS M#079, M#112, M#274 and M#308.  
 692 FTSE Russell 2020.  
 693 See Szeto et al. 2021.  
 694 On Tesco, see its XJS-CRS entry. On Kagome see Tazaki and Miyata 2021.  
 695 Zhang et al. 2010., p. 72.  
 696 Agazzi 2020.  
 697 Salcito 2021.  
 698 Agazzi 2020; and see Braunschweig et al. 2019.  
 699 See Dupraz-Dobias 2021.

Sanctions targeted at COFCO are thus more likely meet with resistance than sanctions more narrowly focused on XPCC-linked firms in the tomato sector. In this sense, target selection and sanctions enforcement that focus more overtly on COFCO risk in the short term advancing the position of party hardliners.

### 3.3.3 Do sanctions exploit cost asymmetries?

Well-designed sanctions incur greater costs for the target than for the sender. As we saw in the earlier discussion, this tends to be the case when sanctions are imposed on highly differentiated products where the sanction-sending coalition represents a high proportion of demand for the targeted exporters' products. At first sight, that does not appear to be the case here. Processed tomato products are relatively homogenous goods, and the countries with import bans in place, namely the US and Canada, represent less than 1 per cent of *direct* exports from Xinjiang<sup>700</sup> – although, as we will see below, the picture looks a little different once we factor in 'indirect' supply that is routed to these markets through third countries. With Xinjiang firms exporting to over 130 countries, it will not be difficult for target exporters to find alternative buyers to fill any gaps left by the loss of direct US exports. However, if or when the EU adopts an import ban on goods from Xinjiang, this will represent a more serious cost to Xinjiang exporters, given that the EU receives around 13 per cent of Chinese tomato products. Italy, alone, receives around 9 or 10 per cent of Xinjiang's processed tomato exports. An Australian import ban might affect another 1.5 per cent of direct exports. The main direct export markets for the Xinjiang tomato sector – those in Africa and the Middle East – are at present absent from this discussion.

Assessing the costs to importers requires a closer understanding of how Xinjiang tomatoes are transformed and re-exported through global value chains. This brings us to the question of how the trade in Xinjiang tomato products is adapting to the disruption caused by Western sanctions.

### 3.3.4 How are targets adapting?

The risk to Xinjiang's tomato sector from Western import bans is larger than the previous discussion of direct export shares may suggest. These bans apply not just to direct imports – for example, imports directly from Xinjiang to the US – but also to indirect supply. They prevent the import of goods made through supply-chains that *at any point prior to import* pass through Xinjiang. This is significant because a substantial share of processed tomato products exported from Xinjiang go first to intermediate countries, where they are gently transformed, before being re-exported into Western markets.

COFCO Tunhe exports large volumes of tomato paste to Asian countries, where it is processed as spaghetti sauces and ketchups and then re-exported under Product of Philippines, Product of India and Product of Pakistan country origin labels.<sup>701</sup> Importers along Italy's southwest coast import tomato paste from Xinjiang in triple concentrate form, add salt and water to convert it to double concentrate, which is then – entirely legally – stamped with a 'Product of Italy' country of origin label and re-exported.<sup>702</sup> One of the main Italian purchasers, Antonio Petti Fu Pasquale, which sells unbranded process tomato products to firms that then themselves rebrand and resell them, was still purchasing from COFCO at scale in 2021, claiming that these products were only being sold to African markets.<sup>703</sup>

Indeed, it does not appear difficult to use these existing supply-chains to mask the origin of sanctioned products. Irina Bukharin has demonstrated that XPCC business networks may be moving sanctioned products into the US through third country intermediaries, such as the Russian firm Grand Star LLC (trading as Kubanochka)<sup>704</sup> – although this particular route may have been disrupted by the US' sanctions on Russia following its invasion of Ukraine. Bukharin finds that over 300 shipments have arrived in the United States through such trade deflection routes.<sup>705</sup> Xinjiang tomato products also still seem to be entering Canada, despite the import ban notionally in place there.<sup>706</sup>

Two insights can be derived from this evidence, both relating to enforcement arrangements.

The first relates to the risk for developing countries if they do not follow Western markets' lead in raising enforcement standards. The risk is that exporters and intermediary firms (such as Antonio Petti Fu Pasquale, mentioned above) will reallocate their trade of Xinjiang tomatoes to markets with lower regulatory and enforcement standards when it comes to forced labour standards. This is social dumping. In the short term, this will mean that buyers and consumers in those markets may enjoy lower prices. But the result, as we have seen above, is that this allows Xinjiang exporters to drive local producers out of the market, using the unfair subsidy provided by forced labour to win on cost.

The second insight relates to enforcement arrangements in markets that do seek to exclude Xinjiang tomato products. In order to achieve import ban enforcement at scale, customs authorities may rely on documentary proof of chain of custody. The risk is that this may encourage evasion through provision of fraudulent paperwork, which is a common pattern in export- and import-control regimes that rely on chain of custody and provenance paperwork. One solution to this may be to impose heavy penalties where such evasion is discovered, as a deterrent. Another solution may be to supplement paper-based enforcement with DNA, genotype and isotopic testing to identify the provenance of tomatoes.<sup>707</sup>

### 3.3.5 What role are sectoral bodies playing?

Our analysis found no evidence of sectoral bodies playing a prominent role on Xinjiang sanctions in the tomato sector.

### 3.3.6 Are capital markets engaged?

While some securities index providers such as FTSE Russell appear to have excluded certain XPCC-linked tomato sector firms in order to comply with US OFAC sanctions, we found no evidence of non-US investors terminating bilateral relationships with Xinjiang tomato sector firms. We also found no evidence of shareholder actions directed at Xinjiang tomato sector firms, nor at Western firms that are major importers of their products. However, there is some evidence of active engagement by institutional investors with downstream firms that may be purchasing products with Xinjiang tomato sector inputs. Investor Alliance for Human Rights has engaged Carrefour,<sup>708</sup> and Investors Against Slavery and Trafficking APAC has engaged a range of companies in the consumer staples sector.<sup>709</sup> But the major fast food retailers that are prominent consumers of processed tomato products have not yet been targeted for investor engagement.

### 3.3.7 Discussion

Several points stand out from our analysis of how sanctions are playing out in relation to the Xinjiang tomato sector.

The first is the significant difference between the evident impact of sanctions on the cotton, textile and apparel industries, and the absence of clear impact to date on the processed tomato sector. Given that Western countries are major destinations for both Xinjiang cotton and Xinjiang processed tomato products, what explains this difference? Several factors emerge, namely the more intensive enforcement activity in the cotton sector than the tomato sector, the more advanced engagement by capital market actors with cotton sector firms, and the absence of a sectoral body amplifying labour standards enforcement in the tomato sector.

The second point that stands out is the significant opportunity afforded by the implementation of the UFLPA. The relatively short, simple supply-chain for export of processed tomato products (when compared, for example, to the more heavily articulated supply-chains for cotton and solar products) may make it more feasible and efficient for CBP to test enforcement strategies in the tomato sector, for example the use of forensic and isotopic testing. Enforcement in this sector could be relatively impactful: even if US direct exports represent a relatively low share of direct exports from Xinjiang, 'indirect' supply will represent a larger share – and potentially a significant one, given the reliance of US fast-food and food business firms, and such foreign firms operating in the US, on these supply-chains. These firms have strong incentives to comply with CBP enforcement efforts, and may also be less susceptible to Chinese government counter-measures than may firms in some other sectors. The tomato sector may offer a relatively uncomplicated sector for developing UFLPA enforcement practice.

700 Data from the Observatory of Economic Complexity.  
701 Szeto 2021.  
702 Birmingham 2021; Civillini et al. 2021.  
703 Civillini et al 2021.  
704 Bukharin 2021.  
705 Bukharin 2021, p. 20.  
706 Szeto et al. 2021.

707 Floare-Avram et al. 2020; Fragni et al. 2018.  
708 IAHR 2022b.  
709 IAST APAC, 'Frequently Asked Questions' at <https://www.iastapac.org/faq/>.

The third point that stands out is that concerted sanctions activity in the Xinjiang tomato sector is so far limited to XPCC-linked targets. It does not extend to COFCO Tunhe, despite the fact that the company may be more vulnerable to sanctions efforts, given its significant international footprint and Beijing's need for COFCO Tunhe to have continued access to international markets, if it is to serve the food security function that Beijing desires. Sanctions on COFCO Tunhe may also be more likely to advance the relative position of opponents of forced labour than sanctions on XPCC-linked firms, as COFCO appears to be better connected to top-level decision-makers in Beijing than the various XPCC Divisional spin-offs. Any effort to target COFCO Tunhe in a more concerted fashion might require consideration of how regulatory leverage can be used to impose costs on its off-shore operations and holdings, such as its offshore plantations, farms and processing facilities, or its commodity trading business headquartered in Switzerland.

The final insight is the low proportion of global market demand currently represented in the sanctioning coalition. This will increase if and when the EU and other countries (such as Australia) adopt import bans. However, given the Xinjiang tomato sector's reliance on African and Middle Eastern export markets, there may be a need to recruit these countries into the sanctioning coalition. Such efforts should emphasize the harm local producers and industry may suffer as a result of the unfair competition from Chinese exporters who rely on illegally cheap, coerced labour – harm that will in fact grow as Xinjiang firms dump more products into these markets as they are increasingly blocked from import into Western ones.

### 3.4 Solar

#### 3.4.1 Xinjiang's solar sector

China is the dominant player in global photovoltaic (PV) manufacturing. Chinese-headquartered companies dominate at each stage of production, making 77 per cent of the world's polysilicon, over 97 per cent of polysilicon wafers, 83 per cent of solar cells, and 74 per cent of solar modules. Moreover, many solar equipment production companies that are not headquartered in China nonetheless make their cells and modules in the country, exploiting structural cost advantages.<sup>710</sup>

Xinjiang is central to China's dominance of the first stages of the supply-chain – the production of silica from quartz, and polysilicon from that silica. From around 2009, the CCP's 'Golden Sun' strategy pursued an aggressive industrial policy to attract investment by chemical and electrical manufacturing firms in eastern China – several of them having close ties to the CCP elite – to kickstart solar manufacturing in the country, including polysilicon production in Xinjiang.<sup>711</sup> This policy mix included very high tariff walls, tax concessions, subsidies, cheap credit, public investment, access to extremely cheap electricity – and access to artificially cheap labour.<sup>712</sup> Daqo New Energy, for example – a major polysilicon manufacturer listed on the New York Stock Exchange that operates in Xinjiang – has acknowledged to the US Securities and Exchange Commission that it receives "unrestricted cash subsidies" from local government agencies.<sup>713</sup>

The attractive cost structure created by the policy mix offered in Xinjiang over the last decade and a half has lured foreign producers, allowing Chinese partners to acquire know-how and technology, before government-backed export-led growth allowed those same Chinese partners to outcompete these same foreign competitors.<sup>714</sup> Over the last decade, foreign producers' market shares have plummeted, with around 45 per cent of global polysilicon capacity now located in Xinjiang. What is more, since 2017 91 per cent of new polysilicon production capacity worldwide has been developed in China, much of it in Xinjiang.<sup>715</sup> And Xinjiang polysilicon is often admixed with polysilicon from other sources to manage costs; Xinjiang polysilicon consequently appears to be used in modules supplying around 95 per cent of on-grid photovoltaic energy produced in the top 30 solar producing countries in the world.<sup>716</sup>

US Government analysis suggests that within Xinjiang's solar sector there are indicators of forced labour, including restrictions on worker exit, restrictions on mobility and freedom of religion, wage theft, unsafe working conditions and the threat of detention.<sup>717</sup> Research suggests that forced labour enters the PV supply-chain at several points connected to XUAR. First, forced labour occurs in mining the raw silica and the making of metallurgical silicon. Eleven different metallurgical silicon producers in XUAR have been tied to forced labour.<sup>718</sup> These ties take several forms: participating in government run 'job fairs' that place forced labourers in private employment; otherwise participating in the subsidised 'Labour Transfer' scheme; or, possibly, operating out of industrial parks that appear to use forced labour under the VSETC scheme described in Part 1 (though this is harder to verify). Several of these parks appear to be controlled by the XPCC. Three of the four largest polysilicon makers in XUAR – GCL-Poly, TBEA/Xinte, and East Hope Group – have allegedly used forced labour in their own operations. A fourth, Daqo New Energy Corp, is alleged to have forced labour in its supply-chain, and to directly benefit from the XPCC.<sup>719</sup> Together, these four producers represent around 45 per cent of world polysilicon supply. At the module manufacturing stage, which is downstream from polysilicon production, only JinkoSolar has been accused of using forced labour in its own XUAR operations, with its factory being co-located with a high security prison and a government-run internment camp, though these allegations have proven harder to verify. But other module makers, including JA Solar, Trina Solar, LONGi and Canadian Solar have also been alleged to use polysilicon made with, or made from silica that is made with, forced labour.<sup>720</sup>

The XPCC has been a key partner for the growth of this sector in Xinjiang. It underwrites, owns and manages many of the industrial parks where silica and polysilicon enterprises operate, including the Shihezi Economic and Technological Development Zone, where Xinjiang Hoshine Silicon Industry Co. – the world's largest metallurgical-grade silica producer, which produces around 17-20 per cent of global supply of silica – and Daqo maintain facilities; and the Zhundong Economic and Technological Development Zone, where GCL-Poly and East Hope operate polysilicon plants. These parks are often co-located with detention centres and high-security prisons, which may (or may not) be an indicator of the use of forced labour. The XPCC also provides solar firms benefits such as reduced rent and utilities, logistical support, warehousing and transport.<sup>721</sup>

Xinjiang solar firms uniformly deny any involvement with forced labour.<sup>722</sup> Chinese-backed media describe the sector as a "target of what appears to be a malicious campaign launched by Western anti-China forces to destroy Xinjiang's rapidly ascending economy and ultimately obstruct the development of China".<sup>723</sup> Western analysts counter by arguing that the sector's dominance in global markets is a product of Chinese mercantilism, which has served to depress innovation in the sector, leaving everyone worse off.<sup>724</sup>

Yet Western sanctions on the sector had been quite limited until the advent of the UFLPA. As the UFLPA took effect in June 2022, global polysilicon prices hit a 10-year high, suggesting no shortage of demand for a product dominated by Xinjiang firms.<sup>725</sup> Only the US has taken explicit aim at targets in the sector, notably through a Withhold Release Order in June 2021 targeting Hoshine, and through subsequent Entity List designations for Hoshine, Xinjiang Daqo New Energy Co. Ltd, Xinjiang East Hope Nonferrous Metals Co. Ltd, and Xinjiang GCL New Energy Material Technology Co. Ltd.<sup>726</sup> Despite its limitations, enforcement has been relatively visible. Beginning in August 2021, US CBP detained hundreds of shipments of solar panels, including some from the largest suppliers to the US market, such as LONGi, Trina, Canadian Solar and JinkoSolar.<sup>727</sup> These detentions have seemingly chilled other imports to the US during the second half of 2021, and may also have disrupted new solar projects there. Some industry actors warned in 2021 that 2.1 GW of solar projects representing a total investment of about USD 2.2 billion on a payroll of 3,000 construction workers could be at risk.<sup>728</sup>

710 Cockayne et al. 2022; Bloomberg NEF and International Solar Alliance 2021.  
 711 Haley and Schuler 2011; Murphy and Elimä 2021.  
 712 Department of State et al. 2021; Elimä 2021; Murphy and Elimä 2021; Hall 2021; Foehringer Merchant 2018.  
 713 Daqo New Energy Corp. 2019.  
 714 Fitzgerald 2016.  
 715 Fitzgerald 2021.  
 716 Cockayne et al. 2022.

717 US Department of State et al. 2021.  
 718 Murphy and Elimä 2021.  
 719 Swanson and Buckley 2021; Murtaugh et al. 2021; Murphy and Elimä 2021; Eventide 2022.  
 720 Ibid.  
 721 Murphy and Elimä 2021; Department of State et al. 2021, Annex 4.  
 722 See the relevant entries in XJS-CRS.  
 723 See GT staff reporters 2021a; and see Reuters 2021; Cui 2021.  
 724 Hart 2020; and Cockayne et al. 2022.  
 725 Bloomberg News 2022b.  
 726 See XJS-GMS M#230, #232-#235. See also M#231 (Department of Labor listing).  
 727 American Clean Power Association 2022; Sylvia 2022; Wagman 2021b; Yujie 2021.  
 728 Wagman 2021.

US CBP initially took a hard line on what chain of custody and other documentation had to be presented in order for the detained solar products to be released.<sup>729</sup> Signs of a possible relaxation appeared in November 2021,<sup>730</sup> and several importers whose goods had been detained under the Hoshine WRO have been able to convince CBP to release those goods, indicating that they had convinced CBP that the goods were not made with forced labour.<sup>731</sup> Nonetheless, the UFLPA – which covers all polysilicon and other solar products from Xinjiang – is expected to significantly magnify the impact of sanctions on this sector.<sup>732</sup> 40 per cent of the firms listed in the initial version of the UFLPA Entity List, published on 17 June 2022, are in the solar sector, suggesting it remains a priority sector for enforcement activity.<sup>733</sup> JinkoSolar has told the US Securities and Exchange Commission that the UFLPA will likely have a financially material impact on its business.<sup>734</sup> The American Clean Power Association has warned that two thirds of planned projects for 2022 may be at risk.<sup>735</sup> Similarly dire warnings have been made about the impacts of potential import bans in Australia<sup>736</sup> and Japan<sup>737</sup>. The outcome depends, however, on implementation and enforcement: in Canada, where a forced labour import ban notionally already covers solar imports, it emerged in 2021 that this may not be preventing such imports occurring.<sup>738</sup>

### 3.4.2 Do sanctions strengthen opponents of forced labour?

The earlier discussions of the impacts of sanctions on Xinjiang's tomato and cotton sectors considered the fact that commercial impacts might not be translating into policy change. Yet Xinjiang's solar sector has a rather different political economy and provenance to Xinjiang's tomato and cotton sectors, with much closer personal ties between sector leaders and Party leadership institutions and personnel in Beijing. The prospects of sanctions achieving policy impacts may thus be somewhat different.

Xinjiang's cotton and tomato sectors developed over the last two decades through Beijing's policies boosting industries that had emerged out of XPCC Divisional enterprise originally developed during the period in the 20th Century when China operated largely separate from the world economy. In each case, a central SOE has also taken a prominent role – the Ruyi Group, in the cotton sector; and COFCO Tunhe in the tomato sector. In contrast, the Xinjiang solar sector is a novel, top-down creation over the last decade and a half, emerging out of investment by eastern China firms under favourable conditions provided by policymakers in Beijing, and which was from the outset designed to be integrated into global trade and capital circuits. The Xinjiang solar sector is a co-production of private capital and state policy under global market conditions, with the XPCC being a partner, rather than parent, to these firms.

A noticeable number of the firms that have invested in the Xinjiang solar sector appear to have ties to Zhejiang, where President Xi was Party Secretary from 2002 to 2007. Some China analysts suggest that a network of Party officials and their private sector associates, developed by and around Xi during this period – the so-called 'New Zhejiang Army' or 'Zhejiang Clique' – enjoys particular influence at the national level.<sup>739</sup> GCL-Poly, established only in 2006, was the world's largest polysilicon producer in 2013 – thanks in part to Poly Group's intimate ties to the PLA, arms exports and Deng Xiaoping's family. This may also help explain the particularly high levels of Chinese state investment GCL-Poly has enjoyed.<sup>740</sup> Today, the company owns stakes in solar ventures around the world, and is part-owned by an array of Western investors including Invesco, Calpers and the Florida State Board of Administration.<sup>741</sup>

Meanwhile, Xinjiang East Hope Nonferrous Metals Co., another major polysilicon producers, is owned by East Hope – a highly connected commodities conglomerate that has a historical relationship with Premier Li Keqiang. One of the four Liu brothers that founded East Hope has been a long-term member of the Chinese People's Political Consultative Conference and the National People's Congress,<sup>742</sup> while another was one of the nine business tycoons invited to government headquarters for consultations to foster closer state-private sector cooperation early on in President Xi's tenure, in 2014.<sup>743</sup> East Hope's growth seems to have benefited from these connections,<sup>744</sup> even as Xinjiang East Hope has reportedly participated in labour transfer programmes since 2017.<sup>745</sup>

Yet Western sanctions have not to date been targeted at the leaders of these firms or sought to exploit their apparent ties to senior policy making circles in Beijing. The Luo family, which occupies key positions in the governance structures of Hoshine – the silica firm targeted by the US – has not been targeted. They appear regularly in Forbes' lists of Chinese billionaires. Nor have the leaders of Poly who have ties to the PLA, the Deng Xiaoping family and the CCP leadership. Nor Kangping Chen, co-founder and Director of JinkoSolar who is also a member of the National People's Congress. A targeting strategy that focused more on these individuals might have a greater impact on the balance of power between proponents and opponents of forced labour policy in Xinjiang's solar sector, especially as these individuals would stand to lose considerably from sanctions, and might have real reach into – if not influence over – Beijing's policy processes.

### 3.4.3 Do sanctions exploit cost asymmetries?

Xinjiang's solar sector also differs in other important ways from the cotton and tomato sectors. While polysilicon is, like tomatoes and cotton, a relatively homogenous commodity, the solar goods into which polysilicon is incorporated are highly differentiated, complex products. Although Chinese exporters have many buyers, Western importers represent a higher proportion of demand in the solar market than in the tomato and cotton markets, which suggests that Chinese solar exporters could be vulnerable to Western sanctions.

Yet Chinese dominance in the solar manufacturing supply-chain is such that the reverse is in fact the case: the sanctioning coalition is highly dependent on Chinese supply, and probably faces greater costs to find or develop new sources of supply than do targeted exporters face in finding new buyers outside the sanctioning coalition. Hoshine silica is found in at least 60 per cent of downstream products, and perhaps as much as 95 per cent of on-grid PV power in the top 30 producing countries. Just five Chinese polysilicon firms supply around two thirds of the global market,<sup>746</sup> and China produced three quarters of global polysilicon in 2021.<sup>747</sup> Polysilicon trade networks are thus concentrated in a way that makes Western (i.e. sender) importers and buyers of solar products highly dependent on Chinese target producers.<sup>748</sup> The US may not represent a large enough portion of demand to change Chinese business practices. Indeed, an anonymous source at one of China's largest solar panel parts producers told the *South China Morning Post* in June 2022 that "the impact" of Western sanctions "on companies' profits is nonexistent, let alone affects the companies' survival".<sup>749</sup>

What is more, the exit costs for Western importers and buyers are extremely high, because polysilicon supply is inelastic: a new plant requires around USD 500 million to 1 billion in investment, and a lead time of 18 months before it comes on line.<sup>750</sup> There are few sources of supply currently available that are not connected to Xinjiang polysilicon, except for supply-constrained First Solar, which offers a thin-film product that does not use polysilicon, with different performance parameters.<sup>751</sup> Perhaps unsurprisingly, thin-film producers and sellers have signalled their support for import bans on polysilicon-based PV technologies.<sup>752</sup>

729 Wagman 2021.  
730 Wagman 2021c.  
731 American Clean Power Association 2022.  
732 See M#308.  
733 See US CBP 2022e, pp. 22-23.  
734 JinkoSolar Holding Co. Ltd. 2021.  
735 American Clean Power Association 2022.  
736 Gifford 2021.  
737 Kyozuka and Hoyama 2021.  
738 Vanderklippe 2021.  
739 Lam 2016.  
740 Week in China 2012; Rosen 2011;  
741 Funaiole and Kurata 2021.

742 Kawase 2021.  
743 China Daily 2014.  
744 Bai et al. 2021.  
745 Murphy and Elimä 2021.  
746 Fitzgerald 2021.  
747 Ji et al. 2022.  
748 Da et al. 2019.  
749 Ji et al. 2022.  
750 Interviews 1, 3, 12.  
751 Cockayne et al. 2022.  
752 PVthin 2022.



Some industry analysts suggest that if Xinjiang-based supply is removed from the global market, there is inadequate supply elsewhere to meet that demand,<sup>753</sup> though other industry advocates argue otherwise.<sup>754</sup>

These market characteristics are leading some to consider solar products as strategically important resources.<sup>755</sup> Typically these are goods that sanctions senders wish to *avoid* sanctioning, or at least to use sanctions to increase their control over. In the case of Xinjiang sanctions, however, Western sanctions currently seem to *exacerbate* Western vulnerability, not address it. This is the reverse of the conditions that sanctions theory tells us ought prevail for sanctions to succeed.

Nonetheless, there are ways that sanctions on the Xinjiang solar sector could exploit cost asymmetries, though these require adjustments in targeting and enforcement strategy. For example, Xinjiang polysilicon producers are likely dependent on access to high-purity quartz for the crucibles used to refine polysilicon under the state of the art Czochralski method. China reportedly produces only 15 per cent of the supply of high-purity quartz it needs, importing most of it from a mine in North Carolina. Direct exports from that mine to Hoshine are probably prohibited by Hoshine's designation on the US Entity List (XJS-GMS M#232), but exports appear to continue on an indirect basis.<sup>756</sup> Blocking these indirect exports through the long-arm reach of the Entity List would exploit Chinese polysilicon producers' vulnerabilities while making it *easier* for other producers to access these supplies – a classic exploitation of cost asymmetries.

### 3.4.4 How are targets adapting?

All three exporter adaptation strategies – trade reallocation, trade deflection and product transformation – appear to be under way in the solar sector in response to Xinjiang sanctions.

It appears that some product are being reallocated from export to North American markets to other destinations, including both export to foreign markets and to the Chinese domestic market, where consumption of solar products continues to rise.

However, the US Department of Energy assesses that Chinese supply still far outstrips Chinese demand,<sup>757</sup> and so Chinese exporters will need to continue to look for other sources of export demand to fill the gaps resulting from loss of North American or European demand (once a European import ban is operational) – or find ways to access North American or European markets through third countries.

This brings us to the question of trade deflection, which is closely related to longstanding and controversial practices of tariff circumvention in the solar value-chain. The US Department of Commerce has been conducting an investigation into efforts to circumvent anti-dumping and countervailing duties (AD/CVD) placed on solar imports from China, by re-routing them through South East Asian countries and passing them off as products of those countries.<sup>758</sup> Sanctions theory tells us that where importers are dependent on targeted exporters – as is the case here – there are strong incentives for sanctions evasion and circumvention. The danger is that the documentation and traceability requirements established under import bans such as the UFLPA could be gamed through the submission of false documentation suggesting a provenance other than Xinjiang product components.

Finally, there are also signs of product transformation by targeted exporters. This takes more than one form. There are rumours that some companies may be seeking to evade Western sanctions by dismantling products made in China and re-assembling them elsewhere to alter their perceived provenance.<sup>759</sup> Separately, some producers have moved polysilicon and module production out of Xinjiang to other Chinese provinces or even offshore, and some have also moved to secure polysilicon supply from non-Chinese sources.<sup>760</sup> In February 2021, LONGi Solar signed a three-year contract with Korean polysilicon manufacturer OCI worth USD 844 million.<sup>761</sup> And in August 2021, Jinko Solar signed a five-year contract with German polysilicon producer WackerChemie to feed wafer and cell manufacturing in Vietnam, which in turn feeds module production in Malaysia. This will create a slavery-free, 'clean' 7GW supply-chain entirely outside China,<sup>762</sup> with JinkoSolar seemingly planning to sort demand into two categories – those customers requiring 'slavery-free' products and the rest – and then to construct separate supply-chains for each category.<sup>763</sup>

This points to a surprising conclusion: the firms that are best positioned to exploit the 'sorting' opportunity created by Western sanctions may not be new entrants, but rather established players that have access to the technologies, relationships and capital required to develop new, 'slavery-free' supply-chains. There is nothing in Western sanctions preventing these firms from continuing to make goods using forced labour – so long as they do not supply them to sanction sender markets. Import bans, alone, cannot change this dynamic. In fact, operating alone, they may *exacerbate* this dynamic. In order to comply with the UFLPA, for example, solar firms are developing complex manufacturing execution systems (MES) to provide traceability and demonstrate the provenance of product components. Large integrated solar manufacturers in China, which cover wafer, cell and module production in one company, already have these systems in place,<sup>764</sup> giving them a first-mover advantage over smaller operators that do not.

The result may be that buyers purchasing 'slave-free' goods are not only failing to contribute to the termination and prevention of forced labour in Xinjiang, and its remediation – but also cross-subsidizing Xinjiang forced labour by buying products, at a 'slavery-free' premium, from the same firms making and selling other goods with forced labour. Addressing this unintended outcome will require two significant policy fixes. First, ensuring that sanctions work not only to block *goods* made with forced labour, but also to target *firms* that use forced labour to make goods. Second, investing in and otherwise supporting new market entrants who have no ties to forced labour, in order to create alternative sources of slavery-free supply of silica and polysilicon. We return to this question of industrial policy later in the study.

### 3.4.5 What role are sectoral bodies playing?

Sectoral bodies have played a complex role in response to Western sanctions regarding forced labour in the Xinjiang solar sector. The Chinese Photovoltaic Industry Association has repudiated claims of forced labour.<sup>765</sup> North American bodies (including the Solar Energy Industries Association, the American Clean Power Association and the Ultra-Low Carbon Solar Alliance), the European peak body (SolarPower Europe) and the UK body (SolarEnergy UK) have all acknowledged the concerns, but taken somewhat different positions on how to respond.<sup>766</sup>

The Solar Energy Industries Association acknowledged forced labour concerns as early as October 2020, and quickly began encouraging its members to move their supply-chains out of Xinjiang.<sup>767</sup> It also organized an anti-forced labour pledge (as has the American Clean Power Association), which hundreds of its members adopted – including some of the Chinese manufacturers such as LONGi and Jinko whose modules were subsequently detained by US CBP on the grounds that they may have been made in whole or in part with goods made by forced labour.<sup>768</sup> This has led some critics to argue that the pledges, and associated efforts to promote supply-chain 'traceability' offer mere window-dressing, since these associations continue to look to workplace audits as a way to assess labour standards in production outside Xinjiang.<sup>769</sup> This fails, critics argue, to appreciate the unreliability of audits to assess minority forced labour risks associated with the Poverty Alleviation Through Labour Transfers programme elsewhere in China.<sup>770</sup> SEIA and ACPA nonetheless argue that improved traceability in solar supply-chains means that the sector "should no longer be considered a 'high-priority' sector for enforcement" of the UFLPA, since importers will know with greater certainty that their products do not include components from Xinjiang or from entities with ties to Xinjiang forced labour.<sup>771</sup> In contrast, SolarPower Europe, Solar Energy UK and Ultra-Low Carbon Solar Alliance have pushed for the sector to move towards a more robust system of sustainability certification, encompassing not only labour standards but also other social and environmental concerns.<sup>772</sup> SolarPower Europe argues that if sufficiently robust, such certification arrangements could reduce the regulatory burden for both states and industry in complying with trade instruments designed to address forced labour.<sup>773</sup>

753 Chen 2021.  
754 Ross Hopper 2021.  
755 Wagman 2021d.  
756 Fromer and Zhou 2021a.  
757 US Department of Energy 2021, p. 169.  
758 Bever and McDaniel 2022.  
759 Interview 3.  
760 Chen 2021.  
761 Kim 2021.  
762 Zacks Equity Research 2021.  
763 Interviews 1, 3, 12.

764 Interviews 2, 3, 5.  
765 Maisch 2021.  
766 See generally Cockayne et al. 2022.  
767 Dayen 2022.  
768 SEIA 2022.  
769 Interviews 2, 4.  
770 Interviews 4, 7, 10.  
771 American Clean Power Association 2022, p. 2.  
772 Cockayne et al. 2022; Fitzgerald 2021.  
773 SolarPower Europe 2022.

What explains these differences? As explored earlier in this Part of the study, sanctions scholars have explored the role that sectoral bodies play in *promoting* sanctions, as a way to benefit from protection. However, that is not what we see in this case. Sectoral bodies have instead sought to mitigate the costs incurred by industry as a result of sanctions promoted by others. It is not sectoral bodies, but rather civil society organizations and research scholars (notably the 2021 publication of *In Broad Daylight*<sup>774</sup>), that have driven the adoption of Western sanctions on Xinjiang silica and polysilicon producers. But the measures that sectoral bodies have promoted in order to mitigate these sanctions' negative impacts for industry are revealing.

Research suggests that the solar sector is highly responsive to industrial and trade policy, and that solar firms in more globalized value-chains tend to favour more open trade.<sup>775</sup> That is indeed what we see here, with sectoral bodies such as SEIA that are dominated by firms more deeply embedded in transnational supply-chains pushing for implementation of sanctions in a way that promotes open trade. In contrast, the European sectoral bodies and Ultra-Low Carbon Solar Alliance are responding to regulatory signals from both the European Commission and global capital markets that environmental and social concerns are increasingly important factors in market access, and that may lead to more vertically-integrated and perhaps regionalized production arrangements. This is particularly clear in Europe, where the EU Commission is in the throes of introducing mandatory human rights and environmental due diligence requirements, whilst also developing integrated solar industrial policy, and has recently announced a more prominent place for sustainability in its trade policy, including making non-compliance with forced labour standards a ground for withdrawal of trade preferences.<sup>776</sup>

### 3.4.6 Are capital markets engaged?

North American import bans and export controls are not yet impeding Xinjiang solar firms accessing global capital markets. Hoshine announced in February 2022 that it would invest USD 2.75 billion in a new polysilicon plant in Ürümqi, Xinjiang's capital.<sup>777</sup> And Xinte, which was established in 2008 near Ürümqi and reportedly participated in labour transfer programmes,<sup>778</sup> is apparently part-owned by Morgan Stanley, Bank of New York Mellon, JP Morgan Chase, UBS, Schroder Investment Management, Allianz, Lazard, State Street and Vanguard.

There are signs of some private and public investors engaging in heightened due diligence and active engagement seeking to address these risks. Investor Alliance for Human Rights has engaged Brookfield Renewables, Canadian Solar, Consolidated Edison, NextEra Energy, REC Silicon, Scatec Solar, Siemens Gamesa Renewable Energy and SolarEdge.<sup>779</sup> Private equity firm Eventide has pushed for the development of a phased exit plan for the industry.<sup>780</sup> On the public side, development finance institutions and multilateral development banks are reported to be developing joint approaches to work with investees to address these risks.<sup>781</sup>

These efforts are, however, voluntary and sporadic, rather than systematic. Consideration has been given in US Congress to requiring systematic disclosure to the SEC of reporting entities' ties to Xinjiang,<sup>782</sup> but no requirement for these rules has yet been enacted. To date there has likewise been no effort to de-list firms with reported ties to Xinjiang forced labour; both JinkoSolar and Daqo remain listed on the New York Stock Exchange.

### 3.4.7 Discussion

Four main insights emerge from this review of sanctions on Xinjiang's solar sector.

First, it is clear that Chinese solar firms with ties to Xinjiang forced labour *are* vulnerable to Western sanctions, both because they need access to Western export markets, and because they rely on Western inputs such as high-quality quartz and capital. Senior leaders of these firms also have important ties to policy-making groups in Beijing, including the National People's Congress, the 'Zhejiang Clique', state-owned lenders, and senior CCP leaders. However, it is not clear that Western sanctions' target selection aims to exploit these vulnerabilities. Instead, target selection to date seems, presumably unintentionally, to exacerbate Western vulnerability.

A better approach might be to target exports of high-quality quartz to Chinese firms, and to adopt targeted sanctions against individual leaders of relevant firms who have direct ties to Beijing's policy-making processes. This may require a more creative approach to sanctions, for example exploring disruption of listings or of professional certification. The CEO of Daqo is a member of the American Institute of Certified Public Accountants, and the CFO of GCL-Poly is a member of the Australian Society of Certified Practising Accountants. Should these bodies be accrediting individuals leading organizations using forced labour? Likewise, has Forbes ever noted that forced labour may be a source of the wealth of individuals included in its rich lists?

Second, it is clear that how import bans are enforced will have a significant impact on outcomes for this industry. At present, there are no viable isotopic or chemical approaches to testing for Xinjiang polysilicon at present. Customs authorities are thus forced to rely on documentary evidence of provenance and chain of custody, which is not only expensive, but also risks the emergence of an evasion industry. Early, visible and strong enforcement may be needed to deter such an outcome.

Third, we are already seeing the emergence of a bifurcated supply-chain, with 'slavery-free' production serving markets that require it, and the rest supplied by existing capacity. Vertically-integrated wafer and module manufacturers in China are in the best position to develop these new 'slavery-free' capabilities and are already doing so – without necessarily terminating their relationships with silica and polysilicon providers using forced labour. They seem set to straddle both supply-chains. In this way, premiums that Western buyers pay for 'slavery-free' products may simply end

up cross-subsidizing goods made (for other markets) with forced labour. This may 'prevent' forced labour, in the sense that it cuts the connection between Western consumption and Xinjiang forced labour, but it does not spell an overall reduction in forced labour within the sector, given that Xinjiang solar supply may continue to grow to meet rising demand in other markets, notably China. Nor does this strategy achieve anything by way of remedy for those who have already been harmed in the making of solar products already sold and installed around the world. Arguably, Western import bans will not work to reduce forced labour in the Xinjiang solar sector: but only to reduce Western consumers' complicity in it. Nor will import bans reduce Western investors' connections to Xinjiang forced labour, given that Western private sector investment in firms with ties to Xinjiang solar has so far been relatively undisrupted.

Fourth, sender importers are currently constrained by the absence of alternative, 'slavery-free' supply of silica, polysilicon and downstream products. Johannes Bernreuter, a leading industry analyst, concludes that if the aim is to remove forced labour from the solar supply-chain, until China's labour policies change "[t] here is no way around establishing new solar supply chains outside China".<sup>783</sup> Accelerating the emergence of such supply should be a shared strategic goal for the sanctioning coalition, as it will reduce the vulnerability of the coalition that arises from these sanctions. Yet at present there is no evidence of a concerted, transnational industrial strategy accelerating the emergence of a slavery-free solar supply-chain.

In the short term, the development of new, slavery-free will be costly. There is no way around that. Bernreuter estimates a roughly 10 per cent increase in solar prices.<sup>784</sup> In the medium and long-term, however, there will be significant benefits, including reduced forced labour; greater resilience to geopolitical shocks; productivity, innovation and social welfare gains from the removal of forced labour from the supply-chain,<sup>785</sup> not to mention ensuring the perceived 'justness' of the transition to renewable energy.<sup>786</sup>

## 3.5 Discussion

### 3.5.1 Dynamics of Xinjiang sanctions

The insights drawn from the sanctions literature in section 3.1 provide a useful framework for analysing and understanding the sectoral dynamics of Xinjiang sanctions. The results of this analysis (sections 3.2-3.4) are summarized in Figure 11, and further explained below.

774 Murphy and Elimä 2021.  
775 Meckling and Hughes 2017; Haley and Schuler 2011.  
776 European Commission 2022.  
777 Shaw and Hall 2022.  
778 Murphy and Elimä 2021.  
779 IAHR 2022b.  
780 See Eventide 2022.  
781 Cockayne et al. 2022.  
782 See e.g. XJS-GMS M#315.

783 Bernreuter 2021.  
784 Bernreuter 2021.  
785 Cockayne 2021.  
786 Cockayne et al. 2022.

Figure 11. Sectoral dynamics of Xinjiang sanctions

	Cotton	Tomatoes	Solar
<b>Overall impacts to date</b>	Significant impact on demand for Xinjiang cotton as well as price, with some targeted firms closing manufacturing plants and laying off workers. Western brands have lost market share in China due to counter-measures. No sign of remediation to victims of forced labour.	Limited sanctions enforcement to date. No clear evidence of impact on Xinjiang sector. No sign of remedy for victims of forced labour.	Limited impact – prices at 10-year high. Possible supply-chain bifurcation. No clear roadmap for developing alternative supply means that established firms capture new ‘slavery-free’ demand. No sign of remedy for victims of forced labour.
<b>Strengthen policy opponents?</b>	Sanctions have responded to evidence of ties to forced labour, rather than sought to impact those with ties to policy makers. No differentiation of enforcement approach between XPCC firms and those with more direct influence in Beijing (e.g. Ruyi Group). Targeted sanctions on firms and leaders’ foreign assets could increase impact.	Sanctions have responded to evidence of ties to forced labour, rather than sought to impact those with influence in policy processes. No differentiation of approach between XPCC firms and those with more direct influence in Beijing (e.g. COFCO Tunhe).	Sanctions not yet targeting industry leaders with influence over policy makers (e.g. those with ties to ‘Zhejiang Clique’, or those with ties to Deng Xiaoping’s family & PLA).
<b>Cost asymmetries</b>	Asymmetries marginally favour sanctioning coalition because of Western share of demand and higher price Western consumers pay. This could be further strengthened by broadening coalition to include Central Asian buyers of raw and spun cotton.	Asymmetries currently favour Xinjiang producers. This will change if: 1. EU import ban is adopted and enforced; 2. African or Middle East countries are recruited into the sanctioning coalition; 3. US takes more robust enforcement action (e.g. against fast food companies); or 4. sanctions focus more on the broader COFCO group – though this risks being perceived as an attack on China’s food security.	Asymmetries strongly favour Xinjiang producers and work against Western importers. This could be addressed by adding a focus on high-quality quartz exports from the US, and through industrial policy to increase alternative supply of slavery-free polysilicon.
<b>Trade adaptation strategies</b>	Evidence of reallocation, deflection and transformation. Clear risk of sanctions evasion – enforcement strategy will be determinative.	Evidence of deflection which may shade into evasion. Some reallocation/social dumping. Enforcement strategy will be critical.	Evidence of trade reallocation and some deflection (e.g. via South East Asia). Dominant firms in the middle of the supply-chain are increasingly engaging in product transformation and supply-chain bifurcation – without giving up forced labour production for some products. This raises cross-subsidization concerns.
<b>Sectoral body conduct</b>	Sectoral bodies representing globalized firms push for limits on import controls. Standards-oriented bodies provide norm amplification. Chinese government responds by politicizing standards processes, creating alternative ‘local’ standards systems.	No activity evident.	Sectoral bodies’ policy stances respond to both positions in global value-chains and local regulatory signals. Globalized value-chains lead sectoral bodies to push for more open trade. Thin-film & ultra-low-carbon producers are more vocal in support of sanctions, as they may improve their competitive positions.
<b>Capital markets engaged?</b>	Increasingly, but primarily through private active engagement, including via IAHR. Some emerging shareholder proposal activity.	Some impacts of US financial sanctions on XPCC family firms, (e.g. removal from stock indices). Early signs of active engagement by IAST-APAC and IAHR. No shareholder actions to date.	Western investors remain invested in Chinese solar firms with ties to Xinjiang forced labour. Development finance bodies most engaged, with some signs of engagement by institutional investors, private equity. No signs of shareholder actions or delisting to date.

Of the three sectors considered, the sector most clearly impacted by Xinjiang sanctions is the cotton sector. Western sanctions appear to be depressing demand for Xinjiang cotton, and its price. At least one firm that has been affected (though not directly targeted) by a US WRO as well as designated on the Entity List has lost hundreds of millions of dollars in revenues, and had to close factories and lay off workers outside China. Meanwhile, Western apparel brands have clearly lost market share in China as a result of Chinese counter-measures (as discussed on Part 2). For the solar sector, there is considerable anxiety around *potential* impacts from Xinjiang sanctions, with investors increasingly active behind the scenes, and US WRO enforcement causing some disruption and delays on imports. But the price of Xinjiang polysilicon is at 10 year-highs, suggesting no overall shortage of demand. The costs of Western sanctions may thus be falling more on Western importers than on Xinjiang producers. Finally, there is little evidence of Xinjiang sanctions impacting the tomato sector to date, beyond withdrawal of some firms from global stock indices. In none of the sectors, however, have the sanctions led to clear signs of policy change, nor of remedy being provided to victims of Xinjiang forced labour. The advent and enforcement of the *Uyghur Forced Labor Prevention Act* (UFLPA) could change this situation, as could the adoption of an EU forced labour instrument.

In all three sectors studied, target selection appears to have been driven primarily by information adduced to governments about the ties between individuals and entities and Xinjiang forced labour programmes. Targets do not appear to have been selected based on the influence they can wield over the government policies and practices that underpin Xinjiang forced labour. The exception that proves the rule is the focus, across all three sectors, on firms and individuals with ties to the XPCC. Firms and individuals within each sector that lack such connections to the XPCC, but may wield significant policy influence in Beijing, have conspicuously *not* been targeted in the same way. Several of these – Ruyi Group in the cotton sector, COFCO Tunhe in the tomato sector, and various solar firms with connections to Zhejiang – appear to have significant interests, assets and holdings outside China which could potentially be targeted for sanctions activity, but have not been to date.

Perhaps most remarkably, only in one of the three sectors considered do cost asymmetries clearly favour sanction senders over targeted exporters. This is remarkable because sanctions theory suggests that sanctions are unlikely to induce changes in target policy or behaviour if the costs of the sanctions are higher for those imposing them than for those targeted. It is perhaps no coincidence that the sector in which sanctions appear, to date, to have had the greatest bite is the sector in which cost asymmetries *do* favour the sanction sending coalition, namely the cotton (including textiles, garments and apparel) sector.

In the cotton sector, the Western sanctioning coalition represents a relatively high share of the ultimate demand for Xinjiang cotton. Reductions in demand for Xinjiang cotton are causing revenue decline for Xinjiang producers. Western importers can, by contrast, find alternative supply with relative ease – although not entirely costlessly. The sanctioning coalition could be strengthened even further if Central Asian buyers of raw and spun cotton were recruited into the sanctioning coalition, since this would further amplify the cost asymmetry in the sanctioning coalition’s favour. Given that many of these Central Asian economies have robust cotton industries of their own, some of which have worked hard in recent years to overcome reliance on forced and child labour, it may be feasible for the sanctioning coalition to recruit them. Having done the hard work of industrial and regulatory transformation, these countries have no interest in their local industry being undercut by Xinjiang cotton made with illegal forced labour.

In the tomato sector, cost asymmetries currently seem to favour targeted Xinjiang producers, in part because there has been relatively limited enforcement of import bans. Producers still appear to be able to ship products to Western markets, including through intermediary firms in Italy. This situation would change if any one of the following four things happened. First, if the EU adopted and enforced a forced labour import ban, as this would disrupt supply-chains for Xinjiang tomatoes to Western markets that pass through Italy. Second, if African and Middle Eastern countries that rely heavily on Xinjiang tomato paste were recruited into the sanctioning coalition. Similar to Central Asian cotton producers, African tomato growers and processors seem to have clear incentives for protection against competition from unfairly cheap Chinese products that have devastated local production. Third, if the US took more robust enforcement action, including against indirect imports. Given the significant demand from US fast food brands for these products, enforcement action that disrupts their access to supply may generate significant leverage and cost asymmetries for Xinjiang producers. Fourth, given the broader COFCO Group's role in securing China's food imports, the company may exhibit greater vulnerability than other firms connected to the Xinjiang tomato sector, where leverage is currently only being exerted on exports. Targeting COFCO Group operations and assets – for example its commodity trading operations in Switzerland – for their connections to a firm involved with Xinjiang forced labour could cause considerable costs for COFCO as well as for Beijing, at a relatively low immediate cost to sanctions senders. However, since Beijing perceives COFCO as a key mechanism for ensuring China's food security, this is likely to elicit a robust response from Beijing, which could increase the costs for the sanctioning coalition in unpredictable ways.

The cost asymmetries are greatest in the solar sector, working in favour of Xinjiang producers and against Western importers. China's dominance of the solar supply-chain, including in silica and polysilicon production, mean that it is Western importers, not Chinese producers, that are more vulnerable to sanctions on silica and polysilicon. Nevertheless, this situation could be reversed, with smart target selection and enforcement strategy. Xinjiang polysilicon producers may be vulnerable to restrictions on their access to the high-quality quartz used in polysilicon crucibles, much of which is exported to China from North Carolina by two firms, one Belgian and one Norwegian. Another way to address this disadvantageous cost asymmetry is simply to increase access to alternative supply of polysilicon. Given that new polysilicon plants cost USD 500 million or more, and often take more than 18 months to come online, there may be a need for coordinated investment and industrial policy to scale up alternative supply.

In all three sectors, producers and exporters affected by Xinjiang sanctions show signs of exploring all three adaptive strategies canvassed by the sanctions literature, namely trade reallocation, trade deflection and product transformation. Reallocation may be leading to social dumping in the cotton and, in particular, tomato sectors.

In the cotton and tomato sectors we also found evidence of producers and exporters openly contemplating fraudulent approaches to sanctions compliance, such as looking to import into the US using fraudulent paperwork. The extent to which this sanctions evasion takes hold will depend on enforcement strategies and resourcing, including how likely it is that such fraud is detected, and what are the consequences of such detection. Customs and other enforcement authorities may need to invest in DNA, genotype or isotopic testing capabilities in order to increase the risks of detection.

Sanctions theory predicts that local producer groups and sectoral bodies may promote sanctions if they see them as a way to reduce competition. However, trade theory also tells us that firms that are integrated into global value-chains are proponents of open trade. In the cotton and solar sectors, both of which are highly globalized, we found evidence of both phenomena at work. Sectoral bodies representing firms relying on open and free trade lobbied Western governments – both prior to the adoption of restrictive measures and during discussions on their implementation – to minimize the disruptions caused by these measures. Sectoral groups representing firms that stood to gain from these sanctions, such as thin-film solar panel firms (which do not rely on polysilicon) or ultra-low-carbon producers were, on the other hand, more vocal supporters of such measures.

In addition, we also found evidence of sectoral groups in the cotton, textile and garment sector serving an important evidentiary and norm amplification role. This has not received significant attention in the trade or sanctions literature. Industry and multistakeholder groups promoting respect for international labour standards were important players in the emergence and dissemination of evidence around Xinjiang forced labour, and in the clarification of market expectations around how firms should respond. There are no similar sustainability certification arrangements in place in the tomato and solar sectors, so the same process of norm amplification has not emerged there.

The Chinese government has responded by seeking to contest and politicize these cotton sector voluntary standards promotion bodies and processes, seeking to portray them as tools of Western governments and interests hostile to China. Alternative Chinese-backed sustainability and certification processes have begun to emerge, one of them with XPCC support. This resembles the situation in the global palm oil sector, where South East Asian producer countries have portrayed international certification schemes as hostile to their sovereignty, and sought to develop local alternatives.

This points to the potential for geopolitical conflict over the Xinjiang forced labour 'narrative', which could spill over into debates on technical standards in international trade and investment. We may see the first indications of this trend in capital markets, as they begin to grapple with the implications of Xinjiang forced labour. While some firms in the Xinjiang tomato sector have been formally removed from leading stock indices in order to comply with US sanctions, we found little evidence that investment into firms connected to Xinjiang forced labour has abated. We did, however, find evidence of growing due diligence and active engagement by investors to address the connections between firms they invest in and Xinjiang forced labour. In the cotton sector, there has been at least one shareholder proposal. In the solar sector, development finance institutions and multilateral development banks seem to be playing an important role behind the scenes. But in all three sectors, it appears that there is significant leverage over conduct related to Xinjiang forced labour – including through debt markets – which investors are not yet using.

### 3.5.2 Are Xinjiang sanctions working?

What does this all add up to? Are Xinjiang sanctions working?

That depends, of course, on what we consider to be the purpose of the sanctions. If their purpose is to prevent and remedy Xinjiang forced labour, then the evidence appears mixed, at best, so far. The PRC has recently moved to ratify the two key ILO forced labour Conventions and claims that the VSETC system has been shut down. However, neither of these things means that forced labour has ended, nor that past forced labour has been remedied. Chinese counter-measures mean that it is now *harder* to access and reliably audit worksites where Xinjiang forced labour may be present. The risks from speaking about the conditions and treatment of Uyghur and other minority workers have also grown. This may make these workers *more*, rather than less, vulnerable to exploitation and abuse, at least in the short term.

One of the intriguing possibilities that emerges from this discussion is that while Western policy makers may indeed aspire to have Xinjiang sanctions reduce Xinjiang forced labour, the sanctions instead work primarily to reduce *Western consumers' and importers' contribution* to Xinjiang forced labour – not to end it *per se*. The significant – and growing – focus on import bans places reduced Western 'complicity' through purchase of goods made with Xinjiang forced labour at the focal-point of Western sanctions strategy. But it does not prevent Western *investors* from continuing to invest in and profit from the production and sale of goods made with Xinjiang forced labour – so long as they are sold into markets outside the sanctioning coalition. Nor do import bans prevent Western consumers and importers from cross-subsidizing Xinjiang forced labour by buying (at a premium) slavery-free goods made by the same firms that use forced labour to make other goods. This is exactly what we see happening in the solar sector.

If the purpose of Xinjiang sanctions *is* in fact to prevent and remediate Xinjiang forced labour, and not simply to reduce Western consumers' and buyers' complicity in it, then adjustments may be required in the sanctioning coalition's strategy. Import bans have a key role to play. As early progress in the cotton and solar sectors makes clear, they can create significant leverage that might provide a foundation for inducing policy change. However, the analysis in this section suggests that consideration may need to be given to a range of adjustments that help accelerate such a change. These include improving target selection to exploit vulnerabilities and cost asymmetries as well as focusing more on actors with policy influence in Beijing; expanding the sanctioning coalition by drawing greater attention to the negative impacts of China's social dumping strategies; development of industrial policy to create alternative supply to replace sanctioned production; greater use of capital market leverage; expansion of sanctions tools to include delisting, decertification and other forms of strategic regulation and blacklisting; and the development of strategies for resisting China's online counter-measures.

Those options are further canvassed in Part 4.

## 4. Strengthening Xinjiang sanctions

Since 21 June 2022 US Customs and Border Protection (CBP) has been empowered to detain goods entering the US that include components made in Xinjiang, on the grounds that they are presumed to be made with forced labour. These powers, provided by the *Uyghur Forced Labor Prevention Act* (UFLPA), represent a new chapter in Western sanctions responding to allegations of Xinjiang forced labour – what this study calls ‘Xinjiang sanctions’. Effective enforcement of the UFLPA, and the adoption of similar import bans in jurisdictions where this is contemplated, such as the EU and Australia, may create the economic pressure needed to induce policy change in Beijing and Ürümqi, bring an end to Xinjiang forced labour, and remedy the harms already suffered by its victims.

The findings of this study – the most comprehensive study of Xinjiang sanctions to date – suggest that at this point Western sanctions are not achieving that result and help explain why that is the case. An honest appraisal of Xinjiang sanctions to date might conclude that they are not intended to be transformative – that is, to end Xinjiang forced labour – but rather to be expressive or demonstrative – that is, to signal Western countries’ commitment to anti-forced labour and anti-slavery norms to domestic and foreign audiences.

In truth, however, it is difficult to assign a singular intent to policymakers in so many jurisdictions, and the sets of measures described here as ‘Xinjiang sanctions’ are all relatively newly imposed. Many are only just beginning to be enforced, so it may take time for their full impacts to become apparent. A better question than ‘Are they working?’ may therefore be ‘What would lead to Xinjiang sanctions combating Xinjiang forced labour?’

The analysis in Parts 1 to 3 of this study points to several factors that appear to be restricting the impact of Xinjiang sanctions to date, including:

- a lack of clarity on the exact policy change sought in order for sanctions to be dropped, and the exact norms underpinning that ask;
- the limited share of demand for Xinjiang products represented by the sanctioning coalition;

- the need to base target selection on: 1) market structure and cost asymmetries, so that sanctions exploit targets’ vulnerability rather than exacerbating the vulnerability of Western importers and buyers; and 2) targets’ influence over PRC policy-making, so that economic coercion induces policy change;
- the absence of coordinated industrial policy to rapidly grow alternative, slavery-free supply that would reduce the costs to Western importers and buyers occasioned by compliance with Western sanctions on Xinjiang supply;
- the absence of clear policy on the continued access to trade and capital markets for firms that cease to import goods made with Xinjiang forced labour but continue to make and sell them in other markets;
- the lack of use of strategic regulation and boycotting powers, such as de-listing, de-certification and de-platforming powers; and
- the lack of focus on provision or enabling of remedy for victims of Xinjiang forced labour.

The literature on sanctions effectiveness suggests the success of Western sanctions in response to Xinjiang forced labour will depend on moving towards a more strategic approach, using an understanding of Xinjiang’s political economy to better target and exploit vulnerabilities and induce policy change. Drawing on the factors identified above, this concluding Part of the study sets out 10 recommendations for strengthening Xinjiang sanctions to make them more strategic and more effective.

### 4.1 10 Recommendations to the sanctioning coalition

#### Recommendation 1: Clarify the ask

Sanctions literature, and studies on what has worked to end systemic forced labour, indicate that sanctions are more likely to be effective if the ‘ask’ – the change of policy or conduct that is required for sanctions to be suspended or dropped – is stated precisely (and narrowly), consistently and within a clear normative framework.<sup>787</sup> The absence of a clear, detailed and consistent message about the policy change that will satisfy the sanction sender can play into target states’ efforts to characterize sanctions as an attempt to demonize the target state and its population, since vagueness may suggest that in fact nothing will satisfy the sanction sender and lead to sanctions termination.

The rationales offered by states in adopting Xinjiang sanctions (detailed in the Xinjiang Sanctions Government Measures dataset (XJS-GMS)) imply a wide range of ‘asks’, often stated in broad terms. For sanctions directed at corporate entities, the ask is implicitly limited to the conduct and leverage of those entities – how they address forced labour concerns in their own operations, business relationships, and engagement with state and other policy actors. For state actors, the absence of a consistent message articulating the precise policy changes desired risks feeding a narrative that Western countries’ Xinjiang sanctions are in fact intended as signals to domestic constituencies of sanctioning governments’ anti-China resolve, not as targeted efforts to create calibrated pressure for specific Chinese policy changes.

Only rarely is the exact normative basis for this ‘ask’ explicitly laid out. This is largely framed in terms of a need for an end to ‘forced labour’ and other human rights abuses, with relevant ILO standards being the most common normative reference point. Occasionally – as in the business guidance and advisory documents published by the US, EU, UK and Canada<sup>788</sup> – reference is also made to the expectations on business set out in UN Guiding Principles on Business and Human Rights. It is often unclear whether the change that is desired is a change in PRC and XUAR government policy, a change in corporate conduct in PRC, a change in the conduct of business outside PRC – or all three.

The sanctioning coalition that seeks to address Xinjiang forced labour should develop, publish and consistently repeat a specific set of asks, based on these normative standards, addressed to identified state and business actors in and beyond China. An end to policies underpinning ‘forced labour’ will be at the heart of these asks. Nevertheless, as the discussion in Part 1 of this study identifies, generic reliance on ‘forced labour’ norms as the basis for condemnation of Chinese conduct may have more complex legal implications than has been appreciated to date, particularly in the context of increasing Western reliance on import bans. The applicability of ILO standards on forced labour to China is not legally straightforward, although the country’s ratification of ILO C29 and ILO C105 will simplify matters. Moreover, reliance on the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and forced labour standards generally, may raise questions about the legitimacy of use of trade measures (specifically) to enforce labour standards. This could have second-order political effects in the international trading system, given developing countries’ traditional unwillingness to go along with industrialized economies’ efforts to use trade measures to enforce labour standards.

The implication is not, however, that ILO forced labour norms and standards do not provide a basis for import bans or other sanctions measures. A better conclusion is that the sanctioning coalition should look *not only* to trade measures, but also to ILO mechanisms to enforce these standards. A second conclusion is that ILO standards may not provide a *complete* basis for unilateral sanctions. The sanctioning coalition would be on stronger ground if it laid out a clear, shared analysis of where China’s conduct and policies fall short of its international legal obligations – and what exactly needs to happen to address that gap.

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Peksen 2019; Cockayne 2021.  
XJS-GMS M#041, M#104-M#111, M#260, M#261.

Section 1.3 of this study identifies several specific areas, beyond the ILO forced labour Conventions and standards, that may be relevant to such an analysis:

- China's commitment to the prohibition on slavery under the 1926 Slavery Convention, and earlier precedents in international law condemning state-backed enslavement in Germany, Japan, North Korea and Eritrea;
- China's commitment under Article 5 of the 1926 Slavery Convention to put an end to the practice of compulsory labour;
- China's obligation under Article 9 of the Palermo Protocol (the United Nations Protocol on Trafficking in Persons accompanying the United Nations Convention against Transnational Organized Crime) to prevent and combat trafficking in persons;
- China's obligations under the ILO Discrimination (Employment and Occupation) Convention No. 111 of 1958 (C111), and the ILO Employment Policy Convention No. 122 of 1964 (C122). The exact ask of the Chinese authorities under these Conventions has been clearly and helpfully laid out in a recent report by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR).<sup>789</sup>

### Recommendation 2: Create a win-win narrative around sustainable development and fair trade

As an instrument of coercion, sanctions inevitably set up or reinforce a conflictual, zero-sum dynamic in the relationship between states. The West has a poor track record of inducing policy change in China on human rights issues through such an approach,<sup>790</sup> and it may be difficult to sustain long-term support for such an approach in Western capitals, given the need for cooperation with China on a wide range of issues, notably climate change. Indeed, significant voices within the Biden Administration are reported to have queried the adoption of trade measures impeding US imports of Xinjiang polysilicon precisely on these grounds.<sup>791</sup>

What is more, analysis of past efforts that have proven successful in dismantling state-backed forced labour – for example in Uzbekistan – suggests they succeeded when coercive measures such as sanctions or boycotts were combined with positive incentives for policy change such as access to finance, technical assistance to support industrial upgrading, and diplomatic engagement and approval.<sup>792</sup>

Both sticks (sanctions) and carrots (positive incentives) need to be combined within a narrative framework offering the target a face-saving path to reform that can be sold to both internal constituents and external audiences not as a capitulation to external pressure, but as an enlightened step towards a state's strategic and policy goals. This requires, in other words, framing the desired policy change in 'win-win' terms.

The development of a win-win narrative framing the labour-force and broader governance policy changes sought by the sanctioning coalition seems particularly important to explore in this case. As the discussion in Part 2 of this study highlights, the Chinese government has proven very willing to frame Xinjiang sanctions as measures designed to humiliate and destabilize China, a rear-guard action by hegemonic Western powers to stave off a rising rival. This risks engendering an antagonistic and adversarial dynamic which will not only make it less likely that China will move away from the policies that currently risk generating forced labour, but may lead to unintended knock-on effects in other areas.

There are however two areas of shared interests between the PRC and Western states that offer the basis for developing a win-win narrative to frame reform of PRC policies in Xinjiang, namely sustainable development and free trade.

The CCP narrative on Xinjiang centres poverty alleviation and economic development as policy goals, alongside counter-terrorism and other stabilisation-related goals. Reference to the UN Sustainable Development Goals is frequent.<sup>793</sup> That narrative does not yet, however, appear to reflect growing evidence of the long-term negative impacts on sustainable development caused by reliance on coerced and forced labour and modern slavery.<sup>794</sup> This evidence suggests that while reliance on coerced labour may enrich a community in the short-term, over the long term it measurably impedes sustainable development in 10 different ways, ranging from reduced productivity and costs to the public purse to intergenerational poverty, and environmental harms, as well as increased risks of political instability. This leaves not only victims, but *all* in the community worse off.

Framing engagement on Xinjiang in these terms would mean framing international engagement as an effort to partner with China to help it leapfrog its sustainable development trajectory in Xinjiang, adopting international best practice – and explicitly *avoiding* the mistakes made in the past by the West.

Chinese officials frequently point out the hypocrisy of Western governments lecturing China on forced labour, given the critical role that slavery and forced labour played in Western colonial and arguably industrial development. Western countries can and should admit to these mistakes, highlighting the continuing burdens this part of their history imposes as a reason why China should avoid making the same mistakes by adopting a more inclusive and equitable approach to sustainable development.

The second element of a win-win narrative would focus on fair and open trade. As the Chinese and Western economies are intimately bound together through trade, both China and the West have a shared interest in trade remaining open and fair, given the long-term welfare gains this will bring to all involved. Forced labour risks undermining support for free trade because it allows some producers to artificially reduce the price of goods and outcompete foreign rivals, which makes free trade less fair. At the same time, unilateral import bans and export controls designed to protect local markets from such unfair competition further contribute to a larger disenchantment with international trade. Addressing forced labour concerns thus offers both parties a win in ensuring the longer-term legitimacy of the system of free trade from which their economies have benefited.

The Chinese government has in fact sent important, if subtle, signals that it is willing to address forced labour concerns, as long as these are addressed through existing trade dispute resolution systems, and not through a tit-for-tat trade war.<sup>795</sup> Efforts in Western capitals to frame Xinjiang sanctions in terms of national resilience, self-sufficiency and autonomy have also faced challenges from their countries' long-standing, deep-seated policy commitments to a liberal trading order.<sup>796</sup> Together, these factors point to the underlying shared interest in Beijing and Western capitals in finding ways to address questions of forced labour in Xinjiang *within* the framework of fair international trade.

These two elements – sustainable development and fair trade – could thus be brought together in a narrative encouraging reform of Chinese policies in Xinjiang as a way to upgrade the PRC's sustainable development strategy to reflect state of the art evidence and to secure the region's place in a fair international trading system. The signal this sends is that the removal of sanctions will ultimately be achieved not simply by technical fixes, but by a shift in China's development strategy for Xinjiang, from one based on extraction and capitalisation of value from 'surplus rural labour' to a more sustainable and equitable approach that respects Uyghur agency.<sup>797</sup>

This shift would be reflected by the adoption of policies addressing the concerns articulated with reference to the norms identified in Recommendation 1, which requires not only technical fixes in workplace relations, but also engagement with larger questions of structural discrimination and equity.

This focus on securing Xinjiang's sustainable development by avoiding earlier Western mistakes around coerced labour is a subtly but significantly different message from that currently being communicated, which instead tends to emphasize the need to punish violations of international norms and defend the liberal trading order from the threat posed by goods produced in Xinjiang. The win-win framing seems more likely to secure Chinese engagement and support.

However, adopting such a narrative should be understood as more than just a shift in messaging. For this message to be convincing, it must be backed by the development of a range of positive incentives and forms of engagement that signal the West's commitment to help China adjust Xinjiang's development trajectory in this way. Past efforts to address forced labour at scale – for example in the Uzbek cotton industry – point to various forms of support that can be provided, including international public and private financing, technical assistance and expertise, and diplomatic engagement and support. Historically, the ILO has played a critical role as a trusted organizer of such reform processes, but civil society and international business have played critical roles as well.<sup>798</sup>

### Recommendation 3: Sanction entities, not just goods

Western sanctions have targeted a range of entities (both public and private) involved in Xinjiang forced labour. However, there is now a significant effort underway to promote the adoption of import bans, which target *goods* rather than entities. The analysis in this study suggests that while this may be a way to create significant leverage and pressure for policy change in Xinjiang, policy makers also need to understand the consequences of this focus on goods.

One result is that even as Western consumers cease buying goods made with Xinjiang forced labour, they may nevertheless continue to subsidize the use of Xinjiang forced labour to make goods sold to other consumers in other markets. Under existing import bans, sanctions and policies, not all firms will be prevented from operating in Western markets simply because they use Xinjiang forced labour.

789 ILO 2022.  
790 Drury and Li 2006.  
791 Interview 8; see also Knickmeyer 2021.  
792 See Cockayne 2021.  
793 See eg SCIO 2020.  
794 See especially Cockayne 2021.

795 Interviews 8, 11, 12.  
796 See the discussion of the 'Autarky' policy current present in debates on how to deal with allegations of Xinjiang forced labour in the solar sector, in Cockayne et al. 2022.  
797 On the central role agency plays in addressing modern slavery in the development context see Cockayne 2021.  
798 See Cockayne 2021.

While some may have their commercial operations constrained – if, for example, they are subject to US SDN List designation – most will simply have their access to these markets blocked for goods made with Xinjiang forced labour, or presumed to be so made. They will be able to continue to sell goods otherwise made. Any premium that Western consumers pay for those goods having been made ‘slavery-free’ can then be used by these firms for other purposes – such as subsidizing production of other goods with Xinjiang forced labour.

This is not a merely hypothetical concern. We already see this pattern emerging in some sectors affected by Xinjiang sanctions, most notably in solar product supply-chains. As the pressure of Xinjiang sanctions forces solar supply-chains to sort themselves into two bifurcated lines, one selling into sanctioning markets, the other elsewhere, it is the established mid-supply-chain module and wafer makers that are using know-how, existing business relationships and access to capital to rapidly develop new ‘slavery-free’ production capacity. Many of these firms are believed to be using Xinjiang polysilicon, and to have connections to Xinjiang forced labour.

The only way to avoid such unintended outcomes is to ensure that sanctions policy targets not only the goods made with Xinjiang forced labour, but more broadly the firms using Xinjiang forced labour. This would require adjusting the approach to import bans so that customs authorities are entitled to detain goods not only because they contain components from Xinjiang, but also where the firm producing or importing the goods is using or connected to Xinjiang forced labour – even if it is only for sale of goods to other markets.

This then goes beyond the approach underpinning the US WRO and UFLPA systems. There, customs authorities can detain goods if those specific goods are thought to have been made with forced labour, either because they come from a specific region, or because they include components from another firm that is on a designated list – be it the WRO list, or the UFLPA Entity List. Even if a firm is using Xinjiang forced labour to produce or sell goods in another market, US CBP cannot detain that firms’ goods at the US border unless those specific goods are believed to have been made with Xinjiang forced labour. Jurisdictions that are now contemplating forced labour instruments, such as the EU and Australia, should thus consider adopting the broader approach that would work to ban an entity from their markets if that entity uses Xinjiang forced labour anywhere.

#### Recommendation 4: Select targets on vulnerability and influence, not market dominance

Many of the measures that form the patchwork of Xinjiang sanctions have emerged not as expressions of a centralized strategy or target selection process, but through the action of individual legislators and government agencies (notably customs authorities) responding to information about specific imports. That information has often been adduced through the careful investigative efforts of media, academics and civil society.

This has significant implications for the profile of the target group addressed by these sanctions. A small number of targets are senior officials that have played important roles in implementing the policies in the XUAR and the XPCC that have produced forced labour, but the architects of these policies have arguably not been targeted.<sup>799</sup> At the same time, many firms have been targeted, and many more feel the effects of Xinjiang sanctions through the restrictions those sanctions place on business relationships. These firms, however, do not appear to have been selected based on their vulnerability to sanctions, nor on their potential influence over Xinjiang policy-makers. Instead, the selection of these firms appears to have emerged at least partly organically, in response to evidence adduced concerning their connection to forced labour.

Moreover, many of these firms operate in sectors where Xinjiang producers represent a large share of global supply. While some analysts advocate that this is how targets should be selected,<sup>800</sup> such an arrangement appears to run counter to insights from the sanctions literature. Sectors in which Xinjiang producers represent a large share of supply are – depending on some other factors such as elasticity of supply – likely to be sectors in which the costs imposed by sanctions on sender importers are higher than the costs of target producers and exporters, which is exactly the pattern that appears to have emerged in the solar sector.

A smarter approach would factor vulnerability and policy influence into target selection. In enforcing import bans that cover whole sectors, sanctioning states might be well advised to focus attention not only on firms with ties to the XPCC, but also on major SOEs with closer ties to Beijing, such as the Ruyi Group and COFCO Tunhe. There may also be other firms with specific ties to policymakers in Beijing, such as GCL-Poly with ties to the PLA and the Deng Xiaoping family, or garment and chemical firms with ties to the ‘Zhejiang Clique’, which could prove to be effective targets.

A final implication is that different states in the sanctioning coalition may need to focus sanctions enforcement activities on different targets, since they will offer different forms and degrees of leverage and different vulnerabilities depending on the economic relationship between China and the sanctioning country in question. For example, European markets may have particular leverage through imports of chili peppers, Italy through imports of processed tomatoes and Japan through imports of walnuts.<sup>801</sup>

#### Recommendation 5: Use capital market leverage

The findings of this study also have implications for the choice of sanctions type. They point to China’s particular need for capital investment as a source of vulnerability. Capital market sanctions may thus provide a particularly effective source of leverage to address Xinjiang forced labour.

At present much Western policy focus in tackling Xinjiang forced labour is on the role of import bans. However, one of the parameters limiting the effectiveness of import bans as sanctions tools is that Xinjiang is simply not a highly export-dependent economy. Less than 10 per cent of Xinjiang’s GDP comes from exports, and only around 2 per cent of exports go directly to the US.<sup>802</sup> A greater share of its GDP comes from sale of products to other Chinese provinces – which then transform those products into exports. In addressing this larger share of Xinjiang GDP, the UFLPA targets any and all goods made by supply-chains passing through Xinjiang. Yet in doing so, it significantly raises the costs of compliance and enforcement. Many of these costs are passed on to industry, but this raises the risk that industry will either evade sanctions or seek to have them rolled back over time.

This suggests a need to explore other forms of leverage to achieve the goal of ending Xinjiang forced labour. While Xinjiang is not export-dependent, this study does highlight its investment dependence.<sup>803</sup> By one calculation Beijing poured over USD 310 billion into Xinjiang between 2014 and 2019,<sup>804</sup> not including the private capital mobilized during that period. The growing role of the bond market in financing XPCC budgets, which was discussed in Part 1, suggests that Beijing is looking to private investors to take responsibility for a larger share of the capital support on which the region seems to rely.

The sanctions literature tells us that where a factor of production is scarce – as is capital in Xinjiang – sanctions can work by reducing the return to that factor (i.e. the return to capital).

Chinese government policy works precisely to attract capital by increasing returns. Xinjiang has a preferential foreign trade and investment policy that gives concessions to foreign investors in industries that are not permitted elsewhere in China. It also offers incentives to domestic investors in certain industries, including a 40 per cent reduction in corporate income tax rates, waivers of tariffs on equipment imports, and access to preferential land access and regulation. These and other incentives are what drew 43 greenfield investment projects worth USD 5.7 billion between 2003 and 2020, including major Western producers such as Dow Chemical, Tesla and Volkswagen. Western investment advisors continue to promote Xinjiang as a source of significant investment returns, particularly in the technology and renewables sectors.<sup>805</sup>

This makes the absence of a clear focus on Western outbound investment in Xinjiang sanctions all the more striking. While there have been limited investment controls placed on a small handful of dual-use technology firms – notably through the US NS-CMIC list, discussed in Part 2 as well as XPCC-connected firms through inclusion of the XPCC on the US SDN List – in most cases there is nothing to prevent entities from sanctioning coalition countries investing in firms connected to Xinjiang forced labour. Through voluntary initiatives such as Investor Alliance for Human Rights and Investors Against Slavery and Trafficking Asia-Pacific, some institutional investors are beginning to actively engage firms with potential connections to Xinjiang forced labour. Some development finance institutions and multilateral development banks are also increasingly sensitized to these issues. However, these efforts are voluntary and nascent. Large banks and institutional investors such as Vanguard, State Street, Blackrock, UBS and JP Morgan Chase continue to be invested in firms reported to have ties to Xinjiang forced labour.

Without the constraints on Western investment in Xinjiang, forced labour users may be creating perverse incentives for Western policy makers. In late 2021, concerned by signs of opposition within the Biden Administration to the UFLPA (which President Biden later signed into law), Senator Marco Rubio highlighted the China investments of President Biden’s climate envoy, John Kerry. These included a USD 1 million stake in a fund that was the second-largest owner of LONGi Green Energy, a Chinese solar manufacturer whose products were detained by US CBP on suspicion of having been made with Xinjiang forced labour, and that was invested in YITU Technology, which had been on the US Entity List since 2019 due to connections to Xinjiang repression.<sup>806</sup>

799 Holslag 2021.  
800 See e.g. Bukharin 2022.

801 See Bukharin 2022.  
802 Zhou 2021; US CBP 2022e.  
803 See also SCMP 2021.  
804 Zhou 2021.  
805 See e.g. Devonshire-Ellis 2021.  
806 Goodman 2021a, 2021b; Moore 2021.

At the same time, the current situation also means that Wall Street and Western investors have significant leverage. The question is whether they are using that leverage to push for an end to policies producing forced labour, or to Western opposition to those policies. In August 2021, John Thornton, co-chair of the China-US Financial Roundtable, executive chairman of Barrick Gold Corp and a former Goldman Sachs president, met Chinese Vice-Premier Han Zheng in Beijing, discussing, amongst other issues, Xinjiang. Thornton then reportedly travelled to Xinjiang for a full week. While he was in Xinjiang, his CCP counterpart reportedly encouraged him to get US lawmakers to recognize that CCP policies in XUAR were counterterrorism efforts akin to the US' post-9/11 response.<sup>807</sup>

Western policymakers have not yet chosen to activate or recruit into the sanctioning coalition the leverage for combating Xinjiang forced labour that global capital market actors possess.

One approach could involve expanding mandatory restrictions on Western outbound investment, from the narrow group of dual-use, military and technology firms at which those controls are currently targeted, to other sectors. This would also allow Western sanctions to target the top revenue-earning industries in Xinjiang such as fossil fuels, chemicals and energy,<sup>808</sup> which have, to date, gone largely untouched by Xinjiang sanctions, despite signs of connections to forced labour.<sup>809</sup> Mining alone receives around 90 per cent of foreign direct investment into Xinjiang,<sup>810</sup> yet remains largely unaffected by Xinjiang sanctions.

Thinking more broadly, the sanctioning coalition could also deploy what has been called its 'platform leverage' over global capital markets – that is, its ability to control which actors access the 'platforms' on which capital market activity occurs.<sup>811</sup> This would involve more than just requiring disclosure by firms regarding connections to Xinjiang (as proposed in bills before US Congress), instead extending to potential de-listing, or de-certification of financial professionals associated with forced labour.<sup>812</sup> It could also encompass ensuring forced labour is factored into emerging ESG standards and regulation, and engaging the insurance sector. Moreover, in time capital markets may also have a role to play in the 'win-win' approach proposed in Recommendation 2, with investors and lenders having an important role to play in encouraging sustainable development reform initiatives, for example through sustainability-linked bonds.

### Recommendation 6: Expand the sanctioning coalition

Sanctions are more likely to work the larger the leverage exercised by the sanctioning coalition. Typically, this means 'the larger the coalition'. One of the key findings of this study is that at present the sanctioning coalition is quite small, with a number of key destinations for exports of goods from Xinjiang, such as Central Asian countries, Australia, Japan and Korea, not yet part of the sanctioning coalition.

Xinjiang sanctions will likely have little overall effect if China is simply able to reallocate trade from Xinjiang to domestic or other foreign markets, which is a very real prospect. China signed a Free Trade Agreement with the Eurasian Economic Union in 2018, and Xinjiang is home to the main land port through which Chinese goods will be exported to the region. Moreover, with India and Pakistan currently negotiating a Free Trade Agreement with the bloc, the market for Xinjiang goods may grow even further.

Xinjiang has also been building new trade ties, especially with South East Asian countries under the Regional Comprehensive Economic Partnership (RCEP). In May 2021, Xinjiang's department of commerce arranged a forum with trade representatives from Indonesia, Malaysia and Brunei, and two months later, representatives from Vietnam, The Philippines and Myanmar.<sup>813</sup> This trade expansion strategy seems to be succeeding, with exports to South East Asian countries growing significantly in the last two years.

Expanding the sanctioning coalition must therefore be a key goal, if Xinjiang sanctions are to work. The US Department of State has recently submitted to Congress a Diplomatic Strategy to Address Forced Labor, which will encourage adoption of import controls, efforts to prevent trade reallocation, and denunciation of human rights abuses in Xinjiang.<sup>814</sup> The sanctioning coalition should build on this strategy by seeking to recruit into the coalition those firms whose own producers and exporters stand to lose from social dumping of goods made with forced labour. This includes cotton producers in Central Asia, tomato producers and processors in West Africa and Latin America, and polysilicon producers in South Korea.

### Recommendation 7: Strengthen import ban foundations and enforcement

Import bans such as the *Uyghur Forced Labor Prevention Act* in the US, the Canadian forced labour import ban, and instruments under consideration in the EU and Australia appear set to play a central role in states' efforts to combat Xinjiang forced labour. This study points to three areas in which additional measures could strengthen the contribution of these bans.

The first relates to the *legal basis* for these bans. Section 1.3.5 of the study considers how these bans comport with international trade law. The exact basis in international trade law for such measures remains unclear. Canada has relied on GATT Article XX(e), relating to the products of prison labour. It is unclear if this provision could cover a ban affecting goods made not through the VSETC scheme (which might be called 'prison labour'), but through the Poverty Alleviation through Labour Transfers scheme. Other options could include GATT Article XX(a) (public morals), Article XX(b) (human life and health) and Article XXI(b)(iii) (emergency in international relations). However there may be difficulties in relying on any of these provisions as a basis for these import bans. The sanctioning coalition may therefore need to develop a common position on the international legal justification for these bans.

The second point relates to the *adoption process* used to adopt these bans. Depending on which part of trade law is identified as the basis for these bans, different procedural consequences may be entailed. In some cases, it may be necessary for the sanctioning state to engage in consultation and negotiation with the affected parties *prior* to adopting these bans, in order to demonstrate that such a ban was necessary to achieve the stated public policy goal. Sanctioning states may also need to give parties affected by a ban the opportunity to be heard, to hear arguments against the measure, and may need to give a written decision.

The third point relates to *enforcement*, which emerges as a critical factor in shaping the effectiveness of sanctions. Many firms will determine their compliance strategy based on an assessment of the risks associated with non-compliance, which itself is shaped by states' choices around enforcement, namely frequency, rigour and penalties. Adequate resourcing of enforcement bodies, including customs authorities, will be critical. So, too, will smart enforcement strategies, that use cost-effective methods to increase risks of detection and punishment. With some Xinjiang producers and exporters openly considering how to evade sanctions through presentation of fraudulent documentation, use of non-documentary enforcement techniques such as DNA, genotyping and isotopic analysis of goods' provenance, will be important. There may also be a role for the use of big-data and predictive analytic techniques.

### Recommendation 8: Reduce the costs of sanctions compliance

Debates over Xinjiang sanctions currently downplay or even ignore the costs of compliance, beyond the costs for importers, such as the increased prices for consumers and the risks created by Chinese countermeasures for personnel and retail firms operating in China. So far, no government has policies in place to provide support to firms incurring these costs, or to address consumer price increases that might ensue. Moreover, the absence of planning for new sources of supply, particularly in sectors where Western consumers and buyers are highly dependent on Xinjiang supply, risks eroding confidence in and support for sanctions policies, especially as those costs become more apparent.

The study points to three ways in which the sanctioning coalition could reduce the costs of sanctions compliance.

First, through *improved access to information*. Given the complexity and opacity of supply-chains, many firms, especially small and medium enterprises (SMEs), face challenges conducting effective due diligence about their connections to Xinjiang forced labour. States can mitigate these challenges through improving access to information about supply-chains, for example by convening or supporting collaborative supply-chain mapping processes. They can also clarify due diligence processes by publishing data about entities found to have or be at risk of having connections to Xinjiang forced labour. The US approach to UFLPA goes some distance in this direction, by creating a list whereby the US government can signal potential enforcement focuses to importers. However, there is more that the sanctioning coalition could do here, especially if it worked in a more coordinated way (as will be discussed in Recommendation 10).

807 Wong 2021.

808 Zhou 2021.

809 See Murphy, Vallette and Elimä 2022.

810 Zhou 2021.

811 See FAST 2019.

812 See the discussion of the CPA society memberships of Xinjiang solar sector leaders in section 3.4.7 above.

813 SCMP 2021.

814 US CBP 2022e.



Second, through *blunting the impacts of Chinese counter-measures*. One way to do this is to provide discounted export credit and trade facilitation support to firms at risk of losing market share in China from compliance with Xinjiang sanctions, in order to help these firms grow their business in other markets. Another approach would involve working with online social media and other platforms to ensure they are not facilitating online harassment or boycotting fomented by the Chinese government.

Third, through *industrial policy* increasing access to alternative supply. This is particularly important in sectors where Western consumers and buyers are currently dependent on supply from Xinjiang, such as the polysilicon and broader solar sector. Coordinated transnational industrial policy may be needed to create a favourable investment and regulatory environment to ensure that alternative, slavery-free supply emerges as soon as possible.<sup>815</sup> The recent European Parliament Resolution on a forced labour instrument seems to acknowledge this with its call for the use of public and private investment to develop additional forced labour-free production capacity in affected supply-chains.<sup>816</sup>

### Recommendation 9: Provide and enable remedy

Western sanctions have thus far done little to secure remedy for victims of Xinjiang forced labour. This is perhaps unsurprising, given that Chinese government policies make identifying and engaging with victims of human rights abuses in Xinjiang both difficult and dangerous, including for those victims. Moreover, the reach of foreign actors, and thus their ability to provide or enable remedy, is limited. The UFLPA Strategy recently published by a US government Taskforce argues that “[s]ome abuses, including PRC-sponsored forced labor, may be impossible to fully remediate... [c]orrective action in such cases may be limited to terminating the relationship with the supplier.”<sup>817</sup> Nevertheless, it is important that remedy is not entirely neglected. Victims of forced labour have a right to remedy under international law, and the provision of remedy will encourage victims of forced labour to come forward, strengthening the effectiveness of sanctions and other efforts to enforce international norms prohibiting forced and compulsory labour, slavery and trafficking in persons.

There are some signs, however, of growing awareness amongst policy makers of the need to consider remedy as part of effective sanctions policy. The recent European Parliament Resolution on a new trade instrument to ban products made by forced labour, which specifically references Xinjiang,

*“[c]alls on the Commission to ensure that the new EU instrument requires the responsible companies to provide remediation to the affected workers prior to import restrictions being lifted; calls for the monitoring of remediation and corrective actions to be undertaken in cooperation with relevant stakeholders, including civil society organisations and trade unions...”*<sup>818</sup>

There are in fact a number of ways in which states could use sanctions policy to provide and enable remedy for Xinjiang forced labour. They could use sanctions investigations to gather data and evidence towards later accountability efforts, grant victims of Xinjiang forced labour access to crime compensation schemes that could be financed from confiscated assets and/or sanctions violation fines.<sup>819</sup> The detention of imports under import bans can also be used to encourage businesses connected to forced labour to provide and enable adequate remedy to workers, as seen in the case of the US CBP using a WRO on Malaysian rubber glove maker Top Glove to encourage it to compensate workers.<sup>820</sup>

### Recommendation 10: Strengthen strategic coordination

Finally, the sanctioning coalition should strengthen coordination mechanisms. Coordination has strengthened steadily since 2020, with a small group of states adopting sanctions on several common targets at the same time, as well as issuing similar guidance to business. In 2021, G7 leaders also committed to action.<sup>821</sup> If or when a new European forced labour instrument is adopted, it is likely to include arrangements for coordination and information-sharing amongst EU countries, and potentially with other partners.<sup>822</sup>

Yet there is a great deal more that the sanctioning coalition could do to ensure consistency in Xinjiang sanctions and their overall effectiveness. One of the surprises of this study’s analysis is just how little overlap there is in different countries’ Xinjiang sanctions target lists. Over 40 per cent of all sanctions are directed at just 5 targets, and beyond this there is little convergence in specific sanctions targeting. More formal arrangements for sharing information about individuals and entities involved in Xinjiang forced labour, including information that emerges through sanctions enforcement processes, could help strengthen targeting convergence and consistency.

Coordination on the legal justification for Xinjiang sanctions (notably under trade law, as discussed in Recommendation 1), and on the overall narrative framing of Xinjiang sanctions (see Recommendation 2) could also strengthen effectiveness. Likewise, intergovernmental coordination could also be useful in setting business expectations. The US, EU, UK and Canada have all issued guidance to business, which demonstrates important similarities, including a convergence around the UN Guiding Principles on Business and Human Rights as the underpinning normative framework. These jurisdictions, and others – such as Japan and Australia – could join together to issue joint guidance, for example by clarifying their governments’ expectations around business remediation of harms arising from Xinjiang forced labour. Some members of the sanctioning coalition have signed up to a set of shared *Principles to guide Government action to combat human trafficking in global supply chains*,<sup>823</sup> which include a commitment to harmonization. This could provide a basis for joint approaches to consideration of entities’ connections to Xinjiang forced labour during public procurement processes.

There could also be scope for closer coordination between export credit agencies, development finance institutions and multilateral development banks, which are all grappling with similar concerns around due diligence and remediation within the context of Xinjiang forced labour. Some multilateral development banks are moving towards cross-debarment arrangements, so that an entity found not to have taken adequate steps to address Xinjiang forced labour by one participating development bank is barred from doing business with the others. Sanctioning governments should consider exploring similar mutual recognition arrangements so that inclusion on a shared a list of entities connected to Xinjiang forced labour, triggers common sanctions across all the participating jurisdictions. They could also develop a shared approach to remedy, for example by creating a pooled fund that could pay out compensation to victims of Xinjiang forced labour or their families.

Finally, there is a clear need for transnational industrial policy to accelerate access to slavery-free supply of certain products, such as polysilicon, where Western consumers and importers will suffer significant costs as a result of loss of Xinjiang supply. The sanctioning coalition should consider how to develop joint initiatives to create this capacity, for example through the US-EU Trade and Technology Council, or through industry-specific bodies.<sup>824</sup>

815 For discussion of what this might look like in the solar sector, see Cockayne et al. 2022.  
816 European Parliament 2022, para. 15.  
817 US CBP 2022e, p. 45.  
818 European Parliament 2022.  
819 FAST 2019;  
820 See Brudney 2020.

821 G7 2021.  
822 European Parliament 2022, paras 9-14.  
823 Australia et al. 2018.  
824 See further Cockayne et al. 2022.

## 4.2 The larger question – the shadow of decoupling and the test of liberal values

Sanctions to address Xinjiang forced labour are not being imposed in a strategic vacuum, but rather in the context of growing strategic rivalry between the US and China. While they may not be *intended* to deepen this rivalry and adversarial positioning, there is a clear danger that they have this effect, as sanctions often do.<sup>825</sup> Some within the Chinese government clearly see Xinjiang sanctions in these terms. In June 2021, CNN reported Chinese Foreign Affairs spokesperson Hua Chunying saying that “lies like ‘forced labor’” were being used to create “forced industrial decoupling” and “forced unemployment” in the Xinjiang region to suppress Chinese companies and industries.<sup>826</sup>

Policy makers will consequently make decisions around Xinjiang sanctions considering not only the short-term leverage or pressure they may create, but also this larger strategic dynamic. De-listing Chinese firms for ties to Xinjiang forced labour may, for example, create costs for those firms and place pressure on Beijing to adapt its policies in Xinjiang – while simultaneously encouraging Beijing to hasten development of its own capital markets and financial platforms, to reduce its own vulnerability to Western sanctions.<sup>827</sup>

For many, the inescapable conclusion is that China is simply ‘too big to jail’ – that is, too large and powerful to effectively sanction – and thus the West must reconcile itself to China’s policies, or find non-coercive ways to persuade China to adjust them. Others see new technical and political possibilities for sanctions tradecraft, after the adoption of broad and powerful sanctions against Russia following its invasion of Ukraine. One key difference, however, relates to the role of the private sector. Western business has, to a remarkable extent, voluntarily withdrawn from business in and with Russia. However, its willingness to withdraw from business with China, where many fortunes remain to be made, seems much less certain.

Xinjiang forced labour thus stands in important ways as a test of the liberal character of international trade and finance. A successful defence of that character – and thus of human rights – will depend on finding ways to make Xinjiang sanctions work. The ideas offered above may provide a starting point.

825 Lovely and Schott 2021.

826 Wagman 2021.

827 Drezner 2021.

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