



21-14 Assessing Potential Economic Policy Responses to Genocide in Xinjiang

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INTRODUCTION

China's Xinjiang Uyghur Autonomous Region is the locus of one of the largest campaigns of government-inflicted human rights abuses in the world. It is also a pivotal source of products, including cotton and refined silica, that feed into global supply chains. This situation presents the United States and other countries with the difficult task of addressing abuses in a country and region that is central to the global economy.

This Policy Brief outlines a variety of economic and diplomatic policies that might be brought to bear in order to both ameliorate conditions in Xinjiang and ensure that global consumers are not accomplices to these abuses by buying products produced with forced labor.¹ That task is being made more challenging by a system of nationwide forced labor transfers out of Xinjiang that is infecting the supply chains for industrial products not associated with the region. Product certification schemes are unlikely to be effective in the region's political environment. Rather, a program of presumptive restrictions on imports from Xinjiang; mandatory due diligence laws; individually targeted sanctions against perpetrators and sanctions against firms aiding and abetting the abuses

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¹ The Turkic Muslim community of Xinjiang is predominately, though not exclusively, Uyghur. For expositional convenience, we refer to them as Uyghurs. Technically, the area is the Xinjiang Uyghur Autonomous Region (XUAR). For expositional convenience, we refer to it simply as Xinjiang.

through the production of surveillance technology; and more symbolic acts, such as naming and shaming in the United Nations and boycotting the 2022 Winter Olympic Games, represent the best options.

The government of China is engaged in a systematic campaign to eradicate culturally, if not physically, the Uyghur Muslim minority of Xinjiang. The US State Department characterizes this policy as “genocide,” documenting an extensive list of continuing abuses against Uyghurs and members of other religious and ethnic minority groups, including “the arbitrary imprisonment or other severe deprivation of physical liberty of more than one million civilians; forced sterilization, coerced abortions, and more restrictive application of China’s birth control policies; rape; torture of a large number of those arbitrarily detained; forced labor; and the imposition of draconian restrictions on freedom of religion or belief, freedom of expression, and freedom of movement” (US Department of State 2021).² Human Rights Watch (2021) and Amnesty International (2021) have termed these practices “crimes against humanity,” a designation that has a different basis in international law.³ Practically, this is a distinction without difference in terms of the extent of abuses perpetrated.

The parliaments of Belgium, Canada, and the Netherlands have also deemed that China is engaging in genocide. Australia and New Zealand, which are more dependent on trade with China, have declined to do so.⁴ That trade dependency

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- 2 There was reportedly dissent within the State Department about the designation with some arguing that “intent” to destroy an ethnic or religious group in whole or part had not been established (Lynch 2021). Historically, debate (and dissent) have been the norm within the US government when making genocide designations (Buchwald and Keith 2019). On the substance, a recent paper appears to establish intent of Chinese officials to “optimize the ethnic population structure” by reducing the Uyghur share through a combination of forced outmigration and draconian reproduction control. Heavily Uyghur counties within Xinjiang have indeed experienced a precipitous decline in fertility seemingly satisfying the Genocide Convention’s language on imposing measures intended to prevent births within a targeted group (Zenz 2021a).
 - 3 Human Rights Watch (2021, p. 2) provides extensive evidence of ongoing “imprisonment or other deprivation of liberty in violation of international law; persecution of an identifiable ethnic or religious group; enforced disappearance; torture; murder; and alleged inhumane acts intentionally causing great suffering or serious injury to mental or physical health, notably forced labor and sexual violence.... As many as a million people have been arbitrarily detained in 300 to 400 facilities, which include ‘political education’ camps, pretrial detention centers, and prisons. Courts have handed down harsh prison sentences without due process, sentencing Turkic Muslims to years in prison merely for sending an Islamic religious recording to a family member or downloading e-books in Uyghur.” Amnesty International (2021, pp. 145–149) concludes that “the Chinese government has committed *at least* the following crimes against humanity imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; and persecution;...potential other crimes against humanity include enforced disappearances of persons, ...enslavement; deportation or forcible transfer of population; and rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or other forms of sexual violence of comparable gravity” (emphasis in original).
 - 4 Stephen Wright, “US Allies Diverge over Labeling China’s Treatment of Uyghurs as Genocide,” *Wall Street Journal*, May 5, 2021, www.wsj.com/articles/u-s-allies-diverge-over-labeling-chinas-treatment-of-uyghurs-as-genocide-11620207782.

is the nub of the issue: Past cases in which the United States has reached genocide designations have involved economies that were small, or at least not central to the world trading system at the time.⁵

The existence of forced labor gives a specifically economic dimension to this pattern of repression and to the potential policy responses of the outside world. The Group of Seven (G7) flagged forced labor and Xinjiang in its Cornwall summit communiqué of June 13, 2021; the White House statement on the communiqué led with a comment on forced labor in Xinjiang.⁶

Goods produced using forced labor are believed to have made their way into the supply chains of well-known global brands, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony, and Volkswagen (Xu 2021). Firms such as H&M, Nike, and Burberry—which announced that they would not source material from Xinjiang—have faced a ferocious backlash in China. Firms such as VF Corp. (which owns The North Face), Inditex (which owns Zara), and PVH Corp. (which owns Calvin Klein and Tommy Hilfiger), which had previously announced that they supported human rights and did not source products from Xinjiang, later removed their stated policies against forced labor from their websites. The German brand Hugo Boss and the Japanese brand Muto went so far as to publicly affirm purchases of Xinjiang cotton.⁷ In January 2021, the United States banned imports of cotton and tomatoes produced in Xinjiang. It had earlier imposed sanctions for human rights abuses on the paramilitary Xinjiang Production and Construction Corps (XPCC) and two high-ranking officials in Xinjiang.

Faced with these atrocities, the United States and the international community could set a variety of policy goals:

- End genocide/crimes against humanity in Xinjiang.
- Ameliorate the condition of refugees fleeing Xinjiang.
- Insulate the economies of the United States and other countries from products produced under forced labor.

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5 In the post-Cold War era, after the State Department policy process on genocide designation was partly formalized, the State Department made assessments of genocide in Cambodia, Bosnia, Rwanda, Burundi, Iraq, Darfur, and areas under the control of ISIS. Before the Cold War, discussions were held within the executive branch on cases in Biafra, Bangladesh, Nicaragua, Guatemala, and the Soviet Union, as well as Ottoman-era atrocities against the Armenians (later recognized by the Biden administration) (Buchwald and Keith 2019). Designation is currently under discussion regarding Myanmar. All of these economies are minor, however (the Soviet Union is an exception, but it was unimportant to US trade and investment at the time). What stands out about the Chinese case is not the facts regarding atrocities but China's centrality to US economic relations.

6 See paragraphs 29 and 49 of the statement (www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/carbis-bay-g7-summit-communiqué/). For the White House statement, see <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/fact-sheet-g7-to-announce-joint-actions-on-forced-labor-in-global-supply-chains-anticorruption-and-ransomware/>.

7 Vanessa Friedman and Elizabeth Paton, “What Is Going on with China, Cotton, and All of These Clothing Brands?” *New York Times*, March 29, 2021 (updated April 2, 2021), www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html; Megumi Fujikawa, “Japan's Muji Appeals to China by Advertising Use of Xinjiang Cotton,” *Wall Street Journal*, May 11, 2021, www.wsj.com/articles/japans-muji-appeals-to-china-by-advertising-use-of-xinjiang-cotton-11620692294#:~:text=Muji%20says%20it%20uses%20cotton,owned%20by%20Ryohin%20Keikaku%20Co.

- Strengthen respect for international law and a liberal global governance regime.
- Bear witness and disassociate from morally reprehensible activities.

This Policy Brief reviews measures taken to date and possible additional actions that could be undertaken to advance shared policy goals, with a focus on the economic aspect. Action to date has consisted of a limited number of targeted sanctions undertaken by several Western democracies. This approach is fundamentally inadequate: Through a process of nationwide forced labor transfers, the problem of Xinjiang forced labor is metastasizing across China and infecting the supply chains for industrial products not associated with the region. Moreover, the problems in Xinjiang are not the product of a few rogue officials. These practices are being coordinated at the highest levels of the Chinese government.

The Xinjiang crisis requires a multifaceted response consisting broadly of approaches that attempt to change regime behavior directly—via explicit sanctions, public shaming and blaming, or the imposition of broader economic costs—and approaches designed to ensure that products produced with forced labor are kept out of markets. Among the ideas highlighted are the following:

- Use the United States’ Global Magnitsky Act and similar laws elsewhere to sanction individuals and entities perpetrating genocide.
- Extend these measures to domestic firms supplying surveillance equipment and technology, presumptively banning imports from Xinjiang unless the absence of forced labor can be established.
- Pass mandatory due diligence laws.
- Develop, through public and private sector activities, public lists of enterprises of concern based on International Labor Organization (ILO) indicators of forced labor.

FORCED LABOR AND THE ECONOMIC SITUATION IN XINJIANG

The documented abuses in Xinjiang are multidimensional. This Policy Brief focuses on forced labor, the form of abuse most salient to the economic policy issues, without any intent to signal that this practice is the worst of what is occurring in Xinjiang.

The landlocked Xinjiang Uyghur Autonomous Region is located in the northwestern corner of China.⁸ Bordered by Afghanistan, the Kyrgyz Republic, Kazakhstan, and Mongolia, the region was part of the historic Silk Road linking China to Central Asia, the Middle East, and Europe. After the decline of overland trade in the 18th century, however, it became economically marginalized. China’s late-20th century surging export-led economy brought accelerated development to coastal regions, but economic prospects in the interior lagged, especially in the west and southwest regions, where per capita incomes are still less than half of those in coastal areas. In 2000, the Chinese government impaneled a Leadership Group for Western China Development to enact the Western

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8 See Roberts (2020) for a history of Chinese policy in Xinjiang.

Development Plan, a sweeping set of investments in education, infrastructure, and industrial development intended to tap into the region's vast coal energy reserves, boost the region's economy, and extend the process of Sinicization into the predominately Muslim and Turkic region.

The Xinjiang economy is still peripheral, accounting for only 1.4 percent of China's gross domestic product. However, it is a major producer of two products, cotton and polysilicon, that are key parts of global supply chains. Xinjiang accounts for nearly 20 percent of global cotton production, with annual production greater than that of the entire United States.⁹ Its position in polysilicon—the material from which solar panels are built—is even more dominant, accounting for nearly half of global production.¹⁰ Its position in polysilicon stems not from a dominant position in the raw material (silicon being among the most abundant minerals on Earth) but from the massive amounts of energy used in the refining process and Xinjiang's low, albeit carbon-intensive, energy costs.

If religious repression and economic expansion form the centerpiece of China's Xinjiang policy, a secondary aim is the creation of a vast reserve army of forced labor. China has achieved this goal through three channels: coerced labor by the rural poor, forced labor by current or ex-detainees (people in reeducation camps), and prison labor (Lehr and Bechrakis 2019).¹¹

According to Human Rights Watch (2021), in 2017, arrests in Xinjiang, which accounts for only 1.5 percent of China's population, accounted for nearly 21 percent of all arrests in China. A significant share of these arrests appears to be for political crimes. Human Rights Watch reports that the share of sentences exceeding five years rose nearly eight-fold between 2011 and 2017. The State Department estimates that more than a million Uyghurs and other Muslims have been interned in what China calls "transformation through education" centers.

Commercial operations are subsidized to incorporate ex-detainees in their operations and permitted to pay below minimum wage (or no wages at all).¹² Lehr and Bechrakis (2019) cite the example of one industrial park that touts

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9 See the International Cotton Advisory Committee, <https://icac.org/DataPortal/DataPortal?Year=2019/20%20for> (accessed on May 21, 2021).

10 Dan Murtaugh, "Why It's So Hard for the Solar Industry to Quit Xinjiang," Bloomberg Green, February 10, 2021, www.bloomberg.com/news/articles/2021-02-10/why-it-s-so-hard-for-the-solar-industry-to-quit-xinjiang.

11 According to the US State Department (2021), "There is evidence of forced labor exacted by the use of force, threats of detention or other abusive practices against workers laboring in the camps, large industrial parks, and residential locations in Xinjiang. There are also reports of individuals 'graduating' from 'vocational training centers' and then being compelled to work at nearby facilities or sent to factories in other parts of China." Former detainees report being threatened with return to incarceration if they did not accept these assignments. See Associated Press, "Secret Documents Reveal How China Mass Detention Camps Work," November 25, 2019, <https://apnews.com/article/china-cables-ap-top-news-international-news-china-race-and-ethnicity-4ab0b341a4ec4e648423f2ec47ea5c47>. For corroboration, see Lehr and Bechrakis (2019), Xu (2020), and Amnesty International (2021).

12 As Lehr and Bechrakis (2019, pp. 5–6) observe, "It is unclear why Xinjiang's ethnic minorities, which historically have resisted the government's efforts to incorporate them in the manufacturing base, would now choose *en masse* to enter the workforce, particularly when they are paid below the minimum wage.... The government explicitly permits companies in Xinjiang to pay minorities below the minimum wage. This appears to be carried out in practice."

costs 30 percent below the rest of China, despite being in a remote location with historically low productivity and poor infrastructure.

The intensification of these Chinese actions has coincided with “the Chinese government’s encouragement of the vertical integration of China’s garment manufacturing sector by moving textile and garment factories closer to the cotton production centered in Xinjiang, hinting at the textile and apparel expansion plan that depends heavily on the forced labor of inmates at the various detention facilities” (Human Rights Watch 2021, p. 35). The implicit message is that encouraging relocation from eastern China will promote Sinicization and contribute to political stability in Xinjiang.

The paramilitary Xinjiang Production and Construction Corps (XPCC) is central to the region’s economy. It operates prisons and internment camps in the region, at least some of which host factories, and has long employed prison labor. It reputedly maintains 36 prison farms. It is also involved in the procurement of equipment to operate the surveillance system. The XPCC controls more than one-third of Xinjiang cotton production and is known to operate 170 ginning factories, some of which are located next to XPCC prisons (Lehr 2020). The XPCC is also connected to the region’s solar industry—via ownership shares or ownership and operation of electrical grids that feed into solar operations—although the extent of its involvement is difficult to discern.¹³ The XPCC also coordinates the transfer of Han settlers into Xinjiang, apparently to permanently alter the region’s demography.

Most of the cotton market (and the most lucrative long-thread segment) is controlled not by the XPCC but by smaller commercial farms and many smallholders. According to Mi, Li, and Gao (2020), 40 percent of Xinjiang cotton farmers plant less than 1 hectare, and only 3 percent of farms are larger than 10 hectares. Many farmers must supplement their on-farm income with off-farm labor for average wages of roughly 150 yuan (US\$23) a day. These smaller operations are also the least mechanized; they engage in extensive use of transferred seasonal labor from Xinjiang (Zenz 2021b).

The State Department cites a China State Council report that acknowledges providing “vocational training” to an average of 1.29 million Xinjiang workers a year between 2014 and 2019. Zenz (2021b) estimates that up to 1.6 million workers are at risk of being subjected to forced labor.

Numerically, the largest component appears to be the forced mobilization of the rural poor for seasonal cotton picking in Xinjiang. Zenz (2020) estimates that in 2018 at least 570,000 rural laborers were transferred into this activity, mostly within Xinjiang. Starting in 2014, local governments were given numerical targets, with rewards and penalties for meeting or failing to meet these goals that have been raised over time. Xu (2020) reports that local governments and private brokers are paid a price per head for arranging transfers.

Forced labor is also deployed in picking tomatoes and working in factories producing textiles, garments, hair accessories, and electronics, both within and outside Xinjiang. Concerns have also been expressed about aluminum and rare earth metals used in consumer electronics and aviation.

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13 “XPCC Ownership in Xinjiang’s Solar Industry Hidden by Complex Ownership Structures,” Sayari, March 30, 2021, <https://sayari.com/blog/xpcc-ownership-in-xinjiangs-solar-industry-hidden-by-complex-ownership-structures/>.

Detainees and former detainees are also deployed in agriculture and industrial activities within and beyond the region. Human Rights Watch (2021) estimates that as of 2018, coercive government measures had transferred 450,000 workers out of Xinjiang. As Lehr and Bechrakis (2019, p. 7) observe, the fact that “poverty alleviation program workers are required to live in secured dormitories far from home with ex-detainees suggests the arrangement may not be voluntary.”

Understanding the scope of the use of forced labor in the supply chain is made more difficult by a large-scale Chinese government program to “pair” firms based in eastern China with entities in Xinjiang, sometimes assigning the firms to build and operate factories within reeducation camps. This practice is sometimes referred to as “Xinjiang Aid.” Participation in this program is believed to increase both the likelihood of being asked to employ workers released from detention facilities and mobilized under “poverty alleviation” programs and access to direct and indirect subsidies. Lehr and Becharikis (2019) list 30 factories and industrial parks believed to be operating using forced labor under this program. Xu (2021) documents 82 foreign and Chinese firms using Xinjiang forced labor outside the region and 54 using forced labor inside Xinjiang (there is some overlap in the two groups). Some of these firms are or are connected to well-known global brands. Press reports have linked forced labor to the production of personal protective equipment (some of which ended up in the United States) and solar panels.¹⁴ Lehr and Becharikis (2019) produce a conservative estimate of 100,000 ex-detainees working under conditions of potentially forced labor (excluding the aforementioned coerced rural labor and prisoners). Xu (2021) documents at least 80,000 former detainees sent to facilities outside Xinjiang, some coming straight from detention, a figure she believes represents a very conservative indication of the scale of the phenomenon. With arrest rates rising and the population under detention growing, it would be reasonable to expect this channel to grow.

There are no good estimates of forced labor by prisoners in detention, the third channel of forced labor. With incarcerations rising, however, the scope for this form of abuse is growing as well.

NONECONOMIC POLICY RESPONSES

Policy toward Xinjiang should have multiple objectives: the cessation of genocide and crimes against humanity; the amelioration of conditions in the Uyghur diaspora; the insulation of the US economy (and the global economy) from products produced by forced labor; the strengthening of adherence to international law and the furtherance of a liberal global governance regime; and the conveyance of disapproval for morally objectionable activities. Potential policy tools range from conventional political diplomacy to economic diplomacy

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14 Muyi Xiao, Haley Willis, Christoph Koettl, Natalie Reneau, and Drew Jordan, “China Is Using Uighur Labor to Produce Face Masks,” *New York Times*, July 19, 2020 (updated August 13, 2020), www.nytimes.com/2020/07/19/world/asia/china-mask-forced-labor.html; Ana Swanson and Chris Buckley, “Chinese Solar Companies Tied to Use of Forced Labor,” *New York Times*, January 8, 2021 (updated January 28, 2021), www.nytimes.com/2021/01/08/business/economy/china-solar-companies-forced-labor-xinjiang.html.

to voluntary action by private entities. There is not a simple mapping from tool to objective: Noneconomic actions may help achieve economic policy goals and vice versa.

Concerned governments, including the US government, can take a variety of actions within multilateral forums regarding genocide in Xinjiang. The first, and most obvious, would be to raise the issue in the United Nations, in both the Security Council and the Human Rights Council, and request a Commission of Inquiry to establish an official narrative and evidentiary archive. Human Rights Watch (2021) recommends that state parties to the International Convention on the Elimination of All Forms of Racial Discrimination individually and jointly file complaints against China for its violations of the conventions against Uyghurs.

Beyond the General Assembly, Schneider (2020) suggests launching some kind of case or investigation by the International Labor Organization (ILO). The problem with this approach is that China has not signed the ILO code on forced labor, so it is not clear on what basis the ILO would proceed. What concerned governments can do in this situation is demand that China sign the 1930 ILO convention on forced labor and the 2014 protocol to the forced labor convention, as well as adhere to its commitment against the use of forced labor under Article 6 of the UN International Covenant on Economic, Social, and Cultural Rights, to which it is a party.

China is not a party to the International Criminal Court, although in principle the actions of Chinese citizens in signatory states to the Rome Treaty or against their citizens would be actionable. The likelihood of actual criminal prosecutions in the ICC is vanishingly small. National prosecutors could, however, launch investigations similar to ICC preliminary examinations to provide groundwork for future prosecutions. China does participate in the International Court of Justice. Hufbauer and Jung (2021) float the idea of action there.

Rather than resolution through the multilateral system, forceful action is more likely to come through national governments working individually or in concert. In some cases, national governments have the legal authority to pursue remedies under existing law. In others, legislation would be needed. For example, under the Global Magnitsky Act, the US government has the capacity to impose visa bans, travel bans, and targeted sanctions against individuals and entities. Such sanctions have been imposed on the XPCC and affiliated officials. Canada, the United Kingdom, and other countries have similar laws. Under its export control laws, the United States can also place enterprises and individuals on the so-called Entity List, which, for example, can be used to restrict access to surveillance technology. The United States, Canada, the United Kingdom, and the European Union have imposed a limited number of Xinjiang-connected sanctions. Given China's uncooperative stance, and problems with access to Xinjiang, the evidentiary hurdle may be so high as to limit their effects, however.¹⁵

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¹⁵ In 2020, the United States imposed sanctions on the XPCC, Peng Jiarui, the deputy party secretary and commander of the XPCC, and Sun Jinlong, a former political commissar of the XPCC. In 2021, in a coordinated move, the United States, Canada, the United Kingdom, and the European Union imposed sanctions on the XPCC and four officials (with the United States adding two officials to its existing list). China retaliated the same day, imposing sanctions on a number of European lawmakers and four think tanks. See appendix 4 in Bown (2021) for a timeline of Xinjiang-connected entities being placed on the export control list.

What might be more effective is to turn the law on non-Chinese firms that support the surveillance state. Human Rights Watch (2021) recommends imposing escalating actions against technology companies contributing to China's mass surveillance state in Xinjiang under the United States' Global Magnitsky Act and similar laws elsewhere. Concerned governments could also oppose lending by the World Bank, the Asian Development Bank, and other multilateral institutions that support surveillance activities. National governments, acting individually or in concert, could also publicly condemn Chinese policy in Xinjiang and cooperate to facilitate prosecutions against Chinese officials on the basis of universal jurisdiction laws (Human Rights Watch 2021).

National governments do control the treatment of Uyghurs within their own borders. Governments should ensure fair access to asylum procedures; facilitate family reunions; end refoulement (the practice of sending a person back to a country where he or she potentially faces a threat to life or freedom); ensure that Uyghurs have access to post-trauma services; and "establish mechanisms to track cases of harassment of Turkic Muslims present in other countries and take steps, including through criminal law, to hold perpetrators accountable" (Human Rights Watch 2021, p. 52).

With the exception of fairly treating diaspora Uyghurs, practically speaking, most of these actions amount to shaming China for its behavior and/or raising awareness. Perhaps the most attention-grabbing idea in this vein would be a boycott of the 2022 Beijing Winter Olympic Games. The Olympics have always been political. In 1980, the United States and other Western countries boycotted the Moscow Olympics over the Soviet invasion of Afghanistan. Four years later, the Soviet Union and its Eastern Bloc allies boycotted the Los Angeles Games. In 1936, no one boycotted the Berlin Olympics, which became a propaganda platform for Adolf Hitler's Nazi regime.

Such a boycott would be viable and visible: The 2022 games are the Winter, not Summer, Games, and are dominated by Western democracies from the northern hemisphere that are committed to international human rights norms.¹⁶ If the United States were to go down this route, it would probably be able to attract a fair amount of support. Russia would side with China. South Korea, which has a military alliance with the United States but is highly trade dependent on China, would be put under tremendous pressure from both sides.

Vancouver has been proposed as an alternative venue.¹⁷ Because China is a massive consumer market, the International Olympic Committee would therefore probably be reluctant to move the Games out of Beijing. But if one wants to raise awareness and impose some reputational costs on China, an Olympic boycott would accomplish those goals.

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16 Of the 10 countries with the most medals in the history of the Winter Games, the USSR/Russia is the only non-OECD country making the list. See www.statista.com/statistics/266371/winter-olympic-games-medal-tally-of-the-most-successful-nations/ (accessed on May 26, 2021).

17 Steve Keating, "Olympics: Calls grow to relocate 2022 Beijing Winter Games," Reuters, February 16, 2021. See www.reuters.com/article/us-olympics-2022-canada/olympics-calls-grow-to-relocate-2022-beijing-winter-games-idUSKBN2AH02U (accessed on June 14, 2021).

ECONOMIC POLICY RESPONSES

Broad trade sanctions tend to work only when the target is small and weak, the international community is united, and the targeted policy or behavior is not a core value of the target regime (Hufbauer et al. 2009). Given China's centrality to the global trading system, the imposition of comprehensive sanctions by a broad coalition of countries is not in the cards. Nevertheless, sanctions may have a role to play by conveying disapproval and insulating the sanctioning countries' economies from products produced under objectionable conditions. Sanctions may also act as a lever to encourage private firms to more tightly monitor supply chains and increase due diligence. Subnationally targeted sanctions, such as the United States' ban on cotton and tomatoes produced in Xinjiang (but not the whole of China), follow this logic. They could be expanded to include a broader set of products and firms.

Action to date has consisted of a limited number of targeted sanctions and partial trade bans. Before the January 2021 US ban on cotton and tomatoes, trade between the United States and Xinjiang had been rising sharply, from a small base. According to Chinese data, in the first quarter of 2021, Xinjiang's direct exports to the United States reached \$64.4 million, 46.5 percent above first quarter of 2019.¹⁸

US trade law permits Customs and Border Protection (CBP) to seize any shipment of goods that enters the United States that included forced labor anywhere in the supply chain. The mechanism by which this seizure occurs is called a Withhold Release Order (WRO). CBP can determine that certain red flags indicate forced labor (unless the firm can establish otherwise). The inferential approach is necessitated by the inability to conduct traditional fact finding in Xinjiang.¹⁹ Canada and the United Kingdom have also imposed bans on Xinjiang cotton. The European Union is considering adopting a similar law to ban products produced using forced labor.

Another challenge is that supply chains tainted by Xinjiang forced labor now extend beyond the region and agricultural commodities and industrial metals. Implementing an effective WRO policy will require expansion of CBP resources devoted to the issue, necessitating either a redirection of resources from other tasks or an expansion of the CBP budget. Schneider (2020) recommends increasing the annual budget allocated to the CBP's forced labor division, charged with enforcing WROs, from \$2 million to \$100 million.

One possibility would be to turn presumption on its head, by banning imports from Xinjiang unless the absence of forced labor can be certified. CBP could then devote its limited resources to identifying acceptable enterprises or shipments rather than trying to root out specific violations. A bipartisan proposal in the US House of Representatives—the Uyghur Forced Labor Prevention Act, which would have created a “rebuttable presumption” that products made in Xinjiang

18 Finbarr Bermingham, “China Trade: Xinjiang Exports to US Doubled in First Quarter, Even as Cotton Ban And Sanctions Kicked In,” *South China Morning Post*, April 22, 2021, www.scmp.com/economy/china-economy/article/3130567/china-trade-xinjiang-exports-us-doubled-first-quarter-even.

19 Lehr and Bechrakis (2019) provide a “smoking gun” example: Hetian Taida supplied clothes to the United States from a factory located within a detention facility—and used the detention facility's address in its paperwork. Appendix 4 in Bown (2021) includes a list of Xinjiang-connected WROs.

are made with forced labor and prohibited from entering the United States unless “clear and convincing” evidence to the contrary is shown—passed the House by a vote of 406-3. It was reintroduced in the current session and referred to the Committee on Foreign Affairs. In 2020 Senator Josh Hawley (R-MO) introduced the Slave-Free Business Certification Act, which would mandate the auditing of third-party supply chains for any company with annual revenue greater than US\$500 million. At present, the bill has been referred to the Committee on Health, Education, Labor, and Pensions.

In parallel, concerned governments should exclude activities in Xinjiang from their trade and investment promotion and guarantee schemes and oppose involvement by the international financial institutions in the region. Human Rights Watch (2021, p. 51) recommends that the European Commission hold off submitting the EU-China Comprehensive Agreement on Investment to the European Parliament and Council for ratification “until reports of forced labor have been investigated by independent and impartial international experts, abuses have been addressed, victims compensated, and there is substantial progress toward holding perpetrators to account.” The Commission suspended the process following the imposition of Chinese sanctions on members of the European Parliament and European think tanks in April 2021.

Beyond trade bans, governments could mandate due diligence, calling on firms to publicly disclose the names, addresses, ownership, and other relevant details about those with whom they do business in Xinjiang to prevent, mitigate, and remedy human rights abuses in their value chains. Due diligence laws have been adopted in the Netherlands and France and are being discussed at the EU level.

In the case of foreign firms operating facilities in China, the United Nations’ Guiding Principles on Business and Human Rights (UN 2011) and the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD 2011) provide policy anchors. The main drawback of these codes is that they presuppose that the host government wants to uphold international norms, which is clearly not the case with regard to Xinjiang, where the state opposes or pays only lip service to international norms.

The OECD Guidelines state that investors should respect human rights “within the framework of internationally recognized human rights, international human rights obligations of the countries in which they operate” (OECD 2011, p. 31). They go on to reference “the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights” and the ILO principles (OECD 2011, p. 32).

China is a state party to the International Covenant on Economic, Social, and Cultural Rights, Article 6 of which prohibits forced labor. China is thus committed to ensure certain rights and employers to respect those rights. But the OECD Guidelines go on to say that “obeying domestic laws is the first obligation of enterprises...in countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines, enterprises should seek ways to honor such principles and standards to the fullest extent which does

not place them in violation of domestic law” (OECD 2011, p. 17).²⁰ In China, the state’s unwillingness to meet its international legal obligations would seem to emasculate any salutary impact of the OECD Guidelines.²¹ The UN Principles face similar difficulties, but they do suggest that states may need to consider extraterritorial application of the law.

Third-party auditing is unlikely to be effective in Xinjiang, for various reasons. The stance of the Chinese government has been fundamentally hostile. Independent news reporting in Xinjiang is extraordinarily difficult. The government has stopped independent auditors at airports and sent them back or forced them to use government-supplied interpreters. As Lehr and Bechrakis (2019) observe, the former detainee population is terrified. They have been coached to dissemble, and they credibly fear reincarceration. The government and enterprises have also initiated avoidance strategies. They have removed documents from the internet and adopted the use of euphemisms. These actions were at least partly triggered by the *New York Times*’ publication of the “Xinjiang Papers,” a trove of leaked internal speeches by Chinese leaders, including President Xi Jinping, on Xinjiang, and the publication by the International Consortium of Investigative Journalists, in conjunction with a number of news organizations, of secret guidelines for operating detention centers and engaging in mass surveillance.²²

Nevertheless, mandatory disclosure laws tie the hands of firms operating in China, increasing their leverage in dealing with their Chinese suppliers.²³ Such an extraterritorial use of a due diligence law would be consistent with the notion emerging from the European Union’s trade policy review that trade policy can be a means of exporting European values. If nothing else, the specter of mandatory reporting could encourage an intensification of voluntary private activity, as discussed below.

Application of these and other measures is complicated by the January 2021 issuance by China of a blocking or anti-coercion rule that allows the Chinese government to prohibit entities operating within China from complying with sanctions issued by foreign governments on third parties and provides

20 According to the US State Department (2021), the law establishing reeducation camps is inconsistent with the Chinese constitution. Amnesty International (2021, p. 8) argues that the operation of the camps appears to be “outside the scope of the Chinese criminal justice system or other domestic law.”

21 However, the OECD Guidelines also specify that adhering countries establish National Contact Points for Responsible Business Conduct, which are partly oriented toward supporting the implementation of the guidelines by home country entities in nonadhering countries. In the United States, the national contact point is located within the Office of Economic Policy Analysis and Public Diplomacy in the Economic and Business Affairs Bureau of the Department of State.

22 “AP Exclusive: China Tightens Up on Info after Xinjiang Leaks,” Associated Press, December 14, 2019, <https://apnews.com/article/cId08873154907be8a3dd93562d6785c>.

23 As one member of the European Parliament put it, “Some companies have said to me that rather than imposing standards on their Chinese suppliers themselves they would much rather be able to go to them and say: this is the law, we have to obey it.” See Alan Beattie, “EU moves against forced-labour imports,” *Financial Times*, February 15, 2021, www.ft.com/content/817d3442-faef-486b-b6dd-a5ba2bd4bca9. The flip side is that China has hostages. For example, it sees retaliation against H&M as a way to influence European deliberations over a cotton ban, “just as Ericsson finds it politic to argue against banning Huawei from 5G systems in Europe.” See Allan Beattie, “The challenge of blocking Chinese cotton to help the Uyghurs,” *Financial Times*, April 8, 2021, www.ft.com/content/23772fda-e21c-4c5e-b497-418557d6ec30.

a variety of penalties for violation (Lovely and Schott 2021). The regulation could potentially be used to block foreign subsidiaries operating in China from complying with primary sanctions against China imposed by the United States or other countries (or secondary sanctions against Iran or North Korea, for that matter). It also allows Chinese companies damaged by such compliance to sue in Chinese courts. 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 law. The regulation gives Chinese authorities extraordinary discretion in implementation that can be used to target firms and trade partners that run afoul of China diplomatically. It would presumably be a central Chinese policy instrument in a Xinjiang-related trade war.

Short of legally mandated due diligence, concerned governments could issue advisories, similar to the ones issued by the United States in 2020 and Canada in January 2021, informing firms of conditions in Xinjiang, and reminding them of potential liability under domestic and international law. Lehr and Bechrakis (2019) advocate the United States making public a watch list of enterprises of concern, which could serve as a benchmark for additional private sector action, as discussed below.

Concerned governments could also extend sanctions to financial transactions, as the United States has done with respect to the XPCC and several Chinese government or Communist Party officials directly responsible for genocide. Those measures could also be extended in the financial sector, for example, by limiting bond issuance or delisting firms in the United States (Schneider 2020). As a practical matter, though, “few of the companies involved directly in forced labor in Xinjiang are listed on US exchanges” (Lehr and Bechrakis 2019, p. 17), and going hard on financial sanctions might incentivize firms to list in Hong Kong or Shanghai over New York. Financial penalties could also be extended to firms handling or transacting in goods produced using forced labor (such as Alibaba), though a hard push on secondary sanctions might accelerate Chinese use of counter-coercion sanctions and generate more domestic support for the regime.

PRIVATE SECTOR INITIATIVES

The private sector has an important role to play in the response to the genocide in Xinjiang. Collective action will be essential to prevent China from playing firms off against each other. Although it may not be attainable, at least globally, the private sector could work with governments to strengthen due diligence.

ILO (2012) provides 11 indicators or red flags of forced labor: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. Lehr and Bechrakis (2019), Xu (2020), and Zenz (2020) find that with the exception of debt bondage, all are evident in Xinjiang, with respect to labor practices within Xinjiang or labor transferred out of Xinjiang.

A softer alternative to sanctions might be a certification regime. Perhaps the most successful attempt at commodity certification is the Kimberley Process Certification Scheme (KPCS), which is credited with halting “blood diamond” production in West Africa and helping end civil wars in Liberia and Sierra Leone. But the KPCS turned on some very specific market structures and political

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incentives that are not present in the case of Xinjiang cotton, the most visible product at the center of the problem.

The KPCS was the response of a very cartelized industry and a small number of producing countries to the existential threat posed by a looming Western consumer boycott over “blood diamonds” (Hendrix and Noland 2014). In the early 2000s, when the KCPS was created, most gem diamonds were purchased by consumers in the United States and Western Europe, with US consumers accounting for nearly half of global demand. De Beers mined half the stones and accounted for 80 percent of sales, derived principally from operations in South Africa, Botswana, and Namibia. Even the intermediate cutting processes were concentrated in three locations (Belgium, Israel, and India). This structure effectively allowed De Beers to internalize the industry-level threat of a consumer boycott, and the small number of producer and consumer country governments facilitated collective action.

The situation in Xinjiang is very different, for several reasons. First, unlike diamonds, cotton production is not highly concentrated in a small number of highly identifiable and thus publicly shameable firms. This market consists of a vast number of suppliers of varying size, and the intermediate consumers of cotton—textile firms—are nearly as numerous. The sheer size of the cotton market and the large number of independent producers and intermediate consumers make it inordinately difficult to create a robust certification scheme and effectively “name and shame” specific producers: There are not many chokepoints that would facilitate certification, and there are no firms with significant enough market share to overcome the collective action problems inherent in attempting to self-police the market. Production in Xinjiang accounts for almost 20 percent—5.2 million metric tons—of total global production.²⁴

Second, unlike diamond gemstones, the vast majority of consumers never set out specifically to purchase cotton. Cotton and cottonseed oil are consumed almost exclusively as intermediate inputs in the production of final good like clothing, bedsheets, detergents, and cosmetics. No one involved in the sale or purchase of a gem-quality diamond is unaware of what he or she is selling or buying. In contrast, most cotton consumption is passive. For this reason, consumers’ ability to link their purchase with the potential ills of the commodity’s production is reduced—and absent that link, it is difficult to generate the kind of consumer awareness that was the key motive behind the KPCS and that is necessary for certification schemes to work. The scheme must differentiate the certified product and allow it to command a market premium over the noncertified product.

Third, the politics of the two cases are vastly different. It is difficult to imagine a certification scheme—which is reliant on the credibility and transparency of third-party reporting—being implemented in Xinjiang, for reasons previously elaborated. Section 1504 of the Dodd-Frank bill, signed into US law in 2010, was intended to curb fighting and human rights abuses around coltan, cassiterite, tungsten, and gold. US firms were required to certify that their imports from the Democratic Republic of the Congo (DRC) were conflict-free. Establishing a

24 See the International Cotton Advisory Committee, <https://icac.org/DataPortal/DataPortal?Year=2019/20%20for>.

certification system in a fragile state like the DRC was hard enough. Establishing a credible process in a “hard” state opposed to the initiative would be effectively impossible.

In lieu of a certification scheme, firms could collectively support the development of an ongoing analysis using these indicators of Chinese firms and suppliers. Although the results of such an analysis or scoring would not be dispositive, they could identify enterprises that are problematic and presumptively to be avoided. Such analysis could be done separately or in conjunction with the previously mentioned public sector list of enterprises of concern. The obvious place to start would be with their own suppliers, including in eastern China, which may be directly or indirectly exploiting forced labor. The product of such activity could inform CBP decision making.

Existing voluntary labor standards codes could also have a role to play. The most prominent example of the use of voluntary labor codes was the promulgation of the Sullivan Principles in apartheid-era South Africa.²⁵ The Sullivan Principles inspired similar initiatives in other controversial situations, including the MacBride Principles (Northern Ireland), the Slepak Principles (the Soviet Union), and the Maquiladora Standards of Conduct (Mexico). More recently, the anti-sweatshop movement has contributed to the creation of SA8000, an auditable certification standard that among other things addresses forced labor.

The introduction of the Sullivan Principles did not occur in isolation. Their development occurred symbiotically with a growing anti-apartheid movement, which included shareholder resolutions; divestment campaigns; and, at the level of state and local governments in the United States, selective purchasing policies with respect to government procurement.²⁶ US investors in South Africa came under considerable pressure to either adopt the Sullivan Principles or divest.

A burgeoning anti-apartheid movement and growing frustration over the apparent lack of progress in South Africa led Sullivan to expand the principles in 1984, adding a provision committing signatory firms to “working to eliminate laws and customs that impede social, economic, and political justice.” The following year, President Ronald Reagan issued an executive order requiring firms to conform to fair employment standards similar to the Sullivan Principles. The action could not stem the rising tide of sentiment in favor of more decisive action. In 1986, the US Congress passed sanctions legislation. In light of US

25 The Sullivan Principles, developed by Reverend Leon Sullivan, in 1977, were as follows: 1. Non-segregation of races in all eating, comfort, and work facilities. 2. Equal and fair employment practices for all employees. 3. Equal pay for all employees doing equal or comparable work for the same period of time. 4. Initiation of and development of training programs that will prepare, in substantial numbers, blacks and other nonwhites for supervisory, administrative, clerical, and technical jobs. 5. Increasing the number of blacks and other nonwhites in management and supervisory positions. 6. Improving the quality of life for blacks and other nonwhites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities. 7. Working to eliminate laws and customs that impede social, economic, and political justice (added in 1984) (www.bu.edu/trustees/boardoftrustees/committees/acsri/principles/). When this tactic did not bear fruit, Rev. Sullivan eventually called on companies to exit South Africa.

26 For example, the State of Maryland adopted a policy that firms bidding for contracts in excess of \$100,000 had to certify that they either did no business in South Africa or adhered to the Sullivan Principles.

history, apartheid resonated with the American public in a way that repression of Uyghurs likely never will. Nevertheless, the episode established a precedent for the US government imposing labor standards extraterritorially.²⁷

CONCLUSIONS

The human rights situation in Xinjiang is dire, and the changing technological landscape is facilitating the creation of a repressive surveillance state there, the likes of which East Germany could only have dreamed. The US government has concluded that these crimes rise to the level of genocide. Some governments have concurred, others have not. But “describing a crime is clearly of secondary importance to taking action to stop the crime,” as Buchwald and Keith (2019, p. 1) observe.

As the 2022 Beijing Winter Olympics approach, the spotlight on the Chinese government’s pattern of gross human rights abuses in Xinjiang will only intensify. As it does, it will force the international community, and the United States in particular, to reckon with the difficulties and inherent limitations of using economic leverage to try and change the behavior of an economic superpower. A sanctions playbook designed to economically coerce changes in human rights practices the way it did in South Africa in the 1980s or Iraq in the 1990s is not going to be effective in addressing a pivotal actor in the global economy and trading system like China.

There is no simple mapping between policy instruments and outcomes; achieving the broad set of goals articulated in the introduction would entail both noneconomic and economic measures as well as private sector initiatives. Some options include the following:

- Establish a Commission of Inquiry through the UN Human Rights Council and appoint a Special Rapporteur on Human Rights in Xinjiang.
- Demand that China end forced labor, which violates its commitment under the UN International Covenant on Economic, Social, and Cultural Rights, and sign the ILO code on forced labor.
- Use the United States’ Global Magnitsky Act and similar laws in other countries to sanction individuals and entities perpetrating genocide and extend these measures to domestic firms supplying surveillance equipment and technology.
- Oppose lending by the World Bank, the Asian Development Bank, and other multilateral institutions for Chinese procurement of surveillance equipment and technology.
- Facilitate Uyghur asylum claims and family reunions; end refoulement; provide post-trauma services; and track harassment and hold perpetrators criminally accountable.

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²⁷ In 1999, Rev. Leon Sullivan and UN Secretary General Kofi Annan formulated the Global Sullivan Principles of Corporate Social Responsibility (www1.umn.edu/humanrts/links/sullivanprinciples.html), an antecedent to the UN Principles. In contrast to the UN Principles, and consistent with their origins as guidelines for corporate activity, the Global Sullivan Principles focus on firm, not state, behavior. They call for multinational companies to proactively advocate for universal human rights and the rights of their employees. Unlike the OECD Guidelines, they do not contain the loophole of operating within the constraints of national law.

- Presumptively ban imports from Xinjiang unless the absence of forced labor can be established.
- Pass mandatory due diligence laws.
- Develop, through public and private sector activities, public lists of enterprises of concern based on ILO indicators of forced labor.
- Develop labor standards along the lines of the Sullivan Principles and SA8000, to be implemented either voluntarily or via government mandate.
- Boycott the 2022 Beijing Winter Olympic Games.

This Policy Brief focuses on the economic policy levers—some official, others emanating from the private sector—that are or could be brought to bear to address the issue. Responses relying on some form of certification scheme are very likely to fail, because of both the nature of the region’s primary exports and the realities of the political environment. The idea that a third-party certification scheme for the region could be operated successfully in a police state is not credible. Moreover, certification-based responses treat Xinjiang, rather than Beijing, as the problem. Certification processes like the Kimberley Process or Dodd-Frank were created precisely because much of the resource harvesting in those cases was being done in warzones outside the government’s control. The problem in Xinjiang is not the absence of government authority but rather its pervasiveness and oppressiveness.

Regionally targeted bans on imports—or presumptive bans with high evidentiary bars for exemption that would have similar effects—would be more effective in creating pain. But they would also come with undeniable costs. Attempting to freeze out 20 percent of the world’s cotton and 45 percent of its polysilicon supply would cause price spikes in an already fragile global economy beset by high commodity prices and inevitably would provoke a much wider, more damaging trade war in retaliation. Whether that risk is acceptable ultimately comes down to an assessment of the harms inflicted and the costs of the action.

Mandatory due diligence laws are needed to address the spread of forced labor out of Xinjiang and the penetration of this abuse into the supply chains for a much broader range of products. Such action would presumably be less susceptible to retaliation than regionally targeted bans. Depending on the reactions of Chinese enterprises, the impact could help alleviate the problem of forced labor and/or encourage decoupling.

Opposing multilateral development lending to China for the purchase of surveillance equipment as well as opposing support for the purchase by other countries of Chinese surveillance equipment is a small but potentially promising response that would have positive second-order effects. In the midst of a wave of global democratic backsliding, making it harder for governments across the developing world to implement the Xinjiang surveillance strategy would help prevent further erosion.

Additional targeted sanctions and symbolic acts may be warranted. The officials responsible for these policies, as well as the owners of firms using forced labor, can be identified and targeted for sanction. This approach would have the

virtue of focusing the punishment on the truly responsible rather than imposing more general sanctions, which would ensnare residents of the region who are not culpable for the regime's actions and who do not benefit from forced labor.

Symbolic acts could publicly shame the regime for its actions. At a minimum, the world should demand that China uphold its commitment to forswear forced labor under the International Covenant on Economic, Social, and Cultural Rights and sign the ILO code on forced labor. Although calls for action and investigation within the UN system should be made, such calls are unlikely to be very effective and would rightly be seen as wholly insufficient by human rights advocates.

A boycott of the 2022 Beijing Winter Olympic Games would be a clear signal of disapproval and impose massive reputational costs on the hosts. The 2008 Beijing Games were widely viewed as China's global coming out party and the culmination of two decades of sustained economic prosperity and emergence as a global force. The 2022 Games could come to be viewed in a starkly different light. To be sure, a boycott would come with political and economic costs to corporate sponsors and media partners, to say nothing of the athletes, in boycotting countries. But it would be morally bankrupt for the United States and other Western governments to participate in an athletic exhibition in a country they have determined to be committing genocide.

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