Making Xinjiang Sanctions Work

Policy Brief No. 1 – Xinjiang forced labour

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

The Xinjiang Sanctions Policy Brief series:

1. *Xinjiang forced labour*
2. *The XPCC*
3. *Legal considerations*
4. *Western sanctions*
5. *Chinese counter-measures*
6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- Forced labour of Uyghur and other minority workers in and from Xinjiang is entwined with Beijing's strategy for governing Xinjiang.
- Two distinct programmes have generated forced labour: 1) the Vocational Skills and Education Training Centres 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.

Why is this important?

- 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.
- 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.

Research overview

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. Xinjiang – literally 'new frontier' in Mandarin – has long been perceived by rulers in eastern China as a gateway through which disruptive forces from the west can enter the Han ethnic 'core' of eastern China. State-sponsored forced labour should be understood in the context of Beijing's governmental strategies for the region.

Governing the frontier

Beijing's strategies for governing Xinjiang have shifted over time from stabilisation to transformation. Once a Silk Road crossroads, the region became poorer when power shifted to the coast in the 18th Century. Per capita incomes in the region are now less than half those in China's eastern provinces.

President Xi Jinping's father, Xi Zhongxun, served as the top CCP official in the region during the 1950s, while it was being brought firmly under PRC control. The CCP's strategy at this time focused on stabilisation, through large-scale land reclamation and Sinification, with large transfers of poor Han agricultural workers into the region. The XPCC was a key instrument in the execution of this strategy (see Policy Brief No. 2 in this series). At this point, some local minority workers and students were forced into agricultural work, and Han prisoners transferred from other provinces were also coerced into forced prison labour. But forced labour was not a tool of social transformation.

That focus emerged in 2014, under President Xi Jinping's leadership. Riots in Ürümqi in 2009 and a March 2014 indiscriminate attack allegedly carried out by Uyghur separatists at the Kunming Railway Station, which left 31 dead and 143 injured, led Beijing to perceive separatism and violent extremism in Xinjiang Uyghur Autonomous Region (XUAR) as a threat to broader PRC stability. Beijing responded by adopting a new governance strategy in Xinjiang. This aimed at integrating the region's political economy more directly into CCP-controlled economic and political circuits, as well as incorporating XUAR into global commerce.

President 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, characterising stability in Xinjiang as the foundation for the stability of the entire nation. Xi further called for the unwavering "use of the weapons of the people's democratic dictatorship".

Beijing also pushed more openly for the assimilation of minority populations, extending surveillance infrastructure deeper into religious, political and household spaces. 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 hosts' private lives and thinking. This strategy has generated forced labour through two distinct policy interventions: 1) so-called Vocational Skills Education and Training Centres; and 2) Poverty Alleviation Through Labour Transfers.

‘Vocational training’

In the last few years, Chinese authorities have constructed a contemporary “gulag archipelago” or system of “concentration camps” 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 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) creating a system of “centralised education” and “behavioural correction” in residential training centres. Between 1 and 2 million people from Uyghur, Kazakh and other minorities may have been involuntarily detained in these detention centres. 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”.

The Chinese government represents these centres as a large-scale effort to develop the skills of disadvantaged minority peoples in XUAR, to improve the “employability of workers” and promote “stable employment”. Detention in the VSETCs is notionally administrative, not punitive. But it requires only that authorities suspect a person’s “infection” with dangerous incorrect thinking such as separatism or religious extremism.

There is growing and extensive evidence that the centres are run as prisons, including hooding, shackling and handcuffing, and shoot-to-kill orders for those attempting escape or causing security disturbances. First-hand testimony and policy documents suggest the VSETCs are brutal and dangerous ethnic internment camps, designed as a massive, preventive counter-extremism measure to pre-emptively fight separatism and religious extremism through “transformation through education” aimed at “treating” people “contaminated” by exposure to separatist and potentially extremist thinking. Evidence also suggests the VSETCs have become sites of significant attendant human rights violations, from sexual assault to torture.

Detention also 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. Within the workplaces associated with this prison-industrial complex, first-hand accounts describe payment of no or negligible wages, the inability to exit, markers of involuntarity in working conditions (such as close surveillance, oppressive supervision and production quotas), and penalties for non-compliance.

The government typically pays enterprises (both private and state-owned) a fee for each “trainee” or “graduate” they employ, and may also provide financial and logistical support, such as subsidised access to production facilities and provision of security services, which may lower production costs by as much as 30 per cent. The government has also actively encouraged employers, especially in cities and towns in eastern China which have been ‘paired’ with urban centres in Xinjiang under earlier development policies, to hire the labour force “re-educated” in the VSETCs. Access to VSETC labour has been a key driver of Xinjiang’s economic expansion in the last decade, attracting significant inward investment by Chinese and Western brands.

Nevertheless, the central rationale of government investment in the VSETC system appears to be a political one. Forced labour is, in this system, intended as a mechanism for transforming workers’ political consciousness. It draws on the Maoist tradition of “Reform through Labour” (*láodòng gǎizào*, 劳动改造) aimed at criminal rehabilitation, and “Re-education through Labour” (*láodòng jiàoyǎng*, 勞動教養, or *laojiao* for short) aimed at political re-education. The latter, which formally ended in 2013, was repeatedly identified as a cause for concern by UN human rights bodies, including the UN Working Group on Arbitrary Detention.

‘Poverty Alleviation through Labour Transfers’

Forced labour has also emerged from the Poverty Alleviation through Labour Transfer scheme (*zhuanyi 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. The scheme has moved hundreds of thousands (and perhaps millions) of ethnic minority workers into jobs in satellite factories in rural villages and towns in Xinjiang, and in factories in cities in Xinjiang and other provinces.

The scheme grows out of longstanding poverty alleviation programming aimed at addressing the so-called “surplus rural labour” in western China, Xinjiang and Tibet. Since 2014, there has been an increased emphasis on the participation of big business, in return for state subsidies and investment. President Xi pushed for an expansion of labour transfers from Xinjiang in 2014. The CCP leadership has linked such transfers to the creation of “immunity” to “religious extremist thinking”, through “ethnic… blending” and Sinification. The scheme is seen as a way to address unemployment before it can “provoke trouble”. By 2016 this approach had translated into an industrial-scale transfer of Uyghur workers from southern Xinjiang into labour-intensive industry, including cotton-related sectors and agriculture in Xinjiang, and technology and other sectors outside Xinjiang. Several hundred thousand people appear to have been transferred in this way.

Worker placement schemes do not necessarily violate international labour norms and standards, but they must guard against coercion. This is especially the case where they are adopted in the context of larger socio-cultural transformation and security efforts, including a history of displacement from the land. In Xinjiang, rather than safeguarding against coercion, the implementation of this scheme seems to have invited it. Teams of officials have visited households to talk reluctant minority workers into participation. “Relatives” of Han ethnicity have lived temporarily in minority households, reporting on what they see – and increasing the risk for their minority hosts of being caught in the VSETC system. And minority workers have also lost access to land.

In 2014, Premier Li Keqiang made clear that he saw transfer of workers into labour-intensive industry as a way of transforming incorrect “thinking about employment” amongst minority groups, thereby protecting those workers against recruitment by “evildoers” (i.e. separatists and violent extremists). Indeed, Xinjiang’s 13th Five-Year Poverty Alleviation Plan, which commenced in 2017, calls for curing “ignorance and backwardness” through the mobilisation of “surplus rural labour”, including minority groups pursuing traditional livelihoods on the land.

Implications

Each of these programmes, alone, represents a significant risk of forced labour. Together, that risk is significantly multiplied. Workers know that if they refuse to participate in the Labour Transfers scheme, they and their family may wind up in “vocational training”. Their consent is “structurally forced”.

The VSETC and Labour Transfers schemes operate in tandem in Xinjiang to transform not only individual worker consciousness, but the agency of minority communities as a whole. Corporate participation in and support for these schemes is supported by significant state subsidies, tax incentives and fiscal transfers.

Xinjiang forced labour should be understood not as the result of poor workplace and labour force management practices on the part of businesses in Xinjiang, but as the result of state policy. It is 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 precisely why some consider Xinjiang forced labour to be a symptom of a broader strategy that, when understood as a whole, may amount to genocide.

The way forced labour emerges from this situation depends on which scheme is involved. The VSETC and Poverty Alleviation through Labour Transfers involve different forms of coercion, applied in different places, by different actors, and for slightly different purposes. This suggests slightly different target sets for sanctions – and different areas of inquiry for corporate due diligence.

Finally, the political logic underpinning Xinjiang forced labour suggests that the Chinese government will resist external pressure to change this policy, long and hard. Companies that participate in Western sanctions efforts will be perceived not simply as signalling unhappiness with commercial employers’ labour management practices, but rather as executing a policy that the CCP has framed as placing national security, unity and rejuvenation at risk. This then activates a long historical memory of China’s “humiliation” by Western imperialists in the 19th and 20th Centuries, stoking a nationalist response.

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 2 – The XPCC

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

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Key research findings

- 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 has taken has evolved with the XPCC, as it 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 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 VSETC facilities, 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 it provides a field for a range of actors to pursue commercial goals.

Why is this important?

- Understanding which actors perceive the XPCC in which way will be important for effective sanctions design.
- 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.
- Sanctions design may need to consider how Xinjiang sanctions work in different economic sectors and supply-chains. (See Policy Briefs Nos 7, 8, 9.)

Research overview

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 represented about 25 per cent of Xinjiang Uyghur Autonomous Region (XUAR) GDP, and XPCC membership represented around 13 per cent of XUAR population. The shifting form and function of the XPCC reflects Xinjiang's changing political economy.

The first 45 years

The XPCC was founded as a settler military garrison on the PRC's north-western frontier in 1954, spun out from the People's Liberation Army, while President Xi's father was the top CCP representative in the region. When the XUAR was formally established in 1955, the XPCC was made answerable to *both* local authorities and Beijing – an insurance policy for the centre against potential separatism.

As a settler garrison, the XPCC followed traditional Chinese patterns of military agri-settlement for stabilising contested frontiers (屯田, *tuntian* and 屯墾, *tunken*). 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'. They historically lived apart from the local populace, carving out farms and towns in sparsely populated areas of Xinjiang, particularly the north, in what was billed as an effort to avoid competition with the local population for scarce resources. Cotton, wheat, tomato, sugar beet, dates and grapes were planted on a large scale.

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". Today, the XPCC has administrative authority over 10 cities, and an area of 70,000 square kilometres. The XPCC has its own administrative structure, fulfilling governmental functions such as healthcare, policing, judiciary, and education for areas under its jurisdiction, which are funded through taxes, fiscal transfers from Beijing and commercial activity. Nominally subject to the XUAR, the XPCC's internal affairs, including the administration of its cities and reclaimed land, operate outside the jurisdiction of the XUAR authorities. Instead the XPCC operates under the direction of leaders reporting to the central government. The XPCC is thus a local instrumentality of the Party in Beijing.

The XPCC has been predominantly Han throughout its existence, sponsoring migration by large numbers of Han smallholder agriculturalists to Xinjiang from other parts of China. Many non-Han in XUAR consequently see the XPCC as integral to the process of Sinification of XUAR. From the outset, the XPCC also helped to construct strategic infrastructure in the region, including highways and nuclear assets, while retaining a role as a reserve paramilitary force, which Beijing has used several times to suppress rebellions and uprisings. Indeed, the strategic role of the XPCC has been repeatedly emphasised by senior CCP leaders.

The market economy era

After its establishment, the XPCC's paramilitary hierarchy facilitated the early infrastructure projects involved in transforming arid into arable land and worked well in the context of a national command economy. But that same structure and culture raised questions about how to integrate the XPCC into a market economy. Beijing's solution in 1998 was to incorporate the XPCC as a commercial organization. Most of the XPCC's Divisions developed commercial strategies based on their existing assets. The XPCC family of companies – which now includes more than 862,000 companies and holdings, across 147 countries – now operates in the agriculture, infrastructure, plastics and energy sectors. 13 XPCC subsidiaries are listed on Chinese stock markets. The XPCC is also a major provider of low-cost housing in XUAR for Han migrants from other regions of China, facilitating both urbanisation and Sinification.

Forced labour and the XPCC

During its first 45 years, the XPCC generated forced labour through seasonal harvest work on XPCC regimental farms. In an arrangement similar to that used in some Central Asian command economies, the XPCC operated a modernised system of corvée labour, mandating annual participation of over a million students aged roughly 6 to 15 per year in the harvest of cotton, sugar beet, tomatoes, chili peppers and other agricultural products. 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. Children could only avoid this if their families paid the fine covering the full quota, which created strong incentives for corruption. 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 (see Policy Brief No. 1).

A second connection to forced labour developed as the XPCC began to provide carceral services to other PRC regions, taking their (largely Han) prisoners for a fee. Many of these were political prisoners subjected to the *laojiao* forced labour system, including in important infrastructure projects (such as the construction of missile and nuclear installations, and in uranium mining), and on XPCC farms and production facilities (including coal mines). 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". This carceral infrastructure and expertise, combined with XPCC interests in light industry and manufacturing, has underpinned the XPCC's important role in the development of the Vocational Skills Education and Training prison-industrial complex over recent years (see Policy Brief No. 1). This has included a role in the construction of internment camps. The industrial parks with which VSETCs are co-located are frequently built, owned, or operated by the XPCC. The Corps also seems 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.

Is the XPCC a profit or cost centre for Beijing?

There are 2 ways to read the XPCC today, each pointing to a different sanctions strategy. One reading sees the XPCC as a complex commercial venture, which has helped integrate XUAR into the global market economy. This reading sees the XPCC as a profit centre for Beijing, a 21st Century East India Company that extracts value from Xinjiang (natural resources and labour), capitalising it through insertion into global trade and finance circuits. XPCC-linked forced labour is, in this reading, like an updated version of now-outlawed colonial use of forced and corvée labour. The brands, buyers and investors that profit from the artificially low cost of this labour are critical to the sustainability of the system; if sanctions induce them to withdraw from that system, XPCC profitability can be reduced and forced labour might be abandoned.

An alternative reading suggests that the XPCC's adaptation to the market economy has not been such a great success. 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 its budget. The XPCC's export and commercial ventures are better viewed 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, and for the consumers of goods priced below true cost – but only because the business model is underwritten by massive fiscal transfers from Beijing. In this reading, the rationale for those transfers is not strictly economic or commercial, but rather strategic and political, aiming at the stabilisation and effective control of XUAR.

Both may be correct. Different actors within PRC perceive the XPCC differently. The two rationales thus co-exist. For the CCP's top-level leaders, Xinjiang and the XPCC are strategic concerns. The XPCC is part of a larger effort by Beijing to enlist business in furthering Beijing's strategic goals, such as stabilisation of XUAR and, possibly, assimilation of its ethnic minorities. For other actors, the XPCC is 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. 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, such as local Divisional managers and Party officials, as to centralised policy-setting from Beijing. In those 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. Sanctions design and target selection may need to consider how sanctions work in different economic sectors and supply-chains within Xinjiang. (See Policy Briefs Nos 7, 8 and 9.)

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[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

Making Xinjiang Sanctions Work

Policy Brief No. 3 – Legal considerations

Based on *Making Xinjiang Sanctions Work*, July 2022[1]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

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Key research findings

- While the Chinese government argues that its policies in Xinjiang are legal, Xinjiang sanctions are based on the premise that they – or their effects – 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 2 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 GATT that prevails in trade dispute resolution circles suggests that enforcement of labour standards should be handled through the ILO.
- 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).

Why is this important?

- 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

[1] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

UN Secretary-General and the International Court of Justice.
- In some cases, reliance on certain norms may shut down certain remedial avenues. While many countries argue that China's Xinjiang policies violate ILO standards on forced labour, for example, it is questionable whether the normative framework around forced labour provides the basis for enforcement through trade measures such as import bans.
- 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.

Research overview

While the Chinese government argues its policies in Xinjiang are legal, Xinjiang sanctions are based on a premise that they – or their effects – are illegal. Some analysts have concluded that, taken together, the policies implemented in Xinjiang in recent years have produced crimes against humanity, or even genocide. This is based on evidence of physical and sexual assault, forced sterilisation, enforced disappearance, torture, and violations of rights to privacy, family life and religious freedom, as well as assessments of the purpose of these policies.

Forced labour

A more common accusation is that the treatment of Uyghur and other minority workers constitutes 'forced labour'. The concept of 'forced labour' is well delineated in international law, notably in the International Labour Organization's Forced Labour Convention No. 29 of 1930 (C29) and the Abolition of Forced Labour Convention No. 105 of 1957 (C105). China has recently signalled it will ratify both.

These Conventions define forced labour as 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. They prohibit use of forced labour for a variety of reasons, including political coercion, education, punishment for dissenting political views, economic development and racial or religious discrimination. The ILO assesses the presence of forced labour using 11 indicators. Several analysts, including in the US Department of Labor and US Customs and Border Protection, have concluded that these indicators are present in Xinjiang.

As an ILO Member, China may be subject to these standards even before it formally ratifies these Conventions, because they were incorporated into the 1998 ILO Declaration on Fundamental Principles and Rights at Work. However, the fine print in the Declaration may also limit the application of these standards, requiring China only to take measures to respect, promote and realise the prohibition on forced labour, as well as taking trade measures off the table as a means of enforcing these standards (Article 5).

The 1926 Slavery Convention

China has been party to the 1926 Slavery Convention since 1937. This commits China to bringing about the complete abolition of slavery, including the exercise of any or all of the powers attaching to the right of ownership. The relevant test is not whether chattel slavery is permitted in China (it clearly is not), but whether these powers are exercised *de facto*.

Relevant jurisprudence has made clear that in the present day, this involves the control exercised over a person that significantly restricts or deprives them of their individual liberty, with intent to exploit through use, management, profit, transfer or disposal of a person. This is usually achieved through violence, deception or coercion, and can involve the use of social and political power to intimidate and coerce. There is evidence supporting the conclusion that in some cases people held in the VSETC system are being treated in a manner that could meet this test. Notably, however, it is the state itself – rather than private 'employers' – that is exercising the requisite control. There are several precedents for characterising large-scale state-backed prison-industrial complexes as "state-backed enslavement", including cases following World War II, and UN inquiries on North Korea and Eritrea. This may be another such case. 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.

Moreover, framing sanctions in terms of China's commitments under the 1926 Slavery Convention may create scope for involving the UN Secretary-General (Article 7) or international courts and arbitral bodies (Article 8).

Other relevant norms

Evidence also points to the possibility that both the VSETC and Poverty Alleviation through Labour Transfers programmes have produced outcomes that violate China's commitments under the UN Protocol on Trafficking in Persons. This would need to be assessed on a case-by-case basis. Where that was the case, China would have an obligation to punish such activities.

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recently expressed "deep concern" about whether China's labour management policies in Xinjiang conform with China's commitments 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 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.

The CEACR also rejected China's characterisation of these policies as furthering 'poverty alleviation', noting 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". The CEACR has called for a number of remedial measures to bring these workforce management policies in line with China's ILO Convention commitments.

Trade law

There is a long history, stretching back to the post-World War II era, of countries agreeing not to use trade measures to seek to enforce labour standards. The entry of China into the WTO system occurred in the context of this agreement being tested and affirmed several times. Developing countries remain resistant to industrialised nations using trade measures to enforce labour standards. 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.

The precise justification under international trade law for import measures restricting imports made with forced labour remains unclear.

Canada relied on GATT Article XX(e), creating an exception to equal treatment rules for “the products of forced labour”, when it adopted a new forced labour import ban. It is unclear whether this would apply to products connected to both the VSETC system *and* Poverty Alleviation through Labour Transfers, since this provision of GATT has not been tested in international dispute resolution.

Another justification for trade measures might be found if state support for forced labour constitutes illegal dumping. But such measures would need to follow an investigation as mandated by GATT, and could only be temporary.

Other justifications also imply certain restrictions on how trade measures are adopted and implemented. These relate to GATT Article XX(b) (human life or health) and Article XX(a) (public morals). To rely on such justifications, countries adopting trade measures will need to consult with affected parties and explore other solutions before turning to bans as a necessary solution.

Another possibility may be to justify import bans under GATT Article XXI (security). Recent decisions by dispute resolution bodies relating to invocation of this provision in disputes between Russia and Ukraine, and Saudi Arabia and Qatar, leave open the possibility of invoking this provision in the context of an international emergency such as the violation of the peremptory norm against slavery, or an ongoing genocide. Nevertheless, framing trade bans as a response to *forced labour* is less likely to be justified under Article XXI.

Figure 1. Norms and remedies that could underpin Xinjiang sanctions

Norms and remedies that could underpin Xinjiang sanctions

	Application to Xinjiang workforce management policies				Remedial considerations		
Norm	**Labour standards**	**Slavery**	**Human trafficking**	**Genocide, CAgH**	**Instrument**	**Remedy sought**	**Other considerations**
International criminal law		Genocide Crime against humanity of enslavement			ICJ Universal jurisdiction	Prosecution Reparations	
ILO C29 and C105	Prohibition on forced labour				ILO mechanisms	Cessation of forced labour	China in process of ratifying.
1998 Declaration on Fundamental Principles and Rights at Work	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
1926 Slavery Convention		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
Peremptory norms of international law		Prohibition of slavery		Prohibition of genocide	State cooperation, cessation of aid, ICJ	Cessation of violation of peremptory norm	Enforceable erga omnes. See ILC 2022.
Palermo Protocol			Obligation to prevent and punish		UN TOC Convention of Parties ICJ	Cessation of trafficking Punishment	Depends on demonstration of intent ('purpose of exploitation')
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

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.

Making Xinjiang Sanctions Work

Policy Brief No. 4 – Western sanctions

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

The Xinjiang Sanctions Policy Brief series:

1. *Xinjiang forced labour*
2. *The XPCC*
3. *Legal considerations*
4. *Western sanctions*
5. *Chinese counter-measures*
6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- Governments have adopted 239 measures in response to Xinjiang forced labour (as of June 2022), according to the Xinjiang Sanctions Government Measures (XJS-GMS, v. 4.0) dataset, available at www.xinjiangsanctions.info.
- 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 any components from Xinjiang.
- The value of shipments detained by US authorities in this way increased from USD 0.218 million in FY 2018 to USD 227 million for the first 6 months of FY 2022, and is expected to increase now that the UFLPA is in force.
- Canada has a similar forced labour import ban in place, not limited to Xinjiang, 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 percent from USD 765 billion in 2017 to as much as USD 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.

Why is this important?

- Understanding what Xinjiang 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 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.

Research overview

The Xinjiang Sanctions Government Measures (XJS-GMS, v. 4.0) dataset, available at www.xinjiangsanctions.info, currently identifies 318 measures adopted or under consideration by 7 governments in response to Xinjiang forced labour. At the time of writing (June 2022), 239 of these measures were in force, 43 proposed but not yet in force, and 36 expired. 60 per cent of all measures in force have been adopted by the United States (see Figure 1, below).

There has been a steady acceleration in the pace of adoption of measures since 2018 (see Figure 2). Import and export restrictions account for the largest share of measures in force, although asset and property restrictions, as well as travel restrictions, have been put in place by a wider group of countries. Only the US and Canada currently have import or export controls in place in response to Xinjiang forced labour (see Figure 3).

While US measures are directed at 108 distinct targets, outside the US sanctions cluster around a small number of individuals and entities, including the XPCC (Figure 4).

Figure 1: Measures in force by jurisdiction

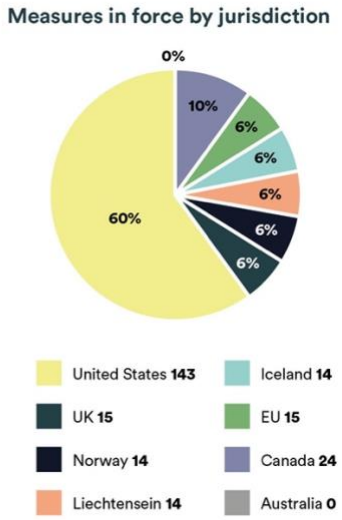


Figure 2: Year-on-year activity on Xinjiang forced labour measures

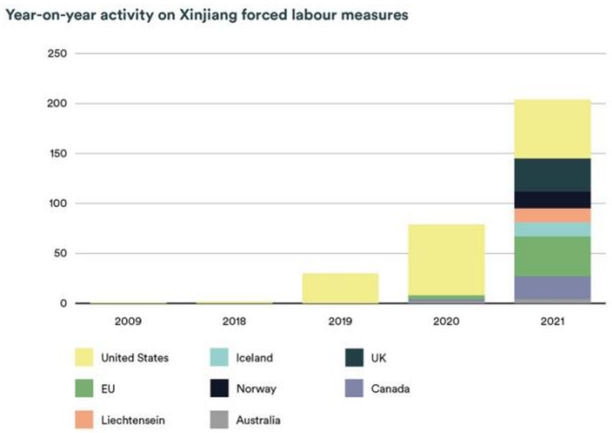
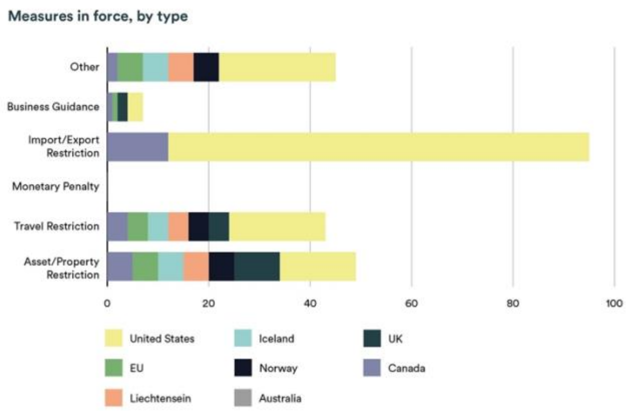


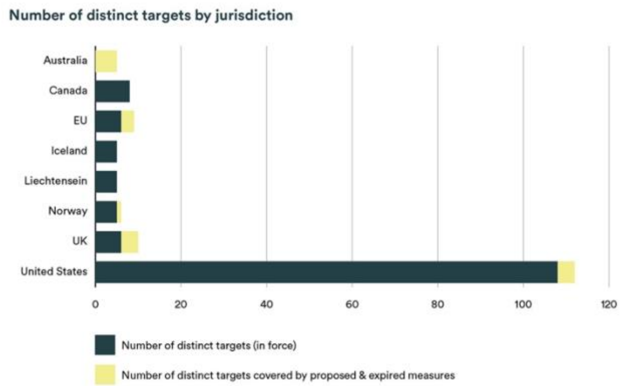
Figure 3: Measures in force, by type



Import restrictions

US Customs and Border Protection (CBP) has detained hundreds of millions of dollars worth of goods reasonably suspected to be made with Xinjiang forced labour, through Withhold Release Orders (WROs) issued under section 307 of the *Tariff Act* of 1930. Such detentions can be based either on US CBP's own initiative or receipt of information from the public. 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. CBP can also seize cargoes where it finds conclusively that they were made with forced labour.

Figure 4: Number of distinct targets by jurisdiction



The US has adopted numerous WROs relating to Xinjiang, including WROs addressing the XPCC's involvement in the cotton trade (since November 2020), banning import of all cotton and tomatoes produced in Xinjiang (January 2021), and targeting several Xinjiang entities centrally involved in the solar energy supply-chain (June 2021). Between 2016 and 2018 only USD 6.3 million worth of forced labour goods were seized by CBP. As of early 2019, just 6 of CBP's 62,450 personnel were charged with enforcing section 307 of the Tariff Act. But enforcement is now ramping up significantly. CBP now has over 20 enforcement personnel at headquarters, and tens of millions of dollars of funding is being put in place to increase enforcement. The value of shipments detained under section 307 of the Tariff Act has consequently risen from USD 0.218 million in FY 2018 to USD 227 million for the first 6 months of FY 2022.

Since 21 June 2022, under the *Uyghur Forced Labor Prevention Act*, the US has applied a rebuttable presumption that *all* goods made in whole or in part in Xinjiang were made with forced labour, which also applies to entities using Xinjiang forced labour elsewhere in China. To import goods from Xinjiang or these firms, importers must comply with due diligence and evidentiary guidance established under the Act and provide "clear and convincing" evidence that the goods were not made with forced labour. Companies have pushed for implementation arrangements minimising the regulatory burden they face, arguing for fast-track and trusted trader arrangements, a phasing in of evidentiary requirements, and heads ups on priority enforcement areas. Numerous companies, including Nike, Coca Cola, Apple, Gap, Campbell Soup, Kraft, JinkoSolar, BP and HSBC lobbied Congress while the bill was being considered.
Canada recently put in place a general ban on imports of goods made with forced labour and appears to have begun enforcing it. Australia and the EU are also considering import bans and are actively looking at the US experience for insights about how to design and implement their own

arrangements. The European Parliament has proposed a ban that applies not only to imports but also goods made with forced labour inside the European common market.

Asset freezes and travel restrictions

All countries that have adopted Xinjiang sanctions have adopted asset freezes and travel restrictions. Many of these were adopted in two coordinated sanctions 'rounds', one in January 2021 and another in March 2021, with the latter accounting for more than a quarter of all measures adopted to date. US financial sanctions are imposed primarily through inclusion of targets in the list of Specially Designated Nationals and Blocked Persons – known as the SDN List – controlled by the US Treasury's Office of Foreign Assets Control (OFAC). 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.

Export controls

Several countries, including the US and UK, have export controls in place. These prevent the export of specified technologies or goods to designated entities, particularly those associated with the XPCC, and with surveillance technologies used in repression and detention of minorities in the VSETC system. The most powerful of these is the US Department of Commerce Bureau of Industry & Security's Entity List (the 'Entity List'), which formally impacts US persons. It further impacts non-US persons through the "foreign direct product rule", which allows the US to restrict provision of certain American goods and services to third party foreign persons that do not voluntarily comply with Entity List restrictions. This creates a strong incentive for foreign entities including financiers, insurers and shippers to refrain from business with entities on the US Entity List.

Business guidance

Canada, the EU, the UK and US have issued guidance or advisories to business laying out expectations relating to the identification and management of risks associated with doing business in Xinjiang, or with entities connected to Xinjiang. Several of these advisories warn business against relying on third-party audits to identify forced labour risks. Moreover, both the US and EU guidance mention investor risks.

Capital market sanctions

There are relatively few controls in place on investment in companies connected to Xinjiang forced labour. This is somewhat surprising, given that studies suggest financial sanctions are generally more effective than trade-based sanctions; and the potential leverage capital market sanctions could offer over Chinese organisations. Capital markets could thus still emerge as a flashpoint in efforts to address Xinjiang forced labour. The European Parliament has, for example, refused to move forward with the EU-China Comprehensive Agreement on Investment until Beijing addresses Xinjiang forced labour concerns. This does not however work to restrict existing capital flows between the EU and China, but only to prevent the adoption of measures that would expand those flows in certain ways.

Investors face challenges identifying company ties to Xinjiang forced labour. Some jurisdictions, notably the US, have contemplated disclosure rules for such risks, but none have yet been adopted. Under the UN Guiding Principles on Business and Human Rights, investors have human rights due diligence obligations, even where merely offering custodial services for clients' securities. But many capital market actors, such as UBS and HSBC, seem to continue purchasing equities issued by firms that are known to be connected to Xinjiang forced labour. Development finance actors seem to be undertaking some heightened due diligence and engagement efforts in response to Xinjiang forced labour. Members of US Congress have raised concerns with the World Bank and the US development finance entity about continued support for firms connected to Xinjiang forced labour. Some institutional investors, including Investor Alliance for Human Rights and Investors Against Slavery and Trafficking APAC, are undertaking targeted active engagement efforts with companies. Shareholder actions related to Xinjiang forced labour are however scarce, though they have been organised at Apple, Disney and Nike. In fact, some institutional investors, such as Blackrock, seem to be using their votes to *endorse* Chinese firms' continued participation in the Poverty Alleviation through Labour Transfers programme.

The most significant controls are in the US. Designation on the US SDN List prevents US persons investing in or buying the debt of designated companies, and the companies of which designated companies own 50 per cent or more. Under Executive Order 14032, the US has also created the Non-SDN Chinese Military-Industrial Complex Companies List, which has been used to target some Xinjiang-related entities. Together, these measures have led to a small number of firms being removed from the equity and bond indices that are tracked by Exchange Traded Funds and other financial products worth trillions of dollars. Yet with the XPCC having holdings in 862,000 entities worldwide, these controls may only be scratching the surface. Moreover, 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, the same period that forced labour has emerged as a major problem in Xinjiang. Chinese firms with ties to Xinjiang forced labour have raised hundreds of millions of dollars in IPOs and debt *after* being sanctioned by the US. The US fund manager, Vanguard, appears to have tripled its investments in Xinjiang between 2018 and 2021. Some of these investments are even integrated into Vanguard's ESG offerings, despite the evidence that doing business in Xinjiang places firms at high risk of exposure to forced labour. And even where US capital flows are impeded, other investors can easily step in. Pension and sovereign funds in Australia, Canada, New Zealand, Norway and UK are all reportedly invested in Chinese firms designated by the US as off limits for US investors

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 5 – Chinese counter-measures

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

The Xinjiang Sanctions Policy Brief series:

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5. *Chinese counter-measures*
6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- 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, available at www.xinjiangsanctions.info, 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 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 the supply-chains' 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 associating their brand with pro-Xinjiang sentiments.

Why is this important?

- 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.

Making Xinjiang Sanctions Work

Research overview

For China, the West's Xinjiang sanctions cross a red line, and cannot go without response. The CCP leadership perceives Xinjiang sanctions as a dangerous and potentially destabilising interference with China's internal affairs, fitting a pattern stretching back at least two centuries. They see Xinjiang sanctions as an effort by the US and its partners to sustain Western hegemony at China's expense.

China has consequently responded to Western sanctions with a range of formal and informal counter-measures of its own. These aim not only to block and blunt the effects of the Xinjiang sanctions measures themselves, but also to counter the spread of the Xinjiang genocide and forced labour narrative, which the CCP calls "the lie of the century".

Formal measures

Beijing has long been opposed to unilateral sanctions, having been under US embargo from the 1950s to 1972, and again following the Tiananmen Square Massacre in 1989. But the West's adoption of various sanctions on China in the last four years has spurred Beijing to develop its own formal sanctions infrastructure.

In September 2020 China's Ministry of Commerce (MOFCOM) published its *Provisions on the Unreliable Entity List*. This creates a list-based mechanism for sanctioning foreign entities engaging in activities endangering China's national sovereignty, security or development, or activities suspending normal transactions outside of normal market trading principles in a way that causes serious damage to Chinese persons. Once listed, peoples and entities are subject to import and export controls, investment controls, travel and work bans, monetary penalties and other measures. Chinese entities must obtain permission to do business with any listed entity.

In 2021 China adopted 42 targeted sanctions on foreign individuals and entities in 14 Western jurisdictions. These are captured in the Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset, available on www.xinjiangsanctions.info. Those targeted include US, EU and UK officials, Canadian and European parliamentary bodies, academics, research bodies and lawyers. Target selection is best explained in terms of these actors' perceived role in generating and promoting the Xinjiang genocide and forced labour narrative.

In recent years, China has also developed a range of 'blocking statutes' to blunt the impact of foreign policies and legislative regimes on Chinese entities. These include measures blocking foreign civil and criminal investigations, foreign export controls and, most recently, two anti-sanctions instruments: MOFCOM Order No. 1 of 2021 providing Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures, and the June 2021 Anti Sanctions Law. Together these instruments allow Chinese government officials to issue orders prohibiting local companies from complying with foreign laws, rules and judgements.

The Anti Sanctions Law is explicitly billed as a means to "oppose hegemonism". It permits Chinese authorities to take action against people and organisations interfering in China's internal affairs, as well as those implementing or assisting discriminatory restrictive measures taken by foreign countries against Chinese citizens and organisations. The law also permits action against such people's spouses, immediate family members, managers and controllers. Moreover, the Rules and the Law allow for Chinese people to sue for harms caused by such foreign measures. As enforcement includes recovery of damages through asset seizures, foreign firms operating in China could be expropriated for complying with US or other third-party laws, including Xinjiang sanctions**.**

Together, these instruments 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. This sets up the prospect of multinational companies in China being forced to choose between compliance with US or other foreign rules (and market access), and compliance with Chinese rules (and market access) – the prospect of decoupling. Foreign banks, in particular, have expressed concern. Although the Law is not yet being applied in Hong Kong, its shadow lingers.

Informal measures

China has supplemented these formal counter-measures with a series of informal measures – what Darren Lim and Victor Ferguson define as deliberate, government-directed disruption of market transactions to further a political or strategic objective, through means not enshrined in official sanctions frameworks or publicly acknowledged as coercive sanctions.

Beijing has used informal measures numerous times in the last decade. It did so in pursuit of strategic objectives, restricting rare earth exports to Japan and Norwegian salmon imports in 20210, punishing states engaging with the Dalai Lama, and most recently in a series of disputes with Australia. In response to Xinjiang sanctions, Beijing has so far used informal measures on three occasions to date: fomenting boycotts and blacklisting of apparel brands in March-April 2021; through strategic regulation and harassment of audit firms in mid-2021; and in threats to Intel and Walmart in December 2021. (Figure 1, below)

Following the largest round of Xinjiang sanctions imposed by Western governments in late March 2021, CCP officials, media outlets, online intermediaries and social media influencers fomented an online boycott of Western apparel firms that had expressed concern about forced labour in the production of Xinjiang cotton. H&M became a particular target, with its logo parodied in a series of online memes. CCP-backed celebrity influencers – who have significant market-moving power in China, where more than 50 per cent of retail sales take place online – withdrew endorsements from H&M, Nike, Adidas, Burberry and Uniqlo. H&M was dropped from Chinese mapping apps, Nike and Adidas apps and ads were removed from Huawei and Xiaomi smartphones, and Zara and Adidas were both targeted for small regulatory fines. Other Western brands reacted by taking down online statements supporting the Xinjiang forced labour narrative. Acting opportunistically, Chinese firms produced new, patriotic content, and even some foreign (largely Japanese) apparel firms jumped on the bandwagon, promoting their own use of Xinjiang cotton to Chinese consumers. In the year that followed, Adidas and Nike reported 24 and 20 per cent drops in sales within China, while the market share of Chinese brands climbed.

Following a steady 'escalation of secrecy' around working conditions in Xinjiang from around mid-2019, from mid-2021 Chinese authorities engaged in an aggressive campaign of 'strategic regulation' of the foreign audit and due diligence firms on which many Western brands rely to certify respect for labour standards in Chinese production processes. In April 2021, at least seven people in China who work with or for Verité, a leading labour audit and due diligence provider based in the US, were interrogated by Chinese authorities over several days. Its local affiliate, Shenzhen Verité, was shut down. Several raids of other providers and related firms appear to have occurred in the same period, involving interrogation of personnel, damage to property, confiscation of files and equipment, and even, in one case, reported death threats. Chinese broadcaster CCTV has reportedly run footage of interviews with audit workers 'recanting' their views on Xinjiang. This intimidation campaign has succeeded in shutting down discussion of the treatment of Uyghur and other Xinjiang minority workers in labour and social audits across China.

In late December 2021, responding to the adoption of the *Uyghur Forced Labor Prevention Act*, Beijing took aim at Intel and Walmart. Chinese authorities criticised Intel's annual supplier letter for calling attention to Xinjiang labour concerns, and Chinese celebrities began to peel away from supporting Intel. When Intel removed the Xinjiang reference from the letter, Beijing publicly welcomed the move and called for Walmart to follow suit. Walmart had been targeted for reportedly removing Xinjiang produce from the shelves of its Sam's Club stores in China. The Central Commission for Discipline Inspection (CCDI) warned Walmart of "bad consequences". Local competitors such as Alibaba, and foreign ones such as Carrefour, both sought to exploit the opportunity, with the latter going so far as staging a "Carrefour Xinjiang Fine Goods Festival".

Figure 1: Features of Chinese informal measures in response to Xinjiang sanctions

Features of Chinese informal measures in response to Xinjiang sanctions

	Strategic regulation	Informal blacklisting	Fomenting consumer boycotts	Regulatory availability	Opportunism
Apparel brand boycotts (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
Intimidation of audit firms (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
Threats to Intel and Walmart (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)

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 6 – Corporate responses

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

The Xinjiang Sanctions Policy Brief series:

1. *Xinjiang forced labour*
2. *The XPCC*
3. *Legal considerations*
4. *Western sanctions*
5. *Chinese counter-measures*
6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- The Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset available at www.xinjiangsanctions.info 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 (see Policy Brief No. 5), 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 investors, this raises questions about investor awareness and responsibility for effective human rights due diligence (see Policy Brief No. 4).
- 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".

Why is this important?

- 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.
- 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. Policy Briefs Nos 7, 8 and 9 explore this possibility in the cotton, tomato and solar sectors.

Research overview

The Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset, which is available on www.xinjiangsanctions.info, includes over 8,000 datapoints relating to 256 companies. These companies are 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), Korea (4), Netherlands (2), Pakistan (2), Spain (3), Sweden (3), Taiwan (3), Turkey (1), UK (9), US (44).

XJS-CRS incorporates commercial data, indications of 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 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 so connected. Version 1 of XJS-CRS focuses 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.

The sample does not aim to be statistically representative, as many companies taking steps in response to alleged forced labour may not publicise 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.

Regional variations in corporate responses

There is a discernible regional variation in companies' general position on the Xinjiang forced labour narrative – that is, whether they acknowledge the fact of these concerns, or deny them. Chinese and Hong Kong companies are far 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 (#IsupportXinjiangcotton) in their social media. Companies headquartered in Western countries (as well as Japan and Hong Kong), on the other hand, are far more often recorded publicly acknowledging concerns around Xinjiang forced labour. Nonetheless, the most common corporate response strategy, across all three contexts (China, Western, Asian), is silence.

Figure 1: Regional variations in corporate responses to Xinjiang forced labour concerns

Figure 1.a – Number of responses recorded in XJS-CRS

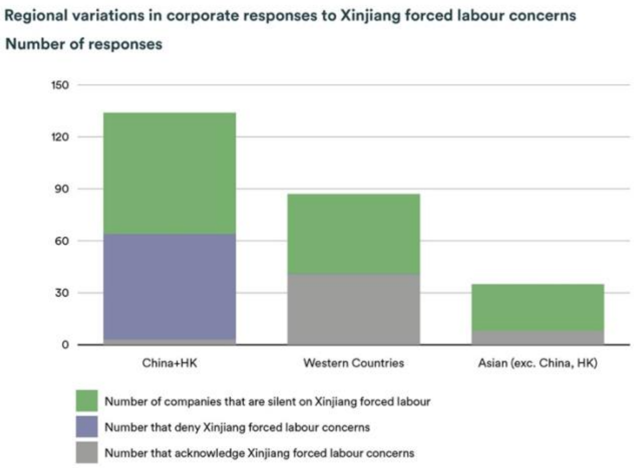
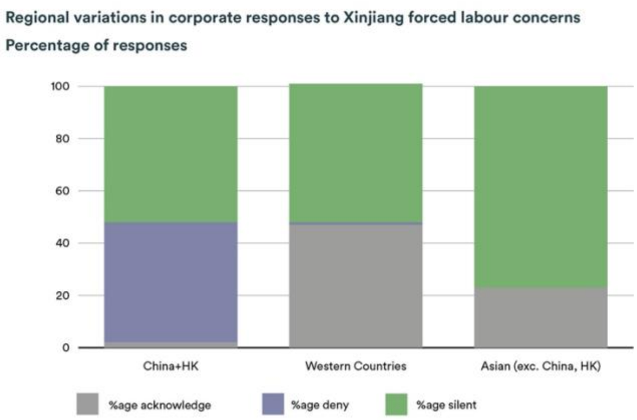


Figure 1.b – Percentage of responses recorded in XJS-CRS



Chinese corporate coordination

The responses of Chinese companies captured in XJS-CRS show signs of coordination amongst companies, and probably with Chinese authorities. There is a similarity in structure and content in the statements of Chinese companies affected by Western sanctions where those companies defend their labour management practices, pay arrangements, accommodation and working conditions. Several companies in the IT sector have also adopted very similar language and structure in statements about US sanctions, suggesting a level of coordination. The choice of language by Chinese companies further suggests a deliberate alignment with official CCP statements casting the Xinjiang forced labour narrative as a slanderous lie. Moreover, in 2021 some companies started providing ethnic minority workers to participate in events run by the Chinese authorities to dispute and counter the Western narrative on Xinjiang, offering personal narratives attesting to their good treatment by their employers.

Due diligence

XJS-CRS also provides detailed information about steps companies acknowledge having taken to identify, address and remediate Xinjiang forced labour in their operations and supply-chains. Most of these companies are Western. Recurring elements of their response include:

- raising awareness with own personnel and suppliers,
- cascading due diligence requirements to suppliers through contracts and codes of conduct,
- cooperation with external experts to strengthen risk analysis, and
- cooperation with peers to share information and develop good practices.

A small number of companies have committed to publish sourcing data, and many emphasise the need for improved traceability in supply-chains. Some have worked collaboratively to map value-chains. Some are moving to make use of technical fixes such as use of DNA and isotope tracing. 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).

However, another recurring feature of these corporate responses is the minimalist approach many of them take. One person interviewed for the study describes firms wanting to know "how much due diligence is enough" to pass regulatory scrutiny in sanctioning states.

Audits

While there is growing evidence that third party audits cannot reliably assess the presence of forced labour in Xinjiang or amongst workers from Xinjiang operating in other provinces (see Policy Brief No. 5), many companies continue to rely on audits for this purpose. Of those companies recorded in XJS-CRS as speaking on the question of Xinjiang forced labour, some 56 per cent mention use of third-party audits. Korean and Japanese firms, in particular, seem to rely on such audits *within* Xinjiang, whereas a small number of companies seem to rely on supplier self-reporting to assess the presence of forced labour. Some of the firms that rely on auditing in Xinjiang or on self-reporting 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, especially in the area of human rights due diligence (see Policy Brief No. 4). Other companies have, however, made changes to their use of audits, usually in combination with a decision to exclude products from Xinjiang from their supply-chains.

Supply-chain relocation

There is only very limited evidence in the XJS-CRS itself of firms relocating supply-chains in response to Xinjiang forced labour concerns. This does not mean it is not happening; firms are understandably quiet about such decisions. (Policy Briefs Nos 7, 8 and 9 examine developments in the cotton, tomato and solar supply-chains in more detail.) Confidential interviews undertaken for this study nonetheless suggest that firms remain driven by a profit-maximisation logic in how they handle the question of Xinjiang forced labour. This translates into a reluctance to develop new supply options, unless strictly necessary, because the competency and volume of production in 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.

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 work to mitigate the costs of supply-chain relocation. Other companies warn that the variation in regulatory approaches in the West, Asia and China is encouraging regulatory arbitrage: jurisdictions with the lowest production standards risk becoming dumping grounds for goods made with forced labour. There is no real evidence in the dataset of significant transition planning by individual businesses, let alone sectors, to reorganise supply-chains to avoid Xinjiang. For many businesses, while Xinjiang sanctions require caution and compliance adjustments, it is “largely business as usual”.

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 7 – Cotton

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

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6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- The cotton sector has been central to both Western sanctions in response to Xinjiang forced labour, 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 it otherwise faces.
- Massive fiscal transfers of around USD 2.5 billion per year from Beijing to the sector have underpinned upgrading over the last decade, supplementing cotton production with processing and textile and garment manufacturing capabilities. Many firms involved have ties to forced labour, through either the VSETC or the Labour Transfers schemes (see Policy Brief No. 1).
- 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 (see Policy Brief No. 5) may actually be shrinking the space available to opponents of forced labour, at least 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 suppliers. This is a result of global cotton market structure 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 importers' 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 unpredicted 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, although many Western investors remain invested in Chinese entities with close ties to the sector.

Why is this important?

- 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 the reduction of Western buyers' complicity with Xinjiang forced labour, rather than the reduction of forced labour itself. It may also have the potential to accelerate broader economic and technical decoupling between China and the West.

Research overview

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. It has also been central to the Chinese counter-measures discussed in Policy Brief No. 5. This is the sector in which the impacts of Xinjiang sanctions have been most visible and apparently most costly to date.

Around 1 in 5 garments currently manufactured worldwide likely contains cotton made with Xinjiang forced labour. Xinjiang produced 91 per cent of Chinese cotton in 2021, and China is the second largest cotton producer in the world.

Cotton and Xinjiang governance

Cotton has been at the centre of the PRC's development strategy for XUAR since the 1950s – first as a focus of land reclamation efforts led by the XPCC, and since 2014 as a centre of industrial upgrading efforts. The XPCC has been a key player, today controlling around 40 per cent of XUAR cotton production, with 110 XPCC regiments involved. More than half of all Xinjiang farmers (70 per cent of whom are from an ethnic minority) grow cotton. Many of them sell it to the XPCC or other 'leading' firms, often under near monopsony arrangements. The cotton sector has been central to the processes of dispossession, proletarianization and Sinification that have characterized CCP stabilisation efforts in Xinjiang over the last 8 decades.

Over the last decade, Beijing has fostered a massive upgrading of the sector's industrial and manufacturing capabilities, from 680 factories in 2014 to over 3,500 in 2019. Through public and private investment, the sector may now employ as many as 600,000 people in Xinjiang, with over 80 per cent of all China's cotton processing companies present in XUAR. This has been achieved through massive fiscal transfers of around USD 2.5 billion per year, as well as Beijing setting a price floor for Xinjiang cotton. The government has also used pairing schemes to encourage investment by established firms in China's eastern provinces. Some of these come from Zhejiang province, where President Xi was Party Secretary from 2002 to 2007.

Forced labour has been present in the sector from its early days. It initially took the form of annual 'work-study' programmes forcing millions of children to assist with the cotton harvest, and may also have involved prison labour. More recently, both the VSETC system and the Poverty Alleviation through Labour Transfers scheme (see Policy Brief No. 1) have coerced Uyghur and other minority workers into the sector, as producers, harvesters and factory workers. This has involved massive mobilization by state and Party authorities, visiting minority households one at a time to recruit workers; placing children in institutionalized care; and physically transferring groups of workers to worksites inside and outside Xinjiang. Cotton producing and processing locations within Xinjiang have become increasingly militarized.

This underpaid, coerced labour force has been critical to the success of the Xinjiang cotton sector, allowing it to overcome high cost structures such as transport costs and low productivity rates. It has also been central to the CCP's intrusive governance strategy for XUAR since 2014.

Western sanctions and Chinese counter-measures

Firms and individuals connected to the cotton sector are to date amongst those most frequently targeted by Western sanction responding to Xinjiang forced labour. These measures include import controls (especially in the US and Canada); targeted financial and travel bans; and export controls.

Even before the UFLPA was enforced and before the adoption of a proposed European forced labour instrument, Western sanctions appeared 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. One target of US sanctions, Changji Esquel Textile Co. Ltd. (溢达纺织有限公司) has reported losses of hundreds of millions of dollars, lost suppliers and closed factories (in Mauritius, not in Xinjiang) as a result of these sanctions.

By mid-2022, Xinjiang cotton prices appeared to have dropped around 30 per cent as a result of reduced demand, occasioned by Western sanctions. Xinjiang cotton producers reported growing stockpiles of Xinjiang cotton which they could not sell. Some were beginning to talk of looking for ways to evade Western sanctions, for example by presenting fake documents to misrepresent the provenance of cotton.

The Chinese government responded to Western sanctions by initiating a series of formal and informal counter-measures, many of them targeting Western apparel brands. These included strengthening China's sanctions infrastructure, strategic regulation, informal blacklisting and fomenting online boycotts. These counter-measures are discussed separately in Policy Brief No. 5. It appears that they have led to declines of 20 to 24 per cent in sales for some leading Western brands such as Adidas and Nike.

Dynamics of sanctions on the cotton sector

Sanctions theory suggests that sanctions will be most effective where sanctioning states and their firms can find alternative business partners at relatively low cost, while sanctioned firms face high costs in finding alternative business partners. These conditions appear to hold in relation to the Xinjiang cotton sector. The US is easily the largest importer of cotton and cotton-mixed products in the world, both by value and weight. If the EU bans Xinjiang cotton, this will enlarge the sanctioning coalition and increase the impacts on the Xinjiang cotton sector. So, too, would the involvement of the Central Asian states that represent a major source of demand for direct exports of Xinjiang raw cotton. This is important because Chinese demand for cotton does not yet come close to absorbing domestic supply, and while it may be feasible for producers and exporters to reallocate trade to alternative markets this inevitably involves price reductions and thus revenue losses. Importers in sanctioning states also face costs from lost Chinese supply. But cotton is relatively homogenous, and supply is relatively elastic. Already there are signs that the gap left by Xinjiang cotton in the US market may be met by increased production from other sources in Asia.

Nevertheless, forensic evidence suggests that as of late 2021 16 per cent of cotton clothes on US store shelves still contained Xinjiang cotton. Some firms appear not yet to be adapting their supply-chains, despite the shadow of the *Uyghur Forced Labor Prevention Act* (UFLPA). Some Xinjiang cotton producers are also clearly exploring the options of trade deflection and sanctions evasion, sending their products to sanctioning markets through third-party intermediaries in order to disguise their origin. Changing firms' risk-benefit calculus will depend on effective enforcement, which will be a function of resourcing, technology (such as use of DNA, genotyping or isotopic analysis), target selection and penalties. Some firms are in fact already pursuing product transformation. Chinese imports of Brazilian and US cotton have risen in the last two years, apparently as some Chinese garment and apparel manufacturers switch away from Xinjiang cotton in order not to be excluded from North American markets.

There is growing evidence that this is leading to supply-chain bifurcation – using non-Xinjiang cotton for products sold into sanctioning markets, such as the US, but continuing to use Xinjiang cotton for sales in China and 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.

Western sanctions on Xinjiang cotton have clearly been perceived as threatening by Chinese policy actors, inducing the counter-measures discussed in Policy Brief No. 5. However, this does not mean that they have strengthened the position of actors that oppose the use of forced labour in the sector. In fact, the draconian nature of Chinese counter-measures may have shrunk the space for such opposition in the short term.

Western sanctions on the Xinjiang cotton sector have to date focused on firms with clear ties to forced labour, and on key figures within the XPCC who have implemented the VSETC and related policies. The degree of influence a target might exert over policy processes in Beijing does not appear to have been a criterion for target selection. Moreover, the sanctions imposed work to cut the connection between, on the one hand, Western actors (importers, buyers, exporters) and, on the other, Xinjiang forced labour. They do not prevent Western *investors* profiting from firms in the Xinjiang cotton sector. Nor do they yet work to ensure the provision of remedy to those already harmed by forced labour in the production of Xinjiang cotton.

China's textile and apparel industries are now so globalized that it would not be difficult to identify cotton sector firms and interests for further targeted sanctions, if the sanctioning coalition sought them. For example, the Ruyi Group, under investigation in France for crimes against humanity as a result of its connection to Xinjiang forced labour, owns British high-end clothing manufacturer Aquascutum and has controlling interests in both US-based The Lycra Company and Australia's largest cotton farm, Cubbie Station (which is co-owned by one of Australia's largest banking groups). 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 extensive residential property overseas.

Sectoral bodies

Sanctions theory suggests that sectoral bodies representing producers in sanctioning states may support (and even drive adoption of) sanctions, because they can create positive externalities and protections benefiting local producers. But trade theory also suggests that firms that are more integrated into global value-chains tend to favour open trade. Sectoral bodies have indeed responded to Xinjiang cotton sector sanctions by arguing for streamlining of import processes, delayed enforcement of the UFLPA and a raft of exceptions.

On the other hand, sectoral bodies have also played another key role in Xinjiang sanctions which has not been predicted by sanctions theory nor trade literature. Multistakeholder bodies focused on promoting environmental labour standards, such as the Fair Labor Association and the Better Cotton Initiative, have emerged as important norm amplifiers, adducing and assessing evidence of labour standards violations, and attempting to work with their members on remediation. As a result, however, the role of these bodies has become highly contested, with the Chinese government actively resisting and portraying these groups as tools of Western governments. Several 'local' standards assurance processes have emerged in China, one of them with the active support of the XPCC, as alternatives. This dynamic resembles the geopoliticisation of sustainability standards processes seen previously in other sectors, such as palm oil. This points to the potential for disputes over the Xinjiang forced labour 'narrative' to spill over into technical standards and regulatory processes, including debates on Environmental, Social and Governance (ESG) finance.

Capital markets

Although cotton firms have not been explicitly targeted by Western capital market sanctions, global investors are increasingly asking questions about the companies' connections to Xinjiang cottons. Groups such as Investor Alliance for Human Rights (IAHR) have led extensive active engagement with the apparel industry. In 2021 a shareholder proposal initiated by Domini, an investment manager, saw 27 per cent of Nike shareholders support additional action to address Xinjiang forced labour. Some firms have begun to pre-emptively de-risk. For example, Lu Thai, a major shirt maker, sold its Xinjiang subsidiary in late 2021. Yet many Western investors remain invested in publicly listed Chinese entities with close ties to the Xinjiang cotton sector.

Sectoral dynamics of Xinjiang sanctions

	Cotton	Tomatoes	Solar
Overall impacts to date	Significant impact on demand for Xinjiang cotton, price. Some targeted firms closing manufacturing plants, laying off workers. Western brands have lost market share (see Part 2). No sign of remediation to victims of forced labour.	Limited sanctions enforcement to date. No clear evidence of impacts. 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 established firms capturing new 'slavery-free' demand. No sign of remedy for victims of forced labour.
Strengthen policy opponents?	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 (eg 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 (eg COFCO Tunhe).	Sanctions not yet targeting industry leaders with influence over policy makers (eg those with ties to 'Zhejiang Clique', those with ties to Deng Xiaoping family & PLA).
Cost asymmetries	Asymmetries marginally favour sanctioning coalition because of Western share of demand and higher price Western consumers will 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 adopted, enforced; 2. African or Middle East countries recruited into the sanctioning coalition; 3. US takes more robust enforcement action eg against fast food companies; or 4. sanctions focused 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 focusing sanctions on high-quartz quality exports from the US, and through industrial policy to increase alternative supply of slavery-free polysilicon.
Trade adaptation strategies	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 emerging. Enforcement strategy will shape firm-level adaptation.	Evidence of trade reallocation and some deflection (via South East Asia). Dominant firms in middle of supply-chain increasingly engaging in product transformation and supply-chain – without giving up forced labour production for some products. This raises cross-subsidization concerns.
Sectoral body conduct	Sectoral bodies representing globalized firms push for limits on import controls. Standards-oriented bodies provide norm amplification. Chinese government responds by politicizing standards processes.	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 more vocal in support of sanctions, as they may improve their competitive positions.
Capital markets engaged?	Increasingly, but primarily through private active engagement, including via IAHR. Some emerging shareholder proposal activity.	Some impacts on XPCC family firms, eg removal from stock indices. Early signs of active engagement by IAST-APAC and IAHR. No shareholder actions to date.	Western investors remain invested in these firms. Development finance bodies most engaged, some signs of engagement by institutional investors, private equity. But no signs of shareholder actions or delisting to date.

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[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 8 – Tomatoes

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

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10. *Strengthening Xinjiang sanctions*

Key research findings

- Xinjiang is the source of around 18 per cent by volume of the global trade 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 the strategy of competition on cost.
- The XPCC has been central to tomato production and processing in the region, and ChalkiS [*sic*] 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 (COFCO) – on its own 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 the US has undertaken limited enforcement. Xinjiang tomatoes are still entering North American markets, including through intermediary countries such as 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. No differentiation of approach between XPCC firms and those with more direct influence in Beijing (e.g. COFCO Tunhe) is evident.
- 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 their connections to the Xinjiang tomato sector.

Why is this important?

- 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. Such countries – especially in Africa and Latin America – 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 regulators and investors brought greater pressure 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 be more likely than those on XPCC-linked firms to create 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.

Research overview

The Xinjiang tomato sector

Xinjiang accounts for around 18 per cent by volume of the global trade 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 the 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, as well as 20 per cent of the European tomato paste market. XPCC entities have played the role of a 'dragonhead' or 'leading' enterprise (龙头企业), purchasing tomatoes from smallholders in return for access to company technology, quality control systems and marketing platforms. This appears to have led to minority farmers and smallholders being coerced either into monopsonistic purchasing arrangements with XPCC-backed tomato firms, or into dispossession. This has swollen the ranks of the "surplus rural labour" that has been the target of Poverty Alleviation and Labour Transfer programmes over the last decade. When ChalkiS sought to expand in 2004 by purchasing a French produce processing company, it could not replicate the cost structure that had made it so successful in Xinjiang, and the venture failed.

But over the last 2 decades other firms, notably the state-owned enterprise COFCO (China Oil and Foodstuffs Corporation) have also become major players. Beijing sees the COFCO Group as a strategically important firm underpinning Chinese food security. The group has revenues of around half a trillion dollars, with 2020 profit exceeding USD 12 billion. It has been listed in the Fortune Global 500 for most of the last quarter of a century, and 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. This growth has been supported by both Chinese and foreign investment, including loans of over USD 175 million from the International Finance Group. COFCO Tunhe, the subsidiary that handles COFCO's tomato business, accounts for around 4 to 5 per cent of global supply of processed tomato products.

The Xinjiang tomato sector's growth over the last two decades has benefited from policies encouraging access to cheap and sometimes coerced labour – including prison labour; the VSETC system; and the Poverty Alleviation through Labour Transfer programme. Another factor is investment into the region by firms from elsewhere in China, included through a 'Pairing Assistance' scheme; significant financial support from state banking, export credit and development finance entities; and transfer of human capital and technology into special industrial zones in the region.

Sanctions dynamics

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. Other jurisdictions have generally not targeted the sector. There are limited signs of importers in other jurisdictions voluntarily exiting relationships with Xinjiang tomato exporters – such as Marks & Spencer and Tesco in the UK, and Kagome in Japan.

Western sanctions have so far had a more limited impact on the Xinjiang tomato sector than on cotton and solar products. There appear to be several reasons for this, including: different market structures and firm-level adaptation; limited enforcement efforts; limited engagement by capital markets actors; and the absence of a sectoral body amplifying labour standards enforcement in the sector.

Moreover, the structure of the global tomato market may work against sanctions in this case. Processed tomato products are relatively homogenous goods, and the sanctioning coalition currently represents a relatively low share of overall demand for direct exports from Xinjiang. 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. Yet the main direct export markets for the Xinjiang tomato sector – in Africa and the Middle East – are at present absent from this discussion.

Nevertheless, the US market represents a much larger share of consumption of Xinjiang tomatoes, if we factor in *indirect* exports through third countries. This is central to the global processed tomato value-chain. COFCO Tunhe exports large volumes of tomato paste to Asian countries, where it is processed as spaghetti sauces and ketchups and re-exported under Product of Philippines, Product of India and Product of Pakistan country origin labels. The company also exports to Italy, where major buyers such as Antonio Petti Fu Pasquale add ingredients and then sell the resulting products as unbranded processed tomato products to firms that rebrand and resell them. The structure of the supply-chain thus lends itself to trade 'deflection' and sanctions evasion. As a result, Xinjiang tomato products appear still to be finding their way to North American shelves, despite import bans in both the US and Canada.

One impact of US financial sanctions has been that global securities index providers, such as FTSE Russell, have removed firms owned by the XPCC from their China indices. This has impacted several Xinjiang tomato sector firms. But the overall impact of these measures on Western investment seems limited, not least because they are currently limited to US investors, and to firms owned by the XPCC. Other firms – such as COFCO Tunhe – are unaffected. Some investor groups, such as Investor Alliance for Human Rights, and Investors Against Slavery and Trafficking APAC, are discussing Xinjiang forced labour with consumer staples retailers, but fast food firms have so far avoided significant scrutiny, and there is no evidence to date of concerted shareholder action.

Implications

As more countries adopt import bans blocking Xinjiang tomato products, the risks of trade reallocation of those products to other markets increases. This will generate social dumping – the export of goods made below labour standards to markets that do not enforce those standards on imported products. In the short term this means that buyers and consumers in those markets will enjoy lower prices. But as the impacts of ChalkiS' market growth on West African production makes clear, the long-term result is that the unfair subsidy provided by forced labour leads to devastation for local industry. Developing countries otherwise active in the tomato sector may be vulnerable – and may therefore be potential recruits into the sanctioning coalition, provided that Western countries offer adequate technical, technological and financial support to allow them to upgrade their own capabilities.

Another implication of the analysis is that enforcement strategy and resourcing will determine whether firms comply with sanctions or evade them. We found clear risks of producers and exporters considering evading sanctions by producing fraudulent paperwork to mask the origin of Xinjiang tomatoes. 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. Given the relative simplicity of this supply-chain, it may be a good testing-ground for enforcement of the UFLPA and other import bans.

The focus of sanctions targeting and enforcement has so far been on XPCC-linked firms, not other firms with close ties to the sector, such as COFCO Tunhe. Sanctioning COFCO could send a stronger signal of Western resolve to Beijing than sanctions that have been imposed to this point, and 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. Yet precisely because it sees COFCO as a strategically important firm, Beijing is more likely to perceive any sanctions directed at COFCO as an attempt to disrupt security and stability in China more generally. Sanctions targeted at COFCO are thus more likely to be meet with resistance.

Sectoral dynamics of Xinjiang sanctions

	Cotton	Tomatoes	Solar
Overall impacts to date	Significant impact on demand for Xinjiang cotton, price. Some targeted firms closing manufacturing plants, laying off workers. Western brands have lost market share (see Part 2). No sign of remediation to victims of forced labour.	Limited sanctions enforcement to date. No clear evidence of impacts. 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 established firms capturing new 'slavery-free' demand. No sign of remedy for victims of forced labour.
Strengthen policy opponents?	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 (eg 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 (eg COFCO Tunhe).	Sanctions not yet targeting industry leaders with influence over policy makers (eg those with ties to 'Zhejiang Clique', those with ties to Deng Xiaoping family & PLA).
Cost asymmetries	Asymmetries marginally favour sanctioning coalition because of Western share of demand and higher price Western consumers will 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 adopted, enforced; 2. African or Middle East countries recruited into the sanctioning coalition; 3. US takes more robust enforcement action eg against fast food companies; or 4. sanctions focused 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 focusing sanctions on high-quartz quality exports from the US, and through industrial policy to increase alternative supply of slavery-free polysilicon.
Trade adaptation strategies	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 emerging. Enforcement strategy will shape firm-level adaptation.	Evidence of trade reallocation and some deflection (via South East Asia). Dominant firms in middle of supply-chain increasingly engaging in product transformation and supply-chain – without giving up forced labour production for some products. This raises cross-subsidization concerns.
Sectoral body conduct	Sectoral bodies representing globalized firms push for limits on import controls. Standards-oriented bodies provide norm amplification. Chinese government responds by politicizing standards processes.	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 more vocal in support of sanctions, as they may improve their competitive positions.
Capital markets engaged?	Increasingly, but primarily through private active engagement, including via IAHR. Some emerging shareholder proposal activity.	Some impacts on XPCC family firms, eg removal from stock indices. Early signs of active engagement by IAST-APAC and IAHR. No shareholder actions to date.	Western investors remain invested in these firms. Development finance bodies most engaged, some signs of engagement by institutional investors, private equity. But no signs of shareholder actions or delisting to date.

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 9 – Solar

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research . For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

The Xinjiang Sanctions Policy Brief series:

1. *Xinjiang forced labour*
2. *The XPCC*
3. *Legal considerations*
4. *Western sanctions*
5. *Chinese counter-measures*
6. *Corporate responses*
7. *Cotton*
8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- China dominates 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.
- 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 that has directly targeted the sector, imposing import bans on products from a major silica provider (Hoshine) and export controls on Hoshine and 3 polysilicon firms.
- US Customs and Border Protection (CBP) 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, with prices for Chinese polysilicon reaching 10-year highs.
- There are as yet no signs of policy change away from use of forced labour; nor 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 support of sanctions, as they may improve their competitive positions.
- Western investors remain significantly invested in the Xinjiang solar sector. Development finance bodies are the most engaged, with some signs of engagement by institutional investors and private equity. However there is no evidence of shareholder actions or delisting to date.

Why is this important?

- Sanctions could be strengthened by adding a focus on high-quality quartz 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 the '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.
- 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) (see further Policy Brief No. 10).

Research overview

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.

Xinjiang is central to China's dominance of the first stages of the supply-chain – the production of silica from quartz, and polysilicon from 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 with close ties to the CCP elite – to kickstart solar manufacturing in the country, including polysilicon production in Xinjiang. 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.

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.

Research suggests that forced labour enters 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 programmes, and possibly (though not certainly) through the VSETC scheme. 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.

Sanctions dynamics

Although they have received considerable media attention, 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). However, the *Uyghur Forced Labor Prevention Act* (UFLPA) now imposes a rebuttable presumption that all solar products with components or inputs from Xinjiang are made with forced labour, and thus subject to exclusion from the US market.

US Customs and Border Protection (US CBP) has reportedly detained hundreds of shipments of solar products, and this may have slowed imports into the US. However, some industry actors warn that solar projects worth around USD 2.2 billion, with a payroll of 3,000 construction workers, could be at risk, and the American Clean Power Association has warned that two thirds of planned projects for 2022 may be at risk. Some firms assess that these bans will have a material impact on their businesses: JinkoSolar, for example, has told the US Securities and Exchange Commission that this is the case. However, beyond these warnings the evidence of overall impact is mixed. Chinese polysilicon prices are at a 10-year high, suggesting the sanctions are not yet shrinking aggregate demand, even if they are leading to a reorganization of demand and supply.

The biggest obstacle to Western sanctions impacting this sector may be that Western buyers are more dependent on Xinjiang producers than vice versa – just 5 Chinese polysilicon firms supply around two thirds of the global market. Western firms face high costs from exiting relationships with Xinjiang polysilicon providers. New facilities typically cost more than USD 500 million and take 18 months or more to bring on line. According to insights from sanctions theory literature, this is the inverse of the conditions for success. Nonetheless, Xinjiang polysilicon producers may be vulnerable to export controls on the high-quality quartz they need for their polysilicon crucibles, most of which comes from North Carolina.

Solar sector firms appear to be adapting to Xinjiang sanctions by reallocating supply to new buyers, by deflecting trade through third countries, and increasingly through product transformation involving use of 'slavery-free' polysilicon to make products for Western markets. In February 2021, LONGi Solar signed a three-year contract with Korean polysilicon manufacturer OCI worth USD 844 million, and in August 2021, Jinko Solar signed a five-year contract with German polysilicon producer WackerChemie to feed wafer and cell manufacturing in Vietnam, with those wafers and cells in turn feeding module production in Malaysia.

If sanctions do bite, the close ties between some of these solar firms and CCP leadership in Beijing suggests that they may have a more direct impact on actors with policy influence than sanctions on Xinjiang's cotton and tomato sectors do (see Policy Briefs Nos 7 and 8). Several of the firms that have invested in Xinjiang solar have ties to Zhejiang, where President Xi was Party Secretary from 2002 to 2006. GCL-Poly, one of the main polysilicon producers, has ties to the People's Liberation Army (PLA) and Deng Xiaoping's family, and Xinjiang East Hope Nonferrous Metals Co., another polysilicon producer, was founded by a family that have served in the National People's Congress and met directly with President Xi Jinping. Yet to date none of these leaders have been directly targeted by Western sanctions.

Sectoral bodies

Sectoral bodies have adopted a variety of stances on Western sanctions, reflecting the interests of their members. The Chinese Photovoltaic Industry Association has repudiated claims of forced labour. The Solar Energy Industries Association, which includes members from multiple countries including the US and China, has acknowledged forced labour concerns, instituted a voluntary pledge against forced labour, and encouraged its members to withdraw from Xinjiang. Yet the association has also argued for relatively light-touch implementation of import bans, allowing solar firms to rely on workplace audits and traceability systems as sources of evidence that their products have not been made with forced labour. The American Clean Power Association has adopted a similar position. The Ultra-Low Carbon Solar Alliance and the International Thin-Film Solar Industry Association, both of which prefer technologies which do not rely on Xinjiang solar products, unsurprisingly favour robust enforcement of import bans. Meanwhile, SolarPower Europe and SolarEnergy UK both seem to favour a greater focus on standards certification, which is in line with regulatory signals from European regulators. Sectoral bodies' positions thus appear to be shaped not only by where their members are situated within global value-chains, but also by the ways in which local regulation shape member preferences.

Capital markets

Western sanctions do not yet appear to have an impact on costs of capital in the solar sector. Western investors are invested in many of the leading firms, including Xinte. Private and public investors appear to be undertaking due diligence and heightened engagement, both through groups such as Investor Alliance for Human Rights, as well as bilaterally. Development finance institutions and multilateral development banks are reported to be developing joint approaches to work with investees to address these risks.

Nevertheless, such efforts are voluntary and sporadic – not systematic. There is no evidence of shareholder action forcing solar power firms to address their ties to forced labour. Consideration has been given in US Congress to requiring systematic disclosure to the SEC of reporting entities' ties to Xinjiang. These rules have, however, not yet been put in place, and to date there has been no effort to de-list firms with reported ties to Xinjiang forced labour, with both JinkoSolar and Daqo remaining listed on the New York Stock Exchange.

Implications

Strengthening the impact of Western sanctions on the Xinjiang solar sector will require improved target selection. Target selection to date seems (presumably unintentionally) to have exacerbated Western vulnerability. A better approach might be to target export of high-quality quartz to Chinese firms, to de-list firms, or to de-certify their leaders. (For example, the CEO of Daqo and the CFO of GCL-Poly are both members of foreign accounting standards professional organizations, which could consider revoking their membership or certification based on their ties to forced labour.)

One unexpected effect of import bans on Xinjiang solar products is supply-chain bifurcation. Evidence suggests that it is the same firms that reportedly rely on forced labour to make components for some products that are developing new 'slavery-free' product lines for Western markets. They have the technical know-how, business relationships and capital to gain first mover advantage in this new market. There is nothing in the current sanctions mix that prevents this approach, nor anything that prevents Western investors or buyers from benefiting from these firms' new or existing business lines. The unintended result may be that Western consumers pay a premium for 'slavery-free' products that cross-subsidises those firms' continued use of forced labour to make other products sold in other markets.

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 (see Policy Brief No. 10). Second, investing in and otherwise supporting new market entrants who have no ties to forced labour, to create alternative sources of slavery-free supply of silica and polysilicon. This requires transnational industrial policy, and a roadmap for a sectoral change (as discussed further in *The Energy of Freedom*). This will not be costless, with industry analyst Johannes Bernreuter estimating a roughly 10 per cent increase in solar prices. Yet in the medium and long-term there will be significant benefits. These include reduced forced labour; greater resilience to geopolitical shocks; as well as productivity, innovation and social welfare gains from the removal of forced labour from the supply-chain; not to mention ensuring the perceived 'justness' of the transition to renewable energy.

Sectoral dynamics of Xinjiang sanctions

	Cotton	Tomatoes	Solar
Overall impacts to date	Significant impact on demand for Xinjiang cotton, price. Some targeted firms closing manufacturing plants, laying off workers. Western brands have lost market share (see Part 2). No sign of remediation to victims of forced labour.	Limited sanctions enforcement to date. No clear evidence of impacts. 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 established firms capturing new 'slavery-free' demand. No sign of remedy for victims of forced labour.
Strengthen policy opponents?	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 (eg 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 (eg COFCO Tunhe).	Sanctions not yet targeting industry leaders with influence over policy makers (eg those with ties to 'Zhejiang Clique', those with ties to Deng Xiaoping family & PLA).
Cost asymmetries	Asymmetries marginally favour sanctioning coalition because of Western share of demand and higher price Western consumers will 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 adopted, enforced; 2. African or Middle East countries recruited into the sanctioning coalition; 3. US takes more robust enforcement action eg against fast food companies; or 4. sanctions focused 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 focusing sanctions on high-quartz quality exports from the US, and through industrial policy to increase alternative supply of slavery-free polysilicon.
Trade adaptation strategies	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 emerging. Enforcement strategy will shape firm-level adaptation.	Evidence of trade reallocation and some deflection (via South East Asia). Dominant firms in middle of supply-chain increasingly engaging in product transformation and supply-chain – without giving up forced labour production for some products. This raises cross-subsidization concerns.
Sectoral body conduct	Sectoral bodies representing globalized firms push for limits on import controls. Standards-oriented bodies provide norm amplification. Chinese government responds by politicizing standards processes.	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 more vocal in support of sanctions, as they may improve their competitive positions.
Capital markets engaged?	Increasingly, but primarily through private active engagement, including via IAHR. Some emerging shareholder proposal activity.	Some impacts on XPCC family firms, eg removal from stock indices. Early signs of active engagement by IAST-APAC and IAHR. No shareholder actions to date.	Western investors remain invested in these firms. Development finance bodies most engaged, some signs of engagement by institutional investors, private equity. But no signs of shareholder actions or delisting to date.

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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Making Xinjiang Sanctions Work

Policy Brief No. 10 – Strengthening Xinjiang sanctions

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at www.xinjiangsanctions.info.

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8. *Tomatoes*
9. *Solar*
10. *Strengthening Xinjiang sanctions*

Key research findings

- Of the 3 sectors studied (see Policy Briefs 7 (cotton), 8 (tomatoes) and 9 (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 – Changji Esquel – 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 (see Policy Brief No. 5).
- 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 solar panel importers than producers.
- Finally, there is little sign – beyond withdrawal of some firms from global stock indices – of Xinjiang sanctions impacting the tomato sector to date.
- Moreover, in none of the sectors 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* (UFLPA) could change this situation, as could the adoption of an EU forced labour instrument.
- In all 3 sectors studied, target selection appears to have been driven primarily by information adduced to governments about the ties between individuals and entities, on the one hand, and Xinjiang forced labour programmes on the other. Targets do not appear to have been selected based on the influence they can wield over the Chinese 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 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.
- Only in 1 of the 3 sectors studied – the cotton sector – do market structure and cost asymmetries (the balance of costs imposed by sanctions) clearly favour importers and buyers in sanctioning states, rather than Xinjiang producers and exporters.
- The sanctioning coalition could be enlarged by recruiting states whose local producers are vulnerable to Chinese social dumping – export of goods made below relevant social and labour standards. These include Central Asian cotton producers, West African and Latin American tomato producers, and South Korean polysilicon.
- 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 3 sectors show signs of emergent sanctions evasion. Where possible, customs authorities may need to supplement document-based compliance with forensic approaches such as DNA, genotype and isotopic testing.
- Sectoral bodies emerge as unexpectedly important players in the sanctions process. As sanctions theory predicts, their positions on sanctions policy are shaped by the commercial interests of their members. But this emerges as 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 the 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, profiting from forced labour. The significant leverage that both investments and capital market regulation afford for addressing Xinjiang forced labour has not yet been meaningfully wielded by Western policy makers, even if individual investors are beginning to actively engage firms with possible connections to Xinjiang forced labour.

Making Xinjiang Sanctions Work

Why is this important?

- The findings of this 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 not being adopted in a strategic vacuum, but against the backdrop of growing rivalry between the US and China. Decisions around sanctions will be made with consideration for their impact on this broader dynamic, as well as 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.
- Others see new possibilities for sanctions tradecraft, based on 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 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

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 countries' 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.
- In addition to the relevant ILO Conventions on forced labour, this set of asks should therefore also 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; and
    - 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 for economic development.
- Growing evidence shows that reliance on forced labour impedes 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 domestic resistance, given long-standing Western commitment 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 otherwise 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 is used 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, 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, not including 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 JPMorgan 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, as well as YUTU Technology, which is 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 in companies with 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 and ESG regulation 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 whose 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 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), XX(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.

Making Xinjiang Sanctions Work

- 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), as well as 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 mitigate these costs through improved access to information. This could help firms, especially SMEs, to 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 grow 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 suppliers. This will require industrial policy to foster investment and create a policy environment conducive to 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 to provide remedy for state-sponsored forced labour. The recent US government UFLPA Strategy suggests that “[c]orrective action in such cases may be limited to terminating the relationship with the supplier”.
- The European Parliament has however 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 as well as 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, 7) on the overall narrative framing Xinjiang sanctions (see Recommendation 2) and on guidance to business would also strengthen the consistency of messaging and 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 on a shared Entity List triggers sanctions across all participating jurisdictions.
- It could also develop a shared approach to remedy, for example by creating a pooled compensation fund (see Recommendation 9).
- Finally, the sanctioning coalition should develop coordinated 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.

[i] James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).

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