

# **A Religious Minority Enslaved: Addressing the Complicity of U.S. Companies in Uyghur Forced Labor**

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## Introduction

Ethnic Uyghurs in China are facing an unprecedented assault on their civil liberties and freedoms. Since 2018, between 1.8 million and 3 million Uyghurs have been collectivized and interned in political re-education camps in China.<sup>1</sup> The Chinese Communist Party (CCP) has stopped at little to advance its priorities,<sup>2</sup> including by carrying out what the U.S. government determined constitutes ongoing genocide and crimes against humanity.<sup>3</sup>

Part of the CCP's systematic assault on Uyghurs includes subjecting them to forced labor, a form of human trafficking under U.S. and international law.<sup>4</sup> One well-documented means of collectivization<sup>5</sup> is the CCP's system of labor transfers both inside and outside the Xinjiang Uyghur Autonomous Region in northwest China. Another form of forced labor occurs in factories, many of which are adjacent to the camps.<sup>6</sup>

In response to concerns over forced labor, the U.S. Customs and Border Protection (CBP) has developed tools to stop goods produced with forced labor from entering U.S. markets. Congress has also sought to devise solutions to these pressing challenges, introducing last year the Uyghur Forced Labor Prevention Act<sup>7</sup> and the Uyghur Forced Labor Disclosure Act.<sup>8</sup> On January 27, 2021, the Senate reintroduced a modified version of the bipartisan Uyghur Forced Labor Prevention Act. These proposed legislative measures seek to expand the CBP's authorities to target forced labor in Xinjiang.

It is in the strategic interest of the U.S. to promote its values, including by advancing solutions to counter forced labor in Xinjiang. The U.S. should implement a tailored “rebuttable presumption” and expand Withhold Release Orders (WROs)<sup>9</sup> to stop goods produced with forced labor from Xinjiang from entering U.S. markets. This requires additional resources, personnel, and expertise to construct successful responses that seek to end human trafficking in Xinjiang. This should be seen as part of broader, bipartisan efforts to address human rights violations in China.

## Forms of Forced Labor in Xinjiang

The CCP is subjecting Uyghurs to forced labor as an additional facet of its repressive policies.

According to U.S. and international law, trafficking requires the presence of “force, fraud, or coercion.”<sup>10</sup> Forced labor is but one form of human trafficking. The Office to Monitor and Combat Trafficking in Persons at the U.S. Department of State notes:

Forced labor, sometimes also referred to as labor trafficking, encompasses the range of activities—recruiting, harboring, transporting, providing, or obtaining—involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel someone to work.<sup>11</sup>

Available reporting indicates that Uyghurs are being forced to labor (1) in factories attached to the CCP's vast network of political re-education camps, and (2) through forced labor transfer programs in Xinjiang and around China.

## **Political Re-education Camp or Political Re-education Camp-Adjacent Forced Labor.**

New reports confirm rumors that many of the same facilities that intern between 1.8 million and 3 million Uyghurs are sharing factory space with so-called legitimate enterprises.<sup>12</sup> Uyghurs in the camps are subject to forced indoctrination, forced self-criticism, torture, and in some cases even death.<sup>13</sup> The camps themselves are an abomination, but activities occurring inside the camps, including subjecting Uyghur women of child-bearing age to forced abortions and forced sterilizations, eventually led the U.S. to conclude that the CCP is committing acts of genocide and crimes against humanity.<sup>14</sup> While initial reports from the camps did not suggest that inmates were also subject to re-education through labor, there were suspicions that this might be the case given the CCP's history of deploying this practice as a means of punishment, despite its claims to the contrary.<sup>15</sup>

More recent reporting confirms that the CCP's historical practices are being revived and used against Uyghurs. *Buzzfeed*'s investigative work details how 170 of the nearly 260 political re-education camps in Xinjiang they identified through satellite imagery analyses are believed to have factories directly attached or adjacent to the camps where Uyghurs are no doubt forced to labor.<sup>16</sup> The connection between the camps and factories is well-documented.<sup>17</sup> For example, the CBP stopped shipments of goods believed to be produced with forced labor in Xinjiang from Badger Sportwear, a company that produced sportswear and uniforms for U.S.-based college sports teams.<sup>18</sup> It was found that this sportswear was sourced from a company called Hetian Taida Apparel that shared factory space with a known political re-education camp in Xinjiang.<sup>19</sup> The fact patterns in the Hetian Taida Apparel allegations are reminiscent of the CCP's practices during the Cultural Revolution. During the Cultural Revolution, internment facilities, also known as *laogai*, were called the Jingzhou Industrial Dye Works and the Yingde Tea Plantation, although in reality both were large re-education-through-labor facilities.<sup>20</sup>

Prison camp or prison camp-adjacent labor affects people in Xinjiang that are currently detained, as well as inmates released from political re-education camps and later transferred to factories both inside and outside Xinjiang through forced labor transfer programs.<sup>21</sup>

**Forced Labor Transfer Programs.** The CCP is also engaging in more traditional collectivization that uproots people from their homeland to labor in other provinces. In dispersing Uyghurs both within and outside Xinjiang, the CCP is able to separate them from their hometowns, their cultural and religious traditions, and from families, the most fundamental of societal building blocks. It is important to note that collectivization efforts mean that Uyghurs are not forced to labor *only* in Xinjiang, but are also being transferred to other regions, including to eastern China.<sup>22</sup>

A new report by Adrian Zenz, senior fellow in China Studies at the Victims of Communism Memorial Foundation, estimates that in 2018 alone, at least 570,000 Uyghurs were mobilized for cotton-picking labor-transfer schemes.<sup>23</sup> There is especially robust information about the extent to which these programs are integrated in Xinjiang's cotton and tomato markets, as well as for the purposes of producing personal protective equipment<sup>24</sup> and textiles.<sup>25</sup>

Poverty alleviation has long been an excuse used by the CCP to conduct major social re-engineering through collectivization programs that transition well-educated Uyghurs (and others) into menial forms of labor for purposes of re-education.<sup>26</sup> In fact, President Xi Jinping made it a priority to eradicate poverty in China by the end of 2020, and while that goal was likely not met (despite claims to the contrary), mobilization of Uyghurs in Xinjiang was a cornerstone of these efforts.<sup>27</sup>

While the CCP's two forced labor schemes are different, they merit equal attention. The U.S. is not without tools to combat forced labor emanating from Xinjiang. It has, in fact, already made use of these tools to stop some goods from entering the U.S. market, but there is certainly more that can and must be done to combat and end forced labor from Xinjiang.

## Actions Taken by the CBP and Congress

The CBP enforces section 307 of The Tariff Act of 1930,<sup>28</sup> which prohibits foreign products made in whole or in part with forced labor from entering the U.S. domestic market. Congress passed the Trade Facilitation and Trade Enforcement Act of 2015,<sup>29</sup> which contained a provision to strengthen the CBP's ability to stop shipments suspected of containing products made using forced labor. Specifically, the act repealed the "consumptive demand" clause in The Tariff Act of 1930. This clause provided a loophole for products made with forced labor "if the goods were not produced in such quantities in the United States as to meet the consumptive demands of the United States."<sup>30</sup> Closing that loophole enabled the CBP to more aggressively block goods from entering the U.S. market. Under the Trump Administration, the CBP worked to fully enforce the laws by issuing 12 WROs on shipments from China related to forced labor between 2018 and 2021.<sup>31</sup> All but two of those WROs were issued after 2019, and of the remaining 10 WROs, eight were directly related to shipments from facilities within Xinjiang.

The U.S. uses WROs in a variety of ways depending on the evidence available regarding the pervasiveness of forced labor to produce goods abroad. Some orders are very targeted, focusing on a particular set of goods from an individual producer. The WRO on hair products from Lop County Hair Product Industrial Park is one such example.<sup>32</sup> The CBP has also issued broader orders targeting entire sectors, such as the new WRO on cotton and tomato products from Xinjiang. The government issued this regional WRO because the CBP found evidence of "debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions" during its investigation of these products originating in Xinjiang.<sup>33</sup>

Forced labor is an issue that extends far beyond the borders of China. The CBP also has WROs on products from 11 other countries.<sup>34</sup> In 2018, the CBP issued a WRO for all cotton products from Turkmenistan.<sup>35</sup> The CBP also issued a sector-wide WRO for tobacco products from Malawi in 2019.<sup>36</sup> If WROs are insufficient at stopping the goods in question, the government can also consider establishing a rebuttable presumption. This allows the CBP to assume that certain goods are produced with forced labor.

Despite the CBP's diligent efforts, there is still significant work to be done to combat forced labor abroad and to prevent goods produced using forced labor from entering the U.S. market. Last session, Members of Congress highlighted the specific need to address these issues in Xinjiang by introducing the Uyghur Forced Labor Prevention Act (H.R. 6210) and the Uyghur Forced Labor Disclosure Act of 2020 (H.R. 6270).<sup>37</sup> Both bills would place additional restrictions on companies doing business in Xinjiang, including preventing goods that were produced in the region from entering the U.S. market. The House passed H.R. 6210 and H.R. 6270 in 2020, but the Senate has not considered the bills. On January 27, 2021, Senator Marco Rubio (R-FL) reintroduced a modified version of the bipartisan Uyghur Forced Labor Prevention Act in the 117th Congress.<sup>38</sup>

## The Business Community's Response

The business community has had a mixed response to human rights concerns, including forced labor, in Xinjiang. While some of the more high-profile instances of American business activity in Xinjiang has been overwhelmingly negative – Disney’s filming of Mulan in Xinjiang<sup>39</sup>, for one thing, the NBA’s since-closed basketball training academies in Xinjiang<sup>40</sup>, another – there are elements of the American business community that recognize their responsibility to stop goods produced with forced labor from making their way into U.S. markets.

In a recent letter to Congress, The American Apparel & Footwear Association, Footwear Distributors of America, National Retail Federation, Retail Industry Leaders Association, and The United States Fashion Industry Association expressed that they have “zero tolerance” for forced labor.<sup>41</sup> In the letter, the associations outlined steps they were taking to respond to reports of forced labor emanating from Xinjiang, including efforts designed to protect their supply chains from being tainted with forced labor from the region. The associations also urged U.S. government action to help businesses be able to better assess the risks of doing business in the Xinjiang region.

In conversations with business associations, many of them see a complementary role for American companies and the U.S. government to play in tackling forced labor in Xinjiang. After human rights concerns in the region became more widely known, many companies took proactive measures to ensure the security of their supply chains in the region by outsourcing supply chain management to third-party organizations, including auditors. It is widely reported, that businesses are struggling to assess the extent to which their supply chains are tainted with forced labor from Xinjiang because auditors say that they are no longer able to do their jobs in a reliable manner due to Chinese government interference.<sup>42</sup> Many in the business community are looking for the U.S. government to press for transparency from the Chinese government or take steps to ensure greater visibility into the extent to which supply chains in Xinjiang are tainted.

As my Heritage Foundation colleague, Trade Economist Tori Smith says:

The natural next step would be for these companies to look at changing their suppliers for the goods that may be produced in factories that auditors cannot access...

Apparel and textile products are subject to incredibly high tariffs and stringent regulations in the U.S. and around the world. The average U.S. tariff rate for shoes, fabric, and clothing products is more than 11 percent.<sup>43</sup> Many of the countries where textile production is common do not have trade agreements with the U.S. that would eliminate or lower these barriers, making it costly to move production.

As companies review their supply chains and U.S. customs enforces the law, the Biden administration and Congress could be taking additional steps to ensure that apparel and textile products remain affordable for American families.<sup>44</sup>

Beyond government action, there is some hope that public pressure may affect businesses decisions to operate in the region. Even the example of the NBA provides hope that U.S. companies and entities can play a positive role in responding to atrocities in Xinjiang. The NBA, after facing public pressure and condemnation for running basketball academies in Xinjiang, eventually closed those facilities.<sup>45</sup> This is a classic example of a free market system operating at its finest – when push comes to shove, public pressure is often enough to cajole businesses to do the right thing.

Given the gravity of atrocities and forced labor conditions in Xinjiang, businesses should consider carefully whether to operate in Xinjiang. It is not yet clear, however, that the region writ-large is devoid of legitimate business operations – ones that happen without the use of forced labor. That’s why an evidence-forward approach is necessary to address these challenges. A combination of efforts from the U.S. government and businesses are necessary to combat exploitation in the region.

## Policy Options to Counter Forced Labor in Xinjiang

The Uyghur Forced Labor Prevention Act advocates creating a “rebuttable presumption” that all goods, with few exceptions, produced in Xinjiang were produced with forced labor. The concept of a rebuttable presumption is a good one, as it alleviates the burden of proof for the CBP to withhold release of goods produced in a particular region. There is precedent for this with North Korea.

In the case of North Korea, the Countering America’s Adversaries Through Sanctions Act (CAATSA), Section 321(b) created “a rebuttable presumption that significant goods, wares, merchandise, and articles mined, produced, or manufactured wholly or in part by North Korean nationals or North Korean citizens anywhere in the world are forced-labor goods prohibited from importation under the Tariff Act of 1930.”<sup>46</sup> Because the Tariff Act of 1930 prohibits the importation of all goods produced with forced labor,<sup>47</sup> and all goods made by North Koreans are assumed to be produced with forced labor, goods produced by North Koreans are generally prohibited from being imported into the U.S. market, with few exceptions.<sup>48</sup> The rebuttable presumption is one of the more powerful tools the U.S. has to counter forced labor, but its strength is in its valid application and enforcement.<sup>49</sup>

The North Korean rebuttable presumption was not without unintended consequences. Because it was written to encompass a wide set of circumstances (North Korean forced laborers in political prison camps as well as North Korean laborers conscripted by the Kim regime to work abroad), there were reported instances of North Korean refugees being denied work because businesses were fearful of potential consequences of getting caught hiring so-called North Korean forced laborers. While these challenges should be easy to resolve, it is a cautionary tale to bear in mind when crafting new rebuttable presumptions.<sup>50</sup> The goal of any rebuttable presumption should be to stop forced labor in its tracks without discouraging legitimate industry from its normal functions.

When considering the use and application of a rebuttable presumption, Congress should ask whether there is sufficient evidence to demonstrate that the Xinjiang market as a whole is tainted. To do so, Congress should have substantial evidence that the majority of industries in the region are tainted by forced labor, making it next to impossible for legitimate business to be conducted. In the North Korean case, this was clear, and deep evidentiary research was not necessary since North Korea operates as a command economy. This may not be the case in Xinjiang. (Although auditors have claimed that they are unable to conduct credible investigations to determine the extent that forced labor is present in supply chains in Xinjiang.)<sup>51</sup>

Furthermore, rebuttable presumptions and WROs are only effective if the CBP is able to enforce them. The CBP relies on tips from individuals who suspect that goods produced with forced labor are making their way into U.S. markets. Persons with relevant information about shipments can submit tips to the CBP’s online portal<sup>52</sup> or call the CBP’s Forced Labor Division hotline at 1-800-BE-ALERT.<sup>53</sup> There is a need to increase awareness about the CBP hotline.

Finally, a successful rebuttable presumption requires the political will to implement it. That means that there must be bipartisan support for its implementation. Given that concern over human rights in Xinjiang is shared by Republicans and Democrats, generating political will should not be too difficult. However, there must be continuity in its application, meaning that a Biden Administration must take up the mantle to carry the policy out.

## Recommendations for the U.S.

Conditions of forced labor in Xinjiang merit a strong U.S. response. Countering forced labor in Xinjiang will require immense political will and bipartisan willingness to continue efforts to counter human rights violations taking place in China. To do so, Congress and the executive branch should take an evidence-forward approach to tackling the challenge. Specifically, Congress and the Biden Administration should:

- **Create a narrowly tailored rebuttable presumption that goods produced in certain sectors of Xinjiang were produced with forced labor.** There is significant evidence that substantial amounts of goods produced in Xinjiang are tainted by forced labor. However, it is not yet clear that the entire region is devoid of legitimate industry. Therefore, a rebuttable presumption should be created that all goods produced in political re-education camps and political re-education camp-adjacent facilities are produced with forced labor. The rebuttable presumption should also extend to the vast network of labor-transfer programs within Xinjiang as well as to programs that transfer Xinjiang residents to other parts of China. This narrowly tailored rebuttable presumption may serve as a precursor to a rebuttable presumption that extends to the entire region.
- **Establish an expanded region-wide Withhold Release Order.** The CBP should issue a Xinjiang-wide WRO under a two-year trial period to determine the percentage of goods produced in Xinjiang that are made with forced labor. This two-year time period could be used to increase resources and personnel expertise in addressing forced labor in China, specifically Xinjiang. If an overwhelming percentage of goods seized at the U.S. border are found to be produced with forced labor, Congress should then consider instituting a regional rebuttable presumption that all goods produced in Xinjiang are produced with forced labor. For the two-year period, Congress should mandate a quarterly report from the CBP detailing ongoing and completed investigations and companies and perpetrators found with forced labor in their supply chains, as well as individuals and entities within the Chinese government responsible for perpetrating forced labor in the region.
- **Increase resources to the CBP's Forced Labor Division.** The CBP's Forced Labor Division plays a critical role in addressing forced labor in Xinjiang. Congress should increase funding, resources, and personnel for the CBP's Forced Labor Division to address the increased need for investigations and response created by the regional WRO.
- **Improve public awareness of the CBP's Forced Labor Division tip portal and hotline.** The CBP relies on tips from individuals, industry experts, lawyers, and others to track down potential shipments of goods produced with forced labor. Awareness of these resources should be increased and amplified to work toward ensuring that zero goods produced with forced labor make their way into U.S. markets.
- **Build a coalition of allies in Asia and around the world to combat forced labor.** One of the strengths of U.S. diplomacy is the commonly shared values among U.S. allies.

Australia, Japan, South Korea, the European Union and others should consider adopting similar measures to the U.S. to ensure that goods produced with forced labor from Xinjiang do not make their way into their own markets. This is already happening in the U.S.–U.K. context. Allies likewise should also share best practices for preventing forced labor more generally.

- **Focus on human rights challenges in China.** Combatting human rights violations in China is a bipartisan priority. Combatting human trafficking is a bipartisan priority. Supporting the CBP's efforts to counter forced labor is one way to create continuity in policy response and has the potential to take these efforts to the next level. The Biden Administration should build on the momentum from the atrocity determination for Uyghurs by extending Priority-2 refugee status to Uyghurs fleeing persecution and sanctioning individuals and entities responsible for human rights violations.<sup>54</sup>

## Conclusion

The need to address human rights challenges in China will remain pressing as the U.S. government transitions into the Biden Administration. Seizing on the bipartisan political momentum to tackle the severe rights violations taking place in Xinjiang is a good place to start; addressing forced labor there is a discrete challenge with practical policy solutions to remedy the challenges and ensure that goods produced with forced labor in Xinjiang no longer make their way into U.S. markets.

*Credit: Heritage Foundation Trade Economist, Tori Smith, contributed substantial research and writing to this testimony.*

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