Responding to alleged Xinjiang forced labour

Findings from a new database of country responses built by Professor James Cockayne (June 2021)

This is the first comprehensive database of economic coercive measures adopted by countries in response to alleged forced labour in Xinjiang in the People's Republic of China. The database provides insights into the source, target, type, timing, rationale and trends in these measures. The database, which will be updated as new measures are adopted, will assist policy actors and companies to understand what measures are in place, and to strengthen future policy and response design.

Key research findings

As of June 2021, the [Xinjiang Alleged Forced Labour Coercive Measures (XJAFLCM) database](#) includes 207 measures – 171 in force, 36 proposed.

49% are in force in the US, but a coordinated effort over the last year led to six other jurisdictions adopting coercive measures. One more is considering them. Yet one G7 country (Japan) does not have any such measures in place, nor do the four guests at the upcoming G7 meeting (Australia, India, Republic of Korea, South Africa).

The measures are targeted at 95 different individuals, entities and groups. Yet 49% of them are targeted at just four individuals and three entities in response to allegations that they are heavily involved in the

organisation and management of a forced labour system in Xinjiang.

Import/export restrictions are the most popular type of measure, followed by asset and travel restrictions. But there is growing diversity in the types of measures being considered and used, including monetary penalties, business guidance, and due diligence rules.

However, the database also suggests a possible emerging shift in strategy: from *direct* targeting of Chinese Communist Party-linked individuals and entities, to an *indirect* strategy, targeting businesses that are commercially connected to the alleged system of Xinjiang forced labour. With the EU currently considering an import ban and mandatory human rights due diligence rules, and signals that the US Congress may consider measures relating to the global solar energy supply-chain, this strategy seems likely to become more evident in the database in the months ahead.

This raises important questions that require further policy research, about the conditions in which such indirect and 'boycott' based approaches are likely to succeed in inducing policy change – and whether that is even the strategic goal of such measures.

Why is this important?

Xinjiang is the source of 20% of global cotton and 35 to 45% of global polysilicon, used in solar panels. Coercive measures may disrupt global trade in these goods. The XJAFLCM database will help policy, business and research actors identify and monitor the measures being adopted to respond to allegations of Xinjiang forced labour. This will help these actors:

- meet their compliance obligations,
- coordinate, and
- strengthen the effectiveness of response and policy design.

The database will also enable further policy research into the design, diffusion and impact of these measures. This will provide insights on:

- how global public policy measures are made and implemented, and
- how to strengthen the impact of these measures to reduce tolerance for and reliance on forced labour in global value chains

Research overview

Multiple independent reports suggest that as many as one million people from Uyghur, Kazakh and other ethnic minorities have been arbitrarily detained in China's Xinjiang province in the last five years. Many of these people are allegedly accommodated in so-called 'political reeducation' and 'vocational training' centres. Many are allegedly forced to work – both in Xinjiang and elsewhere in China – on worksites supplying goods to global markets, notably in the cotton, tomato and solar panel supply-chains.[1]

In response, countries have begun adopting import bans, targeted sanctions and other economic coercive measures – binding instruments intended to cause the target some harm or economic loss with the purpose of inducing a change in policy or practices.[2] In March and April 2021, the Chinese government adopted its own counter-measures, sanctioning 42 different actors in 14 Western countries.

On 5 May 2021, G7 Foreign Ministers, noting with deep concern the "human rights violations and abuses in Xinjiang… especially the targeting of Uyghurs, members of other ethnic and religious minority groups, and the existence of a large-scale network of 'political re-education' camps, and reports of forced labour systems", called "on China to respect human rights and fundamental freedoms" and agreed "the importance of tackling instances of forced labour through our own available domestic means".[3]

Since Xinjiang is the source of around 20 per cent of global cotton and 35 to 45 per cent of global polysilicon used in solar panels, economic coercion measures might have the potential for a significant impact on global trade.

Yet while open source reporting of the coercive measures that governments have begun adopting has been extensive, there has been no public, centralised database of these measures available to date. This makes it difficult for policy actors and companies to identify what measures are in place, understand where they are reinforcing each other, and ensure effective policy and response design.

To address this gap, we built the first comprehensive, public database of such coercive measures, the *Xinjiang Alleged Forced Labour Coercive Measures* database.

The database provides a comprehensive mapping of:

- Instruments proposed or adopted by official governmental bodies (i.e. not including corporate measures);

- With the official purpose of inducing a change in policy or practice connected to the forced labour of people in Xinjiang, and/or from Xinjiang in other provinces – known as 'Xinjiang Aid' (援疆).

We identified these measures through extensive desk research. For each identified measure we coded information relating to:

- Date of proposal or adoption, and whether or not it is in force or merely proposed

- Origin of the measure (country; which body proposed or adopted the measure; formal source; legal basis)

- Whether the measure was a single targeted sanction or a framework for subsequent imposition of such sanctions

- The target (name, identifying information)

- Official rationale

- Type of measure adopted

Each coercive measure is coded separately. Where an instrument provided for distinct sanctions (for example, two different types of sanction against a single individual), each was coded as a separate 'measure'.

Similarly, where an individual instrument was directed at more than one named individual, each measure (i.e. against each named individual) was coded separately.

The database also includes a tab providing similar information about China's countermeasures, adopted in March and April 2021.

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[1] See e.g. Human Rights Watch, "Break Their Lineage, Break Their Roots": China's Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims (New York, 19 April 2021); Vicky Xiuzhong Xu, Danielle Cave, James Leibold, Kelsey Munro and Nathan Ruser, *Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang.* Policy Brief, Report No. 26/2020 (Canberra: Australian Strategic Policy Institute, 2020); Laura Murphy and Nyrola Elimä, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply-Chains* (Sheffield, UK: Sheffield Hallam University Helena Kennedy Centre for International Justice, 2021).

[2] Alfred Cooper Drury, *Economic Sanctions and Presidential Decisions : Models of Political Rationality* (Palgrave Macmillan: 2005), p. 17.

[3] G7 Foreign and Development Ministers' Meeting: Communique, London, 5 May 2021, para. 14. Available at: https://www.gov.uk/government/publications/g7-foreign-and-development-ministers-meeting-may-2021-communique/g7-foreign-and-development-ministers-meeting-communique-london-5-may-2021

Overview of measures

At the time of writing (June 2021), the XAFLCM database includes 207 measures – 171 in force, 36 proposed.

49% of in-force measures are in the US. (*Fig. 1*.) The US has been a front-runner, adopting two measures in 2018, 28 in 2019, 57 in 2020 and six in 2021. The remaining measures have been adopted in the last year by Canada, the EU, Iceland, Liechtenstein, Norway (each 9%) and the UK (6%).[4] (*Fig. 2*) Six jurisdictions (Australia, Canada, EU, Norway, UK and the US) are however now considering proposals for further measures, including a possible EU import ban.
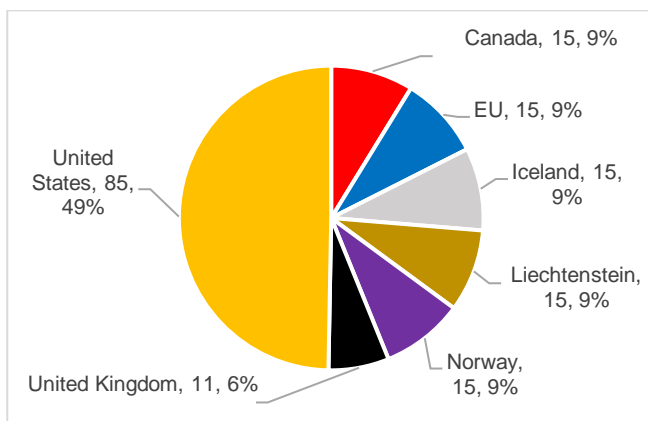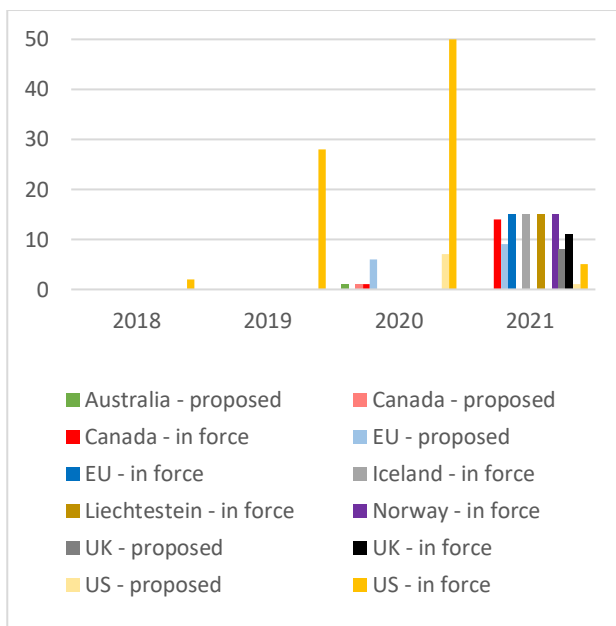
Figure 1: Measures in force by jurisdiction

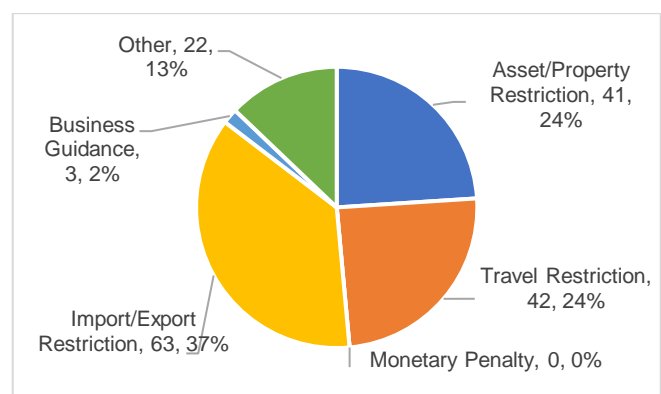### Figure 2: Year-on-year evolution of measures

Despite the G7 Foreign and Development Leaders' Communiqué, however, not all G7 countries have measures in place – Japan being the exception. Of the four guests invited to the G7 meeting in Cornwall, only Australia is considering such a measure. (*Fig. 3*)

Figure 3: Measures in G7 & other jurisdictions
(Numbers of measures in force and, in brackets, those proposed.)

		Asset/Property Restriction	Travel Restriction	Monetary penalty	Import/Export Restrictions	Business Guidance	Other
G7 members	Canada	5	5	-	2	1	2 (1)
	France	See EU	See EU	See EU	See EU	See EU	See EU
	Germany	See EU	See EU	See EU	See EU	See EU	See EU
	Italy	See EU	See EU	See EU	See EU	See EU	See EU
	Japan	-	-	-	-	-	-
	UK	5 (1)	5 (2)	0 (2)	0 (1)	1 (1)	0 (2)
	USA	11 (1)	12 (1)	0 (1)	61 (1)	1	0 (4)
Guests	Australia	-	-	-	0 (1)	-	-
	India	-	-	-	-	-	-
	Republic of Korea	-	-	-	-	-	-
	South Africa	-	-	-	-	-	-
Other	EU	5 (2)	5 (2)	-	0 (1)	-	5 (10)
	Iceland	5	5	-	-	-	5
	Liechtenstein	5	5	-	-	-	5
	Norway	5 (1)	5 (1)	-	-	-	5 (1)

Import/export restrictions are the most popular type of measure in force (37%), followed by asset or property retrictions (24%) and travel restrictions (24%). Business guidance is less common (3%). There are also other measures in place, including requiring business to sign an 'integrity declaration' (Canada) to suspension of investment deal negotiations (EU) (see *Fig. 4*). In contrast, amongst proposed measures, these more creative approaches are 50% of all those being considered, and monetary penalties for non-compliance are some 8% (cf 0% of those measures in force).

Figure 4: Measures in force by type

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[4] Iceland, Liechtenstein and Norway adopted coordinated measures on 22 March 2021, to align with measures adopted by the EU, pursuant to European Economic Area (EEA) obligations. Notably,

Switzerland, a member of the European Free Trade Area but not the EEA, has not yet followed suit.

While there are 207 measures, there are 95 different targets identified. 37% of all measures in force are targeted at just four individuals: CHEN Mingguo (陈明国), WANG Junzheng (王君正), WANG Minshang (王明山) and ZHU Hailun (朱海仑). And while 59 different corporate entities have been named, three entities account for around 12% of all measures in force – the Xinjiang Production and Construction Corps (新疆生产建设兵团), the Xinjiang Production and Construction Corps Public Security Bureau and the Xinjiang Public Security Bureau (新疆公安局). The 'Rationales' for these measures indicate all are believed to have been heavily involved in the organisation and management of the Xinjiang forced labour system.

Trends

The measures have been adopted in 5 main episodes.

Initially, in 2018 US Customs and Border Protection adopted isolated Withhold Release Orders (WROs), detaining goods from Xinjiang under authority of the *Tariff Act 1930*, s. 307.

Next, against the backdrop of growing US-China trade disputes, the US government adopted an array of targeted sanctions (asset freezes and travel restrictions) in October 2019.

Third, the US government further expanded its targeted sanctions in July 2020. This is also the period when other jurisdictions began adopting measures, commencing with Canada, implementing commitments it had made under the US-Mexico-Canada free trade agreement.

An array of proposals were considered, and some adopted, in the second half of 2020, before coordinated targeted measures were adopted by the US, UK, Canada, EU and EEA partners between January and March 2021.

Fifth, China responded by adopting its own counter-measures in March and April 2021, imposing targeted sanctions on 42 individuals and entities from 14 countries, including MPs and MEPs. (*Fig. 5*)

Figure 5: Chinese countermeasure – target locations
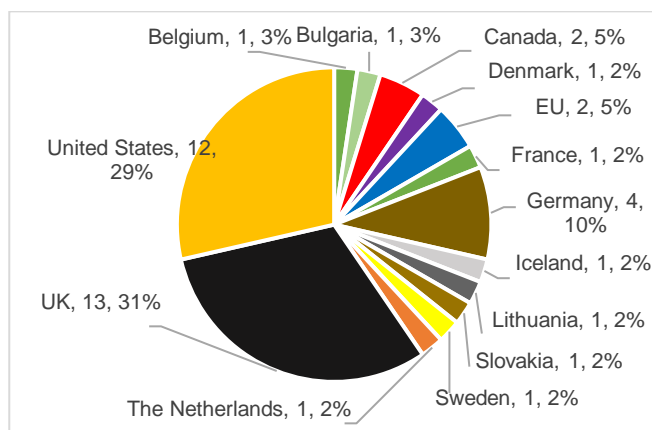
The database also suggests that the adoption of measures over the last year has been highly coordinated, with most jurisdictions adopting measures targeting a small set of individual and corporate entities.

However, there is also evidence of growing variance in the *types* of measures deployed, and of further diversification yet to come (as reflected in the measures that have been proposed but not yet put in force). Different jurisdictions are using different legislative and regulatory tools available to them. This includes growing interest in use of monetary penalties, business guidance, due diligence and disclosure rules, and other corporate regulatory tools, to change the policy and practice not of CCP entities or even commercial entities in PRC, but of commercial entities operating in the jurisdiction adopting the measure.

This suggests a shift from a strategy of *direct* coercion of CCP entities to one of *indirect* coercion, influencing entities doing business with Xinjiang and with entities that may be relying on forced labour from Xinjiang. With the EU currently considering an import ban and mandatory human rights due diligence rules, and signals that the US Congress may consider measures relating the global solar energy supply-chain, this strategy seems likely to become more evident in the database in the months ahead.

This raises important questions that require further policy research, about the conditions in which such indirect and 'boycott' based approaches are likely to succeed in inducing policy change – and whether that is even the strategic goal of such measures.

The database will assist with efforts to answer these questions by enabling further policy research into the design, diffusion and impact of these measures. This will provide insights not only on how global public policy measures are made and implemented, but also potentially on how to strengthen the impact of these measures to reduce tolerance for and reliance on forced labour in global value chains.