

POLICY RECOMMENDATIONS

COERCIVE LABOR IN THE COTTON HARVEST IN THE XINJIANG UYGHUR AUTONOMOUS REGION AND UZBEKISTAN

A Comparative Analysis of State-Sponsored Forced Labor



VICTIMS OF COMMUNISM
MEMORIAL FOUNDATION



Policy Recommendations

"Coercive Labor in the Cotton Harvest in the Xinjiang Uyghur Autonomous Region and Uzbekistan: A Comparative Analysis of State-Sponsored Forced Labor."

Governments and International Organizations:

Accurately measure and conceptualize state-sponsored, non-internment forced labor and integrate this into international accountability efforts.

Governments and relevant international organizations including the International Labor Organization (ILO) must ensure that state-sponsored forced labor in Xinjiang is being accurately measured and conceptualized, and adopt dedicated indicators able to adequately capture *non-internment* and *state-sponsored* forced labor. Whereas the 11 existing ILO indicators¹ were developed to measure forced labor in individual companies or economic sectors, state-sponsored forced labor is characterized by pervasive state-induced and systemic dynamics of coercion where state goals for coercive mobilization are primarily political.

Both Xinjiang and Uzbekistan have initiated whole-of-government and whole-of-society approaches to herd large numbers of citizens into coercive work. In both cases, coercive labor mobilization operates (or operated) through a highly centralized coercive state apparatus, with state dominance over economic policy and the state's ability to commandeer or incentivize relevant economic actors, together with an extensive mobilizational grassroots apparatus created during socialist eras and maintained or evolved by subsequent leaders.

In Xinjiang, this highly coercive apparatus penalizes noncompliance through the threat of internment and the detection of deviance through automated systems of preventative policing. The resulting environment of "structurally forced consent" are linked to systemic forced labor that is not readily detected by examining individual workers or workplaces, especially in highly repressive environments such as Xinjiang where they cannot speak freely.

A new preliminary six-phase dynamic framework developed by VOC China Studies Director and Senior Research Fellow Dr. Adrian Zenz below is designed to specifically evaluate and detect *state-sponsored* forced labor. The table below compares the new set of indicators for each phase of the labor cycle with potentially applicable ILO indicators. The initial labor identification, recruitment, training and transfer phases — the most pertinent stages for evaluating risks associated with state-sponsored forced labor — are not easily captured by the exiting 11 ILO indicators.

¹ ILO. (2012) ILO Indicators of forced labor. Geneva, Switzerland, ILO. Available from: https://web.archive.org/web/20230302194254/https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm

Phase	Uzbekistan	Xinjiang	General risk indicators
1. Identification of labor needs or of employment opportunities	State agencies calculate labor needs based on national production mandates and assign recruitment quotas to local entities.	Surplus labor and cotton- growing regions jointly identify labor needs and plan labor mobilization. Regions use seasonal labor to fulfill mandatory labor transfer quotas, achieve Beijing's poverty alleviation goals, and transform ethnic communities.	<ul style="list-style-type: none"> ● State policies or discourses that seek to change a targeted population's livelihoods in tandem with state employment campaigns. ● Local recruitment quotas for state-directed employment programs, assigned to local governments or community-level institutions. ● Policies that match workers to corporate or state labor needs. ● Policies that systematically identify state-mandated vocational training needs among targeted populations. Potentially applicable ILO indicators: n/a

2. Recruitment	Community institutions conduct recruitment campaigns involving intense psychological pressure and threats.	Recruitment based on databases and intrusive door-to-door campaigns, involving intense psychological pressure ("thought education") and latent or overt threats, including potential internment. Supported by a state-induced ideological environment requiring target groups to not be "lazy."	<ul style="list-style-type: none"> ● Concerted grassroots mobilization efforts such as door-to-door campaigns, involving the state or community institutions acting on behalf of the state. ● Pressure campaigns using peer pressure on those resisting recruitment. ● State labor assignments have to be met unless locals "buy" themselves out of it (or find replacements). ● State efforts to define labor assignments as a matter of patriotic duty or social obligation (and refusal to accept them as sanctionable). <p>Potentially applicable ILO indicators: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (6) intimidation and threats</p>
3. Training	N/A	Ideological indoctrination, "thought education," and	<ul style="list-style-type: none"> ● Mandatory vocational training programs. State-determined training quotas.

		training in legal obligations and rights.	<ul style="list-style-type: none"> • Vocational training programs with state-led mandates to instill “work discipline.” <p>Potentially applicable ILO indicators: (2) deception, (3) restriction of movement, (6) intimidation and threats</p>
4. Transfer to work destination	Accompanied by officials or work supervisors, potentially also law enforcement.	Centralized state-organized transfers, accompanied by officials and law enforcement.	<ul style="list-style-type: none"> • Centralized and/or state-directed collective transfers of workers in groups. • Transfers supervised by officials, security personnel, or other authority figures (such as employers). • Workers cannot choose how to get to work destinations. <p>Potentially applicable ILO indicators: (2) deception, (3) restriction of movement, (6) intimidation and threats</p>
5. Worker management	Supervision by officials or pickers’ employers, potentially law enforcement. Failure to achieve quotas results in verbal or physical abuse. Pressured until harvest is completed.	Supervision by accompanying officials, in some cases law enforcement. Additional surveillance and indoctrination visits by village-based work teams to evaluate their “state of mind” and “motivate” them to complete the harvest.	<p>Work environments:</p> <ul style="list-style-type: none"> • With on-site supervision of workers by officials or security personnel. • Designed to coerce workers to meet company or state targets. • With state-mandated training at work, especially of an ideological, political, or assimilatory nature. • Designed to collectively employ members of a group targeted by state-directed labor programs or policies. • Where companies have been incentivized (e.g., financially) or commandeered by the state in the context of state-mandated labor policies or programs. <p>Potentially applicable ILO indicators: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (5) physical and sexual violence, (6) intimidation and threats, (10) abusive working and living conditions, (11) excessive overtime</p>

Governments:

1) Bans on Xinjiang Forced Labor Products

Implement forced labor bans with “rebuttable presumptions” for all industries and regions known to be heavily tainted with forced labor.

As Dr. Zenz stated in his testimony² before the 2019 Congressional-Executive Commission on China Hearing “Forced Labor, Mass Internment, and Social Control in Xinjiang”, the wide-scale and pervasive nature of forced labor in Xinjiang — as well as the impossibility of conducting fieldwork on the ground and Beijing’s tight information controls around Xinjiang — mean that the only currently effective way for governments to ban Xinjiang forced labor is by enacting “rebuttable presumptions” of forced labor risk for any products from industries or regions known to be heavily tainted with forced labor, including China’s cotton industry and the entire region of Xinjiang as well as all cotton and cotton-derived products from China. Regions and sectors for consideration include especially those made with lower-skilled, labor-intensive manufacturing (or related agricultural harvesting and processing), which research has shown are the labor market segments with the highest likely participation in China’s forced labor schemes.

The United States became the first government to ban forced labor products from Xinjiang with the passage of the Uyghur Forced Labor Prevention Act (UFLPA) that was signed into law by President Biden on December 23, 2021. The law established a “rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States.”³ While the UFLPA went into effect in June, enforcement of the law must be strengthened (see United States recommendations.)

The European Commission, Germany, France, Canada, and Mexico have enacted or are introducing legislation to ban products made with forced labor, and all rights-respecting governments should follow suit to protect their citizens and consumers from unwittingly supporting human rights abuses abroad. The proposed forced labor ban mechanism currently being considered by the European Commission must effectively conceptualize, capture, and combat state-sponsored forced labor (see European Union recommendations.)

2) Hold Beijing Accountable at the ILO

Call for a Commission of Inquiry to be established to investigate forced labor in Xinjiang.

ILO Member States should use all tools at their disposal to hold the government of China accountable for its human rights crimes including state-sponsored forced labor in Xinjiang. Once Conventions No. 29 and No. 105 have entered into force for China in August of 2023, one year

²<https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Beyond%20the%20Camps%20CECC%20testimony%20version%20%28Zenz%20Oct%202019%29.pdf>

³ <https://www.cbp.gov/trade/forced-labor/UFLPA>

after Beijing's instruments of ratification were deposited with the ILO⁴—Member States should call for a Commission of Inquiry to be established to investigate forced labor in Xinjiang, as occurred in Myanmar in the 1990s.

In April of 2022, Beijing ratified the Forced Labour Convention, 1930 (No. 29)⁵ and the Abolition of Forced Labour Convention, 1957 (No. 105)⁶. Convention No. 29 prohibits the use of forced labor in all its forms and requires State parties to make forced labor practices punishable as penal offences. This instrument is supplemented by Convention No. 105, which calls for the immediate abolition of compulsory labor as a means of political coercion or education or punishment for the expression of political views, mobilizing and using labor forces for purposes of economic development, labor discipline, punishment for participation in strikes; and racial, social, national or religious discrimination.

In its 2022 annual report⁷, the ILO Committee of Experts on the Application of Conventions and Recommendations expressed "deep concern" about China's policies in Xinjiang regarding discrimination in employment and called on the government of China to bring its employment practices into line with global standards. The report also cited observations by the International Trade Union Confederation (ITUC) alleging "that the Government of China has been engaging in a widespread and systematic programme involving the extensive use of forced labour". However, the ILO has not officially recognized Beijing's wide-scale state-sponsored forced labor in Xinjiang.

European Union:

Ensure that the forced labor ban proposal effectively conceptualizes and combats state-sponsored forced labor.

In June of 2022, two weeks after the Victims of Communism Memorial Foundation published the Xinjiang Police Files, the European Parliament adopted by an overwhelming majority a resolution⁸ "on the human rights situation in Xinjiang, including the Xinjiang police files" calling for the European Commission to propose an import ban on all products produced by forced labor and on products produced by all Chinese companies listed as exploiting forced labor.

In September of 2022, the European Commission officially announced a proposal⁹ to prohibit products made with forced labor in the EU market. While the US UFLPA imposed a blanket ban on products from Xinjiang presuming they are made with forced labor, the EU proposal does not specifically cite forced labor in Xinjiang, or establish a rebuttable presumption that all products in Xinjiang are tainted with forced labor, or cite specific sectors or companies. The onus is instead on national authorities of the bloc's 27 members to enforce the ban. Article 11 of the EU proposal requires the establishment of database that is "indicative, nonexhaustive, verifiable and

⁴ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_853575/lang--en/index.htm

⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C105:NO

⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf

⁸ https://www.europarl.europa.eu/doceo/document/RC-9-2022-0310_EN.pdf

⁹ https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en

regularly updated database of forced labour risks in specific geographic areas or with respect to specific products including with regard to forced labour imposed by state authorities”.

As it finalizes the proposal, the European Commission must ensure that the mechanism effectively combats state-sponsored forced labor. First, the European Commission must correctly conceptualize state-sponsored forced labor (see Governments and International Organizations policy recommendation.) Second, the proposal should make a distinction between general forced labor and state sponsored forced labor. For regions with known schemes of state-sponsored forced labor such as Xinjiang, the database should include high-risk sectors and companies that national governments should be required to investigate, and/or a lower burden of proof for products from these regions to be investigated and seized.

United States:

Ban all cotton products from China, strengthen enforcement of the UFLPA, and close the De-Minimis shipping loophole.

1) Ban All Cotton and Cotton-Derived Products from China

U.S. Customs and Border Protection has issued 11 Withhold Release Orders (WRO) on products suspected to be produced with prison or forced labor in Xinjiang including all cotton, cotton products, tomatoes, and tomato products as well as certain garments, hair products, apparel, computer parts, and other products. The UFLPA further mandated cotton as one of the high-priority sectors for enforcement to ensure that no cotton products originating from Xinjiang are entering the United States.

According to the U.S. Department of Agriculture, 90 percent of China’s cotton is now grown in Xinjiang while farmers in the rest of the country have largely abandoned the crop.¹⁰ Given that an overwhelming proportion of China’s cotton is being produced in Xinjiang, the United States should issue an updated advisory to businesses putting them on notice that the UFLPA rebuttable presumption is being applied to all cotton imports from China.

2) Strengthen UFLPA Enforcement

The UFLPA is the strongest forced labor import prohibition in the world and a model for other jurisdictions considering similar measures, but requires more robust enforcement, including by adding more high priority sectors and entities as targets for enforcement, and addressing the shipment of Xinjiang goods via third countries.

High Priority Sectors

The Uyghur Forced Labor Prevention Act (UFLPA) mandated that the Forced Labor Enforcement Task Force (FLETF) include in its strategy to prevent the importation into the United States of goods mined, produced, or manufactured wholly or in part with forced labor in

¹⁰ <https://www.ers.usda.gov/amber-waves/2022/december/shift-in-geography-of-china-s-cotton-production-reshapes-global-market/>

the People’s Republic of China a list of high-priority sectors for enforcement—including cotton, tomatoes, and polysilicon—as well as an enforcement plan for each such high-priority sector. The FLETF Strategy, released on June 17, 2022, included a total of four high-priority sectors: apparel, cotton and cotton products, silica-based products (including polysilicon), and tomatoes and downstream products.¹¹

Although CBP has prioritized enforcement related to cotton, polysilicon, tomatoes, and aluminum—the scope of the UFLPA is much larger than these four prioritized commodities and includes any raw materials and goods that are mined, farmed in, or connected to Xinjiang. Billions of dollars worth of raw materials, rare earth and critical minerals and products exported from Xinjiang each year, including a significant percentage of global lithium-ion batteries, 20% of the global production of calcium carbide, 10% of the global production of rayon, 9% of beryllium deposits (a key rare earth mineral used for the production of satellite and aviation components), and 8% of global pepper production.¹²

While all sectors in Xinjiang are at risk of being implicated by forced labor, in order to put domestic US importers on notice that certain sectors are being targeted for compliance by CBP, we recommend the addition of these sectors as high-priority under the UFLPA:

- Extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc)
- Renewable Energy (polysilicon, ingots, wafers, crystalline silicon solar cells, crystalline silicon solar photovoltaic modules)
- Automotive Industry (metals critical to auto manufacturing, including aluminum, steel, and copper, as well as the region’s manufacturing of batteries, tires, and other car parts)¹³

Sectors that the Chinese government is targeting for production, through annual directives to the Xinjiang government and incentives to companies to move out to the Uyghur region, should also be added as priority sectors. The CPB guidance should be updated to include new priority commodities, and it should also emphasize the directive to any importer seeking an exception to the rebuttable presumption to demonstrate that it has fully complied with the requirements set forth in the guidance, including supply chain mapping, intelligence to identify and assess forced labor risk, training, and monitoring of suppliers.¹⁴

Entity List

The UFLPA Entity List¹⁵ developed by the Forced Labor Enforcement Task Force (FLETF) must also be expanded—the UFLPA required the FLETF to make a comprehensive list, and yet

¹¹ Department of Homeland Security. (2022) “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China”, Page 27. https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf

¹² Hearing of the Congressional-Executive Commission on China: Implementation of the Uyghur Forced Labor Prevention Act & the Global Supply Chain Impact, 118th Cong. (2023) (Conklin, Kit). <https://www.finance.senate.gov/imo/media/doc/2023.02.16%20Nova%20Testimony%20for%20Customs%20Hearing.pdf>.

¹³ <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>

¹⁴ Department of Homeland Security (2022) “U.S. Customs and Border Protection Operational Guidance for Importers” https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf

¹⁵ <https://www.dhs.gov/uflpa-entity-list>

there are only 20 companies on the list to date, and all of the entities on the list are derived from WROs or Commerce Department actions dating from June 2021 or earlier. Studies from organizations including the Victims of Communism Memorial Foundation, the Australian Strategic Policy Institute, and the UK's Sheffield Hallam University have identified tens of thousands of Chinese companies suspected of ties to forced labor in the Uyghur region.

The UK's Sheffield Hallam University has identified 55,000 companies, large and small, operating in the Uyghur Region and has published in-depth investigations that have documented at least 150 specific companies in the Uyghur Region and elsewhere in China for which there is significant evidence of participation in state-sponsored labor transfer programs that are tantamount to forced labor.¹⁶ For a start, all XPCC affiliates and subsidiaries—of which there are nearly 3,000 identified¹⁷—must be included on the Entity List. FLETF must presume that all state-sponsored labor transfers in the Uyghur Region constitute forced labor and thus add any company engaged in those coerced transfers of laborers onto the lists. The expanded Entity List will assist importers in ensuring that they know which suppliers to exclude from their sourcing.

Third Country Shipments

CBP must have a specific strategy to address the shipment of Xinjiang products via third countries in order to increase both the efficacy and efficiency of its enforcement. This geographic targeting should place less emphasis on products exported directly from Xinjiang and more on products arriving from third countries. Almost all of the products entering the United States that include Xinjiang content do not arrive directly from Xinjiang. As the Worker Rights Consortium stated in recent Congressional testimony, “This is because the primary contributions of the Uyghur Region to global supply chains are raw materials and other inputs that provide their value added early in the production process: cotton in the apparel supply chain, polysilicon in the production of solar panels, PVC used to make flooring, aluminum used to make cars.”¹⁸ A small number of these finished products are manufactured in Xinjiang—before the region-wide WRO and subsequent enactment of the UFLPA, Xinjiang directly exported only \$300 million worth of goods to the United States per year.

De Minimis Shipping Loophole

Products that are shipped to the United States from China that are not more than \$800 in value are not inspected by CBP due to the de minimis import loophole. A 2015 amendment to the Tariff Act of 1930 requires U.S. customs agents to “admit free from duty and tax shipments of merchandise...having an aggregate fair retail value in the country of shipment of not more than

¹⁶ Hearing of the Congressional-Executive Commission on China: Implementation of the Uyghur Forced Labor Prevention Act & the Global Supply Chain Impact, 118th Cong. (2023) (Murphy, Laura).

<https://www.finance.senate.gov/imo/media/doc/2023.02.16%20Nova%20Testimony%20for%20Customs%20Hearing.pdf>.

¹⁷ Bukharin, Irina. (2021) “Long Shadows How the Global Economy Supports Oppression in Xinjiang.” *C4ADS*. <https://c4ads.org/reports/long-shadows/>.

¹⁸ Hearing of the Senate Committee on Finance: Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field, 118th Cong. (2023) (Nova, Scott). <https://www.finance.senate.gov/imo/media/doc/2023.02.16%20Nova%20Testimony%20for%20Customs%20Hearing.pdf>

\$800."¹⁹ This de minimis shipping provision allows vendors to send materials to the United States without having to report basic data, such as country-of-origin and manufacturer.

Chinese companies such as SHEIN—which now holds the largest share of the U.S. fast-fashion market—are exploiting this loophole to ship products made with Xinjiang forced labor into the United States. According to the Human Trafficking Legal Center, Shein and other companies like it use "Xinjiang cotton in their low-value shipments being sent to the United States."²⁰ Congress must close this loophole through legislation and investigate the companies that are exploiting it, and CBP must update the UFLPA implementation strategy to address the challenges posed by direct-to-consumer businesses such as SHEIN and TEMU.

¹⁹ https://www.cbp.gov/sites/default/files/assets/documents/2020-Aug/Section-321-Data-Pilot-vs-Entry-Type-86-Test_v1-1.pdf

²⁰ https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor#xj4y7vzkg?in_source=embedded-checkout-banner