

**FACTORIES AND FRAUD IN THE PRC: HOW
HUMAN RIGHTS VIOLATIONS MAKE RELIABLE
AUDITS IMPOSSIBLE**

HEARING
BEFORE THE
**CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA**
ONE HUNDRED EIGHTEENTH CONGRESS
SECOND SESSION

APRIL 30, 2024

Printed for the use of the Congressional-Executive Commission on China



Available at www.cecc.gov or www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

55-563 PDF

WASHINGTON : 2024

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

LEGISLATIVE BRANCH COMMISSIONERS

House

CHRISTOPHER SMITH, New Jersey,
Chair
JAMES P. McGOVERN, Massachusetts
BRIAN MAST, Florida
JENNIFER WEXTON, Virginia
MICHELLE STEEL, California
SUSAN WILD, Pennsylvania
ANDREA SALINAS, Oregon
ZACHARY NUNN, Iowa
RYAN ZINKE, Montana

Senate

JEFF MERKLEY, Oregon, *Co-chair*
STEVE DAINES, Montana
MARCO RUBIO, Florida
TOM COTTON, Arkansas
ANGUS KING, Maine
TAMMY DUCKWORTH, Illinois
DAN SULLIVAN, Alaska
LAPHONZA R. BUTLER, California
SHERROD BROWN, Ohio

EXECUTIVE BRANCH COMMISSIONERS

DANIEL K. KRITENBRINK, *Department of State*
MARISA LAGO, *Department of Commerce*
THEA MEI LEE, *Department of Labor*
UZRA ZEYA, *Department of State*

PIERO TOZZI, *Staff Director*
TODD STEIN, *Deputy Staff Director*

CONTENTS

STATEMENTS

Opening Statement of Hon. Chris Smith, a U.S. Representative from New Jersey; Chair, Congressional-Executive Commission on China	1
Statement of Hon. Jeff Merkley, a U.S. Senator from Oregon; Co-chair, Congressional-Executive Commission on China	3
Statement of Hon. James P. McGovern, a U.S. Representative from Massachusetts	4
Statement of Hon. Thea Lee, Deputy Undersecretary for International Affairs, Department of Labor	7
Statement of Scott Nova, Executive Director of the Worker Rights Consortium	16
Statement of Adrian Zenz, Senior Fellow and Director in China Studies, Victims of Communism Memorial Foundation	19
Statement of Jim Wormington, Senior Researcher and Advocate on Corporate Accountability, Human Rights Watch	21

APPENDIX

PREPARED STATEMENTS

Lee, Hon. Thea	37
Nova, Scott	39
Zenz, Adrian	47
Wormington, Jim	95
Smith, Hon. Chris	99
Merkley, Hon. Jeff	100
McGovern, Hon. James P.	101

SUBMISSIONS FOR THE RECORD

Statement of Alicia Hennig, business ethics researcher and interim professor at Technical University Dresden, Germany	103
CECC Truth in Testimony Disclosure Form	111
Witness Biographies	113

FACTORIES AND FRAUD IN THE PRC: HOW HUMAN RIGHTS VIOLATIONS MAKE RELI- ABLE AUDITS IMPOSSIBLE

TUESDAY, APRIL 30, 2024

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was held from 10:03 a.m. to 11:54 a.m., in Room 2020, Rayburn House Office Building, Washington, DC, Representative Chris Smith, Chair, Congressional-Executive Commission on China, presiding.

Also present: Senator Jeff Merkley, Co-chair, Thea Lee, Deputy Undersecretary for International Affairs, Department of Labor, and Representative McGovern.

STATEMENT OF HON. CHRIS SMITH, A REPRESENTATIVE FROM NEW JERSEY; CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chair SMITH. The hearing will come to order, and good morning to all of you. I thank you for coming. Our hearing today will give a very good look at so-called social audits by companies whose supply chains originate in the People's Republic of China, that cover up the existence of forced labor in those supply chains.

Back in the early 2000's, I read a book called *IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's Most Powerful Corporation*. I recall how shocked I was—it was a very heavily footnoted book—how shocked I was at the time—it revealed an American corporation's complicity in aiding and abetting the Nazi regime, especially in tracking down Jews for the concentration camps. As a matter of fact, in the opening the writer talks about why the Gestapo always had such good lists of Jews. Well, they got them from IBM. They placed greed over concern for humanity and turned a willing blind eye to the implications of their work.

Nor was IBM alone in this. Books had been written about the ties the whiteshoe law firm Sullivan & Cromwell had with the Nazis, for example. But I took some comfort in knowing that that was in the past. Surely, if there was evidence today of an evil regime's abuse of human rights—for example, the mass scale detention of despised ethnic and religious minorities in concentration camps, forcing them to toil as practical slaves to produce goods for export—surely American corporations would shudder and shun any complicity with that.

Fast-forward to today, however, and that is precisely what we see, corporate complicity in the grossest of human rights violations. Our hearing revealed, for example, how Thermo—this was recently—Thermo Fisher Scientific, whose DNA markers have been used by police in Tibet and the Xinjiang Autonomous Region to compile databases of the DNA of millions of Tibetans and Uyghurs, has also been implicated in the forced harvesting of human organs. While Thermo Fisher Scientific may be the corporation whose behavior most closely mimics that of IBM before the beginning of the Second World War, our hearing today focuses on those manufacturers, suppliers, importers, and retailers whose supply chains in China are tainted by reliance upon forced labor to achieve the lowest prices, yet who seek to rely on social auditing companies to obscure and whitewash that reliance.

We have known about corruption in the audit industry for a long time. Back in July 2021, I chaired a hearing—and as a matter of fact, Thea Lee was there representing the AFL–CIO on this very issue. We also heard at that hearing from Li Qiang, the founder of China Labor Watch, who testified as to the audits. He said, not only are the audits conducted in China ineffective, but he said that “they are actually corrupt.” He went on through many examples of how auditors for corporations, such as Apple, ignored unfavorable facts, such as with regard to inadequate worker safety processes. He gave several examples of the bribing of auditors so that auditors’ reports would not require the investment of millions in improving conditions in factories and in plants.

Today, using the fig leaf that audits provide, corporations seek to convince consumers, regulators, and perhaps even their own consciences that their supply chains are clean and compliant with U.S. law, including the provisions of the Uyghur Forced Labor Prevention Act and section 301 of the Trade Act, both of which prohibit the importation of goods made with forced labor. In a nutshell, however, as our witness Scott Nova will testify, “social auditing in practice involves giving unqualified people inadequate time to pursue an unrealistic objective they have no incentive to achieve.”

In a country such as the People’s Republic of China, where independent labor unions do not exist, social controls prevent the free exchange of information, and recently passed national security laws make the disclosure of information that portrays China in a bad light a national security offense, social audits are particularly laughable. But beyond aiding and abetting the human rights abuses that forced labor entails, companies whose supply chains are tainted also undercut American manufacturers at home, just as the textile industry whose ability to produce quality goods at an affordable price is undercut by importers who drive costs down by essentially using slave labor.

Such labor may come from prisons in the Chinese laogai system, or from Uyghurs detained in so-called vocational skills, education, and training centers, or otherwise assigned by Poverty Alleviation Through Labor Transfer programs, to toil elsewhere in China. These corporations profit from the sweat of the brow of Uyghurs and other labor abuse victims in China, while begging their fellow Americans seeking to earn a decent wage in factories in the United States.

I look forward to our distinguished witnesses today exposing the deception inherent in the use of social audits to whitewash corporate complicity in labor rights abuses. I would like to receive input on regulatory legislative gaps that they think we might plug. We also hope to hear their thoughts on—particularly—the enforcement of existing legislation, including the UFLPA. Also, I'd like to suggest that our securities laws, in particular our 1934 Securities Exchange Act, and Rule 10b-5 promulgated under it, be put to greater use. That rule, as people are aware, prohibits any untrue statement of material fact, as well as any omission of material fact.

As we go through annual reports and offering statements of publicly traded companies, we should ask whether they are disclosing to their shareholders and potential shareholders that their supply chains may indeed be compromised by forced labor in violation of U.S. law. Are they disclosing the potential loss of goodwill and harm to reputation when it is revealed that a company is benefiting from forced labor in their supply chains, to the detriment of their share price? To date, many corporations seem to be relying on these social audits to shield themselves from potential liability—social audits which today's hearing alone, with the good work done by several of our witnesses, shows to be works of near fiction when it comes to accurately portraying the State of labor in the People's Republic of China.

Compliance departments, please take note—as well as the law and accounting firms that sign off on corporate disclosures: Following this hearing, I intend to write to the Securities and Exchange Commission, and I invite my commissioner colleagues to join me, to ask that they review disclosures by publicly traded companies to assess whether they contain any material misstatements or omissions with regard to forced labor in their supply chains. And if they do, to take enforcement action against them, levying fines.

While the SEC proposed rules in May 2022 to clarify how investment funds can adhere to voluntary environmental, social, and governance standards—this is another fig leaf used by corporations to signal their virtue to consumers—these remain untethered to the objective criteria. That is only a tentative step which emphasizes the 'E' in ESG, and is addressed to investment funds doing little to confront the issue of forced labor in supply chains. Further, if corporations are not policing themselves, and the SEC is slow in responding, then I hope the plaintiff's bar will help discipline these companies seeking to recover any loss in shareholder value that results from regulatory action and exposure of corporate audit-washing.

Finally, I would anticipate a future hearing wherein we invite auditing companies, such as the Löning Company, implicated in the Volkswagen scandal that we will hear about shortly. Whistle-blowers in lowest-price retailers such as Walmart would also be asked to testify. I'd now like to turn to Co-chair Senator Merkley.

STATEMENT OF HON. JEFF MERKLEY, A SENATOR FROM OREGON; CO-CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Co-chair MERKLEY. Thank you, Chairman Smith, for this hearing. For two decades, this Commission has reported on how the

Chinese government's failure to provide basic human rights protection has had a detrimental effect on the lives of people living in China. Today we're focusing on the fact that this same lack of protection has a negative impact on American consumers. It's not a new story. We've known for years that substandard worker rights and lack of transparency in China has resulted in defective imports, such as lead-based toys used by American children.

Our first witness, Deputy Undersecretary Thea Lee—we're so pleased to have her—serves as a member of this Commission and is a longtime expert and champion on this issue. Four years ago this Commission, based on research of another of our witnesses, Adrian Zenz, and others, published a report showing how products made with the forced labor of Uyghurs and other Turkic people in China were coming into the United States. The fruit of this research was the Uyghur Forced Labor Prevention Act, which banned imports of such goods and helped spark a much wider awareness of the need to rid our supply chains of forced labor.

Key to the effort to know whether a supply chain is clean are the audits performed on the companies who are part of that chain. In 2021, the Biden administration issued the Xinjiang Supply Chain Business Advisory, which assessed that "in and of themselves third-party audits are not a sufficient due diligence program and may not be a credible source of information for indicators of labor abuses in the region." With the enactment of our Uyghur Forced Labor Prevention Act, this warning has become a hard reality for companies importing from China.

They now have to provide "clear and convincing evidence" that their products were not made with Uyghur forced labor. This is the core question for today's hearing. Are the audits that importers cite to meet the law's standard reliable? Do they have integrity? Are they genuine? Are reliable audits even possible in an environment where the Chinese government does not allow workers to speak freely, harasses auditors conducting due diligence in Xinjiang, and prevents auditors from obtaining information needed for their job? If a company cannot say with precise certainty to our government and to its shareholders, and most importantly to American consumers, that its products do not contain forced labor, then it needs to stop doing business there.

Let's remember that our aim is not to punish companies simply for doing business in China. Our goal is to improve the human rights situation in China so that businesses can certify that their supply chain is free of forced labor and that their suppliers provide good working conditions and wages to their workers. And we ask these companies to partner with us in working toward that goal. We have an impressive set of witnesses and I look forward to hearing their analysis and their recommendations. Thank you, Mr. Chair.

Chair SMITH. I'm very pleased to welcome our Ranking Member, Representative McGovern. Thank you.

**STATEMENT OF HON. JAMES P. MCGOVERN,
A REPRESENTATIVE FROM MASSACHUSETTS**

Representative MCGOVERN. Thank you very much. And I apologize in advance. I'm in between two hearings at once. But I want

to wish everybody a good morning and I join my colleagues in welcoming our witnesses and the public to today's hearing on audits and certifications of supply chains in China.

This hearing continues the work that the Congressional-Executive Commission on China has done to shine a light on the use of forced labor by the People's Republic of China and to ensure that Congress is doing everything it can to bring an end to the practice. We are motivated by the terrible toll of forced labor on those subjected to it, especially the Uyghur people in Xinjiang, and by its impact on Americans. U.S. consumers should not have to worry about whether the products that they purchase are tainted by forced labor from China. U.S. workers and producers should not have to compete with companies that rely on forced labor.

Congress took a major step in 2021 by passing the bipartisan Uyghur Forced Labor Prevention Act, legislation I was privileged to lead. The UFLPA creates a rebuttable presumption that all goods produced in the Xinjiang region of China are made with forced labor. This means the burden of proof lies with those who want to import goods into the United States to show that their supply chains are free of forced labor. The logic behind the law was that it would create incentives for stakeholders, including the PRC, to change their practices.

The good news is that companies have responded by implementing their economic, social, and governance, or ESG, policies in contracting social compliance audits to certify that the supply chains for their products are free of forced labor. The problem, as we will hear today, is that even when these audits conform to industry-wide ESG standards, they may not be reliable in the Chinese context. This is both because the companies themselves pay for the audits and have a financial stake in clean findings, and because the PRC, instead of correcting course and ending the use of forced labor, has chosen to retaliate against those who do the audits or who cooperate with them.

I want to be clear on this point. The PRC government could react to the worldwide concern that has been raised about its use of forced labor by taking the opportunity to end the practice, which by the way, would be consistent with its obligations under International Labor Organization conventions, all of which China has ratified. Instead, the PRC has taken steps like shutting down the offices of Shenzhen Verité, the Chinese affiliate of the social auditing firm Verité, which is based in my district, reportedly because the company was being a little too accurate about Uyghur forced labor and supply chains.

Since 2021, the PRC has adopted laws, regulations, and practices that seem designed to limit the effectiveness of social audits in detecting the presence of forced labor in supply chains. One example is an anti-foreign sanctions law that has been used at least once to go after a U.S. due diligence firm for collecting Xinjiang-related sensitive information. A second is a broadened definition of espionage that came into play when PRC authorities detained staff at another due diligence firm that was reported to be conducting investigations on forced labor and supply chains linked to Xinjiang.

Out of 29 firms listed by Social Accountability International as qualified to conduct certification inspections of manufacturers in

China, five have announced they will no longer conduct social audits in Xinjiang because conditions simply do not allow them to do so. In light of this, our question today is, what more can Congress do to help to reinforce the incentives in the UFLPA? Are there steps we could take to strengthen the integrity of auditing mechanisms and make them more independent? Are there other ways to foster increased transparency of supply chains that do not backfire on those who try to do the right thing?

So let me just close by emphasizing that we are not here to force companies to leave China. Our consistent goal is to help improve the human rights situation in China. But there is a possibility that the PRC's response so far to the global condemnation of its use of forced labor could lead companies to decide on their own that it is just too risky to do business in China, because the lack of human rights protection doesn't allow them to reliably comply with their own ESG policies. And with that, I thank the chairman for giving me the time, and I yield back.

Chair SMITH. Thank you. I'd now like to welcome our very distinguished witness, Deputy Undersecretary for International Affairs at the Department of Labor Thea Lee, who is no stranger to this Commission, and has been a leader for decades. I remember when you were at the AFL-CIO, and your testimony was brilliant, back in July 2012. You pointed out that section 301 is useless if you don't use it, and pointed out that, at the time, the Bush administration twice rejected requests, which I and others had all supported, to use it. You know, one of the things that I am is non-partisan when it comes to human rights. To speak out no matter who was in the White House. It doesn't matter. Well, the Bush administration dropped the ball big-time. And you pointed it out in your testimony back in July 2012. So thank you. We need to use all the tools. And as you said, if there's a tool but it's not used, what good is it?

You've been advocating for worker rights both domestically and internationally for over 30 years, president of the Economic Policy Institute—a pro-worker Washington think tank—from January 2018 to May 2021, and an international trade economist at EPI in the 1990's. From 1997 to 2017, Deputy Undersecretary Lee worked at the AFL-CIO, the voluntary federation of 56 national and international labor unions that represents 12.5 million working men and women. At the AFL-CIO she served as deputy chief of staff, policy director, and chief international economist.

She served on the State Department Advisory Committee on International Economic Policy, the Export-Import Bank Advisory Committee, and on the board of directors of the National Bureau of Economic Research, the congressional Progressive Caucus Center, the Center for International Policy, and the Coalition on Human Needs, among others. She served on the U.S.-China Economic and Security Review Commission from 2018 to 2020. And, happily, in 2022, you were appointed to this Commission. And we're so glad to have you. Ms. Thea Lee, the floor is yours.

**STATEMENT OF HON. THEA LEE,
DEPUTY UNDERSECRETARY FOR INTERNATIONAL AFFAIRS,
DEPARTMENT OF LABOR**

Secretary LEE. Thank you so much, Chairman Smith, Co-chair Merkley, honorable members of the Commission, for inviting me here today and also for holding this very important hearing. I am honored and thrilled to be here.

I head the International Labor Affairs Bureau at the Department of Labor. It plays a pivotal role in promoting and protecting workers' rights worldwide by advocating for international labor rights and protecting them, including the right to organize, bargain collectively, to have safe working conditions, and to be free of child labor, forced labor, and discrimination. ILAB contributes to creating a more equitable global labor landscape.

The issue of factories and fraud in China is multifaceted, with significant implications for human and labor rights and the integrity of our global supply chains. Today I will address two related issues. First, the challenges and risks for businesses of using social compliance auditing as a definitive assessment of labor conditions in general. And second, the heightened risks given the ongoing human and labor rights violations in the Xinjiang Uyghur Autonomous Region of making reliable audits in the region impossible.

Social auditing can be a useful tool to assess compliance at a particular point in time, but it cannot be the only mechanism for detecting labor rights violations and abuse. As we will hear more about today, audits are often announced in advance, giving managers time to prepare the facility. Managers can easily, and do, fake timesheets to skirt pay and overtime laws. And workers may be pressured to provide inaccurate information. To be effective, social auditing should be part of a comprehensive social compliance system that ensures that unions, democratic worker organizations, and other worker representatives, provide support and voice for workers to identify and raise concerns and collectively advocate for their rights and interests without fear of retaliation.

ILAB's tool, Comply Chain, provides examples of best practices in this area. Worker voice and the ability to freely express concerns are essential. When authentic worker voice exists, workers can freely elect their union representatives, identify problems, negotiate agreements, and hold parties accountable. ILAB recently commissioned Penn State University to provide a report, "Worker Voice: What It Is, What It Is Not, and Why It Matters." I recommend this report to all of you. It provides important insight on why legitimate authentic collective worker voice is critical to ensuring social compliance. And it provides six elements that we need to look for.

It's clear that effective worker voice is impossible when workers are trapped in state-sponsored forced labor, where there are no independent democratic unions—as Chairman Smith mentioned—and where workers continue to face threats and reprisals. This is the situation we face in China. There are widespread restrictions and repression of freedom for human rights defenders. There is not just a lack of civil society presence—rather the entire civic space has been shut down. In Xinjiang in particular, ethnic minorities live in fear of the Chinese government. Any audit occurring in

Xinjiang cannot be conducted without government oversight, making objective worker interviews free from reprisal an impossibility.

As the U.S. Government highlighted in the Xinjiang Business Advisory published in 2021, updated in September 2023, as Senator Merkley mentioned, auditor interviews with workers cannot be relied upon, given pervasive surveillance, the threat of detainment, and evidence of workers' fear of sharing accurate information. And we have heard that auditors have been detained, harassed, threatened, or stopped at the airport. This is why dozens of major audit firms have not operated in Xinjiang for years. The fear of reprisal for both workers and auditors remains high. Social audits in China should not be seen as an authoritative source for companies reflecting on-the-ground human rights conditions. The business community needs to be aware that any audits and, frankly, any business operations undertaken inside China, carry heightened labor and human rights risks.

In conclusion, ensuring that workers have a substantive role and voice in social compliance is essential to make social compliance audits legitimate. Without workers' feedback, input, and support in resolving issues, labor exploitation risks in supply chains around the world will unfortunately persist. The Department of Labor is proud to serve on the Forced Labor Enforcement Task Force to support implementation and enforcement of the Uyghur Forced Labor Prevention Act. The UFLPA is a powerful tool to address egregious human and labor rights abuses and to ensure that U.S. workers and businesses have a level playing field. We will continue to leverage that tool to protect the integrity of lawful trade, the rights of workers, and continue to raise these issues and call for change.

I thank you for your attention, and I look forward to the rest of today's hearing.

Chair SMITH. Thank you very much, Ms. Lee. And again, thank you for your decades of very effective advocacy for worker rights around the globe, including in China.

Would you tell us what a good worker-driven social compliance program might look like? Can you tell us more about what ILAB means by worker voice? And while you're answering that—we all know, I think, in this room that there is no independent labor union in China. But I'm amazed sometimes when I hear, in talking to members of the business community, how they have a labor union—run by the Chinese Communist Party, of course.

And, I mean, it's such a surface appeal argument that's used to suggest that somehow they're looking out for the rights of their own people. And we know for a fact, based on even the reporting we get out of China itself, that occupational hazards and deaths and maiming and loss of limb is very high—and it's grossly under-reported. But there's no independent voice ever. It's always whatever the Chinese Communist Party wants us to see. So if you could maybe address those couple of issues.

Secretary LEE. Thank you so much, Chairman.

So what should a good worker-driven social compliance program look like? Of course, it would be based on international standards, the International Labor Organization Fundamental Principles and Rights at Work. But also, the key thing—what I mentioned earlier—is that workers and their organizations have to be directly in-

volved in the creation, the negotiation, and the implementation of any social compliance program, because that's where the trust comes from. And, you know, I think one of the issues that we will hear about more today is whether workers feel comfortable coming forward and telling the truth. If you sit a worker down in the middle of a factory and say, are you working voluntarily, they're in the spotlight and they know that the auditor is going to leave. But the union doesn't leave. The union is there, 24 hours a day, 7 days a week. It has the trust. It's also cheaper than a social auditing program.

The third piece is that these provisions cannot be optional or voluntary, because we know that doesn't work. So the best practice is binding and enforceable agreements between brands and their suppliers, to which workers are also a party. So we've seen this work around the world, the Dindigul Agreement in India was an agreement between the Tamil Nadu Textile and Common Labour Union, a union of Dalit women workers in India, but also H&M, Eastman Exports, and civil society organizations, and the government got involved. That played a critical role in modifying the withhold release order against Natchi Apparel, a garment maker owned by Eastman Exports, that had a record of systemic physical and sexual violence in the workplace, an indicator of forced labor. So work organizations came to the table with the brands and were able to negotiate an agreement that made a significant change and actually lifted a trade measure.

And finally, companies need to give space and capacity for suppliers to have the financial incentives for compliance. A lot of what this means is they need to pay a fair price to their suppliers. They have fractured their supply chains deliberately. And then if they pay too low a price and then hire an auditor to review the conditions, that's a little bit disingenuous because they're paying nothing and they're saying the workers should be treated well. And those two things don't go together. So that's, I think, one of the things that the companies need to do.

I'm happy to talk just a little bit more about the Worker Voice Project that we asked Penn State to do for us. And there are six components that we have found. And I think these are really useful. This is all on our website. First is *elect*. That workers have to be able to elect leaders free from interference by employers or the government.

The second is *represent*. Workers need to know their rights. They need to be engaged and mobilized. Elected leaders have to be accountable to their members and be responsible for consulting with them.

Inclusiveness, so that worker organizations need to make sure—including the leadership—that they are representing the full breadth. So, for example, if a union says, Well, we're not representing the migrant workers or the people who speak a different language or who come from a different place, then they're not doing their job. So real worker voice includes inclusive leadership.

Protect. Workers have to be protected from retaliation when they speak up, including protection from losing their jobs, or deportation, or facing abuse, including harassment, threats, violence, and coercion.

Enable is the fifth one. Workers need to have the time and space to organize and engage in their union business and the training information to fulfill their rights.

And *empower*. They have to be empowered by the labor laws, have the ability to pursue lawful action, including strikes, and have access to effective mechanisms to file grievances. So I think those six elements are very helpful.

And just briefly, in terms of the question you asked about unions in China—I had some experience when I was working for the AFL-CIO. I was able to go visit a company. And it was a big, big name American company, or international company. It had 23,000 workers. And I was taken around. It was not an investigation. It was just a visit. Talking to the managers. And they had social auditors in there every week, Phillips Van Heusen, Ralph Lauren, very fancy brands. So they were very used to having people come in. And I asked, do the workers have a union? And there was a back and forth, the translation took about 10 minutes because they were trying to explain to the guy, like, what's that? And finally, he said, oh, you mean the Happy People Committee? And I was like, well, I guess. And he's like, Oh, yes, we have that. We have a Happy People Committee. And they go on shopping excursions and so on.

But the fact that there were social auditors in this factory every week, every day, and none of them had asked that question, when all these companies had in their code of conduct freedom of association. So, you know, when a company operates in China, it knows it doesn't have—the workers do not have the ability to have an independent democratic organization, because it's not allowed. The law of the land—the *empower* piece of the worker voice—isn't there. So I think it's an essential piece. And really, any authoritarian, repressive government can't tolerate independent democratic unions, because they are a threat to authoritarianism. But that's why they're so important. And that's why I think it's right that we lift that up when we have this conversation about the failings of social audits. Thank you.

Chair SMITH. Just to ask you, are there any examples where workers have spoken candidly to the auditors, and have been retaliated against? And what response did the auditors take? Did they keep it all internal? Do they go public with it? Do they hear things that could make a difference if they would just speak up?

Secretary LEE. That's an excellent question, Chairman. And I think probably it happens every day that workers say things, and the auditors can leave and the workers can lose their job. I don't think it's that easy for the auditors even to find out if there's been retaliation after they're not on the premises anymore. Do they go back and say, Whatever happened to Joe and Sally? Are they still working? Did they get a raise? Did they get put on the night shift, and so on? And I think that's one of the weaknesses of the social audit—that unlike a union, the social audit parachutes in, parachutes out, and doesn't have the ability to have that constant piece. So I think, unfortunately, sadly, it's something that happens all the time. And maybe it's something also where workers anticipate that there will be trouble, even if—they can't imagine that they can answer that question honestly. And so they do not, because they are looking to avoid trouble.

Chair SMITH. When workers are interviewed in small groups or even alone, how are they picked by these auditors? You know, if it's done randomly, you'd say, Okay, there's some validity to that. But then I could see a worker saying, Oh my God, I've got a target on my back as I walk out the door. As you said, there's surveillance everywhere. And nothing is between them and the auditor. It's between them and the Chinese Communist Party. I mean, how can we expect any kind of good outcome from this? I went back and reread some of the testimony from July 2012. And it's like, we're—it's déjà vu. We're right back where we were, in a very real way. Maybe it's even worse, because we kid ourselves that somehow we're making progress.

I'm not talking about the work you're doing. It's great. But I'm talking in terms of what these corporations are doing. I mean, I'm for card-check here. I know how the management can intimidate even here, in the United States of America. But there are ways of coming back, forming and creating a union that then has their backs. There's nothing like that. And finally—and then I'll yield to my good friend the co-chair—the ILO. Have they been aggressive in promoting free trade unions and worker rights? You know, the six points you've pointed out are the prescription for exactly what needs to be done. Does the ILO really engage? Or do they just put out a report here and there?

Secretary LEE. A lot of excellent questions. In terms of how workers are chosen, I think too often sometimes handpicked workers are chosen by management, that the management knows will give the right answers. And in other cases, I'm not so familiar with the auditing processes to know exactly how they're done, but I think the best practice, I know from my days as a board member of the Worker Rights Consortium, is to do off-premise interviews, so that management's not breathing over your shoulder and looking at you and keeping track of everything. But of course, that's not possible in Xinjiang, as we've talked about. There's no possibility of saying, We're going to go to workers' homes, we're going to talk to workers after they get back from their fishing trips, and so on.

In terms of the ILO—the International Labor Organization is an extraordinary organization. And it's tripartite, as you know. So it has representation of governments, workers, and employers. And sometimes that means it can move slowly in seeking consensus, but our experience is that the ILO has been a very valuable partner in a lot of parts of the world because it provides the credibility and the authority in terms of judging whether a country's laws are in compliance with ILO international standards or not, and also has been a valued partner to us in implementing technical assistance in many countries around the world.

Chair SMITH. Senator Merkley.

Co-chair MERKLEY. Thank you, Mr. Chairman. And thank you, Deputy Secretary. We really appreciate your breadth of experience here. When we started to highlight the issue of slave labor in China, China could have responded by changing their practices, but they didn't respond that way. They responded with a series of laws that make it hard to collect information. And as I understand it, they passed in 2021 the PRC Data Security Law, they passed the Anti-Foreign Sanctions Law, they passed amendments to the Coun-

terespionage Law 2 years later. And just to give a few examples, in December 2023, they put sanctions on a company for collecting—an American company—for collecting Xinjiang-related sensitive information. In March of 2023, under the counterespionage law, they detained employees of Mintz Capital who were investigating the use of forced labor.

So essentially, based on everything that you have mentioned and the application of these additional laws, U.S. companies have this challenge in which, if they follow U.S. law to really get the information they need to make sure they don't have forced labor, then they're in violation of Chinese law. And if they don't do it, they're in violation of American law. And so it seems like under the current conditions described, this is a situation where the company can only really remedy by moving their supply chain out of Xinjiang. Is that where we ended up in all of this?

Secretary LEE. Thank you, Senator Merkley, for that excellent question. And I think at the end of the day, that is the message from the business advisory, the U.S. business advisory in 2021 and 2023, that since you cannot do due diligence in Xinjiang or with Xinjiang workers, then you cannot responsibly operate there. And that would be my advice to companies, and I think that, of course, is the genesis of the Uyghur Forced Labor Prevention Act. It is impossible to do due diligence under those conditions, where it has been made essentially illegal by the Chinese government. If it is impossible to do that, then the only responsible thing to do is not operate in that atmosphere. And hopefully, I think as all the members of the Commission have said today, the goal is to bring about the change, is to convince the Chinese government to stop these practices.

Co-chair MERKLEY. So let's take it to a second point, which is when essentially workers from Xinjiang are taken and transported to other factories, is that—say they're transported a significant distance outside of Xinjiang. In other parts of China outside of Xinjiang, is it possible to conduct audits in a more effective manner?

Secretary LEE. I think the labor transfer program, as you say, has been growing. It is a significant problem. It is also covered by the Uyghur Forced Labor Prevention Act. And it is a means both to circumvent some of the protections in Xinjiang and also to depopulate Xinjiang. So I think that the labor transfer program presents significant challenges. I have not seen an effective way to address the challenges of monitoring the labor transfer program workers outside of Xinjiang.

Co-chair MERKLEY. Is it possible to determine whether your subcontractor is using transferred labor?

Secretary LEE. It ought to be possible, but it's very challenging. It's very difficult. And I know that on the Forced Labor Enforcement Task Force, we've faced a lot of trouble trying to get verifiable information about the labor transfer programs. There's information that's sometimes provided on Chinese websites, and then it disappears. And a lot of that information is not as fresh as we'd like, because there isn't the access. There is not the free access inside of China to workplaces, to workers, to be able to assess effectively who the workers are and where they've come from.

Co-chair MERKLEY. You mentioned a tool, which is binding agreements with suppliers—between a company and suppliers. But how does that solve this problem, if we can't really audit what's really going on with that subcontractor?

Secretary LEE. I think the enforceable brand agreements require that workers be able to have a voice and sit at the table. And that, I don't think, is possible at this moment in China. It's possible outside of China, and we've seen it—the Bangladesh Accord, the Pakistan Accord, the Dindigul Agreement. And there are other sorts of nascent examples of this. Also, the government can't be hostile to the enforceable brand agreement. In many cases, like the Dindigul Agreement, the government has been a partner with the businesses and with the union in putting something together. And so that would be an essential element.

Co-chair MERKLEY. One effect of the forced labor agreement, or the bill that Marco Rubio and I really championed in the Senate, was to essentially encourage companies, because of these situations, to find alternative supply chains in other countries. We thought that perhaps as that starts to happen that would send a message to the Chinese government, and they might say we want to retain these companies, factories, in China. We might see a change in practice. Has there been any sign that as companies seek to get alternative production sites, China might be reconsidering the way it conducts business?

Secretary LEE. I think it's early to say, but I think our experience with some of this is that a lot of those decisions are going to happen in a very closed way. Like, for example, with South Africa and apartheid. You know, during a lot of the period of agitation and activity and divestment from South Africa, the message from the outside was, the South African government doesn't care, you're just hurting the people you're trying to help. But at some point, it becomes untenable for the government to proceed.

And my hope is that that is the direction we are going. We've seen that there has been production diverted outside of China. I think also with the European Union moving in the direction of putting in place their own forced labor import ban and their own mandatory due diligence, which just happened last week, that you're going to see increased pressure on China from other markets. And that's something that I think we've talked about before. Canada and Mexico have also instituted forced labor import bans. As other countries come on board, Australia and other countries are looking at this, I think it becomes—at some point it becomes untenable for the Chinese government to continue business as usual.

Co-chair MERKLEY. I'm out of time now, but I'll mention two things. One, I'd like to follow up with further questions in written form about the Comply Chain Initiative from the International Labor Affairs Bureau and how that fits into this. Second of all, I was just up in Canada on the plastics treaty in Ottawa and was having conversations with Canadian officials about them joining us. Because right now, a lot of products that are turned down in the U.S. are shipped across the border into Canada, which is an escape valve that makes it much less effective. But I think this Uyghur Forced Labor Prevention Act is really a milestone in trying to take on horrific labor practices and terrible human rights viola-

tions by China. I hope we can keep pushing to make it more effective.

Secretary LEE. I agree with you. And I thank you for the work that you did to implement the Uyghur Forced Labor Prevention Act. And just one quick thing—with Canada, ILAB and Canada and Mexico are carrying out trilateral training and technical expertise exchanges with respect to the Forced Labor Import Ban. We brought our customs, trade, and labor officials together from the three countries repeatedly for several workshops that I think have been very valuable. So we are definitely looking to strengthen the ability and the capacity of both Canada and Mexico to enforce their own laws.

Co-chair MERKLEY. Great. Thank you.

Secretary LEE. Thank you, sir.

Chair SMITH. Thank you, Senator.

Just a final question. I chaired a couple of hearings on the growing use of forced labor to mine cobalt out of DR Congo. And in the past, I've been to Goma. I've been to places where this occurs. But not recently. But we know from our hearings that it's something like 25,000 to 40,000 children are being exploited in those mines, and about 200,000 adults. It's all going to China. China is running the mines. And you know, in my opinion, if somebody wants to buy an EV or—that's all up to them. But it should not be on the backs of little African children who are being hurt, and some killed, as they are mining this.

Now, are you aware of any auditing that is occurring—I did ask Secretary Kerry this when he was still the czar for green initiatives. And he said there's an MOU that they're working up, or have worked up. And I've seen it. And to me, it's all aspirational. It doesn't have any teeth whatsoever with DR Congo—if you're going to mine it, process it there. Don't send it to China, where they perhaps again use forced labor or anything but free workers to process it.

And I'm wondering if there's been any audits of that industry, the cobalt industry? Especially since we know without any doubt that there's exploitation in the extreme occurring as it's mined by China, and then it ends up in our showrooms, you know, in our car showrooms. Is it being audited by anyone?

Secretary LEE. Thank you for that question, Mr. Chairman. And it's actually—ILAB has a project that is trying to trace the cobalt from the artisanal mines all the way through the production process. It's been a little bit challenging. We are working closely with the Ministry of Mines and the Ministry of Labor in the DRC. It's difficult. And as you say, for the exact reasons that you say, that both the commingling of the artisanal cobalt mines and the industrial mines—they're right next to each other sometimes. And they are by design sold to the Chinese processors and they go to China for processing. It's very difficult to separate that out.

We have several projects going in the DRC on exactly this issue, because we consider it very urgent and very serious. So we are working both with children and communities and their families. We're working with the labor inspectorate. We are supporting them in getting more training and more resources. And in fact, the DRC labor ministry has moved to hire 2,000 inspectors and administra-

tive officials to improve their labor inspection system, which is a huge start. It's pretty amazing. But they have not had any capacity whatsoever to do the labor inspections in the main mines.

So I think we're working very slowly in that direction. And I know there are also efforts to do more of the processing in the DRC, which they aspire to do—they would like to do. And that would solve one element of the problem. So I agree with you that this is a very serious issue. And we are doing everything in our power both to get more transparency and information, but also to build some capacity among the key players there.

Chair SMITH. I would respectfully ask if you could take a look at two bills that I've introduced. One would provide a rebuttable presumption with regard to the cobalt, and if it's a clean supply chain then, you know, have it come here. But I believe it is so egregiously tainted that there's no way that can be done. Second—so that's the first bill. That has not moved. The second bill has moved. The Ways and Means marked up my bill to create a strategy and do some other things vis-à-vis the cobalt industry in China and DR Congo. And that was marked up in the Ways and Means Committee last week.

So I would ask if you could take a look at it, provide any insight you have. Hopefully, the support of the administration, because we know, even when things pass here they very often have a rough road in the Senate. And, you know, from my point of view, having had those hearings, having heard from witnesses about not just the kids that are exploited, but also the adults. They're not being paid. They're getting sick. They're often going into the mines without appropriate protection gear. And they're being worked by the Chinese Communist Party, who is overseeing all the mines. You know, and 70 percent of all the cobalt is coming from there. So it's very, very serious. And I think we've got to really get ahead of this one.

Finally, I'll just say—please take a look at those. Scott Nova, executive director of the Worker Rights Consortium, who will be speaking, said: Social auditing in practice involves giving unqualified people inadequate time to pursue an unrealistic objective that they have no incentive to achieve. What a paragraph, or what a sentence! Do you agree with that?

Secretary LEE. Yes.

Chair SMITH. Thank you. I really appreciate your testimony. And I look forward to hearing from you on the other bills. Thank you.

Secretary LEE. Thank you so much, Mr. Chairman.

Chair SMITH. I'd now like to welcome our second panel. And thank you, Undersecretary Lee.

Beginning with Scott Nova, who is executive director of the Worker Rights Consortium, an independent labor rights monitor organization that has conducted investigations of working conditions in factories around the globe, including in China, Vietnam, Myanmar, and other countries where severe restrictions on civil society pose special obstacles to labor rights inquiry. Mr. Nova is a leading expert on the aspects of labor rights investigations and on the practices and performance of corporate social auditors. He has written and spoken widely on the intersection of international commerce and worker rights. I'm really happy to have him here, as well as our other witnesses.

Adrian Zenz—Dr. Zenz is the Director of China Studies at the Victims of Communism Memorial Foundation here in Washington, D.C. His research focuses on China's ethnic policy, Beijing's campaign of mass internment, securitization and forced labor in Xinjiang, and public recruitment and coercive poverty alleviation in Tibet and Xinjiang, and China's domestic security budgets. Dr. Zenz is the author of *Tibetanness Under Threat*. He has played a leading role in the analysis of leaked Chinese government documents, including the China Cables, the Karakax List, and the Xinjiang Papers, and the Xinjiang police files.

Then we will hear from Jim Wormington, who is senior researcher and advocate of the economic justice and rights division at Human Rights Watch, where he works on extractive industry supply chains and other issues related to corporate accountability. He was previously a researcher in Human Rights Watch's African division covering human rights issues in West Africa. He is an English-trained barrister, a member of the QEB Hollis Whiteman Chambers, and was educated at Cambridge and New York University of Law. He recently coauthored the report, "Asleep at the Wheel: Car Companies' Complicity in Forced Labor in China."

I'd now like to turn the floor to Scott Nova.

**STATEMENT OF SCOTT NOVA,
EXECUTIVE DIRECTOR OF
THE WORKER RIGHTS CONSORTIUM**

Mr. NOVA. In assessing the validity of labor auditing schemes in China, it is necessary to bear in mind the checkered history of such schemes globally. So-called social auditing has public relations value to corporations keen on convincing us they're operating their supply chains responsibly but has often been of little value to workers.

The examples of social auditing failures are voluminous and tragic. The worst factory disaster in human history happened in Bangladesh in 2013 when a building collapsed and killed 1,100 garment workers. The building had been repeatedly inspected by social auditors working for Western brands. So had the dozen other garment factories in the country, where workers died en masse in fires and structural failures over a period of years due to egregious safety deficiencies. These factories were death traps before they were audited. They were death traps after.

Examples of the failure of social auditing can be found in every industry and in any country. Among the most notable is the long history of auditing failures at Foxconn, Apple's primary supplier in China. Among the grim consequences were worker fatalities from easily preventable explosions, tens of millions of dollars in stolen wages, and inhumane conditions that led to a rash of worker suicides. These failures are the product of flaws inherent in auditing systems.

For corporations to claim that their auditing schemes provide a meaningful umbrella of protection, these schemes must be comprehensive with regular inspection of thousands of production facilities across the supply chain. The only way to conduct thousands of inspections annually at a cost considered affordable by corporations seeking to produce as cheaply as possible is to assess hun-

dreds of compliance standards, even at the most massive facilities, in one to 2 days. Such inspections are superficial by necessity.

So what are the skills of the auditors? In the U.S. we have numerous different regulatory agencies responsible for the enforcement of labor laws within each or multiple categories of specialists. This is typical of regulatory systems because of the extensive expertise required to handle each specific issue. Social auditing systems ask each auditor to handle every applicable standard. Each is a jack of all trades, a master of none, carrying out specialized tasks without specialized training.

How did thousands of audits in Bangladesh miss the hazards that threatened workers' lives? Because the auditors had no training in identifying such hazards. This didn't stop the firms they worked for from issuing the factories a passing grade. Even more problematic are the conflicts of interest inherent in the system. U.S. corporations don't produce in China or Guatemala to uphold labor rights. They do so because it's cheap. Since it costs more to produce under good conditions than bad, promises corporations make to improve conditions through auditing conflict directly with their financial imperatives.

Corporations don't audit to find out whether they need to change their supply chains, for example, leaving a country where the labor environment guarantees abuses. They audit because they want to preserve lucrative sourcing strategies and need to convince policymakers and customers that those strategies are somehow compatible with humane treatment of workers. That goal is not served if auditors consistently reveal embarrassing realities. Corporate imperatives shape auditing schemes, not vice versa.

The corporations employ the auditors directly or pay contract auditing firms. Unlike financial auditing, where there are rules and regulations designed to preserve the ability of auditors to render independent judgment of a client that is paying them, social auditing is notorious for the lack of any regulatory oversight. Auditors have strong incentive to avoid inconvenient conclusions, while facing no consequences for underreporting violations.

As the chairman has noted, social auditing in practice involves giving unqualified people inadequate time to pursue an unrealistic objective they have no incentive to achieve. Social auditing is poorly suited to uncovering abuse, even in environments conducive to labor rights investigation. An unconducive environment like the one in China makes this mismatch extreme. This raises a vital question: How can U.S. corporations importing from China carry out the due diligence with respect to forced labor they now have a legal obligation to perform? The answer, with respect to auditing within the XUAR, is simple. They cannot.

As this Commission reported in 2022, firms cannot rely on factory audits to ensure that their supply chains are free of forced labor. Meaningful audits remain a practical impossibility in the region, which is why no sourcing can be allowed. Many auditors have stopped auditing in the region, some in response to calls from human rights groups, others because the UFLPA has shrunk the market for auditing. Brands that have ceased sourcing from the region have no reason to hire auditors to conduct inspections.

However, as UFLPA enforcement accelerates and pressure mounts in industries like solar and auto that have been heavily dependent on the region, there is a risk of a resurgence of efforts to use social auditing within the XUAR, as legal and political cover for continued sourcing. Indeed, some auditing firms continue to operate in the region. One is Elevate, one of the most prominent auditing firms in the world. There was also the recent Volkswagen audit of its joint venture facility in the XUAR, an audit so lacking in credibility that most of the staff of the firm that performed it publicly disavowed it.

While the impossibility of conducting credible labor inspections within the XUAR is well established, compliance with the UFLPA's ban on imports from factories outside the XUAR that utilize transferred Uyghur workers remains essential to compliance with the UFLPA. Since labor transferred from the region has been utilized by factories in many different parts of China, the risk is nationwide. This raises two questions: Are corporations inspecting suppliers to ensure there's no transferred labor? And what methods are their auditors using to overcome the massive obstacles to such inspections?

There's little public information available. Most corporations are silent on how they are complying in this area. And no auditing firm has provided any transparency as to methods. We know from private discussions that some auditing firms are claiming they can detect transferred labor, but it is unclear how many corporations are using such services and what methodologies are employed. In our opinion, given the powerful incentive any supplier using transferred labor has to hide the practice, reliably detecting the presence of transferred Uyghur labor requires methods beyond those normally employed by social auditors—including gathering information from the facility's workers offsite.

Interviewing workers onsite is useless in this context. It is inconceivable that a Han Chinese worker is going to tell an auditor in a conversation arranged by factory managers occurring inside the workplace that Uyghur workers are present in the facility and that management is hiding them. However, based on limited information available, we're unaware of any auditing firms that are using such alternative methods.

There's another obstacle to effective audits. The Chinese government is actively seeking to undermine the ability of auditors to expose abuse. Indeed, they are even targeting auditing firms and their Chinese personnel involved in efforts to verify compliance. The Outlaw Ocean Project provides a window into the effectiveness of auditing under these conditions. The project uncovered multiple instances of audits failing to identify forced labor in seafood processing plants in China, supplying U.S. firms. All had been certified by prominent bodies that use social audits to verify compliance. In one case, the investigation found Uyghurs working at a plant the same day an audit gave the facility a passing grade.

By way of excusing these failures, auditing firms told investigators, and I quote, "forced labor is notoriously difficult to identify." Indeed. Corporations face a severe UFLPA compliance dilemma, even if they've stopped sourcing from the XUAR. Full compliance requires viable methods to ensure there's no transferred Uyghur

labor at suppliers outside the XUAR. The U.S. Government should be asking corporations importing goods from China to demonstrate that they have such methods in place. The leaders of any corporation that can't do so must then explain how they know, with respect to any given import on a given day, that they are not breaking the law. Thank you.

Chair SMITH. Thank you very much, Mr. Nova.

Dr. Zenz.

**STATEMENT OF ADRIAN ZENZ,
SENIOR FELLOW AND DIRECTOR IN CHINA STUDIES,
VICTIMS OF COMMUNISM MEMORIAL FOUNDATION**

Mr. ZENZ. Dear Chairman, dear Co-chair, thank you for inviting me to testify today. The so-called Xinjiang Uyghur Autonomous Region operates the world's largest current system of forced labor—state-imposed forced labor, with over 2 million Uyghurs and ethnic group members at risk as we speak. In contrast to most forms of forced labor, state-imposed forced labor operates through a pervasive police-state environment.

It is therefore often more readily assessed as a risk than a specific instance because it creates an environment where victims cannot speak freely. As a result, due diligence efforts based on social or labor audits are not feasible, either in Xinjiang or in Chinese provinces that receive transferred ethnic workers. The Chinese government has been hiding related statistics of transfers outside of Xinjiang. But, according to my research, the number of transferred Uyghurs was set to increase last year by 38 percent.

Affected companies and supply chains must be considered at risk of being tainted with forced labor. The only ethical choice is divestment. Many auditing companies are either unaware or pretend to not realize that the very nature of state-imposed forced labor and labor transfers means that forced labor cannot be reliably assessed at workplaces. You would have to conduct an audit of the entire social environment. While there have been efforts by companies to divest from supply chains linked to Uyghur forced labor, these efforts remain insufficient, supply chain transparency remains limited, and this has been severely aggravated by obfuscation efforts by the Chinese state, which is now increasingly criminalizing the collection of data essential to performing due diligence.

Germany's chemical company BASF operates two joint ventures in Xinjiang. Its joint venture partner, Markor, has participated in government work teams that entered and spied on ethnic households during the peak of the mass internments. Incriminating reports on Markor's website that were identified and passed to media last year describe staff enforcing assimilatory ethnic unity activities and entering targeted households at night. However, as recently as November 2023, BASF stated that it was in concrete discussions with an auditing firm to renew its Xinjiang joint venture audit in 2024. And as we know, of course, these audits cannot uncover these kinds of activities.

In December 2023, Volkswagen published an informal one-page PDF billed as an audit of its joint venture factory in Xinjiang. Immediately after the report was issued the staff of the auditing firm, Germany's Löning, disavowed any connection to the audit. Between

then and now, nearly one-third of the entire staff at Löning have in fact resigned, presumably in protest. The audit's methodology shed significant doubts on the findings' validity. Volkswagen had disclosed that the actual audit was conducted by two Chinese lawyers, who were accompanied onsite by merely one Löning staff member.

Markus Löning's comments to the media suggest that his quotes published by Volkswagen were, in fact, misleading. In them, Löning claimed that "we conducted 40 interviews." However, later he conceded that the audit was mainly based on a review of documentation rather than interviews, given—according to his own words—that interviews would endanger the staff. Löning's statements acknowledged that this so-called audit consisted of little more than a visual onsite inspection combined with a review of staff work contracts. Such a review cannot identify state-imposed coercion.

Experts have noted that a poorly designed audit is, at best, meaningless and, at worst, excuses harm that the audit claims to mitigate. Volkswagen's strategy appears to exploit the fact that no visible signs of forced labor were ever likely to emerge at its facility. By creating the appearance of a genuine audit, while measuring factors irrelevant for assessing state coercion, the Volkswagen-Löning effort is a paradigmatic and deliberate example of audit-washing. In addition, further research I conducted shows that the SAIC-Volkswagen test track in Turpan, a Uyghur region, was built by a Chinese state-owned enterprise using transferred Uyghur laborers, according to their own statements.

Aside from exposure to coerced labor transfers, internal government documents show that Volkswagen could also be implicated in Xinjiang's camp-linked forced labor system. Following the Löning audit, index provider MSCI removed Volkswagen's ESG red flag rating, indicating that Volkswagen can be considered an ethical investment, despite its continued presence in Xinjiang. The most recent evidence implicating Volkswagen's test track and forced labor has so far been completely ignored by MSCI. MSCI is rewarding and enabling Volkswagen's audit-washing and complicity in the region. This issue warrants further investigation into both the Löning audit and into MSCI's methodology.

Just in February this year, the International Labor Organization published an update of its guidance, adding a section on state-imposed forced labor and responding to feedback and criticism given by others and myself, in my extensive engagement for the ILO last year. And you will find an entire section of that reviewing the implications of these updated recommendations of the ILO in my written testimony. This should be used to investigate and to measure the issues created by audit-washing and by questionable methodologies, including by index providers.

Recommendations. I recommend that the U.S. Government and/or Congress publish a detailed report about the ways in which the Chinese state impairs the implementation of meaningful audits and intimidates auditors and companies, preventing due diligence. Congress should hold hearings to investigate the experiences of audit providers in China and whether or not they would be willing to conduct audits in Xinjiang. Scott Nova and I sent a letter to

multiple auditors early in 2020, and we only got affirmative responses from a limited number of them. This is an unacceptable situation.

Congress should also hold hearings involving Volkswagen, to investigate the circumstances of the Löning audit, and whether the public has, in fact, been misled by it. Congress should also hold a hearing questioning index provider MSCI, and potentially other index providers, over its methodology in adding and then removing its red flag rating for Volkswagen without clear and appropriate evidence—and also what MSCI will do about the latest allegations directly implicating the Volkswagen test track in Uyghur labor transfers. CBP should use the Uyghur Forced Labor Prevention Act to require companies whose supply chains involve an elevated risk of connection to products made in whole or in part with Uyghur forced labor, to disclose their supply chains at the raw material level. And if they are unwilling or unable to do so, then Congress should enact related legislation. Thank you.

Chair SMITH. Thank you very much for your testimony and expertise, and also for those very good recommendations. And we will follow up. Thank you.

Mr. Wormington.

**STATEMENT OF JIM WORMINGTON, SENIOR RESEARCHER
AND ADVOCATE ON CORPORATE ACCOUNTABILITY, HUMAN
RIGHTS WATCH**

Mr. WORMINGTON. Thank you, Chairman Smith, members of the Commission, for the invitation to be here today.

The essential context for this hearing is the long-standing connection between major global industries and the Chinese government's human rights violations, including state-imposed forced labor programs targeting Uyghurs and other Turkic groups. The car industry provides a compelling example of the links between global supply chains and Uyghur forced labor. My organization, Human Rights Watch, in February 2024, published a report describing how approximately 10 percent of global aluminum, a vital material for car manufacturing and other industries, is produced in the Xinjiang Uyghur Autonomous Region, which I'll refer to as the Uyghur region.

Our research showed that aluminum producers, and the coal mines and coal plants that supply them, have participated in coercive labor transfers, a form of state-imposed forced labor. Aluminum from the Uyghur region is shipped out of Xinjiang, melted down, and used to make aluminum products for car manufacturers and other industries. The hearing today is important because companies and their suppliers in the car industry and other sectors continue, as my colleagues have said, to use social audits to investigate labor conditions at factories in the Uyghur region.

Audits are not a credible mechanism for investigating Uyghur forced labor. The Chinese government's use of extrajudicial detention, torture, and enforced disappearances in Xinjiang, as well as massive intrusive surveillance, pose grave risks to workers. This makes it impossible for auditors to safely and credibly investigate forced labor. Volkswagen's 2023 audit, as Dr. Zenz has explained, exemplifies the problems and pitfalls of auditing in the Uyghur re-

gion. I won't repeat what Dr. Zenz said about the audits, but I think it's extremely instructive that Markus Löning, whose firm oversaw the audit, said afterwards that interviews with workers in the Uyghur region could be "dangerous," and that "even if workers would be aware of something, they cannot say that in an interview,"—this from the person who oversees the firm that oversaw the audit.

Following the release of the Volkswagen audit report, Human Rights Watch and 61 Uyghur human rights and labor organizations issued a statement criticizing the Volkswagen audits and calling on consultancies and auditors to immediately cease providing services in the Uyghur region. But stopping the use of audits at factories in the Uyghur region is not enough to address the role of audits in enabling connections between global supply chains and Uyghur forced labor. And I think this is, in some sense, the most important part of what I'll say today, which is that stopping audits in the Uyghur region is not enough to stop the connection between audits and the washing of global supply chains.

That's for two reasons. The first reason, as Scott Nova has referenced, is that labor transfers are continuing outside of the Uyghur region, and that the question of how you can audit sites and factories outside of Xinjiang is a question and challenge that all companies operating in China have to confront. And the second reason is that in industries, especially, for example, in the car industry, companies also use what's called supply chain due diligence audits, not to investigate conditions at a particular factory, but to verify whether their suppliers have processes in place to avoid sourcing products or materials linked to human rights abuses. So those audits don't look at particular factories. They look at the sourcing policies of direct and indirect suppliers.

These audits, as others have said, are still constrained by the threat of Chinese government harassment and reprisals against auditors across China, where they are investigating links to Uyghur forced labor. Our own research on supply chain due diligence audits in the aluminum sector revealed evidence that auditors assessing a car industry supplier, with evidence of links to the Uyghur region, avoided reference to Uyghur forced labor in the audit report due to "the political sensitivity of the issue." This form of self-censorship plays squarely into the Chinese government's efforts to quash discussion of its abuses in the Uyghur region, even for an audit that was happening outside Xinjiang.

The impossibility of conducting credible audits in the Uyghur region, and the growing concerns about the obstacles to effective auditing in the rest of China, mean that companies should not rely on audits either as evidence of the absence of forced labor at specific factories or as proof that a supplier in China is sourcing responsibly and does not have forced labor in its supply chain. Companies should instead themselves map their supply chain and responsibly disengage from joint ventures, subsidiaries, or suppliers who continue to operate or source materials or products from the Uyghur region.

I would echo what others have said, and as Chairman Smith has said—about the importance of holding hearings to bring executives from audit firms to Congress to testify about both the obstacles of

auditing in China and the efforts that those firms are taking to avoid being complicit in human rights abuses in China and elsewhere. Congress should also hold hearings with key industries, including the car industry, requesting that they testify about the risk of Uyghur forced labor in their supply chains, and about their use of audits at their joint ventures and their suppliers, potentially building on the Senate Finance Committee's ongoing investigation into the car industry and its links to Uyghur forced labor.

Finally, Human Rights Watch thinks and has said that the Uyghur Forced Labor Prevention Act is an extremely important and effective piece of legislation at stopping imports of products from the Uyghur region entering the U.S. But for products like aluminum, where the supply chain remains extremely opaque and extremely complex, supply chain transparency is the key obstacle to effective enforcement and prohibition of imports linked to forced labor. Congress should consider enacting legislation for high-risk commodities—like cotton, polysilicon, and aluminum—that requires companies importing those commodities to disclose their supply chains to prove that they are, in fact, not sourcing from the Uyghur region. Thank you, Chairman Smith.

Chair SMITH. Thank you so very much, Mr. Wormington.

Maybe you could all give us some insight as to what consequences you think there ought to be for these auditing companies. We will invite them. We look forward to your recommendations as to who. I'm wondering—if an auditor—obviously, they must have some true sensibilities toward the people they're talking to. And when they come back again and find out that Joe or Jim or whoever all of a sudden has disappeared, or they're in the *laogai* or they're in a concentration camp for having spoken to them, if they did, is there any anecdotal information on that, or is it all just completely closed?

And let me just ask you this. You know, this whole auditors issue reminds me of the charade that we saw going on in the 1990's. When, starting with George Herbert Walker Bush, then followed very aggressively by Bill Clinton, we had an MOU with China on gulag labor. And I went over to China several times. I actually got into Beijing Prison No. 1, where Tiananmen Square activists, 40 of them, were making shoes for export, and socks. And Frank Wolf and I went there. And, you know, we took samples out. We got an import ban on that one, but only because we had the information and it was actionable.

But every time we raised it with the administration, they would say, Oh, we have an MOU. And they would wave it in front of us. And I'd say, But it's not worth the paper it's printed on, because if we suspect something and we have no access to the gulag or *laogai* that's producing this, we tell the Chinese government, they investigate, and 60 days later they give us an account. So I met with our customs people on one of my trips to our embassy. And I said, Well, how many cases do you actually get? And they said—none. Because, you know, who's going to do it? And even if they had one, they would have to give it to the Chinese police to do a whitewash, which they would do.

But at hearing after hearing we would have administration witnesses telling us how we have an MOU. And now I think—fast for-

ward to today—we have these audits, which thankfully you are helping to expose for the fraud that they are. And we've got to come up with something. But what consequences should we be imposing, if any, on the auditing companies? Obviously, most of them are not U.S., if any. And then the companies—like at our hearing; Thea will remember this. You know, we focus a lot on Apple, and the others, but Apple in particular. And it was—it's, like, nothing has changed.

And I'm just wondering, you know, 14 years later, after that hearing, we're still dealing with this issue. And the corporations are hiding behind this, like, See, we've got this audit, everything looks fine. What companies, finally, would you say are the worst violators of using this? You mentioned Volkswagen. And I think that's a very insightful case. We'll invite them. Maybe they'll come and testify. You know, it would be great to hear how they square this with good corporate citizenship. But any—if any of you would like to take a shot at this? Yes.

Mr. NOVA. I mean, in terms of the issue of retaliation against workers who've testified to auditors, it's a widespread problem in the industry. And there's very little follow-up in general from corporate auditing firms. I don't know of any firms that have a proactive mechanism for follow-up, which means in order for them to even find out that something has occurred, either the factory would have to disclose it, which is obviously unlikely, or workers would have to trust the auditor enough to actually reach out to them and complain, based on a belief that they'd likely get some recompense as a result.

And in general, auditors don't have that trust because from a worker's perspective, an auditor is some group of people who come into the factory under management's auspices, walk around the factory with management, and ask a bunch of questions that might as well have come from management. You know, we see this problem frequently in our own investigations. And in addition to the problem of after-the-fact retaliation, there's the problem of before-the-fact coaching, of managers telling workers—threatening them with consequences if they testify or, most commonly, simply telling them: If you tell auditors anything negative about our facility, we'll have to close and you'll lose your job. So that's a huge obstacle.

On the question of consequences for auditors, this is a really important issue. One obvious possibility is to view the role auditors play in helping corporations hide the reality of their supply chains from relevant audiences in the U.S.—to view it as an act of fraud, and to think about how that could be punished appropriately. Under the Trafficking Victims Protection Act, the executives of corporations who profit from forced labor in their supply chains that they either know about or should know about, can be criminally prosecuted. It's never happened, but the power exists to do so. The power also exists to prosecute the auditors under the same law. And until we see these kinds of consequences, it's very unlikely that we'll see a major change in the practices and ethics of auditing firms and the corporations that use them.

Chair SMITH. Mr. Wormington.

Mr. WORMINGTON. Thank you, Chairman Smith.

I mean, just to echo a point that Scott made, I think that it is essential to think about what the legal strategies are that can hold audit firms accountable. There is an analogy in the mining sector, which I do a lot of work on, where you have certification systems that purport to certify a particular commodity—it could be gold, it could be cobalt, for example—as being responsibly produced. And in essence, what that certification is saying to the consumer is you can trust that the origin of this material—you can trust the origin of this commodity. And so there are ongoing examples of litigation, including in London, where organizations are trying to hold those certification agencies accountable under consumer misrepresentation law, because they are misrepresenting to the consumer that something was responsibly sourced, when it wasn't.

But it's certainly true, I think, that the more legislation we can have to facilitate those kinds of actions, the better. Just quickly, on the other companies—the brands, the Apples, the car companies that are implicated, I want to be really clear that our report did include Volkswagen, but the issue of sourcing of materials—not having a factory in Xinjiang, which is the Volkswagen case—but the sourcing of raw materials is a problem that applies across the automotive industry. It's not a Volkswagen-specific problem. And if you are having car companies come to testify about their supply chain links to forced labor, you should absolutely be requiring the Teslas, the Fords, the Mercedes, the General Motors, to come and testify about that issue.

The other point I just want to quickly make on that front is that we think a lot about imports, because of the Uyghur Forced Labor Prevention Act. And, of course, we want to make sure we protect consumers globally from imports that are linked to forced labor. But many of these companies also have huge joint venture operations inside of China—for example, including General Motors, including Volkswagen—where in some cases, the majority of their cars are actually being sold inside of China and produced inside of China. But those are still U.S. or European companies. And so the question should be asked as to what the standards are that these companies are applying for sourcing inside China, for your operations and your joint ventures in China, just as much as you are for the cars that are being exported to the U.S. I think that would be a critical question to ask carmakers also if they come to testify.

Chair SMITH. Thank you. Dr. Zenz.

Mr. ZENZ. Yes. I would very much agree with the assessment that these sorts of pseudo-audits constitute a form of fraud and should be punished as such. And I defer to experts, such as Scott Nova, who are more familiar with the existing legal frameworks and how they should be strengthened.

I think there's also a real communication problem. So when I, for example, gave the recommendation that the U.S. Government or Congress should publish a detailed report about Chinese government impairment and obfuscation of auditing—of meaningful auditing, I think there needs to be a lot more detailed communication; for example, State Department guidance on Xinjiang Business Advisories or the CBP's guidance on the UFLPA—that with this kind of form of forced labor you cannot go and audit a workplace, and then inspect a workplace and say, Okay, well, there wasn't any

obvious visual sign of coercion, so we can kind of give this a passing grade. We should really educate and also put it out as a warning sign to specifically say that these kinds of procedures and standards to perform an audit are unacceptable overall.

And, as we know with the UFLPA, unfortunately, there's no criminal punishment component. If you violate the UFLPA, your shipment gets detained. And you can go and pass it on to the Canadians, or whoever else in the world. And that's not much of a punishment if you do that on purpose and use a fraudulent order to cover it up. And, as a side note—on your mentioning of the reeducation through labor system, the *laogai* system—I think we should keep in mind—I published a research report last year that examined over 30 Chinese academic research articles in which Chinese academics in the 2000s examine the shortcomings of the *laogai* forced labor system, according to their views. And they said the *laogai* system is ineffective. It's not good at reeducation and it's not good at forced labor. It tries to do both at the same time.

And the incredible thing is that what we see in Xinjiang is that the Xinjiang reeducation camps constitute an improvement. They actually took these recommendations, and improved the reeducation forced labor system by having a dedicated reeducation phase and then a dedicated skills training and labor placement process to perform forced labor in private companies. And I think it needs to be recognized how the Chinese state is innovating their mechanisms of repression, also with the poverty alleviation through labor transfer program, how this constitutes an innovation by rendering state-imposed forced labor less visible and more obfuscated, and more insidious as a result. And so a lot more work and public communication, I think, should occur pointing out that fact. Thank you.

Chair SMITH. Thank you. Secretary Lee.

Secretary LEE. Thank you so much to all three witnesses for your excellent testimony and the information provided.

You've all raised a lot of interesting points. I guess one thing I'd like to hear from each of you is some concrete advice. And I appreciate some of the suggestions that have come out in terms of transparency and so on for the U.S. Government, and particularly the FLETF, the Forced Labor Enforcement Task Force, which I serve on. You know, on the one hand, you're saying we need better guidance for determining what is—you know, in terms of state-sponsored forced labor. But it's a little bit of a contradiction because I would say that the business advisory that came out tells people not to produce there. And so, you know, you're going to give people better guidance like, How do you do an audit in a state-sponsored forced labor situation? Is there even an answer to that question, that if we had a better guidebook we could improve it?

But I guess what I'd really love to hear from each of you is what you think next steps should be in terms of enforcement. We have this important tool, the Uyghur Forced Labor Prevention Act. We have the withhold release orders. That can be motivating. And the thing that's motivating about it is that it covers the entire supply chain. So, in principle, every single thing that is in the auto supply chain is covered by both the Tariff Act of 1930 and the Uyghur Forced Labor Prevention Act. And yet we don't have the visibility, or the tools to effectively be able to gather each one. So do you have

some concrete suggestions for how we can gain better visibility and better effectiveness in terms of using the tools at our disposal? Thank you.

Mr. NOVA. It's a critical question. And, you know, the corporations themselves are carrying out audits every day, specifically around forced labor transfers. And one recommendation would be for the FLETF itself to contact key importers, perhaps the several largest in each of the most important industries and ask them to proactively demonstrate that they are utilizing audit methods that enable them to reliably detect the presence of transferred labor. If they're not doing that, then it's quite obvious that they cannot know in any given instance whether the products they're importing were or were not made with forced labor, in violation of the UFLPA import ban.

And then the question is, what to do about corporations that can't demonstrate that. And ultimately, I think corporations will have to believe that unless they can credibly verify compliance, they ultimately won't be able to import. I don't think there is a way to consistently do, at this point in time under current political conditions, reliable audits in the country. At a minimum, any individual involved in them is taking a sizable personal risk. And I don't know how, in that context, you can expect people to do their jobs effectively.

I think the Chinese government will have to draw the conclusion that the enormous and relentless obstacles it's putting in place that prevent any kind of meaningful verification are going to have to be reduced. And that if that doesn't happen, there'll be a mass exodus of investment. And, very frankly, I don't see any other scenario in which we'd see change that doesn't involve that fear existing in the minds of decisionmakers in the Chinese government, then leading to some softening of the level of repression, surveillance, scrutiny, that's making it impossible for auditors to do a credible job.

Mr. ZENZ. I think it's great that the Xinjiang Business Advisory is being published. And maybe the best solution is actually to publish a separate document, a separate advisory on auditing—on auditing in the context of state-imposed forced labor. And why that is an inherent contradiction. Why the very concept of a standard social audit approach is incompatible with the very nature of how state-imposed forced labor operates. And, of course, the existing guidance, you know, makes sense and says that you can't reliably assess, you can't interview, etc. But I think it goes beyond "you can't interview." There's a lot more that factors into it. And I think FLETF could draw on the updated ILO guidance on that.

And I've produced a report that actually gives some pointers on that. We actually have some hard copies in the room. And if there was such guidance, I think it should be complemented with a full report documenting the Chinese state's efforts of interference and the legislation, the national security legislation that basically outlaws the data gathering required for conducting a meaningful audit. And you could, of course, include testimony and the arrest of citizens—of members of American auditing companies, like Mintz, etc.

And if you had these kinds of documents, even though they're not legal, it would create a de facto reference point and anchor point

that companies like MSCI could be questioned against. And I think that would be a start. You know, based on what methodology did MSCI remove that rating, in light of “X”? But “X” needs to be better documented. And on an official level, not just by us researchers. And also, the Volkswagen. Based on what standard of reference do we criticize and say—and the U.S. Government—basically, it fails to meet a standard that’s effectively of the U.S. Government. And the next step after that, of course, would be to punish and declare violations and transgressions that are obvious under fraud—as fraud.

Or to enact legislation. Maybe we need dedicated legislation that prevents audit-washing worldwide, which is a big issue as we’ve heard today. It’s an issue in private companies. It’s an issue in—private forced labor, state-imposed forced labor, China, the Democratic Republic of Congo, etc., many places. Maybe this is something where legislation needs to really move into. And I think subsequent hearings would be essential in creating a baseline, but also to create information as to what would be effective. But I think an updated, maybe dedicated guidance, on audits, both pertaining to Xinjiang and to transferred Uyghurs in other provinces—a dedicated guidance by FLETF—would be a really good first step.

Chair SMITH. Mr. Wormington, if you could just delay for a moment. We have a vote on the floor, and Commissioner Nunn and I are going to have to leave. But I would ask, if your time permits, Secretary Lee, if you could chair the hearing, and ask your further questions, and also hear from Mr. Wormington. I’d like to yield so that we can get over and vote. Thank you so much.

Representative NUNN. All right. Thank you, Mr. Chairman, for holding this important hearing today. And we’ll make sure that we move expeditiously here. But we want to talk about examining the lies and the duplicity of what the Chinese Communist Party has done, particularly when it comes to us. China is not new to the realm of misinformation and deceptive practices. In fact, just a couple of months ago this very Commission reviewed the CCP’s lies when it came to the inaccuracies in the Universal Periodic Review.

Today we’re going to examine the CCP’s abuse of third-party social audits to hide their use of forced slave labor in products used by everyday Americans, perhaps even many of us in this room. The truth is that China will stop at nothing to deceive the West and skirt our enforcement mechanisms, as the administration has attempted to apply. The CCP continues the abuse of Uyghurs and other religious factions and illustrates they will continue to commit genocide and crimes against humanity in order to fulfill the CCP’s interest, and exploit for distinct market advantage even against us here in the West.

However, the CCP does not act alone. This is one of the things I want to focus in on today. As we will discuss, there are certain corporations and third-party actors that have no issue in assisting the CCP in their malign activities. In fact, I would offer that the weaponization of social compliance audits indicates that the CCP has strategically stacked the cards in their favor when it comes to uncovering forced and slave labor in their country. So, Mr. Chairman, I want to applaud you for taking on what is a difficult issue, one that has challenges both inside China and outside China. And I want to thank the witnesses for taking time to share your exper-

tise with us today, as well as the Senate and the administration for being involved in this.

So I'd like to begin with you, Mr. Wormington. You talked a lot about the mining companies, and the different aspects of this. Let's just ask the big question in the room: Are Western companies being compliant with the CCP in helping them hide their abuse, the use of Uyghur, and other slave labor forces? And I ask that we talk top level.

Mr. WORMINGTON. Yes. I think what's really clear, for example, from our research on Volkswagen, is that companies do have standards that are applying outside China that they are not applying inside of China.

Representative NUNN. Do you think the CCP is playing a direct role in influencing these companies, either overtly or covertly?

Mr. WORMINGTON. I think it's certainly true when you talk to car company executives that the fear of reprisals that they face from the Chinese government is affecting how they're interacting with their own suppliers and their own staff in China.

Representative NUNN. Do we have blind spots when it comes to this? We certainly have it on the auditing side. But we hear the anecdotal evidence coming from companies. I'd like to know, where are we most out of information? Or where are those gaps existing?

Mr. WORMINGTON. Yes. The Uyghur Forced Labor Prevention Act is an extremely effective piece of legislation in stopping products from coming into the U.S. where they are linked to the Uyghur region, to Xinjiang. The question is, and this is the blind spot, what are the products that come from the Uyghur region? Because companies, like car companies, have thousands of suppliers, thousands of sub-suppliers. And at the moment they do not know whether or not some or many of those sub-suppliers are in fact sourcing from the Uyghur region.

Representative NUNN. So aside from the obvious monetary profit that these companies are getting, would you offer—are there other items behind why they would be standing with the CCP, rather than their perceived Western values of a free and independent labor force, when they know at some point in their supply chain they are exploiting a group of individuals for their own corporate profit? Are there other rationales why anyone would be doing this?

Mr. WORMINGTON. The reason, again, to take the example of the car industry, is that many of these companies have huge business interests in China, have huge financial interests in China, have huge joint ventures in China. And the decisions that they're taking are, of course, partly motivated by threats and reprisals from the government, and partly motivated by the fact that they have big business in China.

Representative NUNN. So by deterring this or "calling it out," they would effectively be stepping away from China as a source of production for themselves.

Mr. WORMINGTON. Well, we've seen the risks, for example, with H&M, that where companies come out and say they're not going to source from the Uyghur region they face reprisals both online in China and in terms of their market share.

Representative NUNN. I'm now going to ask Mr. Nova—you've done a lot on the social auditing side. How effective do you believe

social audits are in both uncovering as well as addressing the labor rights abuses that are coming out of the Uyghur region within China?

Mr. NOVA. I think social auditing is an ineffective mechanism under the best of circumstances. And the situation in China represents the worst of circumstances, in terms of the challenges and obstacles to auditing. So I do not believe reliable information is being developed. Indeed, I don't even think corporations are fully utilizing the options available to them to at least try to do it a little bit better. And just to speak quickly to your earlier question—you know, I don't think there needs to be another motivation besides money. Corporations aren't in the business of values. They're in the business of profit for shareholders. And if making that profit requires bending their practices in such a way that it's acceptable to a host government, in this case the most important host government, the Chinese, historically they've been very happy to do that.

Representative NUNN. Well, Scott, I agree with you on aspects of that. I will hopefully highlight that we, as consumers, do have values. And that a lot of what drives our decisionmaking is based on the fact that we don't exploit labor, that we don't use slave workforces in order to do it. We fought an entire Civil War here in this country for this very purpose. And I would highlight that I think you nailed it on the head here—we want to have visibility and transparency into this so that we, as consumers, can make informed choices, and do hold those corporate entities—whether they're in China or here in the United States or elsewhere—accountable.

I guess my next question then is, who else besides just the government, which I think is performing admirably here, can help to hold these institutions accountable? Particularly the multinational entities?

Mr. NOVA. Well, there are, of course, other country governments which also need to step up. And there's been some positive movement in Europe in this regard, I think, following the lead of the U.S. Government in terms of addressing this specific issue. So that's encouraging. You make a very important point about consumers. And there are consumer organizations. But you know, consumers aren't a highly organized, highly mobilized constituency. If they were, I think we'd have very different supply chains, because you're absolutely right. Consumers don't want to be wearing clothing made with forced labor. They don't want the solar panels they're proud of installing on their roof to include polysilicon that was made with forced labor.

And if consumers understood fully what was happening in supply chains globally, they would demand change. The primary function of social auditing is to shield the actual practices in supply chains from the scrutiny of consumers and thereby enable business as usual to continue, even in the absence of a level of humanness that consumers would consider minimally acceptable as consumers. And so we need to remove that shield and ensure that consumers can see what's actually happening. And if we succeed in that regard, then we will change because at the end of the day, corporations need someone to sell their products to.

Representative NUNN. Mr. Nova, I would not disagree with anything you just said. I think that's on the mark. Let me ask then, are there success stories that we can point to for further replication that really highlight how we provide the transparency, both to the consumers, both to the end user, as well as to the corporations themselves that are trying to acquire this to know what is actually happening in China, so that we can hold these folks accountable?

Mr. NOVA. There are examples from other countries that are positive. I talked earlier in my testimony about the horrible situation in Bangladesh, of workers dying in fires and structural collapses in buildings that had supposedly been inspected, factory buildings, by auditing firms. But the worst of those disasters ultimately created enough pressure that more than 200 brands and retailers signed an enforceable agreement with worker representatives, not just to do inspections but to clean up the buildings, to renovate the buildings, and help pay for it to make them safe. We then saw a radical physical transformation of the production infrastructure of the Bangladesh garment industry, resulting in concretely demonstrably safer factories for more than 2 and a half million garment workers.

And the key component of that was that the results of the inspections done by the safety engineers, each hazard identified and the remedy necessary to correct it, was published. And the progress at each factory toward correcting each of those hazards was reported publicly on an ongoing basis. That is the opposite of what happens in the field of corporate social auditing, where nothing is public. The workers themselves don't see the results of the investigations that supposedly exist to protect their rights. But can you have an agreement like that in China? You spoke to this earlier, Secretary Lee. Who signs an agreement on behalf of workers with corporations that speaks to what happens to workers in China? That's the challenge with replicating that model in the Chinese context.

Representative NUNN. I mean, I think we can speak to millions of car owners here in the United States that potentially are going to have electric vehicles "chosen" for them, or even want to do it for their own energy efficiency or social consciousness. They don't want to know that that battery came from a cobalt mine that was done by a child labor force, perpetrated by the Chinese on a country in Africa. I think that there's a real requirement here for us not to do the façade of social auditing, but to have true transparency here. Thank you for your testimony.

Deputy Undersecretary Lee, you've been a leader in this with the administration. Some of the recommendations that have been provided here, I wonder if you might share with us a little bit. If this transparency were to be provided, if we were able to have a better indication for not only Americans but consumers around the world, what roles could the administration play in enforcing this, holding China accountable, and, ultimately, making sure that we, as the consumer, have some kind of insight into what's happening here so that we can make our own market-drive choices?

Secretary LEE. Thank you so much, Mr. Nunn, for that question. I mean, I think transparent, accountable supply chains are essential. And it's something that in some ways we got away from in the go-go days of the global economy, where these complex and frac-

tured supply chains exist so that corporations do not have to take responsibility, they don't have to know. But I think it's completely possible. It's just that we have to change the business culture to make it understandable that everybody from the CEO on down in a company understands that—you know, obviously they're making purchasing decisions that require—you decide where you're going to buy it from. What's the quality of it? There's quality control. There's price. There's everything else.

You could, if you wanted to, know who the people were. So I think that we're working in that direction in the U.S. Government, in terms of both what's required by Customs and Border Protection and the enforcement of things, but also in terms of the international finance loans, in solar supply chains, looking for more transparency at every stage of the supply chain. So that is something that we are very committed to doing. And I think that's all good. It's good for consumers. Ultimately, it's good for businesses. They may resist it in the short term, but I think this is the way of the future. And I think we have a situation that is morally unacceptable if we don't have the transparency. Thank you, sir.

Representative NUNN. Thank you, Deputy Undersecretary Lee. Thank you, Chairman. And I would highlight, let's hold the bad actors accountable, let's recognize the many who have tried to step out on this to do the right thing—both as consumers and as corporate citizens—and ultimately recognize that the real threat here is coming from a government that has largely enforced a slave labor mentality on its own people inside the CCP. And the ultimate adversary here are the people who are allowing this to happen at the front end. The threat happens both inside and outside of China. Thank you, Mr. Chairman.

Chair SMITH. Thank you very much. And I'm sorry, we do have to leave. It's on zero over at the—on the floor. And I really thank our distinguished Commissioner for taking over the hearing. Without objection, a statement by Alicia Hennig will be made a part of the record. And, again, I thank you so much for your recommendations and your testimony.

Secretary LEE. Thank you, Chairman Smith.

I think we'll resume where we left off—with Mr. Wormington.

Mr. WORMINGTON. Thank you, Commissioner. Yes, the question of recommendations for FLETF I think is a really important question. I have one very simple one up front, which is that aluminum be made a high-priority sector, because of the percentage of the material globally that is coming out of the Uyghur region. I think that should happen as soon as possible, and certainly by this summer. I think that in terms of the broader recommendations, this question of supply chain transparency would really be front-and-center for me. As we've said, the Uyghur Forced Labor Prevention Act is an extremely powerful tool. And the question is, how do we identify those products that are coming from the Uyghur region into the U.S.?

So far, that identification has been done sector by sector, based on the priorities for enforcement of CBP. And so, for example, in the automotive sector I think there's been a sense that electric vehicle batteries might be a priority for enforcement. And I know that that has then led to much more scrutiny on the supply chains

of electric vehicle batteries within car companies. So as you have a priority, as you have a sense that enforcement is coming, you have reactions from the industry. Which, of course, is exactly what we want. But we need something that creates those incentives on a much more systematic and systemic level, given how many products and how many commodities are linked to the Uyghur region.

At the moment, CBP is using some techniques—for example, through questionnaires that they're giving to sectors—whether it's to solar, whether it's to textiles—about high-risk commodities like polysilicon or cotton. And those questionnaires are designed to ask importers about the origin of their materials and about their supply chain transparency. But they're being done as part of that enforcement infrastructure, and not as part of a systemic legislative effort to push for more supply chain transparency.

So I think it's really important we look to other models. For example, Dodd-Frank has been used for conflict minerals to generate transparency over supply chains and the refining of high-risk metals from the Democratic Republic of Congo. And we should think about, if not necessarily transposing that exact same model, then what the model is for using legislation to drive transparency across high-risk commodities, linked to the Uyghur region.

Secretary LEE. Thank you very much, Mr. Wormington, for that answer. And I think we're really ready to wrap up. But I wanted to give each of the witnesses a chance, if there's any last point that you wanted to make before we adjourn.

Dr. Zenz.

Mr. ZENZ. Sure. I would just—we've, I think, had very important input, very educated input. And in my opinion, this is such a long-standing problem in so many ways; we have seen so many gaps also in understanding the nature of state-imposed forced labor, and the kind of challenge that this poses. The ILO itself discounted the role of state-imposed forced labor. It discounted this role in the 2000's, said that we needed to pay more attention to slavery, to global supply chains, which of course in many ways was very true. But it also kind of disempowered multilateral institutions, and the ILO itself, to be less prepared, first, to kind of stumble through the Uzbekistan situation in a way that was heavily criticized, but then also to be quite unprepared when the Uyghur situation really exploded. And it's now the largest system of state-imposed forced labor.

And so I would really urge Congress and the administration to followup, to hold these hearings, to commission this report into the status of auditing in China, as suggested; for the UFLPA guidance to update its requirements of supply chain disclosure up to the raw material level for high-risk sectors, and so on; to hold hearings and to investigate the practices. Under what circumstances did MSCI remove this rating, which is unbelievable. In many ways, when I was preparing for this hearing I felt that this is kind of the tip of an iceberg. And it's like the opening of a door that leads to a whole building. So I just want to emphasize with this metaphor the need for followup hearings and followup action on several of these issues. Thank you.

Mr. NOVA. I'd just reiterate what I said earlier about the importance and value of intensified scrutiny of the methodologies being

employed by corporations and the auditors that they utilize to ostensibly ensure compliance with the UFLPA and with section 307. And whatever can be done to draw out information and create transparency about what companies are and are not doing, I think would be extremely helpful in advancing this debate and the enforcement of those laws.

Secretary LEE. Thank you so much to all three of you. Your testimony has been extraordinarily useful and valuable, but also the work that you all do all day every day is valuable to us. And so we appreciate it. We look forward to holding the next hearing which will, I think, delve deeper, as you say, Dr. Zenz, into the door that's been cracked open a slight bit. But I think you have all raised a lot of systemic issues here that are not going to be solved in the short term, or not solved easily. But I think you've also put before us some very concrete and valuable suggestions for how we might proceed. So I thank you for your time. I thank everyone for being here. And with that, I conclude this hearing.

[Whereupon, at 11:54 a.m., the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENTS

STATEMENT OF HON. THEA LEE

Congressman Smith, Senator Merkley, Honorable members of the Commission, thank you for the invitation to appear before you today.

I am the Deputy Undersecretary of Labor for International Affairs at the Department of Labor and oversee the work of the Bureau of International Labor Affairs (or ILAB for short). ILAB plays a pivotal role in promoting and protecting workers' rights worldwide. By advocating for international labor rights, including the right to organize, bargain collectively, to have safe working conditions, and to be free of child labor, forced labor, and discrimination, ILAB contributes to creating a more equitable global labor landscape.

Overview

The issue of factories and fraud in China is multifaceted, with significant implications for human and labor rights and the integrity of our global supply chains.

In my testimony, I will address two related issues: first—the challenges and risks for businesses of using social compliance auditing as a definitive assessment of labor conditions in general, and second—the heightened risks given the ongoing human and labor rights violations in the Xinjiang Uyghur Autonomous Region, making reliable audits in the region impossible.

Risks of using social compliance auditing alone as a definitive assessment of labor rights

Social auditing can be a useful tool to assess compliance at a particular point in time, but it cannot be the only mechanism for detecting labor rights violations and abuses. Audits are often announced in advance, giving managers time to prepare a facility. Managers can easily fake timesheets to skirt pay and overtime laws. And workers may be pressured to provide inaccurate information.

To be effective, social auditing should be part of a comprehensive social compliance system that ensures that trade unions, democratic worker organizations, and other worker representatives provide support and **voice for workers to identify and raise concerns and collectively advocate for their rights and interests** without fear of retaliation. ILAB's Comply Chain provides examples of best practices in this area.¹

Worker voice and the ability to freely express concerns are particularly important. When authentic worker voice exists, workers can freely elect their union representatives, identify problems, negotiate agreements, and hold parties accountable. ILAB recently commissioned Penn State University to provide a report, "Worker Voice: What It Is, What It Is Not, and Why It Matters."² This report provides important insight on why legitimate, authentic collective worker voice is critical to ensuring effective social compliance.

It is clear that effective worker voice is impossible when workers are trapped in state-sponsored forced labor, where there are no independent, democratic unions, and where workers continue to face threats and reprisals.

On the ongoing human and labor rights violations in the XUAR

This is the situation we face in China. There are widespread restrictions and repression of freedom for human rights defenders. There isn't just a lack of civil society presence; rather, the entire civic space has been shut down. In Xinjiang in particular, ethnic minorities live in fear of the Chinese government.

¹See "Steps Toward a Worker-Driven Social Compliance System" at <https://www.dol.gov/agencies/ilab/comply-chain/steps-to-a-social-compliance-system>.

²See "Worker Voice" at: https://www.dol.gov/agencies/ilab/worker-voice?__ga=2.22750203.1707314604.1713908500.385848940.1713786258

Any audit occurring in Xinjiang cannot be conducted without government oversight, making objective worker interviews free from reprisal an impossibility. As the U.S. Government highlighted in the Xinjiang Business Advisory,³ published in 2021 and updated in September 2023, auditor interviews with workers cannot be relied upon given pervasive surveillance, the threat of detainment, and evidence of workers' fear of sharing accurate information. Moreover, auditors have reportedly been detained, harassed, threatened, or stopped at the airport.

That is why dozens of major audit firms have not operated in Xinjiang for years; the fear of reprisal for both workers and auditors remains high. Social audits in China should not be seen as an authoritative source for companies reflecting on-the-ground human rights conditions. The business community needs to be aware that any audits, and frankly any business operations undertaken inside China, carry heightened labor and human rights risks.

Concluding remarks

In conclusion, ensuring that workers have a substantive role and voice in social compliance is essential to make social compliance audits legitimate. Without workers' feedback, input, and support in resolving issues, labor exploitation risks in supply chains around the world will unfortunately persist.

The Department of Labor serves on the Forced Labor Enforcement Task Force to support implementation and enforcement of the Uyghur Forced Labor Prevention Act. The UFLPA is a powerful tool to address egregious human and labor rights abuses and to ensure that U.S. workers and businesses have a level playing field. We'll continue to leverage that tool to protect the integrity of lawful trade and the rights of workers and continue to raise these issues and call for change.

I thank you for your attention.

³See Departments of Labor, State, Treasury, Commerce, Homeland Security and the Office of the U.S. Trade Representative *Xinjiang Supply Chain Business Advisory*, <https://www.state.gov/xinjiang-supply-chain-business-advisory/>.

STATEMENT OF SCOTT NOVA, WORKER RIGHTS CONSORTIUM

Chairman Smith, Co-chairman Merkley, Members of the Commission, thank you for convening this hearing and for the ongoing efforts of the Commission and its staff to hold corporations accountable for what happens to the workers in their supply chains in China.

In assessing the validity of auditing and certification schemes in the People's Republic of China, it is necessary to bear in mind the checkered history of such schemes, not just in China but across global production chains. So-called social auditing has been a prominent component of global manufacturing and sourcing for more than thirty years, beginning in the apparel and footwear industries and expanding over time to a vast array of sectors and products. These schemes, which have proven public relations value to corporations keen on convincing customers, journalists, and policymakers that they are operating their supply chains responsibly, have often been of little or no value to the workers whose rights they purportedly exist to protect.¹

The examples of social auditing's failures are voluminous; I will cite one that is particularly illustrative. The worst industrial disaster in a factory setting in world history, the collapse of the Rana Plaza factory building in Bangladesh in 2013, which killed 1,134 workers, was the culmination of two decades of scandalous recklessness by U.S. and European apparel brands and their local partners, resulting in dozens of mass fatality fires and structural failures in factories across that country's sprawling garment sector.² In almost every such case, including Rana Plaza, the factories in which workers died en masse had been repeatedly inspected by social auditors who failed to identify or correct lethal hazards that were readily detectable. After Rana Plaza, when legitimate building safety inspections finally began in Bangladesh under the auspices of the Accord on Fire and Building Safety, the inspectors did not identify a single factory in a multi-story building, out of more than 1,600 factories inspected, that had proper fire exits.³ All these factories had been the subject of numerous social audits conducted for Western brands and retailers. The factories were death traps before these social audits, and they were death traps afterward, a perfect track record of failure over more than a decade and a half of social auditing and across tens of thousands of individual audits.

Prominent examples of the failure of social auditing to protect workers can be found in every sector—from apparel,⁴ to electronics,⁵ to toy manufacturing,⁶ to seafood⁷—and in any country that intersects with global supply chains. Among the most notable is the long history of labor rights auditing failures at Apple's primary supplier in China, Foxconn. Our organization, in conjunction with the Economic Policy Institute, documented aspects of this history in a series of publications between 2012 and 2015. Among the grim consequences of inadequate social auditing by Apple at Foxconn were worker fatalities resulting from easily preventable explosions, tens of millions of dollars in stolen wages that were never repaid, and in-

¹ Sarosh Kuruvilla, *Private Regulation of Labor Standards in Global Supply Chains: Problems, Progress, and Prospects*, Ithaca, NY: ILR Press, 2021; and MSI Integrity, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance*, July 2020, https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf.

² Scott Nova and Chris Wegemer, "Outsourcing Horror: Why Apparel Workers Are Still Dying, One Hundred Years after Triangle Shirtwaist," Ed. Richard P. Appelbaum and Nelson Lichtenstein, *Achieving Workers' Rights in the Global Economy*, p.17–31, Ithaca, NY: Cornell University Press, 2016, <https://www.jstor.org/stable/10.7591/j.ctt1h4mhcm.5>.

³ Review and analysis of initial inspection reports and corrective action plans available on the website of the International Accord for Health and Safety in the Textile and Garment Industry, "Status of factories in Accord programs," <https://internationalaccord.org/factories/#factory-search>.

⁴ Brian Finnegan, *Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Worker Rights*, AFL-CIO, April 23, 2023, <https://aflcio.org/sites/default/files/2017-03/CSReport.pdf>.

⁵ International Labor Rights Forum and Business, Human Rights and Environment Research Group School of Law, University of Greenwich, *Time for a Reboot: Monitoring in China's Electronics Industry*, September 2018, p.7–9, https://gala.gre.ac.uk/id/eprint/22685/1/22685percent20MARTIN-ORTEGA_Time_for_a_Reboot_2018.pdf.

⁶ Li Qiang, "Fair Toys for Our Kids," Hearing before the Congressional-Executive Commission on China: "Working Conditions and Factory Auditing in the Chinese Toy Industry," December 11, 2014, <https://www.govinfo.gov/content/pkg/CHRG09113jhr92632/html/CHRG09113jhr92632.htm>.

⁷ The Outlaw Ocean Project, "China: The Superpower of Seafood," accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/#failure-of-private-sector-safeguards>.

humane work hours and production pressure that contributed to the rash of worker suicides at Foxconn in 2010 and 2011.⁸

These failures are the product of flaws inherent in the approach to labor inspection that defines most social auditing systems.⁹ For global corporations to credibly claim that their social auditing schemes provide a meaningful umbrella of protection for workers, these schemes must be comprehensive in scope, which requires regular inspections of hundreds, thousands, or tens of thousands of production facilities and worksites across a corporation's supply chain. The only way to conduct thousands of inspections annually, at a level of expenditure considered affordable by corporations whose zeal for minimizing labor costs explains why they are producing in Bangladesh, China, Vietnam, and other low-wage countries in the first place, is to use auditing methods that allow dozens or hundreds of labor compliance standards and benchmarks to be assessed, at even the most massive production facilities, in the space of one to two days.¹⁰ Such inspections are superficial by necessity.

So are the skills of the auditors. The only way for one or two people to carry out labor inspections that purport to cover the panoply of legal and regulatory standards relevant to a typical workplace is for those individuals to have a little knowledge about a lot of subjects. In the U.S., we have numerous different regulatory agencies at the Federal, state, and local level responsible for the enforcement of labor-related laws and standards at American workplaces, including the Wage and Hour Division of the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, the Social Security Administration, and local building inspectorates, among other bodies. Within each, there are different categories of employees with training in specific regulatory disciplines. These divisions of labor are typical of well-developed regulatory systems because of the extensive expertise required to handle each category of labor rights. Social auditing systems, by contrast, almost invariably expect each individual auditor to handle every applicable labor and worker protection standard. Each auditor is thus a jack of all trades and a master of none, called upon to carry out a series of specialized tasks without specialized training. How did audits conducted in thousands of apparel factories in Bangladesh invariably miss the fire and structural hazards that threatened workers' lives? Because the people who conducted those audits had no meaningful training in the *identification* of fire and structural hazards. This did not, however, stop the firms they worked for from issuing an endless stream of audit reports claiming to have assessed workplace safety, in Bangladesh and elsewhere.¹¹

Even more problematic are the conflicts of interest inherent in social auditing and certification mechanisms. U.S. corporations don't produce in China, or Guatemala, or Cambodia because they want to uphold labor rights; they produce in countries with terrible labor rights environments because it is much cheaper than producing in the U.S. While identifying and correcting labor rights violations and improving suppliers' labor practices is essential to achieve genuine respect for worker rights in a corporation's supply chain, it also costs more to produce under good conditions than under bad conditions, so the labor rights promises corporations make are in direct conflict with their financial imperatives.

Corporations do not utilize auditing schemes because they are considering changing the way they operate their supply chains—for example, leaving a region or country where the labor rights environment precludes adequate worker rights protection or paying higher prices to suppliers to support better labor practices. They utilize

⁸ Scott Nova and Isaac Shapiro, "Polishing Apple: Fair Labor Association gives Foxconn and Apple undue credit for labor rights progress," Economic Policy Institute, Issue Brief #352, November 8, 2012, <https://www.epi.org/publication/bp352-polishing-apple-fla-foxconn-labor-rights/>; and Scott Nova and Isaac Shapiro, "Assessing the Reforms Portrayed by Apple's Supplier Responsibility Report," Economic Policy Institute, Issue Brief #377, March 25, 2014, <https://www.epi.org/publication/assessing-reforms-portrayed-apples-supplier/>. Additional related commentaries and blog posts are available at <https://www.epi.org/people/scott-nova/>.

⁹ Abigail Higgins, "Corporations are paying for worker abuse audits that are 'designed to fail', say insiders," The Guardian, October 10, 2023, <https://www.theguardian.com/global-development/2023/oct/10/corporate-auditing-foreign-workers-abuse-claims>.

¹⁰ For testimony from auditors on what they can accomplish during audits spanning one or two days, see: Human Rights Watch, "Obsessed with Audit Tools, Missing the Goal: Why Social Audits Can't Fix Labor Rights Abuses in Global Supply Chains," November 15, 2022, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>.

¹¹ Declan Walsh and Steven Greenhouse, "Certified Safe, a Factory in Karachi Still Quickly Burned," The New York Times, December 8, 2012, <https://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html>; and European Center for Constitutional and Human Rights, "RINA certifies safety before factory fire in Pakistan," November 2016, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_Rina_Pakistan.pdf.

these schemes because they want to preserve lucrative sourcing strategies and need to convince customers and policymakers that those strategies are compatible with the humane treatment of workers. That goal is not served if audits consistently reveal embarrassing realities and show a need for major reform.

Corporate imperatives shape auditing schemes, not vice versa. The corporations either employ their auditors directly or select and pay contract auditing firms. While industry parlance uses terms like “independent” to refer to auditing schemes, what corporations mean by that term is only that they do not *directly own* the auditing firms to which they outsource work: they do, however, choose the firms, pay them for their services, and decide whether to use them again in the future. And, unlike the world of financial auditing,¹² where there are industry-wide rules, standards, and regulatory mechanisms designed to preserve the ability of auditors paid by a client to be in a position to render independent judgment of that client’s performance, and where there are legal penalties for malfeasance or fraud, social auditing is an industry notorious for the lack of any binding professional standards and the total absence of regulatory oversight.¹³ Some certification bodies purport to utilize rigorous standards that they use to “accredit” auditing firms, but any such standards are purely self-generated and operate apart from any independent oversight.¹⁴ And since audit reports are almost always secret—including from the workers whose rights they are officially protecting—auditors face no accountability via public scrutiny of their work.¹⁵ This is a system in which auditors have strong incentive to avoid inconvenient conclusions and rarely face any consequences for underreporting labor rights violations.

Social auditing, in practice, involves giving unqualified people inadequate time to pursue an unrealistic objective they have no incentive to achieve.

Social auditing is poorly suited to uncovering labor rights abuses even in environments conducive to labor rights investigation; an unconducive environment, like the one that has long prevailed in China, makes this mismatch extreme. Competent labor inspections depend on the ability of workers to speak freely about their circumstances and conditions of work. They require a functioning civil society in which knowledgeable labor rights organizations can provide guidance to investigators. The challenges of auditing in China, in this regard, were extensive a decade ago.¹⁶ The closure of civic space, acceleration of censorship, and intensification of political repression in recent years has made the situation far worse.

This gives rise to a critical question: how can corporations sourcing from China carry out the labor rights due diligence, specifically with respect to forced labor, that they have a legal obligation to perform if they import products into the United States?

The answer with respect to auditing *within* the Xinjiang Uyghur Autonomous Region (“XUAR” or “Uyghur Region”) is simple: they can’t. In March 2020, I testified to this Commission that “No Uyghur worker in the XUAR can possibly feel safe

¹² Organisation for Economic Co-operation and Development, Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility, OECD Working Papers on International Investment, No. 2001/03, Paris: OECD Publishing, p.10, <https://doi.org/10.1787/525708844763>.

¹³ Business & Human Rights Resource Centre, “Social audit liability: Hard law strategies to redress weak social assurances,” September 2021 https://media.business-humanrights.org/media/documents/2021_CLA_Annual_Briefing_v5.pdf; Anna Beckers, Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law, Portland, OR: Hart Publishing, 2015, p.49, <https://dokumen.pub/enforcing-corporate-social-responsibility-codes-on-global-self-regulation-and-national-private-law-9781849469029-9781849468992-9781849469012.html>; and Re:Structure Lab, Forced Labour Evidence Brief: Social Auditing and Ethical Certification, Vancouver: Stanford, Simon Fraser, and Yale Universities, 2022, p.21–22, https://www.restructurelab.org/s/ReStructureLab_Social_Auditing_and_Ethical_Certification_July2022.pdf.

¹⁴ Re:Structure Lab, Forced Labour Evidence Brief: Social Auditing and Ethical Certification, Vancouver: Stanford, Simon Fraser, and Yale Universities, 2022, p.20, https://www.restructurelab.org/s/ReStructureLab_Social_Auditing_and_Ethical_Certification_July2022.pdf.

¹⁵ Carolijn Terwindt and Miriam Saage-Maass, “Liability of Social Auditors in the Textile Industry,” Friedrich Ebert Stiftung, December 2016, p.8, https://www.ecchr.eu/fileadmin/Publikationen/Policy_Paper_Liability_of_Social_Auditors_in_the_Textile_Industry_FES_ECCHR_2016.pdf, (“Contrary to auditing scheme claims of >>transparency<< (e.g. BSCI 2015), audit reports are regarded as confidential and the property of the auditor’s client and therefore generally not made public. Therefore, workers or unions have no means of verifying the veracity of such reports.”).

¹⁶ Mark Anner, “CSR Participation Committees, Wildcat Strikes and the Sourcing Squeeze in Global Supply Chains,” British Journal of Industrial Relations, March 2018, p.75–98, <https://wsr-network.org/resource/csr-participation-committees-wildcat-strikes-and-the-sourcing-squeeze-in-global-supply-chains/>.

speaking candidly. (. . .) The only answer a worker can safely give to the question of whether her labor is voluntary is ‘yes’ . . . At this point, no firm should be conducting audits in the XUAR. The only purpose audits can serve is to create the false appearance of due diligence and thereby facilitate continued commerce in products made with forced labor.”¹⁷ This Commission’s 2022 Annual Report¹⁸ states: “Firms cannot rely on factory audits to ensure that their supply chains are free of forced labor in the XUAR.” This reality persists and meaningful labor rights auditing, on the issue of forced labor and on any other labor rights question, remains a practical impossibility in the region.

Many auditors have stopped auditing in the XUAR. Some did so in response to public calls from human and labor rights organizations,¹⁹ others because enactment and implementation of the Uyghur Forced Labor Prevention Act (UFLPA),²⁰ the issuance of the Withhold Release Order covering cotton and tomatoes from the Uyghur Region that preceded it,²¹ and the public exposure of widespread state-sponsored forced labor in the region,²² has shrunk the market for social auditing. Brands that have ceased sourcing from the region for legal or reputational reasons, or are attempting to conceal their sourcing, have no reason to hire auditors to conduct labor inspections.

Some auditing firms, however, continue to operate in the region, though it is unclear if they are claiming to verify the absence of forced labor at specific production facilities or worksites.

Companies and organizations that indicated publicly, as recently as 2021, that they were auditing in the Uyghur Region, or would conduct an audit there upon request, were: ELEVATE, ERM, Sedex, and TCO Certified.²³ The Worker Rights Consortium (WRC) has been told by a confidential source that ELEVATE continues to audit in the Uyghur Region. There is also, of course, the now notorious audit recently commissioned by Volkswagen of its joint venture facility in the XUAR, which predictably concluded that all is well.²⁴ That audit was so lacking in credibility that most of the staff of the German consulting firm that performed it for Volkswagen issued a public statement disavowing any involvement in the project.²⁵

As the enforcement of the UFLPA accelerates, and the pressure mounts on industries like solar and auto, that have been heavily dependent on inputs from the

¹⁷Testimony of Scott Nova before the Congressional-Executive Commission on China, “Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region” Roundtable, March 11, 2020.

¹⁸Congressional-Executive Commission on China (CECC), Annual Report 2022, November 2022, p.260, https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report_0.pdf.

¹⁹Eva Xiao, “China’s Xinjiang despite forced-labor concerns restricted access has made examinations difficult in a region where China’s repressive tactics against Muslim minorities have been criticized,” Wall Street Journal, September 21, 2020, <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>; and Business & Human Rights Resource Centre, “China: Auditors, certification firms & organisations answer questions on their approach in Xinjiang as forced labour concerns grow,” Updated May 17, 2021, <https://www.business-humanrights.org/en/latest-news/auditors-answer-questions-on-their-approach-in-xinjiang-among-growing-forced-labour-concerns/>.

²⁰Public Law No. 117–78. See: U.S. Customs and Border Protection (CBP), “The Uyghur Forced Labor Prevention Act,” accessed April 26, 2024, <https://www.cbp.gov/trade/forced-labor/UFLPA>, and U.S. Department of Homeland Security (DHS), “Uyghur Forced Labor Prevention Act,” <https://www.dhs.gov/uflpa>.

²¹CBP, “Xinjiang Uyghur Autonomous Region WRO Frequently Asked Questions,” accessed April 26, 2024, <https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions>.

²²A collection of investigative reports and research studies is available at Coalition to End Forced Labour in the Uyghur Region, “Reports,” <https://enduyghurforcedlabour.org/home/reports/>

²³Business & Human Rights Resource Centre, “China: Auditors, certification firms & organisations answer questions on their approach in Xinjiang as forced labour concerns grow,” Updated May 17, 2021, <https://www.business-humanrights.org/en/latest-news/auditors-answer-questions-on-their-approach-in-xinjiang-among-growing-forced-labour-concerns/>. On April 23, 2024, the WRC checked the websites of the auditors and certifiers contacted by BHRRC during spring 2021 and there were no new statements related to the Uyghur Region on their websites.

²⁴Associated Press, “Volkswagen-commissioned audit finds no signs of forced labor at plant in China’s Xinjiang region,” December 6, 2023, <https://apnews.com/article/china-volkswagen-xinjiang-uyghur-forced-labor-c505dac48be92b6f792bafdaae61f9>; and Volkswagen, “ESG Controversies,” March 19, 2024, <https://www.volkswagen-group.com/de/esg-controversies-15846>.

²⁵Victoria Waldersee, “Senior staff at auditing firm distance themselves from audit of VW’s China plant,” Reuters, December 13, 2023 <https://www.reuters.com/business/autos-transportation/auditing-firm-distances-itself-duos-work-vws-china-plant-2023-12-13/>, and Patricia Nilsson, “Staff rebel at consultancy behind VW review of Xinjiang rights abuse,” Financial Times, December 13, 2023, <https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>.

XUAR²⁶ and have little experience with intensive scrutiny of labor practices in their supply chains, the risk remains that we will see a resurgence of efforts to use social auditing within the XUAR as legal and political cover for continuing to source from the region. As has for decades been the case in the apparel industry, the sector in which my organization specializes, if there is a corporation in need of a favorable labor rights report it can brandish to shore up a reputation sullied by disreputable labor practices, that brand will always be able to find a social auditor willing to issue that report, even in circumstances where the obstacles to effective investigation are obviously insurmountable. In December 2018, the Associated Press (AP) published a story conclusively documenting the production of clothing for U.S. brands at an internment camp in the city of Hotan;²⁷ the manufacturer, Hetian Taida, was soon to become the first company in the XUAR to be the subject of a U.S. Withhold Release Order.²⁸ The company was operating two facilities, one inside the camp and also one adjacent to it, which included, among its employees, what XUAR authorities call camp “graduates”: recently released detainees who are forced to work at a particular workplace as a means of continued government scrutiny and control. At the time of AP’s report, the latter facility had just received labor rights certification from Worldwide Responsible Accredited Production (WRAP),²⁹ a U.S.-based, industry-funded auditing and certification body that is utilized by numerous apparel brands and retailers. Despite the negative publicity arising from the AP story, and despite the fact that the facility inside the internment camp had recently been featured on Chinese national television in a program touting the internment camps as centers of vocational training and Uyghur social uplift, WRAP and the factory’s customers had no trouble immediately finding multiple social auditors willing to conduct audits and issue favorable reports declaring the company to be free of forced labor. One, the prominent Swiss auditing firm SGS, went so far as to affirmatively conclude that the workers at the facility adjacent to the camp enjoyed full respect for their right to organize and bargain collectively.³⁰ The WRC asked WRAP what methods its auditors had used to enable workers at that facility to speak freely about their circumstances, given the severely repressive environment in the XUAR. WRAP’s CEO replied that since the facility was not located immediately within the detention camp, our concerns about a repressive environment were “misplaced.”³¹

While the impossibility of conducting credible labor rights inspections within the XUAR is well established, a separate set of questions about social auditing arises with respect to the provision of the UFLPA that bans imports from factories outside the XUAR that utilize Uyghur workers transferred *from* the XUAR under the auspices of government authority. Compliance with this provision of the law requires that corporations prohibit their suppliers from involvement in labor transfers *and* requires that they have the capacity to verify that suppliers are obeying this requirement. Since labor transferred from the XUAR has been utilized by factories in many different parts of China—use of transferred Uyghur workers has been exposed in the supply chains of Apple and Nike, among other leading corporations³²—it must be assumed that the risk of complicity in this forced labor scheme exists at virtually any production facility in the country. This gives rise to two questions: 1) are corporations importing goods into the U.S., made in part or in whole in any part of China, inspecting the relevant suppliers to ensure that no transferred labor is

²⁶ Laura Murphy and Nyrola Elimä, “In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains,” Sheffield Hallam University Helena Kennedy Centre for International Justice, May 2021, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>; and Laura Murphy, Kendyl Salcito, Yalkun Uluyol, Mia Rabkin, et al., “Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region,” Sheffield Hallam University Helena Kennedy Centre for International Justice, December 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>.

²⁷ Dake Kang, Martha Mendoza, and Yanan Wang, “US sportswear traced to factory in China’s internment camps,” Associated Press, December 17, 2018, <https://apnews.com/e7c9af9654fa43ad958b2dc54895d42e>.

²⁸ CBP, “CBP Issues Detention Orders against Companies Suspected of Using Forced Labor,” October 1, 2019, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

²⁹ WRC, “Hetian Taida Apparel Co., LTD.,” 2019, <https://www.workersrights.org/factory-investigation/hetian-taida-apparel-co-ltd/>.

³⁰ Amfori, “Hetian Taida Apparel Co. Ltd.,” March 21, 2019, <https://www.workersrights.org/wp-content/uploads/2020/02/BSCI-Hetian-Taida-20190313.pdf>.

³¹ Email on March 1, 2019, from Avedis Seferian, Chief Executive Officer at WRAP, to Scott Nova, Executive Director of the WRC.

³² Vicky Xiuzhong Xu et al., “Uyghurs for sale: ‘Re-education’, forced labour and surveillance beyond Xinjiang,” Australian Strategic Policy Institute, 2020, <https://www.aspi.org.au/report/uyghurs-sale>.

being utilized, and, if so, 2) what methods are their auditors using to overcome the obstacles to credible and effective inspections, given the prevailing climate of repression of rights of speech and assembly across China and the extremely sensitive nature of any discussion of Uyghur forced labor?

There is a notable dearth of public information that speaks to these urgent questions. Most corporations sourcing from China are publicly silent on how they are complying in this area. And we are unaware of any auditing firm that has provided any transparency as to the methods it utilizes to verify compliance. We know from private discussions with corporations in several industries that some auditing firms are claiming they can verify the presence or absence of transferred labor and that such services are being utilized by a substantial number of corporations. It is unclear what percentage of corporations in various sectors are utilizing such services and it is unclear what methods the auditors are utilizing.

In our opinion, especially given the powerful incentive any supplier using transferred labor has to hide the practice, reliably detecting the presence of transferred Uyghur labor requires the use of methods beyond those normally employed by social auditors. This includes gathering information from a facility's employees offsite, without the knowledge of factory management, and gathering information from people not employed by a facility but living or working in its vicinity, who may have observed the presence of transferred workers. Interviewing workers onsite, a dubious method of gathering information under the best of circumstances, is useless in this context. It is inconceivable that any Han Chinese worker is going to tell an auditor, in a conversation arranged by factory managers, and occurring inside the workplace, that Uyghur workers are present at the facility and that management is hiding them. While rigorous review of factory records may be sufficient in some cases to expose the presence of transferred labor, there is a long history in China of the use of false records to fool social auditors,³³ a problem our organization has encountered in our own factory investigations in China in the past.³⁴ If the number of transferred Uyghur workers at a facility is small relative to the size of the overall workforce, it would not be difficult in most cases for managers to provide altered records that obscure their presence. It is therefore unlikely that auditing methods that rely solely on records review, traditional worker interview methods, and interviews with management can serve as a reliable mechanism for detecting transferred labor across a corporation's Chinese supply chain, even if the review of records and questions for managers are specifically designed to enable auditors to do so. However, based on the limited information available, it is our understanding that few, if any, auditors are using offsite interviews and other alternate methods of investigation.

There is another obstacle to effective audits: the Chinese government, in policy and practice, is actively seeking to undermine the ability of auditors to expose labor rights abuses at facilities in China producing for export. In 2021, the government enacted statutes designed to counteract the efforts of China's trading partners to hold Chinese suppliers accountable for the use of forced labor and other labor rights abuses.³⁵ The effect of this law is to subject companies doing business in China to sanctions for taking actions that advance the implementation and enforcement of the UFLPA and any other law or policy designed to hold importers accountable for the use of forced labor by their Chinese suppliers. The government has also targeted major brands that are known to be working to comply with the U.S. Government's requirements concerning the XUAR and Uyghur forced labor. Most prominently, the government launched a de facto consumer boycott of H&M, a massive buyer of apparel from Chinese suppliers and a company with major ambitions as a retailer in the country—with devastating impact on H&M's Chinese sales.³⁶ The Chinese gov-

³³ Lauren Foster and Alexandra Harney, "Doctored records on working hours and pay are causing problems for consumer multinationals as they source more of their goods in Asia," *Financial Times*, April 22, 2005; Kathy Chu, "Some Chinese factories lie to pass Western audits," *USA Today*, April 30, 2012; Alexandra Harney, *The China Price: The True Cost of Chinese Competitive Advantage*, New York: Penguin Press, 2008, p.200; and Dexter Roberts and Pete Engardio, "Secrets, lies, and sweatshops," *Business Week*, November 17, 2006, http://www.nbcnews.com/id/15768032/ns/business-us_business/t/secrets-lies-sweatshops.

³⁴ WRC, "Worker Rights Consortium Assessment re Lianglong Socks Co. Ltd (China): Findings, Recommendations and Status Report," April 3, 2008, https://www.workersrights.org/wp-content/uploads/2016/02/Lianglong_Socks_Report_4-3-08.pdf.

³⁵ Tatman R. Savio, Mahmoud (Mac) Fadlallah, Shiva Aminian, Jingli Jiang, Bodi Jia, and Daniel L. Cohen, "The New PRC Anti-Foreign Sanctions Law," Akin Gump Strauss Hauer & Feld LLP, July 2, 2021, <https://www.akingump.com/en/insights/alerts/the-new-prc-anti-foreign-sanctions-law>.

³⁶ Bloomberg News, "China Canceled H&M. Every Other Brand Needs to Understand Why," March 14, 2022, <https://www.bloomberg.com/graphics/2022-china-canceled-hm/>.

ernment is also specifically targeting auditing firms and their Chinese personnel involved in efforts by buyers to verify forced labor-related compliance by Chinese suppliers³⁷—actions presumably designed to show auditors that successful efforts to identify forced labor place them at severe personal risk. This legal and practical crackdown on labor rights inspectors working for foreign buyers is also likely to impede another form of auditing highly relevant to UFLPA compliance: audits designed to assess whether suppliers have adequate administrative mechanisms in place to verify the source of the inputs they utilize and to spot check whether the sub-suppliers a supplier reports are actually the source of the inputs in question (this includes so-called “supply chain due diligence audits” and “traceability audits”).

Given that precise control of the supply chain, including the exclusion of suppliers implicated in forced labor, is essential to a corporation’s ability to comply with the UFLPA, impediments to this form of auditing carry enormous compliance risks.

An important window into the effectiveness of social auditing, in the present context, at detecting forced labor in China is provided by the work of The Outlaw Ocean Project, a journalistic enterprise that conducts extensive investigations of forced labor and other rights abuses in fishing and seafood processing. In investigations reported in the fall of 2023, The Outlaw Ocean Project uncovered multiple instances of social audits failing to identify state-imposed forced labor in seafood processing facilities in China supplying U.S. firms.³⁸ All ten seafood processors that The Outlaw Ocean Project linked to Uyghur forced labor were certified by the Marine Stewardship Council (MSC) and four were certified by the Aquaculture Stewardship Council (ASC), certification bodies that rely on social audits to verify labor rights compliance. In response to the investigation’s findings, MSC acknowledged that its reliance on social audits has “significant limitations.” In March 2024, after the publication of the investigation, ASC said it intended to “phaseout program operations and cease investment in China”; at the time it had 289 certified companies in China.³⁹

The Outlaw Ocean Project reported that social audits are normally announced, which allows workplaces to hide Uyghur workers in advance of the audits, and “[e]ven if they get to interview these workers, auditors aren’t trained to identify state-imposed forced labor, and workers are reluctant to be candid for fear of retribution.”⁴⁰ Most seafood buyers nonetheless relied on audits to defend themselves in their responses to the investigation, “many asserting that audit reports proved there was no forced labor at the implicated factories.” In one case, the investigation found evidence of Uyghurs working at a plant the same day an audit was conducted by SGS that gave the site a passing grade.⁴¹

Sedex, a widely utilized auditing platform, continues to allow its “SMETA” assessment tool to be used in audits across China, even while refraining from providing assurances that SMETA is sufficient to detect forced labor. In response to a question from The Outlaw Ocean Project, Sedex stated:

“Forced labour is notoriously difficult to identify and evidence given it is a criminal activity. Instances of forced labour—and sometimes particular practices/behaviours associated with higher risks of forced labour, such as those outlined in the ILO indicators—are often driven underground. The SMETA audit methodology includes assessment points relating to these indicators, and there is a “sensitive issues” process that allows auditors to raise particularly sensitive concerns immediately and confidentially with the site’s customers, allowing quick mitigation and remediation action.

³⁷ CECC, Annual Report 2022, November 2022, p.256–271, https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report_0.pdf.

³⁸ Outlaw Ocean Project, “China: The Superpower of Seafood,” October 9, 2023, accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/>.

³⁹ Neil Ramsden, “Aquaculture Stewardship Council to cease operations in China,” Undercurrent News, March 27, 2024, https://cdn.theoutlawocean.com/investigations/china/pdf/coverage/undercurrent-news_aquaculture-stewardship-council-to-cess-operations-in-china.pdf.

⁴⁰ Outlaw Ocean Project, “China: The Superpower of Seafood,” October 9, 2023, accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/>.

⁴¹ Magali Dauwalder, Global Head of Corporate Affairs at SGS, told The Outlaw Ocean Project: “The audit SGS carried out was a traceability audit. This audit is not a social audit. It doesn’t cover working conditions.” See: The Outlaw Ocean Project, “SGS S.A.: Correspondence,” June 26, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/sgs-sa/>; and Ian Urbina, “The Uyghurs Forced to Process the World’s Fish,” The Outlaw Ocean Project, October 9, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/the-uyghurs-forced-to-process-the-worlds-fish/>.

However, behaviours may still be covered up and therefore extremely difficult for auditors to find. Auditors cannot make serious allegations of criminal activity without clear evidence (. . .) There are many regional-specific considerations in how to conduct effective supply chain human rights and environmental due diligence. We are aware of reported challenges in conducting supply chain due diligence and onsite audits within some high-risk regions, including constraints on access by independent auditors, that make obtaining reliable information by any safe and ethical means difficult. These challenges don't detract from SMETA's effectiveness in other contexts."⁴²

A month later Sedex acknowledged: "we recognise it may be difficult and risky for auditors themselves to explicitly recognise state-imposed forced labour in practice."⁴³

For all of the reasons discussed above, corporations sourcing from China face a severe UFLPA compliance dilemma, even if they have undertaken a faithful effort to exclude inputs from the Uyghur Region from their supply chains. While compliance with the UFLPA does not require labor rights auditing to be feasible *within* the XUAR, the law's ban on products made with transferred Uyghur labor elsewhere in China, its ban on products made by companies found to have been complicit in forced labor (those on the UFLPA-mandated "Entities Lists"),⁴⁴ and the need to verify suppliers' claims that they are not using inputs from the XUAR, all require a capacity to conduct reliable workplace audits across the rest of China. Given the weaknesses of social auditing worldwide; given the gauntlet of obstacles—long-standing and new—specific to effective social auditing in China; and given the track record to date; the capacity of corporations sourcing from China to ensure that they are complying with the UFLPA and Section 307 of the Tariff Act is in grave doubt. Assuming that this capacity actually exists would be folly. The U.S. Government should be asking corporations importing goods into the U.S., made in whole or in part by suppliers in China, to affirmatively demonstrate that they have *viable* methods and systems in place to ensure that the products they are importing were not sourced from the XUAR, were not made by workers transferred from the XUAR, and were not touched by any company on the Entities Lists. The leaders of any corporation that cannot so demonstrate must then explain how they know, on any given day, with respect to any given import, that they are not breaking the law.

The WRC recommends that Congress:

- Hold hearings in which it asks the executives of leading social auditing firms and certification bodies active in China to disclose the methods they use to verify compliance with provisions of the UFLPA that require workplace-level labor rights inspections, explain why those methods should be viewed as reliable given the relevant circumstances, and provide examples of their effectiveness.
- Hold hearings in which it asks executives of leading brands in the auto, solar, primary metals, and apparel sectors these same questions.
- Request that CBP revise and upgrade the methodological standards it cites in its recommendations to importers concerning the use of audits; the current guidance⁴⁵ is silent, for example, on the value of onsite worker interviews in workplaces in China.

⁴²The Outlaw Ocean Project, "Supplier Ethical Data Exchange (Sedex)," June 28, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/supplier-ethical-data-exchange-sedex/>.

⁴³The Outlaw Ocean Project, "Supplier Ethical Data Exchange (Sedex)," July 20, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/supplier-ethical-data-exchange-sedex/>.

⁴⁴DHS, "UFLPA Entity List," Updated December 8, 2023, accessed April 29, 2023, <https://www.dhs.gov/uflpa-entity-list>.

⁴⁵CBP, "Uyghur Forced Labor Prevention Act: U.S. Customs and Border Protection Operational Guidance for Importers," June 13, 2022, p. 15, https://www.cbp.gov/sites/default/files/assets/documents/2022_Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf.

State-Imposed Forced Labor in the Xinjiang Uyghur Autonomous Region: Current State, Latest Evidence, Impossibility of Credible Social Audits, and Ongoing Western Complicity and Audit-Washing

Written Testimony submitted for the hearing of the United States Congressional-Executive Commission on China, titled "Factories and Fraud in the PRC: How Human Rights Violations Make Reliable Audits Impossible"¹

Dr. Adrian Zenz
 Senior Fellow and Director in China Studies
 Victims of Communism Memorial Foundation
 Washington, D.C.

April 30, 2024

Table of Contents

- 1.0 Introduction: Forced Labor in the Xinjiang Uyghur Autonomous Region (XUAR) and the Tibet Autonomous Region (TAR)
- 2.0 Assessing the Continuation of Coercive Labor Transfers in the XUAR and TAR
- 3.0 The Challenge of Measuring Non-Internment State-Imposed Forced Labor in the PRC
- 4.0 The Suitability of the International Labour Organization's Adapted New Guidelines on Forced Labor Measurement for Capturing Forced Labor in Xinjiang and Tibet
- 5.0 The Involvement and Complicity of Volkswagen and BASF in Xinjiang
- 6.0 Audit-Washing: The Löning Audit of the SAIC-Volkswagen Factory in Urumqi
- 7.0 Assessing the Continued Complicity of International Companies in Uyghur Forced Labor
- 8.0 Recommendations for the U.S. government to Ensure Accountability for International Firms and Combat Forced labor in the PRC
- 9.0 Appendix: List of Internal State Documents from Xinjiang on Forced Labor and Coercive Poverty Alleviation

¹ <https://www.cecc.gov/events/hearings/factories-and-fraud-in-the-prc-how-human-rights-violations-make-reliable-audits>

Executive Summary

In the so-called Xinjiang Uyghur Autonomous Region (XUAR), Beijing currently operates the world's largest system of state-imposed forced labor, with over two million targeted Uyghurs and other ethnic group members at risk. Unlike most forms of forced labor, state-imposed forced labor operates through a pervasively coercive social context marked by a lack of civic freedoms and a state that generates powerful coercive pressures through local mobilization via an extensive grassroots bureaucracy. To refuse a work placement offered by the state entails a systemic risk that is often more implicit than overt.

State-imposed forced labor is often better assessed as a systemic risk than a specific instance, because it creates an environment where its victims cannot speak freely, rendering assessment of individual cases difficult or impossible. As a result, due diligence efforts based on social or labor audits are not feasible, both in Xinjiang and in other Chinese provinces that receive transferred ethnic workers from that region. Companies with operations or other business ties to Xinjiang, including through supply chains and intermediary countries, must be considered at risk of being tainted with forced labor. The only ethical response is divestment. However, many western companies remain entangled with production sites and supply chains at risk of being exposed to Uyghur forced labor. In December 2023, Volkswagen published an "audit" of its joint venture factory in Xinjiang that can best be described as a highly problematic exercise in "audit-washing."

The sections below detail the latest evidence of Xinjiang's two systems of forced labor, challenges to measuring Xinjiang's less-visible forced labor system, and related recent changes to forced labor measurement guidelines published by the International Labour Organization (ILO) to better capture such clandestine forms of state-imposed forced labor. It then details the problems surrounding Volkswagen's "audit-washing" exercise in 2023, links between the operations of Volkswagen and the German chemical company BASF in Xinjiang and the atrocities being perpetrated in the region, and recent increases in Xinjiang's foreign trade that have followed an intensification of its coercive labor transfer program under the current Party Secretary Ma Xingrui. It ends with related recommendations for policymakers and businesses to ensure that corporations and consumers are not providing support, wittingly or unwittingly, for Beijing's grave abuses of human rights.

1.0 Introduction: Forced Labor in the Xinjiang Uyghur Autonomous Region (XUAR) and the Tibet Autonomous Region (TAR)

*This section is based on the article "The conceptual evolution of poverty alleviation through labour transfer in the Xinjiang Uyghur Autonomous Region." Central Asian Survey (2023).
<https://doi.org/10.1080/02634937.2023.2227225>.*

Introduction

In early 2017, the Xinjiang Uyghur Autonomous Region (XUAR) in the north-west of the People's Republic of China (PRC) embarked on a campaign of interning 1-2 million Uyghurs and other predominantly Turkic ethnic groups into re-education camps (Zenz 2018, 2022b). Initially called

“Transformation Through Education Centres,” their terminology was later unified to “Vocational Skills Education and Training Centres” (职业技能教育培训中心 or VSETCs).

At a U.S. Congressional hearing in October 2019, evidence was presented for multiple XUAR coercive labor programs: (1) work placements of VSETC detainees; (2) labor transfers of (non-detained) rural surplus laborers into non-agricultural work; and (3) as part of labor transfers, programs to “send work to people’s doorstep” through construction of village “satellite factories” (Zenz 2019)². This led to the important presumption that Xinjiang’s products are tainted with forced labor, legislated as the Uyghur Forced Labor Prevention Act (UFLPA) that came into effect in June 2022 (Bloomberg 2022). Subsequent research on coercive labor transfers into cotton-picking led to the US import ban on all Xinjiang cotton in January 2021 (Sudworth 2020; Zenz 2020).

Specifically, the two major systems of forced labor targeting Uyghurs and other ethnic groups in the Xinjiang Uyghur Autonomous Region (XUAR) can be described as³:

- (1) forced labor linked to the region’s re-education camps, known as Vocational Skills Education and Training Centers (VSETCs), in which detainees receive coerced skills training during internment and are then coercively placed into work⁴; and
- (2) the separate so-called Poverty Alleviation Through Labor Transfer policy, which coercively trains and transfers non-detained rural surplus laborers from the primary (agricultural) sector into secondary or tertiary sector work.⁵ Labor transfers also include coerced seasonal transfers of surplus laborers into seasonal agricultural work, in particular the harvesting of agricultural produce such as cotton and tomatoes.⁶ This system operates in both Xinjiang and the Tibet Autonomous Region.

Xinjiang’s Poverty Alleviation Through Labor Transfer program is the coercive work policy that underpins most forced labor linked to the region. While VSETC-linked forced labor placements can be linked to the production of textiles, electronics, and a few other labor-intensive products, Poverty Alleviation Through Labor Transfer is the only forced labor policy implicated in the production of cotton, tomatoes and tomato products, peppers and seasonal agricultural products,

² Zenz, A. (2019). *Beyond the Camps: Beijing’s Long-Term Scheme of Coercive Labor, Poverty Alleviation and Social Control in Xinjiang*. Journal of Political Risk, Vol. 7, No. 12. <https://www.jpolrisk.com/beyond-the-camps-beijings-long-term-scheme-of-coercive-labor-poverty-alleviation-and-social-control-in-xinjiang/>. Cf. Lehr and Bechrakis 2019.

³ Zenz, A. (2019). *Beyond the Camps: Beijing’s Long-Term Scheme of Coercive Labor, Poverty Alleviation and Social Control in Xinjiang*. Journal of Political Risk, Vol. 7, No. 12. <https://www.jpolrisk.com/beyond-the-camps-beijings-long-term-scheme-of-coercive-labor-poverty-alleviation-and-social-control-in-xinjiang/>.

⁴ Zenz, A. (2023). Innovating penal labor: Reeducation, forced labor, and coercive social integration in the Xinjiang Uyghur Autonomous Region. *The China Journal*, 90. <https://doi.org/10.1086/725494>.

⁵ Zenz, A. (2021). *Coercive Labor and Forced Displacement in Xinjiang’s Cross-Regional Labor Transfer Program*. The Jamestown Foundation. <https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>; Zenz, A. (2023). The Conceptual Evolution of Poverty Alleviation Through Labour Transfer in the Xinjiang Uyghur Autonomous Region. *Central Asian Survey*, 42(4), 649-673. <https://doi.org/10.1080/02634937.2023.2227225>.

⁶ Zenz, A. (2020). *Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton*. Newlines Institute. <https://newlinesinstitute.org/china/coercive-labor-in-xinjiang-labor-transfer-and-the-mobilization-of-ethnic-minorities-to-pick-cotton/>; Zenz, A. (2023). Coercive Labor in the Cotton Harvest in the Xinjiang Uyghur Autonomous Region and Uzbekistan: A Comparative Analysis of State-Sponsored Forced Labor. *Communist and Post-Communist Studies*, 56(2), 1–32. <https://doi.org/10.1525/cpcs.2023.1822939> (alternative free download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694); Murphy, L. T., et al. (2021) *Laundering cotton: How Xinjiang cotton is obscured in international supply chains*. Sheffield Hallam University. <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton>.

seafood products, polysilicon production for solar panels, lithium for electric vehicle batteries, and aluminum for batteries, car vehicle bodies, and wheels.⁷

In July 2022, the UN Special Rapporteur on contemporary forms of slavery adopted this conceptual framing of Xinjiang's two distinct forced labor systems, and affirmed the continued severity of state-imposed forced labor through poverty alleviation and labor transfers in both the XUAR and the Tibet Autonomous Region (TAR), stating that:

Two distinct State-mandated systems [of forced labor] exist: (a) the vocational skills education and training centre system, under which minorities are detained and subjected to work placements; and (b) the poverty alleviation through labour transfer system, where surplus rural labourers are transferred into secondary or tertiary sector work. Similar arrangements have also been identified in the Tibet Autonomous Region, where an extensive labour transfer programme has shifted mainly farmers, herders and other rural workers into low-skilled and low-paid employment (p.8).⁸

Poverty Alleviation Through Labor Transfer represents a non-internment state-imposed forced labor mobilization system. Such systems operating in the XUAR, the TAR⁹, Uzbekistan (until 2021) and Turkmenistan share several core features.¹⁰ Unlike most forms of private (company-based) forced labor, these systems operate through a pervasively coercive social context — i.e. a police state — marked by a lack of civic freedoms and a state that generates powerful coercive pressures through an extensive grassroots bureaucracy. Non-cooperation entails a systemic risk that is often more implicit than overt. Non-internment state-imposed forced labor mobilization is therefore not easily measured by the ILO's set of 11 indicators.¹¹

Since 2020 and especially under Xinjiang's new party secretary Ma Xingrui, Xinjiang has been shifting away from former party secretary Chen Quanguo's highly mobilizational,

⁷ Zenz, A. (2020). *Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton*. Newlines Institute. <https://newlinesinstitute.org/china/coercive-labor-in-xinjiang-labor-transfer-and-the-mobilization-of-ethnic-minorities-to-pick-cotton/>; Zenz, A. (2023). Coercive Labor in the Cotton Harvest in the Xinjiang Uyghur Autonomous Region and Uzbekistan: A Comparative Analysis of State-Sponsored Forced Labor. *Communist and Post-Communist Studies*, 56(2), 1–32. <https://doi.org/10.1525/cpcs.2023.1822939> (alternative free download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694); Halper, E. (2023, September 18). EV Makers' Use of Chinese Suppliers Raises Concerns about Forced Labor. *The Washington Post*. <https://www.washingtonpost.com/business/interactive/2023/>; Swanson, A., & Buckley, C. (2021, January 8). Chinese Solar Companies Tied to Use of Forced Labor. *The New York Times*. <https://web.archive.org/web/20230424180048/>; Murphy, L., & Elimä, N. (2021). *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*. Sheffield Hallam University. <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/pdfs/>; Murphy, L., et al. *Driving Force*. Sheffield Hallam University. <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/>; Urbina, I. (2023, October 9). The Uyghurs forced to process the world's fish. *The New Yorker*. <https://www.newyorker.com/news/news-desk/the-uyghurs-forced-to-process-the-worlds-fish>.

⁸ Obokata, T. (2022) *Contemporary forms of slavery affecting persons belonging to ethnic, religious and linguistic minority communities*. United Nations General Assembly Human Rights Council. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F26&Language=E&DeviceType=Desktop&LangRequested=False>.

⁹ Zenz, A. (2020). Xinjiang's System of Militarized Vocational Training Comes to Tibet. *China Brief*, 20(17). <https://jamestown.org/program/jamestown-early-warning-brief-xinjiangs-system-of-militarized-vocational-training-comes-to-tibet/>.

¹⁰ Zenz, A. (2023). Measuring Non-Internment State-Imposed Forced Labor in Xinjiang and Central Asia: An Assessment of ILO Measurement Guidelines. *Journal of Human Trafficking*. <https://doi.org/10.1080/23322705.2023.2270366>.

¹¹ Ibid.

campaign-style labor transfers to a more normalized and institutionalized strategy that emphasizes maintaining labor placement achievements through intensified monitoring. By establishing “poverty prevention” and “Unemployment Monitoring and Early Warning” mechanisms, the state prevents people from returning to an unapproved state of low measurable income based on traditional livelihoods, including through abandoning state-arranged jobs. These mechanisms render less visible the forced labor created by the region’s Poverty Alleviation Through Labor Transfer policy.¹²

The Chinese state defines rural surplus laborers, also referred to as rural migrant workers (农民工), as persons engaged in forms of subsistence agriculture who are considered to be superfluous labor within modernizing agricultural production (Chen, Zhang, and Shi 2019; NBS 2005; PRC Ministry of Agriculture 2003; Xinhua 2020). State policies and statistics on these labor transfers from primary to secondary or tertiary economic sectors include various forms of self-initiated labor migration (“self-transfer” 自发), transfers facilitated by private intermediaries (often incentivized by the state), and transfers directly supervised by state agencies, all of them occurring within an increasingly draconian employment policy context.

Labor transfers target non-detained rural populations and involve a wide range of sectors, including cotton-picking, tomato-picking, and polysilicon production for solar panels (Swanson and Buckley, 2021; Murphy and Elimä 2021; Zenz 2020, 2023a). By contrast, VSETC-linked labor placements began in 2018, having evolved from China’s Re-Education Through Labor system, to effect a controlled release of detainees into a narrower range of low-skilled manufacturing or other workplaces, with no established links to cotton harvesting or polysilicon production (Zenz 2023b). In contrast to labor transfers, many detainees were not agricultural workers before internment, and some can eventually return to their original (non-agricultural) workplaces. VSETC-linked labor victims can receive almost no pay and work in highly securitized environments. By contrast, transferred laborers face multiple unfreedoms but can potentially increase incomes compared to farming, despite receiving much lower remuneration than average Chinese workers. Labor transfer implementation is governed by a formal poverty alleviation policy pursuing both political and economic goals. The camp-to-labor policy likely ended late 2019 when many lower-security camps were closed, with many victims likely remaining in forced labor. By contrast, labor transfers further intensified from 2021, and now constitute Xinjiang’s primary coercive labor system (Zenz 2022c).

Rural Surplus Labor in China

In the classic dual-sector or Lewis-Ranis-Fei model of economic development, surplus labor is defined as “labor [that] can be transferred out of the traditional [agricultural] sector without reducing the volume of farm output” (Cook 1999, 18). Abundant labor in the agricultural sector is characterized by low marginal productivity (the marginal product of labor is the change in output resulting from employing one added unit of labor). China is widely recognized as having abundant rural surplus labor (Chan and Wei 2019; Cook 1999; Hasmath 2019; Wang and Weaver 2013). Labor transfers move workers from primary to secondary and tertiary sectors, which may or may not involve geographical relocation.

In the 1950s, Mao Zedong imitated Stalin’s development strategy of promoting industrialization by systematically exploiting a land-confined peasantry through a system of

¹² Ingram, R. (2023, October 26). *When ‘poverty alleviation’ means forced labor for Uyghurs*. The China Project. <https://thechinaproject.com/2023/10/26/when-poverty-alleviation-means-forced-labor-for-uyghurs/>

unequal exchange, restricted population mobility, and rural collectivization (Chan and Wei 2019, 427). Based on this “rural-urban dual system,” rural population shares remained largely stable between 1955 and 1978 at around 84-85 percent, artificially maintaining large numbers of underemployed surplus laborers (Chan and Wei 2019, 428). With decollectivization in the 1980s, peasants were permitted to seek work in cities, unleashing millions of rural surplus migrant workers who fueled China’s export-driven development strategy (Chan and Wei 2019, 431).

Rural Exploitation and Labor Transfer Policies in China and Xinjiang in the 2000s

By the late 1990s, China’s socio-economic inequality had increased significantly (Heilmann 2017, 259). To help reduce this inequality, the government issued its “2003–2010 National Rural Migrant Worker Training Plan” emphasizing “labor transfer of the rural surplus labor force” (PRC Ministry of Agriculture 2003).

A 2005 report by China’s National Bureau of Statistics (NBS) described Xinjiang’s labor transfers as directly related to social stability (NBS 2005). Out of 1 million “person-time” surplus laborers transferred in 2004, some 585,200 were from southern Xinjiang. It further complained that transfers were insufficiently state-driven: about 50 percent were self-initiated, 20 percent were facilitated by family or friends, and “only” 30 percent were organized by government entities. The report therefore lamented that the “flow of surplus rural labor in Xinjiang was in a semi-disordered state,” rendering state-controlled macro-level steering difficult.

While some rural laborers likely welcomed state policies enabling them to earn wage incomes in cities and industrial sectors, transfers already showed evidence of coercion. A 2007 Chinese research report cites a township leader in Kashgar’s Konasheher county:

Nowadays, farmers in the suburbs of cities and towns go voluntarily, but in remote rural areas there is indeed a phenomenon of compulsion. [...] Working in the countryside...it is impossible to [do this] without any force (Ma 2007, 35).

Between 2004 and 2018, the number of annual labor transfers in southern Xinjiang grew threefold, from 585,200 to 1,736,000 person-times (NBS 2005; *Xinhua* 2019).

The Conceptual Evolution of Labor Transfers 2014-17

At the Second Central Xinjiang Work Forum in May 2014, central government priorities for Xinjiang took a decisive shift from economic development to “de-extremification” (去极端化) and stability maintenance (Zenz 2021c). Anthropological fieldwork confirms 2014 was a watershed year for Uyghurs, who felt increasingly coerced to participate in formal state policies (Steenberg and Rippa 2019, 275). Officials argued that economic development “must absolutely be subservient to social and long-term peace and stability,” providing an important supporting role (Central Office Bulletin 2014, 65). Premier Li Keqiang noted that southern Xinjiang’s three million surplus laborers posed a “particularly prominent” problem, arguing that “people without land, employment or a fixed income have nothing to do and wander all day” and will “be easily exploited by evildoers” (Central Office Bulletin 2014, 39–40). Similarly, Xi Jinping stated that the unemployed will “provoke trouble,” whereas employment is “conducive to ethnic interaction, exchanges and blending” and leads ethnic groups to “imperceptibly study Chinese culture” (20).

In February 2016 Xinjiang adopted the national Decision to Win the Battle Against Poverty, which established annual targets to achieve Xi Jinping's mandate of eradicating absolute poverty by 2020 (*China News* 2016). It specified the use of village-based work teams (officials going door-to-door) to implement Targeted Poverty Alleviation work, warning that teams must remain villages until poverty alleviation had been achieved. These teams were later used to identify persons for re-education internment and to enforce numerous state policies (Zenz 2019, 2021a, 2023a). The battle against poverty would involve "stimulating the inner motivation of the masses" under the explicit maxim "curing poverty means to first cure ignorance and backwardness." The state's ambitious transfer goals necessitated increasingly coercive pressures: Chinese academics found that Uyghurs often resisted such transfers even when offered adequate remuneration and free housing (Deng, Mamati & Wang 2016, 83).

Increased Labor Transfer Coercion under Chen Quanguo 2017-19

A decisive turn towards more coercive mobilizational approaches coincided with Chen Quanguo's appointment as Xinjiang's party secretary in 2016 and the mass internments from early 2017. Xinjiang's 13th Five-Year Poverty Alleviation Plan from May 2017 adopted the new central government concept of the Poverty Alleviation through Labor Transfer program (Yecheng Government 2017). Labor transfers of older persons and ethnic minority women were now to be accelerated through satellite factories. The plan noted that poor people's "labor and employment willingness and abilities are insufficient." Relying heavily on employment creation and labor transfers, it repeated five times that the "inner motivation" of locals is insufficient and must be "stimulated." People's outdated mindset of "waiting, relying, wanting" must be "eradicated," a phrase not found in previous major planning texts. The plan reiterated that "curing poverty means to first cure ignorance and backwardness." In concrete terms, this means that cadres in village-based work teams would "deeply penetrate" households and perform "thought work" until they "cause a transformation in the way farmers think about choosing their employment" (Nilka County 2020).

Anar Sabit, a Kazakh camp survivor whose testimony featured in *The New Yorker*, noted that between July and October 2017, many street cleaners from southern Xinjiang appeared in her northern city of Kuytun.¹³ A relative with a government job explained that these were transferred workers who work during the day, and at night are "locked" into dormitories. This type of worker in the same city (Kuytun) featured in undercover footage obtained by *The New York Times*, depicting transferred surplus laborers from Khotan and Kashgar in a secure work compound with security checkpoints (Buckley and Ramzy 2019). These workers stated in the video that they could not leave at will. These accounts indicate that transferred laborers are not free to leave, consistent with a Yanqi county (Bayingol prefecture) directive regarding labor transfers from southern Xinjiang. It required authorities to "ensure that stable employment rates reach 95 percent" (Yanqi Government 2018). Transferred laborers who temporarily leave their workplaces were to be tracked so that "their whereabouts and actions are clear." Obtaining approval for such leave involved multiple government entities.

Developments since 2020: Unemployment Monitoring and Early Warning

¹³ Written communication, September 2022.

Since 2020 and especially under Xinjiang's new party secretary Ma Xingrui, a technocrat from Guangdong experienced in economic development, Xinjiang has been shifting from Chen Quanguo's highly mobilizational, campaign-style labor transfers to a more normalized and institutionalized strategy that emphasizes maintaining labor placement achievements through intensified monitoring. Xinjiang's 13th Five-Year Poverty Alleviation Plan first specified the creation of an "Unemployment Monitoring and Early Warning System" to ensure achievement of employment targets. Xinjiang's 14th Five-Year Plan for Employment Promotion (2021-25) mandated, in the critical "guiding thought" section that outlines the plan's core principles, that not just one person per household but "every single person who is able to work is to realize employment" (XUAR Government 2021c). Governments at county and township levels must "comprehensively analyze the specific reasons for the decline in [a particular household's] income," and the first listed countermeasure is labor transfer. Xinjiang's 14th Five-Year Plan for Socioeconomic Development (2021-25) reiterates these goals (XUAR Government 2021b). Through this intensification, labor transfers reached a record 3.17 million person-times in 2021 before leveling off at above 3 million in 2022.

VSETC-Linked Labor Placements

The VSETC system represents an evolution of Mao Zedong's Re-Education Through Labor system, which achieved neither effective psychological transformation nor profitable production (Zenz 2023b). VSETCs create a camp-to-labor pipeline where camps focus on re-education internment (without labor), followed by a gradual release process of short-term camp-based skills training, job training in nearby factories alongside evening re-education, and then coerced work placements in factory parks or further afield. Eschewing Mao's model of re-education through manual labor, the VSETC system leverages non-camp factories to increase profitability and therefore the system's long-term sustainability.

The earliest policy document on VSETC-linked labor placement is the "Notice on Further Improving the Autonomous Region's Policy Regarding the Textile and Apparel Industry" from April 2018 (Khotan City 2020). Here and in most other documents on the subject, the transfer of camp detainees into factory work is described as 'Education Training Centers +' (教育培训中心+). The plus symbol after VSETC terminology indicates camp-linked placement, nearly always into labor-intensive industries such as garment-making. By December 2018, Xinjiang's Development and Reform Commission (XJDRC) noted that VSETC-linked labor had become an important "carrier" for attracting "a large number of [eastern Chinese] enterprises to invest and build factories in Xinjiang" (XJDRC 2018).

Numerous witness accounts confirm that VSETC-linked employment can constitute a severe form of forced labor, where workers are paid negligible wages, have no freedom of movement, labor for long hours under close surveillance and supervision, and are threatened with further internment for non-compliance (Amnesty International 2021, 126-29; Zenz 2023b).

In sum, both forced labor systems follow very different policy and implementation schemes and pursue at least partially different aims (Zenz 2023b). While both create a docile and inexpensive workforce, VSETC-linked work placements facilitate re-entry of detainees from diverse vocational backgrounds into society, whereas labor transfers convert farmers and pastoralists into industrial workers. The fact that at least some detainees can return to their former workplace underlines how camp-linked labor placements focus more on coercive integration of detainees into society than on sectoral transfers (Amnesty International 2021, 127). While former

detainees are broadly assigned work in their home regions and usually face severely curtailed mobility, surplus laborers can be transferred to northern Xinjiang or eastern China. Whereas Xinjiang's March 2019 white paper on counterterrorism defines VSETCs as dedicated "de-extremification" vehicles, labor transfers and other socio-economic measures serve an auxiliary preventive function of limiting the soil in which "extremism" can take root (SCIO 2019). No new policy or implementation evidence on camp-linked labor has emerged since early 2019, suggesting that new coercive labor victims are now likely linked to labor transfers or forms of prison labor (Zenz 2023b).

2.0 Assessing the Continuation of Continued Coercive Labor Transfers in the XUAR and TAR

This section is based on the article "Forced Labor in the Xinjiang Uyghur Autonomous Region: Assessing the Continuation of Coercive Labor Transfers in 2023 and Early 2024," Jamestown Foundation China Brief, Vol. 24 (5), <https://jamestown.org/program/forced-labor-in-the-xinjiang-uyghur-autonomous-region-assessing-the-continuation-of-coercive-labor-transfers-in-2023-and-early-2024/>.

Summary

- Higher-level policy and state planning documents indicate that coercive XUAR employment and poverty alleviation policies are to continue at least through 2025. XUAR state and media sources document that these policies continue to be implemented.
- The Poverty Alleviation Through Labor Transfer program continues to expand and represents a non-internment state-imposed forced labor mobilization system. Forced labor transfers for 2023 exceeded those from the previous year and surpassed state-mandated quotas.
- In 2023, Xinjiang significantly expanded the scale of the Pairing Assistance program, which facilitates cross-provincial labor transfers, aiming to increase transfers to other Chinese regions by 38 percent, to levels exceeding those of any year since the mid-2010s. During his recent visit, Xi Jinping had again endorsed this policy, which aims to reduce the "dominance" of the Uyghur population in their own homeland.
- The "Unemployment Monitoring and Early Warning Mechanism" was expanded in 2023 to extensively track the income and work situations of the lower-income population.
- Xinjiang's government has intensified employment and training requirements, aiming to ensure employment for every able person, as mandated in the 14th Five-Year Plan.
- In 2023, Xinjiang drastically expanded its skills training efforts, with the state increasingly targeting groups traditionally not engaged in such training, with a view to transferring them into work strongly implicated in forced labor.
- Land use rights, covering up to 90 percent of land in some areas, are being transferred away from local farmers to state-run cooperatives, forcing the local population into wage labor through coercive labor transfers.

Xinjiang currently operates the world's largest system of state-imposed forced labor. Coercive labor transfers and poverty alleviation practices in the Xinjiang Uyghur Autonomous Region (XUAR) have continued through early 2024. State work plans for this year mandate an

intensification of employment requirements for the region's targeted ethnic groups, and official labor transfer statistics reflect heightened work requirements first introduced in 2021. Xinjiang's focus on these requirements intensifies the region's forced labor risk, extending it into higher-skilled sectors while concealing its coercive nature.

During his Xinjiang visit in August 2023, PRC General Secretary Xi Jinping emphasized that while the region needed to develop, it should "ensure development with stability" and "must always give top priority to maintaining social stability," concurrently promoting the "legalization and normalization of stability maintenance work" (CPC News, August 27, 2023).¹⁴ Xi also emphasized the need to "consolidate and expand poverty alleviation achievements (巩固拓展脱贫攻坚成果)," an expression frequently found in connection with the region's current policy focus on "Preventing a Return to Poverty (防止返贫)" and on the creation of an "Unemployment Monitoring and Early Warning Mechanism (失业监测预警机制)."

Current XUAR Party Secretary Ma Xingrui (马兴瑞) seeks to reinforce the fruits of the region's re-education mass internment campaign and other assimilatory policies under the mantra of "high-quality development (高质量发)" (China Brief, 2022).¹⁵ The summary of Xi's statements underscored this approach, citing the expression "high-quality development" five times, thereby highlighting its significance for the state's long-term strategy for the region (CPC News, August 27, 2023).¹⁶

The evidence indicates that since early 2020, the VSETC policy is no longer active, although waves of arbitrary detentions have since continued outside the VSETC system. Besides performing mass re-education, the VSETCs functioned as filtration camps, "releasing" those considered less problematic into forced labor while sentencing others (especially intellectual and business elites) to long prison terms (Journal of Contemporary China, 2024).¹⁷ While the VSETC system apparently no longer actively processes new victims, hundreds of thousands of detainees have been placed into forced labor and likely remain trapped in coercive work (The China Journal, 2023).¹⁸

In contrast, Xinjiang's Poverty Alleviation Through Labor Transfer program continues to expand. Within the wider context of Xi Jinping's Targeted Poverty Alleviation (精准扶贫) initiative, labor transfers are the coercive work policy that underpins most forced labor linked to the region (Central Asian Survey, 2023).¹⁹ While VSETC-linked forced labor placements can be linked to the production of textiles, electronics, and a few other labor-intensive products, Poverty Alleviation Through Labor Transfer is the only forced labor policy that has been directly linked to the production of cotton, tomatoes and tomato products, peppers and seasonal agricultural products, seafood products, polysilicon production for solar panels, lithium for electric vehicle batteries, and aluminum for batteries, car vehicle bodies, and wheels.²⁰

¹⁴ <https://web.archive.org/web/20240118103410/http://cpc.people.com.cn/n1/2023/0827/c64094-40064572.html>

¹⁵ <https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>

¹⁶ <https://web.archive.org/web/20240118103410/http://cpc.people.com.cn/n1/2023/0827/c64094-40064572.html>

¹⁷ <https://www.tandfonline.com/doi/full/10.1080/10670564.2024.2302484>

¹⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4468500

¹⁹ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225?src=recsys>

²⁰ Zenz, A. (2020). *Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton*. Newlines Institute <https://newlinesinstitute.org/china/coercive-labor-in-xinjiang-labor-transfer-and-the-mobilization-of-ethnic-minorities-to-pick-cotton/>; Zenz, A. (2023). Coercive Labor in the Cotton Harvest in the Xinjiang Uyghur Autonomous Region and Uzbekistan: A Comparative Analysis of State-Sponsored Forced Labor. *Communist and Post-Communist Studies*, 56(2), 1–32. <https://doi.org/10.1525/cpcs.2023.1822939> (alternative free download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694); Halper, E. (2023, September 18). EV Makers' Use of Chinese

Poverty Alleviation Through Labor Transfer represents a non-internment state-imposed forced labor mobilization system. Such systems operating in the XUAR, the Tibet Autonomous Region, Uzbekistan (until 2021), and Turkmenistan share several core features (Journal of Human Trafficking, 2023).²¹ In contrast to company-based forced labor, these systems operate through a pervasively coercive social context marked by a lack of civic freedoms and an extensive grassroots bureaucracy designed to coercively mobilize targeted groups.

Currently Active XUAR Policies and Government Work Plans

Since 2020/2021—and especially under Ma Xingrui—Xinjiang has shifted to a strategy of normalization and institutionalization that emphasizes maintaining labor placements through intensified monitoring and surveillance. This is a move away from the campaign-driven transfer approach taken by Ma’s predecessor, Chen Quanguo (陈全国). Under this new strategy, the state prevents people from returning to an unapproved state of low measurable income based on traditional livelihoods, including through abandoning state-arranged jobs (China Brief, 2022).²² For the 14th Five-Year Plan (2021 to 2025), the XUAR instituted intensified employment and training requirements for targeted rural populations. In 2021 and 2022, this resulted in increased annual labor transfer figures compared to the 13th Five-Year Plan (2016 to 2020). Labor transfers reached a record 3.17 million person-times (人次) in 2021 before leveling off at above 3.03 million person-times in 2022 (Central Asian Survey, 2023).²³

Xinjiang’s 14th Five-Year Plan for Employment Promotion (2021 to 2025) mandates that not just one person per household but “every single person who is able to work is to realize employment” (XUAR Government, December 14, 2021).²⁴ Governments at county and township levels must “comprehensively analyze the specific reasons for the decline in [a particular household’s] income.” The first listed countermeasure is labor transfer.

Several Uyghur regions published government work plans for 2023 indicating intensified employment efforts targeting Uyghur surplus laborers. For example, Hotan County’s 2023 work plan specified the construction of additional industrial parks, including parks jointly established with the Xinjiang Production and Construction Corps (XPCC), relying on industrial development to “provide more jobs for the masses” (Hotan County, October 1, 2023).²⁵ Industrial parks are premier destinations for the most coercive forms of labor transfers and the forced work placements of re-education detainees. The 2023 work plan for Karakax County outlines a

Suppliers Raises Concerns about Forced Labor. *The Washington Post*.

<https://www.washingtonpost.com/business/interactive/2023/>; Swanson, A., & Buckley, C. (2021, January 8). Chinese Solar Companies Tied to Use of Forced Labor. *The New York Times*. <https://web.archive.org/web/20230424180048/>; Murphy, L., & Elimä, N. (2021). *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*. Sheffield Hallam University. <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/pdfs/>; Murphy, L., et al. *Driving Force*. Sheffield Hallam University. <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/>;

Urbina, I. (2023, October 9). The Uyghurs forced to process the world’s fish. *The New Yorker*.

<https://www.newyorker.com/news/news-desk/the-uyghurs-forced-to-process-the-worlds-fish>.

²¹ <https://doi.org/10.1080/23322705.2023.2270366>

²² <https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>

²³ Transfer figures are not cumulative as surplus laborers are transferred annually. Figures are given as “person-times” (人次), resulting from the fact that laborers can be transferred multiple times per year (the difference between “persons” and “person-times” amounts to roughly 10-11 percent, meaning that the number of distinct transferred individuals represents 89-90 percent of the stated “person-times” figure). <https://doi.org/10.1080/02634937.2023.2227225>

²⁴ <https://archive.is/PFzsb>

²⁵ <https://web.archive.org/web/20240122212609/http://www.htx.gov.cn/htx/c114304/202310/f44ac40812424a1c9bcb113ab2b88936.shtml>

continued acceleration of industrial park expansion together with the promotion of “labor-intensive industrial clusters,” including the “vigorous development” of “labor-intensive enterprises focusing on socks, hair product processing, shoe leather manufacturing, textile and clothing, electronic product assembly, and light industrial manufacturing”—all industries at the highest risk of forced labor (Karakax County, January 5, 2023).²⁶ The 2023 work plan for Yutian County outlined a labor transfer quota of 82,000 person-times, an increase of 1,000 over the 2022 quota, and planned a skills training “action plan” (Yutian County, September 27, 2023).²⁷ In January 2024, Xinjiang’s state media published an article announcing intensified efforts for economic and employment growth for 2024 (Xinjiang Daily, January 8, 2024).²⁸ It noted that that year marks the 75th anniversary of the PRC and represents a “critical” year for the achievement of the 14th Five-Year Plan (2021 to 2025). The article called on the Uyghur heartland region of Kashgar to “work hard to drive employment.” The most recent XUAR government work report, listing work goals for 2024, mandates that the state should “provide employment for ‘focus groups (重点群体)’ such as rural-urban migrant workers, and strive to ensure that all people in urban and rural areas who are able to work can find employment” (Tianshan, January 30, 2024).²⁹ So-called “focus groups” or “focus persons” are those the state considers to represent the highest security risk, and many of these had been subjected to re-education internment.

Evidence for Ongoing Labor Transfers in the XUAR (January 2023 to January 2024)

General Labor Transfer Evidence

By the third quarter of 2023, the XUAR had already exceeded its entire 2022 labor transfer volume of 3.03 million person-times, announcing the transfer of 3.05 million person-times rural surplus laborers between January and September, and surpassing the state-mandated quota by 10.9 percent (Xinhua, October 27, 2023).³⁰ Kashgar Prefecture alone placed 1.05 million “rural laborers” into work, 34.4 percent of the regional total (Xinjiang News, December 21, 2023).³¹ This indicates a continuation of the region’s intensified employment and labor requirements, following the mandates for the 2021 to 2025 period stated in the region’s economic and employment-related Five-Year Plans. In March 2023, the XUAR issued the “Xinjiang 300,000 Construction Worker Three-Year Training and Employment Action Plan (2023-2025)” to “drive more surplus labor to find employment in the construction industry” (XUAR Government, March 18, 2023).³² 96,000 of these were to be trained and transferred in Kashgar Prefecture (The Paper, May 19, 2023).³³

Recent local work reports also reflect the continued achievement of the XUAR’s intensified employment requirements. For example, Yili Haosheng Muyi Biotechnology Co. (伊犁昊昇木驿生物科技) announced plans to build a third production line in 2024 to “solve the

²⁶ <https://web.archive.org/web/20240122212558/https://www.myx.gov.cn/detail.html?did=2855>

²⁷ <https://web.archive.org/web/20240122212543/https://www.xjvt.gov.cn/zfxxgk/fdsk/2023-09-27/4798.html>

²⁸ <https://web.archive.org/web/20240122214049/https://www.xjfb.com/contents/219/226572.html>

²⁹ https://web.archive.org/web/20240130060046/https://www.ts.cn/xwzx/sxw/202401/20240130_18902930.shtml

³⁰ https://web.archive.org/web/20240122213731/https://new.tzxm.gov.cn/xwzx_9109/xwdt/202310/20231030_1361660.shtml

³¹ <https://web.archive.org/web/20240130200918/http://www.xjnews.cn/20231221/b19698bcb64408930031c65e6f2295/c.html>

³² <http://web.archive.org/web/20240130220329/http://zjt.xinjiang.gov.cn/xjzjt/c114117/202310/4f25c1a9da124ac987d8dec68f9a534f.shtml>

³³ http://web.archive.org/web/20240131143232/https://m.thepaper.cn/baijiahao_23156849

employment problem of more local surplus laborers” (Tianshan, January 1, 2024).³⁴ A January 2024 article issued by the XUAR government to local media outlets noted that due to employment efforts throughout 2023, an ethnic village in Artush City successfully subjected all 1,606 villagers who met the state’s “employment conditions” to state-assigned work (Artush City, January 15, 2024).³⁵ Of these, 157 or 9.8 percent were employed in other XUAR prefectures or other Chinese provinces such as Jiangsu and Shandong. This outcome was achieved through the deployment of “village-based work teams,” which have played a crucial role in the coercive mobilization of targeted ethnic populations. “Village-based work teams” go door-to-door to enforce state policy, monitor compliance, identify deviant citizens for re-education internment, and subject ethnic household members to skills training and work assignments (Central Asian Survey, 2023).³⁶ Another January 2024 report published by Yining County details how, in November 2023, such work teams “devoted all their efforts” to promote the “transfer of the surplus workforce,” successfully “stimulating the inner motivation of [ethnic] villagers” (Yining County, January 17, 2024).³⁷ In short, coercive labor mobilization continues unabated.

Cross-Provincial Labor Transfers Through Pairing Assistance

Coercive labor transfers of targeted ethnic populations to other provinces in China continued throughout 2023. During his visit to Xinjiang in August 2023, Xi Jinping argued that the Pairing Assistance program that links eastern Chinese provinces with ethnic regions in Xinjiang for cross-provincial labor transfers needed to be strengthened (CPC News, August 27, 2023).³⁸ Xi exhorted the XUAR authorities to “do Pairing Assistance work well,” “guiding population groups from Xinjiang to find jobs throughout the PRC (要做好对口支援工作...鼓励和引导新疆群众到内地就业).”

In a significant development, the XUAR government stated that for 2023 the region was planning to increase the proportion of “poverty-alleviated laborers” (脱贫人口务工) transferred to other provinces from 2.54 to over 3.5 percent (State Council Information Office, February 27, 2023).³⁹ Based on a 2023 goal to transfer at least 1.087 million of this sub-group of surplus laborers, this would mean an increase of 37.8 percent, from 27,600 in 2022 to over 38,000 laborers in 2023 transferred to other provinces. These figures do not include cross-provincial transfers of surplus laborers that fall outside this sub-group. This announcement therefore suggests a significant increase in cross-provincial labor transfers, given that in 2018, only approx. 25,000 surplus laborers (all types) had been transferred to other provinces (China Brief, 2021).⁴⁰

³⁴ https://web.archive.org/web/20240122215843/https://www.ts.cn/xwzsjjxw/202401/20240101_18299852.shtml

³⁵ https://web.archive.org/web/20240119163708/https://www.sohu.com/a/751950683_121333036

³⁶ <https://doi.org/10.1080/02634937.2023.2227225>

³⁷ <https://web.archive.org/web/20240119153324/https://www.xjyn.gov.cn/xjyn/c113635/202401/b8238dc3257747cea5e9a974c9c7663e.shtml>

³⁸ <https://web.archive.org/web/20240118103410/http://cpc.people.com.cn/n1/2023/0827/c64094-40064572.html>

³⁹ <https://archive.is/KovLUU>

⁴⁰ China Brief (2021). <https://jamestown.org/program/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>. Between January and November 2018, the XUAR transferred 25,378 surplus laborers (from within a total of 2.796 million person-times transfers for all of 2018) to other provinces (PRC government, December 26, 2018). For additional evidence that the 1.087 million figure refers to “poverty-alleviated laborers” (脱贫人口务工), workers who were “freed” from poverty and who are performing state-arranged or state-approved labor to prevent them from encountering a lower measurable income level, see People’s Daily, August 11, 2023.

In line with this XUAR-wide mandate, Kashgar Prefecture's plans for 2023 lamented that too many rural Uyghurs were being placed into local (nearby) employment and that not enough were subjected to "organized transfer employment," indicating a preference for and planned intensification of state-directed work assignments that transfer Uyghurs outside of their immediate home regions (Kashgar Government, April 13, 2023).⁴¹

A September 2023 state media article reported that Hubei province accepted 4,100 workers, while Anhui province, which is paired with the Uyghur majority population county of Pishan (Hotan Prefecture), received a transfer of over 5,000 workers (People's Daily, September 17, 2023).⁴² Among these, 295 Uyghurs were reported to have "settled down (落户安家)" in Anhui—a term that indicates a relocation of household registration, pointing to a more permanent labor transfer arrangement. This is a significant and concerning development, given that labor transfers are part of state efforts to "optimize" (i.e. reduce) the Uyghur population ratio in southern Xinjiang, in order to "end the dominance of the Uyghur ethnic group" in their own homeland (Central Asian Survey, 2021).⁴³ In addition, Hubei province received 13,700 transferred laborers from Xinjiang between mid-2020 and mid-2023, and continues to employ such laborers in Xinjiang through Hubei-based companies operating local factories (Hubei government, July 4, 2023).⁴⁴

Unemployment Monitoring and Early Warning

The XUAR has also continued and intensified the deployment of its "Unemployment Monitoring and Early Warning System," first documented by the author in June 2022. In 2021, Xinjiang sent 400,000 cadres to investigate and monitor the poverty and income situations of 12 million rural households through an "early prevention, early intervention, early assistance" campaign that identified 774,000 households for "real-time monitoring" (China Daily, January 11, 2022).⁴⁵ A September 2023 XUAR government report described the use of such monitoring to continually increase targeted households' "transfer income" (remittances of surplus laborers derived from non-agricultural work) (NRRRA, September 12, 2023).⁴⁶ Monitoring efforts were to be intensified. An August 2023 notice from the XUAR "Work Conference on Consolidating and Expanding the Fruits of Poverty Alleviation" stated that officials must improve their "political stance" in grasping the importance of poverty alleviation work, to "resolutely consolidate and expand the results of poverty alleviation," an effort that was to involve "strengthened tracking and monitoring" of the income and work situation of lower-income rural populations (NRRRA, August 2, 2023).⁴⁷

Enforcing Labor Transfers Through Land Usage Rights Transfers

In 2023, the XUAR also continued its coercive transfer of agricultural land from predominantly ethnic smallholder farmers to large state-run or state-supervised cooperatives (CPCS, 2023).⁴⁸

⁴¹<https://web.archive.org/web/20240122213348/https://h5.drcnet.com.cn/docview.aspx?version=edu&docid=6738059&leafid=26667&chnid=6675>

⁴²<https://web.archive.org/web/20240118162902/https://wap.peopleapp.com/article/7203943/7047614>

⁴³https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3862512

⁴⁴<https://archive.is/eJ5Lw>

⁴⁵<https://web.archive.org/web/20220112021101/https://cn.chinadaily.com.cn/a/202201/11/WS61dcd2d4a3107be497a01931.html>

⁴⁶<https://web.archive.org/web/20230912172938/https://nrra.gov.cn/2023/09/12/ARTISXzH2PjwztUrsZ3w2KH230912.shtml>

⁴⁷<https://web.archive.org/web/20230925152529/https://nrra.gov.cn/2023/08/02/ARTIwUlaSF1MzMqaQi5y5ANF230802.shtml>

⁴⁸https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694

Land transfers are a primary method for coercing Uyghurs and other ethnic group members into livelihood changes through labor transfers. After surrendering their land usage rights, surplus laborers are then “liberated” to enter labor transfers into secondary or tertiary work. In 2023 in a Zhaosu County township, usage rights for 90 percent of agricultural land had been transferred (Legal Daily, November 7, 2023).⁴⁹ In one of the township’s villages alone, over 500 rural surplus laborers were subjected to labor transfers after usage rights to thousands of acres of their land were shifted. The township party committee secretary emphasized that “the township actively guides farmers to voluntarily transfer land use rights to large-scale [agricultural] planters.”

Seasonal Labor Transfers

Xinjiang’s 14th Five-Year Social and Economic Development Plan (2021 to 2025) has mandated closer cooperation between XPCC and other regions for an “enlarged” promotion of seasonal (harvest-related) agricultural labor transfers (CPCS, 2023).⁵⁰ An April 2022 article on Xinjiang’s employment programs and labor transfers affirms that the “vast scale” of cotton, tomato, and other plantations in southern Xinjiang continues to “provide an abundance of short-term employment avenues” (Tianshan, April 7, 2022).⁵¹

Seasonal labor transfers of predominantly ethnic rural surplus laborers for seasonal agricultural work have continued. An April 2023 report on China News stated that in Luntai County, tomato-processing companies received 150 laborers for seasonal labor (China News, April 20, 2023).⁵² Similar arrangements were reported for another township in Luntai, involving 245 rural laborers. In the same month, a township in Kashgar Prefecture received a batch of transferred rural surplus laborers to cultivate (plant, tend, harvest) peppers. The report noted that the region needed “large numbers of workers” and that the state was engaging in “vigorously organizing villagers” for such work (The Paper, April 21, 2023).⁵³ Another report noted similar arrangements for Wensu County, stating that local governments were “conducting a thorough survey of the rural surplus labor force in the entire township and actively guiding the farmers” to address the “labor shortage problems during the busy farming season” (China News, April 19, 2023).⁵⁴

The concurrent publication of numerous similar articles on the subject indicates the presence of a XUAR-wide seasonal labor campaign to meet staffing needs for labor-intensive agricultural work. Such campaigns develop significant coercive pressures, heightening forced labor risks (Newlines Institute, December 2020).⁵⁵

⁴⁹https://web.archive.org/web/20240118142711/http://www.legaldaily.com.cn/Village_ruled_by_law/content/2023-11/07/content_8924298.html

⁵⁰https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694

⁵¹https://web.archive.org/web/20220409180753/https://www.ts.cn/xwzx/szxw/202204/20220407_6339712.shtml

⁵²<https://web.archive.org/web/20230717145056/http://www.xj.chinanews.com.cn/dizhou/2023-04-20/detail-jhcrtzv5402810.shtml>

⁵³https://web.archive.org/web/20240118211409/https://m.thepaper.cn/baijiahao_22804619

⁵⁴<https://archive.md/CGZm8>

⁵⁵<https://newlinesinstitute.org/rules-based-international-order/genocide/coercive-labor-in-xinjiang-labor-transfer-and-the-mobilization-of-ethnic-minorities-to-pick-cotton/>

State-Mandated Vocational Skills Training Quotas

As part of the 14th Five-Year Plan, the XUAR government is aiming to significantly expand its vocational training efforts, increasing average annual training volumes from 1.2 million to 1.5 million person-sessions (China Brief, 2022; XUAR Government, December 14, 2021).⁵⁶ Vocational skills training in the context of poverty alleviation and labor transfer policies is part of a process that creates high coercive labor risks for targeted ethnic groups. State reports confirm that throughout 2023, the government “intensified vocational skills training” and had directed regional authorities to “vigorously carry out order-oriented” work placements for targeted groups, including “focus groups such as those who are difficult to employ” (Xinjiang Daily, January 19, 2024).⁵⁷ In 2023, the XUAR conducted a record-setting 2.5 million person-times vocational skills training sessions, exceeding its goal for that year of 1.5 million by 66.6 percent. Xinjiang’s high-pressure campaign to meet and exceed training and transfer targets for lower-income rural populations (predominantly Uyghurs) is being implemented with greater intensity than expected.

Local examples show how the expansion of skills training means that the state is increasingly targeting populations that have traditionally not sought to engage in vocational skills training or labor transfers—namely, women in traditional homemaker and caretaker roles.⁵⁸ These groups are at highest risk of coercion. For example, a village in Yili Prefecture has been “vigorously” implementing the directive to have ethnic women “leave [their] land but not [their] township,” transferring them from traditional agricultural livelihoods to local factory work (Gongliu County, January 16, 2024).⁵⁹ In this case, 50 ethnic women were subjected to training in sewing skills, a sector that is strongly implicated in forced labor.

Previously, labor transfers implicated only lower-skilled sectors in forced labor. However, intensified skills and in-company training efforts have increased the forced labor risk. Recent propaganda reports exemplify this. For example, a February 2023 report discusses how over time, a transferred Uyghur rural surplus laborer employed by a civil engineering company came to be “transformed into a skilled worker” (China Union, February 24, 2023).⁶⁰

Conclusions

Higher-level policy and state planning documents indicate that coercive XUAR employment and poverty alleviation policies are to continue at least through 2025. XUAR state and media sources document that these policies continue to be implemented. The intensification of labor transfers in the context of the XUAR’s recent Unemployment Monitoring and Early Warning campaign significantly increased forced labor risks, given that these efforts target groups that have traditionally not chosen to pursue secondary or tertiary sector employment that requires them to abandon farming and/or to surrender their long-standing land usage rights (Central Asian Survey, 2023).⁶¹ Increased employment requirements targeting ethnic groups have resulted in soaring

⁵⁶ China Brief (2022) <https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>; XUAR Government (2021) <https://archive.is/Pfzsb>

⁵⁷ <https://web.archive.org/web/20240119143729/http://xj.people.com.cn/n2/2024/0119/c186332-40719270.html>

⁵⁸ See related discussion in Zenz, A. (2023). The Conceptual Evolution of Poverty Alleviation Through Labour Transfer in the Xinjiang Uyghur Autonomous Region. *Central Asian Survey*, 42(4), 649-673. <https://doi.org/10.1080/02634937.2023.2227225>.

⁵⁹ <https://archive.ph/jo3VW>

⁶⁰ <https://web.archive.org/web/20230228015125/http://acftu.people.com.cn/n1/2023/0224/c67502-32630539.html>

⁶¹ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225?src=recsys>

foreign trade figures in Uyghur heartland regions, implicating global supply chains (The Hill, November 9, 2023).⁶²

Xinjiang's recent policy changes have rendered forced labor less visible and more challenging to conceptualize. By leveraging poverty alleviation policies to normalize and institutionalize mass coercive work, Xinjiang continues its fundamental strategic shift away from institutions of the state's domestic security apparatus, focused on re-education and internment, and towards entities overseen by the Development and Reform Commission (ChinaFile, May 24, 2022).⁶³ As a result, Uyghur forced labor is becoming both more prevalent and more insidious (The China Project, October 26, 2023).⁶⁴

*Coercive Labor Transfers in the Tibet Autonomous Region (TAR)*⁶⁵

*Background and Contextual Evidence*⁶⁶

Despite significant contextual differences, the ongoing deployment and expansion of coercive labor transfers in the XUAR and TAR are quite similar in terms of policy framing and the general policy implementation approach. Both focus on targeted recruitment of rural ethnic groups through village-based work teams, coerced labor training involving military drills and political indoctrination, state-arranged work placements and transfers to workplaces, and from 2021, an increased focus on retention through Unemployment Monitoring and Early Warning mechanisms.

From 2012, the TAR's Chamdo region initiated a military-style training for the surplus workforce transfer of pastoral and agricultural regions. Chamdo's scheme was formally established in the region's 13th Five-Year Plan (2016-20). In March 2019, the TAR issued the 2019-2020 Farmer and Pastoralist Training and Labor Transfer Action Plan, which mandates "vigorous promotion of military-style ... training," applying Chamdo's highly coercive model to the entire region.⁶⁷

Overcoming Tibetans' resistance to labor transfer is an integral part of the entire mechanism. TAR-related documents state that the "strict military-style management" of the vocational training process causes the "masses to comply with discipline," "continuously strengthens their patriotic awareness," and reforms their "backward thinking."⁶⁸

In April 2023, a group of six United Nations Special Rapporteurs on contemporary slavery, trafficking in persons, racism and racial discrimination, cultural rights, minority issues, and right to development issued a joint statement, expressing concerns that labor transfer and

⁶² <https://thehill.com/opinion/international/4300097-forced-uyghur-labor-undergirds-xinjiangs-export-boom/>

⁶³ <https://www.chinafile.com/reporting-opinion/features/public-security-ministers-speech-describes-xi-jinpings-direction-of-mass>

⁶⁴ <https://web.archive.org/web/20240108202638/https://thechinaproject.com/2023/10/26/when-poverty-alleviation-means-forced-labor-for-uyghurs/>

⁶⁵ Coercive labor transfers in the TAR were first documented in: Zenz, A. (2020). Xinjiang's System of Militarized Vocational Training Comes to Tibet. *China Brief*, 20(17). <https://jamestown.org/program/jamestown-early-warning-brief-xinjiangs-system-of-militarized-vocational-training-comes-to-tibet/>

⁶⁶ For the conceptual nature and measurement of non-internment state-imposed forced labor mobilization, see the 'Background' section for the XUAR.

⁶⁷ TAR Government. (2019) 西藏自治区人民政府公报.

<https://web.archive.org/web/20200828164034/http://bianba.chhttps://archive.is/wip/y4Bwnangdu.gov.cn/bbxrmz/c105723/202005/721b7732060f46d086689f445bbf1fa/files/d211713c75324a7f918714407398cd6a.pdf>

⁶⁸ Autonomous Region Poverty Alleviation Office. (2016, November 17). 提升技能增本领拓宽渠道促就业昌都市扎实推进就业扶贫. TAR Government. <https://archive.is/wip/N9hz>; TAR Government. (2020, June 10). 齐扎拉主持召开自治区产业建设领导小组会议 要求坚持人民至上 全力推动农牧民转移就业 努力实现“量”的增长“质”的提高. <https://archive.is/NYMwi>.

vocational training programs in the TAR are used to “undermine Tibetan religious, linguistic and cultural identity, to monitor and politically indoctrinate Tibetans,” that these programs employ political indoctrination in a militarized environment, and that they “could lead to situations of forced labour.”⁶⁹ The experts noted that “Tibetans are being drawn away from sustainable livelihoods in which they have traditionally had a comparative advantage, such as wool and dairy production, and into low-paid, low-skilled work in manufacturing and construction.” Similar forced labor concerns were raised in the May 2023 report of the United Nations’ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷⁰

Current TAR Policies and Work Plans Impacting the Period April 2023 to April 2024

In early 2021, the TAR reported that it had established 652 rural labor transfer “bases” and developed over 7,000 labor export entities.⁷¹ That year, the region had published a policy plan to strengthen the intensity of organized labor transfer and training of rural populations.⁷² In 2022, the TAR government announced that its employment creation programs, including the annual transfer of over 600,000 rural surplus laborers, had achieved “full coverage.”⁷³ Its 2022 transfer figure stood at 631,000.⁷⁴

For the 14th Five-Year Plan (2021-25), the TAR envisioned an expansion of labor transfer channels and “vigorous” promotion of labor transfers targeting rural populations, including through “vigorous” development of rural industry, continued construction of labor transfer bases, accelerated urbanization, and intensified Pairing Assistance with eastern Chinese regions.⁷⁵ (Pairing Assistance has also played a significant role in promoting labor transfers in Xinjiang).

TAR Employment Policies and Practices since April 1, 2023

Efforts to compel Tibetans into labor transfers have continued in 2023. In 2023, the TAR transferred a record number of 647,000 persons, an increase of 16,000 compared to 2022 and 47,000 over the stated target.⁷⁶ Its labor transfer target for 2024 has now been increased to 630,000, and the degree to which these transfers are directly “organized” by the state was

⁶⁹ UN. (2023, April 27). *China: “Vocational training” programmes threaten Tibetan identity, carry risk of forced labour, say UN experts.* <https://www.ohchr.org/en/press-releases/2023/04/china-vocational-training-programmes-threaten-tibetan-identity-carry-risk>.

⁷⁰ UN. (2023, May 31). *Convention on the Elimination of All Forms of Discrimination against Women.* (p. 12). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/153/23/PDF/N2315323.pdf?OpenElement>.

⁷¹ TAR Ministry of Human Resources and Social Security. (2022, April 12). 关于印发《西藏自治区“十四五”就业促进规划》的通知 https://web.archive.org/web/20220602180058/http://hrss.xizang.gov.cn/xwzx/tzgg/202204/20220412_293188.html

⁷² County Poverty Alleviation Office. (2021, September 6). 南木林县关于健全防止返贫致贫动态监测和帮扶机制的贯彻落实方案. Nannulin County People’s Government. <https://web.archive.org/web/20220527142814/http://www.nmlx.gov.cn/news-detail.thtml?cid=157894>

⁷³ He J. (2022, March 21). 【人社厅】西藏创业就业扶持实现全覆盖. Economy Daily. <https://web.archive.org/web/20220531170013/http://sz.people.com.cn/n2/2022/0321/c138901-35183994.html>

⁷⁴ TAR Development and Reform Committee. (2023, January 13). 西藏自治区2022年国民经济和社会发展计划执行情况与2023年国民经济和社会发展计划草案报告. China Tibet News.

https://web.archive.org/web/20230610115216/http://epaper.chinatibetnews.com/szrb/202301/23/content_180505.html

⁷⁵ TAR Ministry of Human Resources and Social Security. (2022, April 12). 关于印发《西藏自治区“十四五”就业促进规划》的通知 https://web.archive.org/web/20220602180058/http://hrss.xizang.gov.cn/xwzx/tzgg/202204/20220412_293188.html

⁷⁶ Tibet Daily. (2024, January 8). 政府工作报告(摘要). TAR Government. https://web.archive.org/web/20240123153919/https://www.xizang.gov.cn/xwzx_406/ztzl_416/cszzt/2024mxzzqllh/tt/202401/20240108_397369.html

raised.⁷⁷ Labor transfers were to be accelerated in their “order-based” form whereby companies can put in “orders” for workers, which the state then takes, trains, and delivers to them.⁷⁸ Order-based labor transfers were to meet the growing “employment needs” of enterprises in the TAR. The TAR’s January 2024 government budget report similarly speaks of “...increased skills training for nomads and farmers, promoting labor transfers...”⁷⁹

The TAR continues to emphasize that to “increase the inner development motivation” of persons along sensitive PRC national border regions is a matter of national security.⁸⁰ “High-quality” development is viewed as central to border defense efforts, and this is secured through coercive poverty alleviation efforts that overcome people’s internal resistance.

A September 2023 report states that TAR regions were broadening employment channels and carrying out “ideological improvement projects” designed to improve the “ideological and cultural concepts of the masses and enhance the inner motivation of farmers and herdsmen.”⁸¹ Through a range of activities and trainings, rural Tibetans were being led to “increase their inner motivation” to earn money through labor transfers, overcoming their “conservative employment aspirations.” These are direct indicators of coercion.

Conclusions

Coercive labor transfer, poverty alleviation and employment measures have continued in the TAR, as labor transfer measures have intensified, mandated transfer quotas are continually increased, and efforts to “stimulate” Tibetans’ “inner motivation” and overcome their reluctance to abandon traditional lifestyles in organic communities continue. Coercive poverty alleviation and employment efforts are reinforced through intensified dynamic monitoring (surveillance) and assistance mandates. These measures are creating pervasive and continually intensifying risks of forced labor throughout the TAR.

⁷⁷ Ibid.

⁷⁸ TAR Government. (2024, April 10). 西藏自治区人民政府办公厅关于印发西藏自治区2023年优化营商环境工作要点和行动方案的通知. Maizhokunggar County Government. <https://archive.ph/D2L.Y9>

⁷⁹ Tibet Daily. (2024, January 22). 关于西藏自治区2023年预算执行情况和2024年预算草案的报告. TAR Government. https://web.archive.org/web/20240123160459/http://www.xizang.gov.cn/xwzx_406/ztzl_416/cxzt/2024nxzzzqjh/tt/202401/20240122_399776.html.

⁸⁰ Tibet Daily. (2024, January 8). 扎根祖国边疆守护神圣国土——西藏扎实推进国家固边兴边富民行动示范区创建. The United Front Work Department of CPC Central Committee. https://web.archive.org/web/20240123154359/https://www.zyztb.gov.cn/zyztb/2024-01/08/article_2024010809112014520.shtml.

⁸¹ Mo, R. (2023, November 2). 曲水县: 全力做好“五篇文章” 共治共建和美乡村. Lhasa Government. <https://web.archive.org/web/20240123154647/https://www.lasa.gov.cn/lasa/lsyw/202311/9e76fede6d19400687e7f818a31be240.s.html>.

3.0 The Challenge of Measuring Non-Internment State-Imposed Forced Labor Mobilization in the PRC

This section is based on the article “Measuring Non-Internment State-Imposed Forced Labor in Xinjiang and Central Asia: An Assessment of ILO Measurement Guidelines.” *Journal of Human Trafficking* (2023). <https://doi.org/10.1080/23322705.2023.2270366>.

Conceptualizing State-Imposed Forced Labor in Central Asia

Multiple Central Asian regions perpetuate forms of state-imposed forced labor, in both agricultural harvesting and production of state-mandated crops. While Uzbekistan eventually ended forced labor mobilization into cotton harvesting by 2021, coercive labor transfers for agricultural harvesting and other work persists in Xinjiang, Tibet, Uzbekistan, and Turkmenistan, and to a lesser extent in Tajikistan.⁸²

Close analysis reveals crucial differences between state-imposed and private (corporate) coercive labor practices. The former relies on a whole-of-government and whole-of-society approach, involving a social context of pervasive coercion, surveillance, police harassment, arbitrary detention, and a general lack of civic freedoms. State-driven coercive labor practices are frequently enforced by entities that represent or are connected to state security and surveillance apparatuses. This means that resisting government work mandates raises repressive risks across multiple aspects of people’s lives. Non-cooperation may not only endanger household income through dismissal, salary reductions, or loss of land use rights. It can also drastically affect access to essential services and benefits, and incur various forms of state repression. McGuire and Laaser (2021, p. 560) described the resulting coercive environment as “structurally forced consent.” Within this environment, state-imposed forced labor practices heavily exploit deep systemic vulnerabilities, such as impoverishment and a lack of decent livelihood opportunities, and are often enforced using threats that are more implicit than explicit. Consequently, coercive transfers of targeted populations into state-mandated work (including seasonal harvesting) constitute a dynamic practice akin to human trafficking that cannot easily be measured in a particular location.

Previously, I argued that state-imposed forced labor systems in Xinjiang and Uzbekistan exhibit five core structural features (Zenz, 2023a, p.22). Here, I suggest that these also apply to labor mobilization in Turkmenistan (and to a lesser degree in Tajikistan):

- (1) a centralized authoritarian state with a strong bureaucratic apparatus and a powerful, coercive domestic security apparatus, that
- (2) steers economic policy, imposes production quotas, and incentivizes or commandeers relevant economic actors, including state-owned and private companies and farmers;
- (3) creates a coercive social environment, especially among targeted populations;
- (4) leverages this environment in tandem with substantial grassroots-based human resources and local institutions to
- (5) develop top-down mobilization pressures at the grassroots level.

The ILO’s Global Reports and Conceptualizations of State-Imposed Forced Labor

⁸² In Tajikistan, coercive cotton picking is unevenly enforced, has been on the decline, and typically does not entail transportation due to short distances between people’s homes and fields (Hofman, 2023)

Following the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, which called for the "elimination of all forms of forced or compulsory labour," the ILO in November 2001 established a Special Action Programme to combat Forced Labour (SAP-FL) to provide related technical assistance to member states (ILO, 2001, 2018a). The SAP-FL was tasked with developing Survey Guidelines and indicators for assessing forced labor (De Cock, 2007).

In 2012, the ILO presented its first indicator-based Survey Guidelines (ILO, 2012a). The Survey Guidelines present indicators for each of the two dimensions of the ILO's forced labor definition (involuntariness and menace of penalty) for each of the three phases (compare ILO, 2018a, p. 28). Consequently, the framework (Table 2) is more accurately presented through a six-field matrix⁸³:

Phase	Dimension (of forced labor)	
	Involuntariness	Menace of penalty
1. Unfree recruitment	For example, deception about true nature of work	For example, threat of denunciation to authorities
2. Work and life under duress	For example, forced overtime or degrading living conditions	For example, isolation or violence
3. Impossibility of leaving	For example, no freedom to resign in accordance with legal requirements	For example, confiscation of identity papers or travel documents

Table 2. Created by the author based on ILO (2012a, p.23-25).

To qualify as forced labor, at least one of the three phases must show at least one indicator in each dimension (both involuntariness and menace of penalty) (ILO, 2012a, p. 26).⁸⁴ Even when indicators of involuntariness or coercion at the workplace itself are difficult or impossible to measure, their presence during the recruitment or exit phases suffices for a forced labor determination. The indicators listed in the Survey Guidelines derived from a set of indicators of trafficking for labour and sexual exploitation, produced in 2009 by the ILO in collaboration with the European Commission, and elicited from a group of European experts using the Delphi methodology (which condenses the collective opinion of an expert community) (ILO, 2012a, p.22). They were therefore chosen by experts working in and experienced with European and non-state-imposed forced labor contexts.

That same year, the ILO published the 11 indicators of forced labor that subsequently became widely known and used (ILO, 2012d). However, those indicators oversimplify the reality of forced labor, lack any reference to the three phases of forced labor, and therefore blur the connection between coercive work and human trafficking through unfree recruitment. Most importantly, the 11 indicators were in fact never designed to formally measure forced labor at all, but merely to train front-line staff to visually recognize potential forced labor in work-related settings. The brochure itself notes this:

⁸³ The Survey Guidelines themselves speak of an indicator framework with "six dimensions" (ILO, 2012a, p.22).

⁸⁴ The framework distinguishes between "strong" and "medium" indicators, and requires that at least one of the two indicators be "strong." From 2018 the ILO abandoned this distinction, which according to interviewed ILO officials, ILO member states deemed to be overly arbitrary (ILO, 2018a, 2018b, 2023).

These indicators are intended to help “front-line” criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. The indicators represent the most common signs or “clues” that point to the possible existence of a forced labour case. (ILO, 2012d, p. 2)

The ILO’s evaluation in Uzbekistan used the 11 indicators only as “first impression” (“prima facie”) tools for monitoring teams to use in the cotton fields (at the workplace), whereas questionnaires to pickers and farmers also assessed the critical phase of recruitment, using questions which became more detailed over time (ILO, 2015, p. 7, Annex p. 26, 45-47; ILO, 2018d, p. 60-61). Consequently, they are particularly ill-suited to identify state-imposed forced labor, where most coercive pressures occur during recruitment and transfer phases, and may not be visible at workplaces (compare Zenz, 2023a).

Unfortunately, ILO documents themselves elevate the significance of the 11 indicators while failing to mention the Survey Guidelines. For example, both the ILO’s “Global guidelines on the economic reintegration of victims of forced labour through lifelong learning and skills development approaches” and its “Ending forced labour by 2030” documents state that this set constitutes the ILO’s “core operational indicators of forced labour,” based on “extensive practical experience and research” (ILO, 2020, p. 34; ILO, 2018c, p. 97). The Survey Guidelines are cited much less often than the 11 indicators. Among works that cite them, very few substantively engage with their conceptual measurement dimension or the six-field matrix, mostly either referring to the document in passing or else focusing on the ILO’s lack of disaggregating human trafficking cases from within global forced labor estimates (e.g. Chuang, 2017).

Discussion: The Measurement of Non-Internment State-Imposed Forced Labor Mobilization

In contrast to most forms of forced labor, state-imposed forced labor operates through a pervasively coercive social context marked by a lack of civic freedoms and a state that generates powerful coercive pressures through an extensive grassroots bureaucracy. Non-cooperation entails a systemic risk that is often more implicit than overt. Strategies for evaluating non-internment state-imposed forms of forced labor should take into account that:

- It is often more readily assessed as a systemic risk than a specific instance, because it creates an environment where its victims are less likely to speak freely, rendering assessment of individual cases difficult or impossible, as the ILO found in Uzbekistan (ILO, 2017a).
- Its assessment must consider its fundamental preconditions, such as an overall coercive environment, a comprehensive mechanism for pressure-driven grassroots mobilization, and a state policy mandating work or production targets for targeted populations.
- Due to their dynamic nature, labor mobilization programs are often best assessed during mobilization stages including recruitment, training, and transfer, rather than just at the

workplace itself.

- While it leverages people’s vulnerabilities, such as a lack of alternative livelihood opportunities, it is not always equally economically exploitative, particularly when political aims are primary, as in Xinjiang. This reduces the effectiveness of indicators focused on exploitative work conditions and requires a stronger focus indicators measuring the policy and institutional basis of state-imposed forced labor.
- Its operation includes agricultural production mandates.

The ILO’s 2012 Survey Guidelines are largely suited to evaluate non-internment forms of state-imposed forced labor in Central Asian regions. However, its indicators were designed for private forced labor and should therefore be adapted as suggested in the previous section (besides the adaptation to each local context that the Framework already mandates). Specifically, assessments of state-imposed forced labor could follow three steps:

1. Assess presence of an employment policy targeting population groups for potentially coercive/involuntary work.
2. Assess presence of a state mobilizational apparatus able to enforce this policy.
3. Assess presence of specific risk indicators by matching evidence with the adapted ILO Survey Guidelines.

Consequently, to counter state-imposed forced labor, policymakers should use the adapted Survey Guidelines instead of the 11 indicators. They should further take into account whether, in a particular context, state-imposed forced labor is implemented primarily for economic or for political reasons. State-imposed forced labor creates a pervasive risk for affected regions. Related indicators must encompass all phases of coercive labor mobilization and assess the existence of targeted state employment policies or production mandates. Policymakers and ILO officials should closely study the evolving coercive labor mobilization and mandated agricultural production practices in Xinjiang, Uzbekistan, Turkmenistan, and Tajikistan, and deepen their understanding of the unique properties of non-internment state-imposed forced labor.

In addition, for areas and products where a risk of state-imposed forced labor has been identified, the burden of proof should be reversed: companies must prove that products from such regions are free from any form of coerced labor. The ILO’s evaluation in Uzbekistan provides precedent for such a step, given that it assessed a systemic nationwide “risk of forced labour” (ILO, 2017c, p.xiii, 57; Tapiola, 2022, p.32). While such a reversal can lead to overenforcement (banning imports of some goods not linked to forced labor), the alternative would be severe underenforcement. By nature, state-imposed forced labor creates systemic coercive risks throughout the entirety of targeted regions, populations, and economic sectors. Policy measures designed to effectively combat all forced labor cannot limit their focus to specific supply chains or companies, or rely on indicators designed to detect private forced labor evaluated at workplaces. They must also engage with the primary design features of state-imposed forced labor.

4.0 The Suitability of the International Labour Organization's Adapted New Guidelines on Forced Labor Measurement for Capturing Forced Labor in Xinjiang and Tibet

This section is based on the article "Updated ILO Forced Labor Guidelines Directly Target Uyghur Forced Labor," Jamestown Foundation China Brief, Vol. 24 (9), April 2024. <https://jamestown.org/program/updated-ilo-forced-labor-guidelines-directly-target-uyghur-forced-labor/>.

Summary:

- For first time since establishing its forced labor taskforce in 2001, the International Labour Organization (ILO) has issued authoritative and comprehensive guidance on operationalizing the research and measurement of forced labor, updating its more provisional guidelines from 2012.
- The new ILO Handbook adds a substantial new section on state-imposed forced labor, squarely targeting Beijing's forced labor in Xinjiang and Tibet and specifically referring to "labour transfers" of ethnic minorities.
- The Handbook adopts the author's category of "non-internment state-imposed forms of forced labor" in its research guidelines, significantly enhancing the ability to detect the forced labor of Uyghurs.
- The Handbook notes that forced labor may be implemented by states for political reasons, including for reasons of "altering the population composition in particular areas." This language points directly to labor transfers targeting Uyghurs.
- The Handbook's statement that non-internment forced labor mobilization is best assessed as a risk rather than a specific instance, which it adopts from the author's recent research, provides strong support for arguments that related legislation should reverse the burden of proof, shifting it from enforcement authorities to companies. This could have implications for the European Union's upcoming forced labor legislation.

In 2001, the International Labour Organization (ILO) established its Special Action Program to combat Forced Labour (SAP-FL) to develop survey guidelines and indicators for assessing forced labor worldwide. In 2012, this resulted in the first systematic attempt to establish a forced labor measurement framework, a set of Survey Guidelines titled "Hard to see, harder to count" (ILO, 2012).⁸⁵ The 2012 Guidelines had several limitations, however. Their technical nature was designed to inform national forced labor surveys, making them largely inaccessible to non-experts. It also came with conceptual limitations, having been primarily designed to counter private forced labor. Finally, the Survey Guidelines were a work in progress, given that the ILO's efforts were still in their infancy, and therefore did not claim to be authoritative (Journal of Human Trafficking, 2023).⁸⁶

This led to the European Commission using a much more widely known ILO framework, the set of 11 forced labor indicators, in September 2022 draft legislation prohibiting the import of products involving forced labor, widely understood to target forced Uyghur labor in the People's Republic of China (PRC) (European Commission, September 14, 2022).⁸⁷ These indicators were

⁸⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf

⁸⁶ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

⁸⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0453>

however designed not for formal measurement but to help frontline inspectors recognize potential signs of forced labor at workplaces (ILO, 2012).⁸⁸ In conversations with the author, the ILO noted that they had “a communication problem” about the roles of their various indicator frameworks.

The ILO’s 11 indicators are ill-suited to identify what the author has referred to as “non-internment state-imposed forced labor mobilization.” This form of forced labor mobilization, which characterizes forced labor transfers in Xinjiang and Tibet, is a dynamic process whereby states identify a target population for forced work, and then coercively mobilize, recruit, and train them, before transferring them to designated workplaces (Central Asian Survey, 2023; China Brief, September 22, 2020).⁸⁹ Workplaces are not necessarily heavily secured, and the process does not involve prisons or labor camps, rendering this type of forced labor less visible and harder to measure. The ILO encountered this challenge when attempting to measure forced labor mobilization for cotton harvesting in Uzbekistan (ILO, 2022).⁹⁰ It tried to interview workers in the cotton fields (i.e. at their place of work), but struggled to find specific signs of coercion, besides the fact that workers gave highly standardized answers, suggesting that they had been coached by the state to mislead ILO evaluators (Journal of Human Trafficking, 2023).⁹¹ In 2023, the author interviewed several senior ILO officials (Journal of Human Trafficking, 2023).⁹² The author challenged them about the facts that:

1. their 2012 Survey Guidelines were not designed to capture state-imposed forced labor in the PRC and elsewhere;
2. these Guidelines contained indicators that were only partially suited to capture Uyghur forced labor;
3. these Guidelines were little-known compared to the widely known set of 11 indicators;
4. the ILO’s overall approach to forced labor measurement was unequipped to capture non-internment (i.e., non-prison) forms of forced labor mobilization, which are harder to conceptualize and measure; and
5. the ILO’s global reports on forced labor have been far too optimistic concerning claims of a decline of state-imposed forced labor worldwide.

As a result of this engagement, the ILO told the author in 2023 that they would update their Guidelines. This update was published in late February this year. The results are highly impressive. The ILO appears to have carefully considered all feedback, as well as input by advocacy organizations such as Anti-Slavery International, and adopted improvements on all five points.

⁸⁸ https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

⁸⁹ Central Asian Survey (2023) <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>; China Brief (2020) <https://jamestown.org/program/jamestown-early-warning-brief-xinjiangs-system-of-militarized-vocational-training-comes-to-tibet/>

⁹⁰ https://www.ilo.org/global/topics/forced-labour/publications/WCMS_846225/lang--en/index.htm

⁹¹ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

⁹² <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

The New Guidelines

In February 2024, the ILO published a “Handbook,” updating its 2012 Guidelines “Hard to see, harder to count” (ILO, 2024).⁹³ Here is a rundown of the key changes from a PRC-focused perspective, each of which is then discussed in greater detail:

1. The new guidelines are now presented in the form of an authoritative “Handbook.”
2. This Handbook contains four mentions of “labour transfers” that target minorities for forced relocation. This particular expression is only commonly used in PRC contexts and the way it is defined in the Handbook points directly to forced labor in Xinjiang and Tibet.
3. The Handbook contains an expanded indicator framework, with dedicated sections for indicators of state-imposed forced labor.
4. The most important change from a China perspective is the addition of a dedicated section on measuring state-imposed forced labor (section 9).
5. This new section 9 contains an important subsection titled “General research considerations,” which outlines the challenges of assessing “non-internment state-imposed forms of forced labour.” This subsection draws from and builds on the conceptual work of the author (Journal of Human Trafficking, 2023).⁹⁴
6. Section 9 states that forced labor mobilization may be implemented by states for political or national security (and not just economic) reasons, making it even more diagnostic of Uyghur and Tibetan forced labor.
7. Section 9 also discusses forced labor linked to administrative detention and “re-education” without legal conviction, language that targets Xinjiang’s camps (and similar situations worldwide).
8. The Handbook strengthens the role of desk research, explicitly referring to academic research and NGO reports.

The new Handbook is more authoritative than the previous Guidelines. In the introduction, it presents itself as an integrated, authoritative, and “updated measurement framework and set of tools for the design, implementation and analysis of surveys of forced labour” (p.ix). It highlights the fact that it contains “a new unified set of core indicators of involuntary work and coercion,” representing the new ILO office-level standard for forced labor measurement. The Handbook is a unified update of both the previous Survey Guidelines and the Guidelines Concerning the Measurement of Forced Labour endorsed by the 20th International Conference of Labour Statisticians (ICLS) in 2018, further underscoring its authority (ICLS, 2018).⁹⁵

Previously, it was not clear which ILO document constituted the “standard” for measuring forced labor as defined by ILO Conventions 29 and 105. The adoption of the 2018 ICLS document was an important step in standardizing the ILO’s approach to measuring forced labor. But it rendered the 2012 Survey Guidelines somewhat outdated, further adding to the numbers of documents that evaluators and researchers had to account for. While the new Handbook is an “office document” that has not been formally approved by the ILO governing

⁹³ https://www.ilo.org/global/topics/forced-labour/publications/WCMS_914768/lang-en/index.htm

⁹⁴ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

⁹⁵ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf

body, it still constitutes an important development as it represents the world's most authoritative framework for operationalizing the measurement of forced labor.

Specific References to “Labour Transfers”

The Handbook uses the phrase “labour transfers” four times. While describing a global phenomenon, this particular expression is essentially only used in PRC contexts (Central Asian Survey, 2023).⁹⁶ The Handbook’s definition therefore points unambiguously to forced labor in Xinjiang and Tibet. Two uses occur in section 1.3 that outline the updated indicator framework when discussing indicators for coercive recruitment in the context of state-imposed forced labor for economic development (ILO, 2024, p.11)⁹⁷:

Other violations involve large-scale labour transfer schemes, where workers belonging to certain ethnic or religious minority groups must—under menace of penalty—relocate to another geographical area to work in a State or private enterprise, sometimes under guise of vocational training or regional economic development.

This phrasing links labor transfers specifically to (1) ethno-religious groups, (2) geographical relocation, and (3) work in enterprises. The advantage of this framing is that it specifically points to forced Uyghur labor. However, there are several disadvantages. First, PRC coercive labor transfers could also target impoverished Han Chinese. Second, transfers also occur through satellite factories in rural villages, in which case they do not involve geographic relocation (see Journal of Political Risk, 2019).⁹⁸ Third, labor transfers can involve non-enterprise work destinations (China Brief, February 14).⁹⁹ It is a common misconception that transfers must “transfer” people across space, whereas the term “transfer” refers to a sectoral transfer—from farming or herding to wage labor in the industrial sector, the service sector, or wage labor within agricultural processing or seasonal harvesting (CPCS, 2023).¹⁰⁰ A third disadvantage is that labor transfers can involve non-enterprise work destinations.

All ILO forced labor measurement guidelines and documents explicitly state that measurement categories and related indicators must be adjusted to local contexts, meaning that the wording is not a straitjacket. In addition, the Handbook clearly distinguishes labor transfers from forced labor linked to re-education camps (Handbook sections 9.3 and 9.4; both systems of forced labor are discussed in detail in Central Asian Survey, 2023).¹⁰¹

The two other instances of “labour transfer” are found in section 9.4, which discusses state-imposed forced labor for the purpose of economic development:

Such [labour transfer] schemes can result from the combination of various methods of compulsion to work: measures of general nature involving

⁹⁶ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

⁹⁷ https://www.ilo.org/global/topics/forced-labour/publications/WCMS_914768/lang-en/index.htm

⁹⁸ <https://www.jpolrisk.com/beyond-the-camps-beijings-long-term-scheme-of-coercive-labor-poverty-alleviation-and-social-control-in-xinjiang/>

⁹⁹ <https://jamestown.org/program/forced-labor-in-the-xinjiang-uyghur-autonomous-region-assessing-the-continuation-of-coercive-labor-transfers-in-2023-and-early-2024/>

¹⁰⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694

¹⁰¹ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

compulsion in the recruitment, assignment and transfer of labour, used in conjunction with other restrictions on freedom of employment, such as preventing workers from terminating their employment contracts or compulsorily extending contracts, penal sanctions for breaches of contract or as a means of maintaining labour discipline, restrictions on freedom of movement or on the possession and use of land, or abusive application of vagrancy laws (ILO 2007, para 107). (p.168)

This links labor transfers not only to coercive mobilization but also to retention mechanisms designed to maintain employment, such as Unemployment Monitoring and Early Warning and other poverty-fallback prevention systems. These have become increasingly important in recent years as the region has transitioned from the campaign-style approach of Xinjiang's former CCP Party Secretary Chen Quanguo (陈全国) to a focus on institutionalizing coercive transfer policies by his successor Ma Xingrui (马兴瑞) (China Brief, June 5, 2022).¹⁰² In addition, the reference to restrictions on the “use of land” (taken from a 2007 International Labor Conference report) is highly significant for assessing PRC coercive labor transfers, which frequently enforce transfers of land-use rights from targeted ethnic groups to large operators or government cooperatives, subjecting the now landless Uyghurs more readily to labor transfers (China Brief, March, 2021; CPCS, 2023).¹⁰³

The New Indicator Framework

The Handbook provides an updated indicator framework. The previous indicator framework consisted of a six-field matrix: two columns for the two dimensions of forced labor per definition in ILO Convention 29, and three rows for the three employment cycle phases: recruitment, work conditions, and ability to leave work (see Journal of Human Trafficking, 2023). The 2024 Handbook simplifies the framework to a four-field matrix, eliminating the phase distinctions for the coercive dimension.

The 2012 version of the framework was only designed for private (company-based) forced labor. The Handbook now adds sections and indicators for state-imposed forced labor (SIFL) for each of the three employment cycle phases both for involuntariness and for the menace of penalty (coercion) dimension. This addition is crucial. However, the new framework imposes an unnecessary limitation by restricting SIFL indicators to particular forms of state-imposed forced labor, forms that differ for each phase. For example, indicators linked to prison labor are relegated to the second phase (“employment”), while those linked to forced labor mobilization for economic development—the type of forced labor affecting Uyghurs and Tibetans—are limited to the first phase (“recruitment”). While forced labor transfers are best measured at the recruitment stage, Xinjiang is now enforcing Uyghur work quotas by preventing them from leaving work, using mechanisms such as the new Unemployment Monitoring and Early Warning system (China Brief, June 5, 2022).¹⁰⁴ The association of employment cycle phases to particular forms of state-imposed forced labor therefore imposes an unnecessary

¹⁰²<https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>

¹⁰³ China Brief (2021) <https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>; CPCS (2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4439694

¹⁰⁴<https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>

restriction. The coercive dimension adds indicators that are essential for capturing forced labor from coercive labor transfers in Xinjiang and Tibet, namely the imposition of punishments such as detention or imprisonment for refusing state-assigned work.

The New Section on State-Imposed Forced Labor

The Handbook's most important improvement is the addition of a 23-page section on state-imposed forced labor (section 9). After defining the aspects of state-imposed forced labor following ILO Convention 105, section 9 presents a crucial innovation—a section titled “General research considerations.” This section notes that:

In contrast to most forms of forced labour, state-imposed forced labour operates through a pervasively coercive wider social context marked by a general lack of civic freedoms and a state apparatus that generates powerful coercive pressures through an extensive grassroots apparatus consisting of state and non-state institutions. Non-cooperation entails a systemic risk that is often more implicit than overt (p.149).

This conceptual framing of state-imposed forced labor, adopted from the author's recent research, encapsulates why forced labor is difficult to conceptualize and even harder to measure (Journal of Human Trafficking, 2023, p.21-22).¹⁰⁵ By making this a research consideration for all forms of state-imposed forced labor, the ILO ensures that the elusive character of this unique form of forced labor—ubiquitous in Poverty Alleviation through Labor Transfer policies in Xinjiang and Tibet—receives due attention (Central Asian Survey, 2023).¹⁰⁶

The section then continues to list several considerations for research on what it refers to as “non-internment state-imposed forms of forced labor,” a phrase based on one coined by the author to capture the nature of Xinjiang's forced labor transfers (Journal of Human Trafficking, 2023).¹⁰⁷ Perhaps the most important of these considerations is that this form of forced labor may be measured by assessing “evidence of a state policy” linked to coerced work (p.150; Journal of Human Trafficking, 2023, p.22).¹⁰⁸ In the absence of direct witness testimony or the ability to conduct on-site research in regions such as Xinjiang or Tibet, policy analysis is the only way to demonstrate the existence of coercive labor practices and is how the first systematic research demonstrating the existence of Uyghur forced labor was conducted (Journal of Political Risk, 2019).¹⁰⁹ In addition, the Handbook agrees with the author's conclusion that non-internment state-imposed forced labor is best assessed during mobilization, given that coercion may be much less visible at workplaces (p.150; Journal of Human Trafficking, 2023, p.22).¹¹⁰

The Handbook notes that political aims may motivate forced labor policies, as is primarily the case in Xinjiang and Tibet. When reviewing the 2012 Survey Guidelines, the author had noted that the ILO's measurement frameworks were mainly geared toward capturing

¹⁰⁵ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

¹⁰⁶ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

¹⁰⁷ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

¹⁰⁸ *ibid.*

¹⁰⁹ <https://www.jpolrisk.com/beyond-the-camps-beijings-long-term-scheme-of-coercive-labor-poverty-alleviation-and-social-control-in-xinjiang/>

¹¹⁰ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

forced labor motivated by economic exploitation, which is the most common motivation for coerced work. The Handbook takes this critique into account, which the author had also voiced in encounters with ILO officials. It now states that state-imposed forced labor may be assessed through:

evidence of a state policy that instrumentalizes employment or work for political objectives such as aligning political views with those of the established political, social or economic system, altering the population composition in particular areas or enhancing national security.

Especially noteworthy is the reference to “altering the population composition.” This refers to state policies to “optimize” ethnic population ratios, especially in southern Xinjiang’s Uyghur heartland by ending the “dominance” of Uyghur population groups and increasing numbers of Han Chinese settlers (Central Asian Survey, 2021).¹¹¹ In 2017, the central government mandated an increase in southern Xinjiang’s settler population by 300,000 by 2022, a strategy that largely relied on attracting Han Chinese from other parts of the PRC through promises of free land, housing, education, and government jobs (China Brief, March, 2021).¹¹² PRC scholar-officials have confirmed that labor transfers to other regions in Xinjiang or to other PRC provinces serve to reduce the density of concentrated Uyghur populations (China Brief, March, 2021).¹¹³ Recent research has found that transfers to other provinces were set to increase by 38 percent in 2023 (China Brief, February 14).¹¹⁴ In conversations, ILO officials had cited the author’s article in Central Asian Survey (2021)¹¹⁵ as an example of how labor transfers directly relate to other aspects of the atrocity. The inclusion of this observation in the Handbook is very significant, as it points to major non-economic reasons for Xinjiang’s forced labor systems, and to ways in which state-imposed forced labor can reinforce other oppressive policies.

Implications for the Proposed EU Forced Labor Ban

Non-internment state-imposed forced labor mobilization is especially challenging to conceptualize and evaluate. The 2024 Handbook accounts for these difficulties in the “General research considerations” for assessing this type of forced labor, which provide crucial context in line with the unique properties of coercive labor transfers. Of particular significance is the statement that “non-internment state-imposed forms of forced labour ... [are] more readily assessed as a systemic risk than a specific instance, given that this form of forced labour creates an environment that renders its victims much less likely to speak freely” (p.150; compare Journal of Human Trafficking, 2023, p.21).¹¹⁶

This research guidance directly suggests that this form of coerced work creates a society-wide systemic risk. This framing, which the ILO adopted from the author’s work, effectively means that the burden of proof of forced labor rests on those who participate in the affected economic system or are connected to it through their supply chains.

¹¹¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3862512

¹¹² <https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>

¹¹³ <https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>

¹¹⁴ <https://jamestown.org/program/forced-labor-in-the-xinjiang-uyghur-autonomous-region-assessing-the-continuation-of-coercive-labor-transfers-in-2023-and-early-2024/>

¹¹⁵ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3862512

¹¹⁶ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

This could have interesting implications for the European Union's forced labor regulation. The version of this regulation proposed by the European Parliament contained a crucial provision to reverse the burden of proof of the existence of forced labor, shifting it from the authorities to the importing entities, akin to the US Uyghur Forced Labor Prevention Act or UFLPA (European Parliament, 2023).¹¹⁷ This reversal is essential for capturing goods made in the context of state-imposed forced labor, as without it, any legislation would result in severe underenforcement (Journal of Human Trafficking, 2023).¹¹⁸ However, during the negotiations between the Parliament and the Council, this crucial provision was removed, in line with the version adopted by the Council which privileged the economic interests of member states (European Council, March 5, 2024; European Council, March 13).¹¹⁹ As a result, it is unlikely that the new measure can effectively counter Uyghur forced labor (UCANews, March 6).¹²⁰ The 2024 Handbook could play a major role here. To trigger new investigations into suspected forced labor cases, the proposed legislation already suggests a so-called "risk-based approach." This is centered around a database of known cases of forced labor, or in the case of state-imposed forced labor, of affected regions or sectors. It uses "substantiated concern" as the evidentiary threshold (European Council, March 13; Crowell, March 26).¹²¹ However, in the course of such investigations the burden of proof remains on the investigating "competent authority," in contrast to the UFLPA (European Council, accessed April 17).¹²²

Under section 47, the agreed version of the legislation text states:

Where in response to a request for information from a lead competent authority, an economic operator or a public authority refuses or fails, without a valid justification, to provide information requested, provides incomplete or incorrect information with the objective of blocking the investigation, provides misleading information or otherwise impedes the investigation, including when a risk of forced labour imposed by state authorities is identified, the lead competent authority should be able to establish that the prohibition has been violated on the basis of any other relevant and verifiable information gathered during the preliminary phase of the investigation and the investigation (European Council, March 13, p.25).¹²³

Without free and unfettered access to Xinjiang's factories and affected Uyghur workers, the Commission's ability to demonstrate forced labor is severely limited. This is where the new ILO Handbook becomes relevant. By arguing that specific instances of forced labor in state-imposed contexts cannot be reliably measured because of the very nature of this type of coerced work, the

¹¹⁷ <https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-forced-labour-product-ban>

¹¹⁸ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

¹¹⁹ After the Council approved the new text in March, the Parliament is scheduled to vote on it on April 22 (European Parliament, 2024). European Council (March 5) <https://www.consilium.europa.eu/en/press/press-releases/2024/03/05/council-and-parliament-strike-a-deal-to-ban-products-made-with-forced-labour/>; (March 13)

<https://data.consilium.europa.eu/doc/document/ST-7542-2024-INI1/en/pdf>

¹²⁰ <https://www.ucanews.com/news/us-expert-criticizes-eu-ban-on-goods-made-by-uyghur-forced-labor/104356>

¹²¹ European Council <https://data.consilium.europa.eu/doc/document/ST-7542-2024-INI1/en/pdf>; Crowell

<https://www.crowell.com/en/insights/client-alerts/the-eu-forced-labor-regulation-a-legal-breakdown>

¹²² <https://www.consilium.europa.eu/en/policies/forced-labour-products/#:~:text=On%205%20March%202024%2C%20the%20investigation%20and%20decision%20making%20process>

¹²³ <https://data.consilium.europa.eu/doc/document/ST-7542-2024-INI1/en/pdf>

Handbook's "General research considerations" provide further authoritative guidance for the interpretation of this crucial section of the legislation, which has tied itself to ILO standards that the Handbook operationalizes. Specifically, the EU's investigating authority could easily interpret section 47 in tandem with the new ILO Handbook to argue that the presence of forced labor is established by the existence of a relevant state policy, its enforcement on the ground, and the general inability to assess specific instances of forced labor, as outlined in the Handbook's "General research considerations." Even though this would not reverse the burden of proof, the investigating authority could then determine the presence of forced labor simply based on (1) a relevant database entry that documents the prevalence of forced labor in Xinjiang based on existing research reports, and (2) a demonstrated connection of an imported good with supply chains linked to Xinjiang.

In so doing, the EU forced labor ban could operate in a more similar fashion to the UFLPA in regard to Xinjiang (although in contrast to the UFLPA, it lacks a preventive detention mechanism). Europe could then potentially avoid its current fate of being a dumping ground for goods made with forced labor from Xinjiang (SCMP, March 21).¹²⁴

5.0 The Involvement and Complicity of Volkswagen and BASF in Xinjiang

SAIC-Volkswagen's Links to Forced Labor Risks

Research¹²⁵ obtained by the author and published¹²⁶ by Germany's Handelsblatt¹²⁷ shows that the SAIC-Volkswagen test track in Xinjiang's Turpan was built by a subsidiary¹²⁸ of the China Railway Engineering Corporation (CREC)¹²⁹ using transferred Uyghur surplus laborers.¹³⁰

The entity overseeing the construction, the Xinjiang Test Track Project¹³¹, was involved in village work teams¹³² monitoring Uyghur families, arranging "ethnic unity"¹³³ activities associated with Beijing's campaign of forced assimilation, and facilitating the transfer¹³⁴ of Uyghur surplus laborers. CREC reports state openly that the project itself employed¹³⁵ transferred Uyghur surplus laborers¹³⁶ during the peak of the mass internments in 2017 and 2018. Chinese media websites published photos¹³⁷ showing Uyghur laborers employed by the project in military drill uniforms with the red flowers characteristic of most coercive labor transfers (the state uses military drilling to enhance "discipline" and "obedience" among transferred Uyghur

¹²⁴<https://www.scmp.com/news/china/article/3256144/eu-sees-200-surge-imports-chinas-xinjiang-region-despite-human-rights-concerns>

¹²⁵<https://twitter.com/adrianzenz/status/1757605974419075362>

¹²⁶<https://www.rfa.org/english/news/uyghur/vw-uyghur-labor-02142024234503.html>

¹²⁷<https://www.handelsblatt.com/unternehmen/industrie/autokonzern-neue-vorwuerfe-gegen-vw-in-xinjiang/100014434.html>

¹²⁸<https://archive.is/GuByO>

¹²⁹<http://www.crec4.com/>

¹³⁰<https://www.rfa.org/english/news/uyghur/vw-uyghur-labor-02142024234503.html>

¹³¹<https://web.archive.org/web/20240423222354/http://one.crec4.com/content-3281-10930-1.html?WebShieldDRSessionVerify=70ZAMVptMVD3obO9XinU>

¹³²<https://archive.is/DfxcE>

¹³³<https://web.archive.org/web/20211026151100/http://gh.crec4.com/content-713-5898-1.html>

¹³⁴<https://archive.is/DfxcE>

¹³⁵<https://archive.is/e9mTS>

¹³⁶<https://archive.is/HPZDR>

¹³⁷<https://archive.is/s9jIR#selection-812.0-823.18>

workers). The photo caption states: “The SAIC Volkswagen and CREC 4th Bureau Xinjiang Test Track Project jointly recruits Uyghur and other ethnic minority workers to work in the project.”



Image of transferred ethnic laborers as part of CREC’s Xinjiang Test Project. Caption text: “上汽大众汽车有限公司与中铁四局一公司新疆试车场项目部联合招收维吾尔等少数民族工人到项目部工作。” Source: <https://archive.is/s9jIR#selection-850.0-861.18>

A reasonable assessment of forced labor risk in Xinjiang requires a thorough review of the entire social grassroots context in which companies operate, specifically the “non-internment state-imposed forced labor mobilization” dynamic that drives Uyghur labor transfers. The Volkswagen “audit” conducted by Löning did not assess this context and therefore failed to evaluate the relevant circumstances under which the Turpan test track was constructed.

Aside from exposure to the labor transfer system, Volkswagen is also at risk of being linked to Xinjiang’s separate camp-linked¹³⁸ forced labor system. Data from the Xinjiang Police Files¹³⁹—a trove of confidential documents hacked¹⁴⁰ from Chinese police computers, on which analysis was published by the Victims of Communism Memorial Foundation in May 2022 in collaboration with a media consortium of 14 leading outlets including the BBC—shows that detained Uyghurs were immediately placed into vocational training, including in educational institutions that state on their websites that they train their students directly for work in companies that include Volkswagen. The Xinjiang Light Industry Technical College in Urumqi reported¹⁴¹ a collaboration¹⁴² with the carmaker’s factory, and stated in 2019 that Volkswagen

¹³⁸ <https://www.journals.uchicago.edu/doi/abs/10.1086/725494>

¹³⁹ <https://www.xinjiangpolicefiles.org/>

¹⁴⁰ <https://doi.org/10.25365/jeacs.2022.3.zenz>

¹⁴¹ https://web.archive.org/web/20231113005702/https://www.xjgg.edu.cn/xjgg/xjgg1/dj_detail.php?ssid=79&sid=21&id=8569

¹⁴² <https://www.sueddeutsche.de/wirtschaft/vw-china-vorwurf-zwangsarbeit-1.6316708?reduced=true>

participated¹⁴³ in a college job fair. At least one Uyghur, Adiljan Hashim, was placed from a reeducation camp into this institution, according to police records contained in the Xinjiang Police Files. The region's white paper¹⁴⁴ on the camps states that detainees are trained in automotive maintenance and repair. Hashim and other cases demonstrate¹⁴⁵ the clear possibility¹⁴⁶ that Volkswagen could have hired Uyghurs who were interned in a reeducation camp, although Beijing's information controls and barring of access to the region by independent observers in Xinjiang renders it impossible to obtain direct evidence for such hires.

BASF's Joint Venture Partner Markor's Connections to the Atrocities

Research¹⁴⁷ obtained by the author and published¹⁴⁸ by Germany's Der Spiegel¹⁴⁹ and ZDF¹⁵⁰ (national television) shows that BASF's joint venture partner in Xinjiang, Xinjiang Markor Chemical Industry, participated in village-based work teams that entered and spied on ethnic households.

Reports published by BASF's Markor on its company website describe staff joining state work teams, entering ethnic villages to eat, sleep, "control," and "enter" targeted households at night, a practice associated with Beijing's systems of forced assimilation of ethnic minorities. Together with Markor Chemical, BASF operates two joint ventures¹⁵¹ in the region: BASF Markor Chemical Manufacturing (Xinjiang) Co., Ltd. and Markor Meiou Chemical (Xinjiang) Co., Ltd.

In February 2018, Markor work teams joined state officials in being "deeply embedded" in a village to "control" 24 "focus households." Having received a "command" from the Qiemo county party committee at midnight, the teams made "focused preparations" to "enter homes at night" (夜间入户).

Witness accounts confirm that groups of state officials accompanied by police would enter homes at night to make arrests during the mass internment campaign. A 2015 document from the Xinjiang Police Files states that "nightly home visits" (夜间入户走访) must involve at least two assistance police officers and five people's militia (民兵). A corroborating public report by the China Industry Federation says that in February 2018, Markor "work teams" became "immersed" in ethnic villages, "eating, sleeping, working and studying with villagers," and joining village flag-raising ceremonies. Villagers who failed to attend these ceremonies were targeted for re-education detention.

State media and Markor reports show that throughout the mass internments and until at least 2022, Markor work teams promoted state policies through home visits, as well as "ethnic unity" and "poverty alleviation" activities. Markor's factory complex received visits by "paired

¹⁴³ http://web.archive.org/web/20231110163602/https://www.xjqq.edu.cn/xjqq/xjqq1/dj_detail.php?ssid=24&sid=97&id=8446

¹⁴⁴ https://web.archive.org/web/20190824064427/http://english.www.gov.cn/archive/whitepaper/201908/17/content_WS5d57573cc6d0c6695ff7ed6c.html

¹⁴⁵ <https://www.jpolrisk.com/karakay/>

¹⁴⁶ <https://apnews.com/article/china-volkswagen-xinjiang-uyghur-forced-labor-c505dac48bebe92b6f792bafdaae61f9>

¹⁴⁷ <https://twitter.com/adrianzenz/status/175344974807708076>

¹⁴⁸ <https://www.theguardian.com/world/2024/feb/06/german-firm-basf-urged-to-quit-xinjiang-over-gross-abuses-of-uyghurs>

¹⁴⁹ <https://archive.is/pk9Uc>

¹⁵⁰ <https://www.zdf.de/nachrichten/wirtschaft/unternehmen/basf-uyghuren-xinjiang-china-100.html>

¹⁵¹ <https://www.basf.com/global/en/who-we-are/sustainability/we-produce-safely-and-efficiently/audits/xinjiang.html#:~:text=The%20situation%20in%20the%20Xinjiang,in%20the%20two%20joint%20ventures.>

relatives," a policy that coercively pairs Han Chinese to ethnic families to surveil and indoctrinate them.

Markor's close involvement in enforcing repressive and assimilatory state policies is unsurprising as its parent company, Zhongtai, is deeply implicated in state activities in Xinjiang, including mass Uyghur forced labor. Zhongtai was sanctioned by the U.S. government in September 2023.

Following the revelations, BASF announced¹⁵² that it would sell its joint venture stake and withdraw from Xinjiang. However, serious questions remain as to why the company (1) did not carefully investigate the activities of its joint venture partner much earlier, and (2) why it did not choose to withdraw from the region following detailed reports of the various atrocities in 2019 and 2020. In November 2023, BASF stated¹⁵³ that it was in "concrete discussions" with a "reputable" auditing firm to renew its Xinjiang joint venture audit in 2024, after having conducted previous audits¹⁵⁴ in 2019 and 2023. The company asserted¹⁵⁵ that:

The situation in the Xinjiang region has always been part of BASF's overall assessment of its joint ventures in Korla. Regular due diligence measures including internal and external audits have not found any evidence of human rights violations in the two joint ventures.

While the details of the circumstances of these attempted audits are unknown, it is evident that such exercises cannot prove the absence of forced labor and related contextual risks. In April 2023, Germany's Association of Critical Shareholders stated¹⁵⁶:

BASF operates two joint ventures with Chinese companies in the city of Korla. Although BASF assures that there will be no forced labor there, such a guarantee simply cannot be credibly given for partner companies or suppliers. The Ethical Trading Initiative (ETI) rules out an independent review of working conditions due to widespread repression. German audit companies such as TÜV Süd have also withdrawn from the region in 2020 because workers cannot speak freely about the human rights situation. It is therefore questionable how BASF intends to rule out the possibility that no human rights violations are committed in the value chain of its joint ventures in Korla. We therefore cannot understand how BASF can sufficiently comply with the requirements of the Supply Chain Due Diligence Act (LkSG).

¹⁵²<https://web.archive.org/web/20240404075857/https://www.nytimes.com/2024/02/18/business/volkswagen-basf-xinjiang-china.html>

¹⁵³<https://archive.is/t0fJN>

¹⁵⁴<https://www.basf.com/us/en/who-we-are/sustainability/we-source-responsibly/marikana1.html#:~:text=After%20previous%20audits%20in%202019,joint%20venture%20audit%20in%202024.>

¹⁵⁵<https://www.basf.com/global/en/who-we-are/sustainability/we-produce-safely-and-efficiently/audits/xinjiang.html#:~:text=The%20situation%20in%20the%20Xinjiang,in%20the%20two%20joint%20ventures.>

¹⁵⁶<https://www.kritischeaktionäre.de/en/basf-se/completely-inadequate-consequences-of-forced-labour-risks-in-china-our-countermeasures/>

It is concerning that BASF decided to withdraw from the region only after direct evidence was published implicating its joint venture partner in the atrocities, and following significant political pressure after dozens of lawmakers from the Inter-Parliamentary Alliance on China (IPAC) sent a letter¹⁵⁷ to BASF's CEO Dr. Brudermüller demanding the company's full withdrawal from Xinjiang.

Despite evidence of having been implicated in forced labor, Volkswagen has merely stated¹⁵⁸ that it is "in talks" about the "future" of its Xinjiang site. As of April 23, 2024, more than two months after the revelations, Volkswagen has issued no further statement on the matter. The fact that following the Löning audit-washing exercise (detailed in section 6.0), global index provider MSCI removed¹⁵⁹ Volkswagen's ESG red flag¹⁶⁰ notice, declaring the company once again fully investible from a social, environmental and ethical perspective, means that the company can continue to operate with impunity in a region that is actively perpetrating mass atrocities. Volkswagen's ethically questionable approach is supported by audit-washing practices and the irresponsible behavior of index providers such as MSCI. This issue warrants urgent further investigation into the Löning audit and into MSCI's methodology and processes for verifying the absence of ESG-related red flags.

6.0 Audit-Washing: The Löning Audit of the SAIC-Volkswagen Factory in Urumqi

In June¹⁶¹ 2023, Volkswagen announced an independent audit of its much-criticized joint venture factory in Urumqi. On December 5, 2023, the company announced the results. The report absolved the firm from exposure to any form of forced labor, and Volkswagen reported¹⁶² "no indication of any human rights violations or wider issues around working conditions."

But immediately after the report was issued, the staff¹⁶³ of the auditing firm went into revolt¹⁶⁴, disavowing any connection to the report. Scrutiny is now focused on the audit's methods, its lack of transparency, and on the person behind the audit: the firm's managing director, Markus Löning, whose most recent statements have all but invalidated the audit's central claims. This in addition to the new findings detailed above, that directly implicate Volkswagen in forced Uyghur labor, showing that the SAIC-Volkswagen test track in Xinjiang was built by a Chinese state-owned enterprise using Uyghur workers employed through the region's highly coercive labor transfer program.

Experts and activists have long warned that credible audits in Xinjiang are impossible. A growing body of scholarly research¹⁶⁵ shows that Xinjiang operates the largest system of state-

¹⁵⁷<https://ipac.global/wp-content/uploads/2024/02/Letter-to-Mr-Brandmuller-regarding-BASF-complicity-in-human-rights-abuse.pdf>

¹⁵⁸<https://www.reuters.com/business/autos-transportation/volkswagen-talks-with-jv-partner-over-future-business-activities-xinjiang-china-2024-02-14/>

¹⁵⁹<https://www.reuters.com/business/autos-transportation/volkswagen-sheds-red-flag-rating-index-provider-msci-after-xinjiang-site-audit-2023-12-14/>

¹⁶⁰<https://europe.autonews.com/automakers/vw-under-fire-amid-allegations-chinas-human-rights-abuses>

¹⁶¹<https://www.ft.com/content/5abdf131-a003-4f83-bb93-bb435541d92e>

¹⁶²<https://www.volkswagen-group.com/en/esg-controversies-15846>

¹⁶³<https://www.reuters.com/business/autos-transportation/auditing-firm-distances-itself-duos-work-vws-china-plant-2023-12-13/>

¹⁶⁴<https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

¹⁶⁵<https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

imposed forced labor¹⁶⁶ in the world today, affecting more than 2 million¹⁶⁷ Uyghurs and members of other ethnic groups.

The region's SAIC-Volkswagen joint venture factory was established in 2013 for political¹⁶⁸ rather than economic reasons. Back then, according to consultant Jochen Siebert, an expert on the Chinese-German auto industry, the Chinese state gave Volkswagen a choice¹⁶⁹: "Do you want [government] approval for other planned factories...?" If the answer was going to be "yes," the company also had to build one in Urumqi. Volkswagen denies this allegation, but its representatives have told¹⁷⁰ German media that political motivations did play a role. Volkswagen says that the factory currently only handles¹⁷¹ technical commissioning and deliveries.

The factory's audit ostensibly followed the international SA8000 standard¹⁷², which seeks to assess child and forced labor, health and safety, freedom of association, discrimination, physical or psychological punishment, working hours, and incomes. That sounds impressive—until one realizes that no visible sign of coercion was ever likely to be found at the factory. Coercion occurs primarily¹⁷³ during the recruitment, training, and transfer processes, and is often less visible at workplaces.

The audit was performed¹⁷⁴ by Löning Human Rights and Responsible Business, an entity founded by Markus Löning¹⁷⁵, a former member of the German parliament who also served as Germany's human rights commissioner between 2010 and 2013. However, neither Volkswagen nor Löning published an actual audit report. The company merely posted an unsigned¹⁷⁶ document containing quotes by Markus Löning, without his signature or company letterhead—as though he had undertaken the work independently of his firm. This was accompanied by a short Volkswagen statement¹⁷⁷.

The reason for this awkward presentation of audit results soon became clear. In a stunning turn of events, on December 7, 2023, the Löning company posted¹⁷⁸ a statement on its LinkedIn account which appeared to distance its entire staff from the whole audit exercise. The statement noted that besides Mr. Löning and Christian Ewert¹⁷⁹, the senior strategy advisor at Löning who oversaw¹⁸⁰ the audit, "no other team member from Löning participated in, supported or backed this project."

¹⁶⁶ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366?scroll=top&needAccess=true>

¹⁶⁷ <https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/>

¹⁶⁸ <https://www.bbc.com/news/world-asia-china-54918309>

¹⁶⁹ <https://www.sueddeutsche.de/wirtschaft/report-nichts-ist-gut-1.3727046>

¹⁷⁰ <https://taz.de/Zwangsarbeitsvoruerfe-gegen-Volkswagen/!5976436/>

¹⁷¹ <https://www.reuters.com/business/autos-transportation/volkswagen-audit-xinjiang-site-found-no-signs-forced-labour-2023-12-05/>

¹⁷² <https://sa-intl.org/resources/sa8000-standard/>

¹⁷³ <https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

¹⁷⁴ <https://loening.org/>

¹⁷⁵ <https://loening.org/team/markus-loening/>

¹⁷⁶ <https://web.archive.org/web/20231213201811/https://www.volkswagen-group.com/en/publications/more/quotes-markus-loening-founder-and-managing-director-of-loening-human-rights-responsible-business-gmbh-2572/download?disposition=attachment>

¹⁷⁷ <https://web.archive.org/web/20231213223026/https://www.volkswagen-group.com/en/publications/more/management-summary-on-the-esg-audit-of-saic-volkswagen-xinjiang-automotive-company-limited-2573/download?disposition=attachment>

¹⁷⁸ https://web.archive.org/web/20231213221334/https://www.linkedin.com/posts/loening_statement-on-the-volkswagen-audit-at-the-activity-7138492238422073344-2wDZ/

¹⁷⁹ <https://loening.org/#team>

¹⁸⁰ <http://web.archive.org/web/20231214194905/https://www.linkedin.com/feed/update/urn:li:activity:7141129069131202561/>

Four senior employees added identical statements¹⁸¹ to further distance themselves: “I have not supported the acceptance of this project, nor have I been involved in it in any capacity.” Citing insiders, the *Financial Times* reported¹⁸² that this reflected “outrage among staff at the firm.” Some Volkswagen managers are similarly critical of the audit, complaining¹⁸³ that its “result ... had been fixed in advance.”

A review¹⁸⁴ of Löning’s staff webpage and changes in the LinkedIn Profiles of leading Löning staff members, including the senior employees who had further distanced themselves from the Löning audit effort, shows that between February and April 2024, at least seven staff members (nearly 30 percent of all listed employees) left the organization. Six of them had held senior positions.

The audit’s methodology raises significant questions about the findings’ validity and relevance. Volkswagen had disclosed¹⁸⁵ that the “actual audit” was conducted by two Chinese lawyers from an unnamed firm in Shenzhen, who were merely “accompanied on site” by Löning staff. Given that Chinese citizens are legally required¹⁸⁶ to support whatever the state defines to be a matter of national security, and that Chinese lawyers and labor auditors have faced targeted state harassment¹⁸⁷, the exercise cannot be taken to constitute an independent audit.

Löning’s LinkedIn post also acknowledged severe methodological limitations, conceding that “the challenges in collecting meaningful data for audits [in Xinjiang] are well known and are also present in this project.” Markus Löning’s comments to the *Financial Times* further suggest that his quotes as published by Volkswagen were misleading. In those quotes, Löning had claimed¹⁸⁸ that “we...conducted 40 interviews...” However, speaking to the *Financial Times*, he conceded¹⁸⁹ that the audit was mainly based on a “review of documentation...rather than interviews,” given that interviews could endanger staff. He added that “even if they would be aware of something, they cannot say that in an interview.”

Internal state documents confirm¹⁹⁰ that poverty alleviation and reeducation work is subject to strict requirements of secrecy¹⁹¹, meaning that Uyghurs cannot discuss their experiences in the camps or with state-mandated training and employment. This, of course, is why experts¹⁹² and reputable auditing firms¹⁹³ agree that audits in Xinjiang are both impractical¹⁹⁴ and unethical¹⁹⁵. Meanwhile, Volkswagen has confirmed¹⁹⁶ that the audit did not

¹⁸¹ <https://www.reuters.com/business/autos-transportation/auditing-firm-distances-itself-duos-work-vws-china-plant-2023-12-13/>

¹⁸² <https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

¹⁸³ <https://www.handelsblatt.com/unternehmen/industrie/volkswagen-wegen-xinjiang-werk-in-der-kritik/100003715.html>

¹⁸⁴ This review was conducted by Campaign for Uyghurs (CFU). An archived version of Löning’s staff web page can be found at <https://archive.is/pbP7l>.

¹⁸⁵ <https://web.archive.org/web/20231213223026/https://www.volkswagen-group.com/en/publications/more/management-summary-on-the-esg-audit-of-saic-volkswagen-xinjiang-automotive-company-limited-2573/download?disposition=attachment>

¹⁸⁶ <https://thediplomat.com/2019/02/the-real-danger-of-chinas-national-intelligence-law/>

¹⁸⁷ <https://www.wsj.com/articles/china-closes-u-s-auditor-as-tensions-mount-over-forced-labor-allegations-11629390253>

¹⁸⁸ <https://web.archive.org/web/20231213201811/https://www.volkswagen-group.com/en/publications/more/quotes-markus-loning-founder-and-managing-director-of-loning-human-rights-responsible-business-gmbh-2572/download?disposition=attachment>

¹⁸⁹ <https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

¹⁹⁰ <https://www.xinjiangpolicefiles.org/files-related-to-forced-labor/>

¹⁹¹ <https://www.ipolrisk.com/wash-brains-cleanse-hearts/>

¹⁹² <https://chinadigitaltimes.net/2022/03/interview-laura-murphy-on-forced-labor-in-xinjiang/?amp>

¹⁹³ <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>

¹⁹⁴ <https://endughurforcedlabour.org/wp-content/uploads/sites/44/ASI-CC-EUFL-position-on-SIFL-in-the-EU-Forced-Labour-Regulation.pdf>

¹⁹⁵ <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/pdfs/shu-hkc---unsp-call-for-input-forced-labor-in-ag-sector-final.pdf>

¹⁹⁶ <https://www.handelsblatt.com/unternehmen/industrie/volkswagen-wegen-xinjiang-werk-in-der-kritik/100003715.html>

even attempt to review staff résumés, meaning the company could not evaluate what Uyghur employees had gone through prior to joining Volkswagen.

Experts agree¹⁹⁷ that this type of forced labor cannot be assessed at workplaces¹⁹⁸. In places such as Xinjiang, it is “a practical impossibility for a business to undertake credible and effective due diligence,” according to a joint statement from three human rights advocacy groups.

In so many words, Markus Löning has effectively conceded these well-known facts. Taken together, his statements¹⁹⁹ acknowledge that the so-called audit he oversaw consisted of little more than a visual on-site inspection, combined with a review of staff work contracts and the past three years of salary payments. Such a review cannot identify state-led coercion: Even Xinjiang’s most blatantly coercive work policy documents state²⁰⁰ that Uyghurs sign²⁰¹ work contracts and receive wages for the state-assigned jobs that they are forced to accept. Documentary and witness evidence²⁰² shows that those who refused to “agree” to such assignments were detained in camps.

Markus Löning also stated²⁰³ that he and his colleagues “were unable to identify any special security measures,” a virtually meaningless assessment given that nearly all Chinese workplaces come with basic security features such as fences, surveillance cameras, and entry-exit checkpoints. He conceded that the so-called audit focused only on the plant’s 197 employees. This and his statements²⁰⁴ to the media suggest he was aware that systemic state coercion can only be measured outside the factory gates.

In addition, Volkswagen’s claim²⁰⁵ that the audit employed the “internationally renowned” SA8000 standard was later qualified²⁰⁶ by Löning’s staff, who noted that their firm is “not accredited to conduct SA8000 audits.” Löning is indeed not listed²⁰⁷ on the website of the firm that crafted the standard, Social Accountability International (SAI). Markus Löning subsequently conceded²⁰⁸ to the *Financial Times* that he had used the SA8000 standard only as a “framework” for data collection. However, SAI itself has classified²⁰⁹ Xinjiang as a “high-risk location for the purposes of SA8000.”

Further evidence identified by the author in early 2024 (detailed in section 5.0) demonstrates that the SAIC-Volkswagen test track in Turpan, a Uyghur region, was built using transferred Uyghur surplus laborers at high risk of forced labor.

¹⁹⁷<https://enduvghurforcedlabour.org/wp-content/uploads/sites/44/ASI-CC-EUFL-position-on-SIFL-in-the-EU-Forced-Labour-Regulation.pdf>

¹⁹⁸<https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366>

¹⁹⁹<https://web.archive.org/web/20231213201811/https://www.volkswagen-group.com/en/publications/more/quotes-markus-loning-founder-and-managing-director-of-loning-human-rights-responsible-business-gmbh-2572/download?disposition=attachment>

²⁰⁰https://web.archive.org/web/20191212034310/http://www.mohrss.gov.cn/SYRlzyhshbzb/jiuye/gzdt/201903/t20190321_312709.html

²⁰¹https://web.archive.org/web/20231214175424/https://new.nrra.gov.cn/art/2020/9/14/art_304_183315.html

²⁰²<https://www.tandfonline.com/doi/full/10.1080/02634937.2023.2227225>

²⁰³<https://web.archive.org/web/20231213201811/https://www.volkswagen-group.com/en/publications/more/quotes-markus-loning-founder-and-managing-director-of-loning-human-rights-responsible-business-gmbh-2572/download?disposition=attachment>

²⁰⁴<https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

²⁰⁵<https://web.archive.org/web/20231213223026/https://www.volkswagen-group.com/en/publications/more/management-summary-on-the-esg-audit-of-saic-volkswagen-xinjiang-automotive-company-limited-2573/download?disposition=attachment>

²⁰⁶<https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

²⁰⁷<https://www.reuters.com/business/autos-transportation/volkswagen-audit-xinjiang-site-found-no-signs-forced-labour-2023-12-05/>

²⁰⁸<https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>

²⁰⁹<https://www.business-humanrights.org/en/latest-news/social-accountability-international-responded/>

Experts have noted²¹⁰ that “a poorly designed or executed audit is at best meaningless and at worst even excuses harms that the audits claim to mitigate.” Volkswagen’s audit strategy appears designed to exploit the fact that no visible signs of forced labor were ever likely to emerge at its facility in Urumqi. Their absence is therefore, practically speaking, irrelevant²¹¹ for forced labor assessments. By creating the appearance of a genuine audit while measuring factors that cannot detect systemic state coercion in the first place, the Volkswagen-Löning effort is a paradigmatic example of audit-washing.

7.0 The Continued Risks of International Companies’ Exposure to Uyghur Forced Labor

The Context: Soaring Foreign Exports from Southern Xinjiang

Uyghur forced labor taints global supply chains largely indirectly, through links to supply chains throughout China and neighboring Asian countries, allowing Xinjiang’s direct foreign trade to experience dramatic growth despite nominal forced labor bans by countries including the US. Much of this growth is driven by the Uyghur heartland regions in southern Xinjiang and linked to labor-intensive products, the types of goods most at risk of forced labor. This means that many products made with forced labor are likely to enter global supply chains in indirect ways, in violation of national and international forced labor policies and legislation.

In 2021, Xinjiang’s direct trade with other countries increased 5.8%. This occurred despite the US government’s ban²¹² on Xinjiang cotton in January 2021 after reports²¹³ of mass forced labor in its cotton-picking apparatus. Of the total export value, 51.4% came from labor-intensive products that are among those most likely to involve Uyghur forced labor, especially textile and garment production (Urumqi Customs, 2021).²¹⁴

In 2022, Xinjiang’s direct trade increased 10-fold, rising by an impressive 57%, the fastest growth rate of any Chinese province or region that year.²¹⁵ Some 85% of this trade consisted of labor-intensive products linked to high forced labor risk. In January-September 2023, Xinjiang’s trade increased by 47% and its exports by 49%. Exports of labor-intensive products grew by over 50%, while exports of solar cells, lithium batteries, and electric passenger vehicle components grew by 61%.²¹⁶

Despite demonstrated prevalence of forced labor, trade growth was driven especially by increases in southern Xinjiang’s Uyghur regions, whose share of Xinjiang’s foreign trade rose from 21.7% in 2021 to 26.6% in 2022, then further to 30.5% in the first 8 months of 2023, boosted

²¹⁰ <https://www.gmfus.org/news/ai-audit-washing-and-accountability>

²¹¹ <https://www.tandfonline.com/doi/full/10.1080/23322705.2023.2270366?scroll=top&needAccess=true>

²¹² <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave>

²¹³ <https://newlinesinstitute.org/rules-based-international-order/genocide/coercive-labor-in-xinjiang-labor-transfer-and-the-mobilization-of-ethnic-minorities-to-pick-cotton/>

²¹⁴ “2021 Nian Xinjiang waimao jin chukou tongbi zengzhang 5.8% shixian “shisiwu” lianghao kaiju,” n.d.

http://www.customs.gov.cn/urumqi_customs/556675/556651/556655/556657/4150606/2022012810501734456.doc

²¹⁵ Chen Qiangwei. (2022) “2022 Nian Xinjiang waimao jin chukou zong zhi shou po 2400yi yuan.” Xinjiang Daily. 17 January.

https://web.archive.org/web/20230502221301/http://xj.news.cn/2023-01/17/c_1129293626.htm

²¹⁶ Xinyu, W. (2023). “Shouci tupo 2500yi yuan! Qian san jidu Xinjiang waimao chuang lishi xingao.” Altaw.com. 21 October.

https://web.archive.org/web/20231117134554/http://www.altaw.com/yw/202310/20231021_16820877.html. Xiaoli, L. (2023).

“Qian 8 yue Xinjiang waimao jin chukou zong zhi zengzhang yu wu cheng.” Tianshan Net. 11 October.

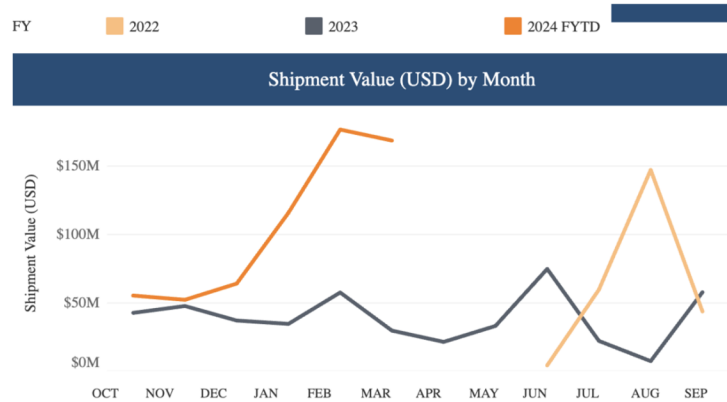
https://web.archive.org/web/20231113163440/https://www.ts.cn/xwzx/jjxw/202310/20231011_16581203.shtml

by high growth in the Kashgar special economic zone and by targeted state efforts to increase southern Xinjiang's foreign trade.²¹⁷ In the first four months of 2023, foreign trade grew fastest in Kashgar (123%), Hotan (123%) and Kizilzu (140%), all regions with particularly high risk of Uyghur forced labor.²¹⁸

These increases can be linked to a policy re-orientation on economic growth and coercive development and poverty alleviation policies under Xinjiang's Party Secretary Ma Xingrui, which involved intensified labor transfer mandates and numbers.

Besides increased exports, southern Xinjiang's increased trade shares are also an indicator of drastic growth in local production for at least initial domestic use. This means that more products made with forced labor are entering global supply chains via Chinese domestic companies and their international trade partners, as well as through intermediary countries that obscure the Xinjiang origins of key raw materials or components.

Products made in whole or in part in Xinjiang are entering global supply chains through intermediary countries, in particular Vietnam, Malaysia, Thailand, and other Asian countries. Most shipments detained by Customs and Border Protection (CBP) under the Uyghur Forced Labor Prevention Act (UFLPA) were from one of these intermediary countries. The chart below, published by the CBP on its UFLPA dashboard²¹⁹, further demonstrates that the value of detained shipments with the status "pending" and "denied" has increased considerably since the beginning of 2024. Most of these products were in the "electronics" category, followed by "apparel, footwear, and textiles" and "industrial and manufacturing materials."



Source: CBP UFLPA enforcement statistics (dashboard).

Several billion dollars worth of solar panels from China with links to Xinjiang have been shipped to the U.S. through India, obfuscating supply chains and potentially circumventing UFLPA regulations. India's Waaree Energies Ltd has sent millions of panels to the US with components

²¹⁷ Ibid 145. Xiaoli, L. (2023).

²¹⁸ Yanan, L. (2023). "Qian 4 yue Xinjiang waimao jin chukou 949.5yi yuan tongbi zengzhang 82.7%." Belt and Road Portal.

May 17. <https://web.archive.org/web/20231113170231/https://www.yidaivjlu.gov.cn/p/318666.html>

²¹⁹ <https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics>, accessed 4/25/2024.

from Chinese company Longi Green Energy Technology, whose products were repeatedly denied entry to the US market over concerns about forced labor.²²⁰

A February 2024 report from Human Rights Watch (HRW) about forced labor and ethical risks related the global car industry's exposure to the PRC and Xinjiang points to a concerning risk of exposure and a worrying lack of ethical concern.²²¹ The report concludes:

Despite the risk of exposure to forced labor through Xinjiang's aluminum, some car manufacturers in China have succumbed to government pressure to apply weaker human rights and responsible sourcing standards at their Chinese joint ventures than in their global operations. Most companies have done too little to map their supply chains for aluminum parts and identify and address potential links to Xinjiang. Confronted with an opaque aluminum industry and the threat of Chinese government reprisals for investigating links to Xinjiang, carmakers in many cases remain unaware of the extent of their exposure to forced labor. (p.1)

As the HRW report noted, as evidence of their ethics compliance, carmakers often point to their collaboration with the Aluminum Stewardship Initiative (ASI), an audit program that assesses direct and indirect suppliers against social and environmental standards. However, ASI has given manufacturers of aluminum products in China a passing grade for their sourcing practices even where evidence suggests those companies may have sourced aluminum from Xinjiang (an example is China's Chalco Ruimin, which until 2022 received aluminum from Xinjiang Zhonghe, a supplier that stopped disclosing its downstream customers in 2023; p.84-85). Other Chinese aluminum suppliers did not respond to HRW questions about its supply chain relationships to Xinjiang, a typical transparency issue affecting PRC domestic supply chains.

As the HRW report also notes, car industry staff and sourcing experts conceded that the threat of Chinese government retaliation has deterred western companies from talking to China-based suppliers and joint ventures about potential links to Xinjiang (p.7-8). All of this suggests that many global companies are using auditing processes and related assertions about ethics standards in ways that can mask risks of exposure to Uyghur forced labor.

8.0 Recommendations for the U.S. Government to Ensure Accountability for International Firms and Combat Forced labor in the PRC

Given the demonstrated and pervasive state-imposed forced labor ongoing in Xinjiang, the only responsible choice for companies and investors is divestment and withdrawal.²²² Audits must only be used in responsible ways, with full acknowledgement of their limitations, and they must not be used in regard to supply chains that are directly implicated in Uyghur forced labor.

The U.S. State Department should regularly issue updated Xinjiang Supply Chain Business Advisories that are more specific in detailing supply chain risks, due diligence

²²⁰ <https://www.bloomberg.com/news/articles/2024-02-05/us-solar-boom-opens-indian-door-to-chinese-components-made-with-forced-labor>

²²¹ <https://www.hrw.org/report/2024/02/01/asleep-wheel/car-companies-complicity-forced-labor-china>

²²² See also the joint publication on investor guidance related to Uyghur forced labor published by Anti-Slavery International, the Investor Alliance for Human Rights, and Sheffield Hallam University: <https://www.antislavery.org/wp-content/uploads/2024/01/ASI-HCIJ-IAHR-Investor-Guidance.pdf>.

limitations, and known issues related to inadequate auditing schemes. Future advisories should reference, and incorporate where appropriate, the ILO's updated forced labor measurement guidelines²²³ and research considerations that present a more comprehensive picture of the risks associated with state-imposed forced labor.

The U.S. government (or Congress) should publish a detailed and publicly-available research report on the obstacles imposed by the Chinese government that inhibit the ability to conduct credible social audits in Xinjiang. Such reporting should uncover the full extent to which the PRC is actively obfuscating domestic supply chain relationships, preventing effective auditing efforts through threats and detentions, and incentivizing international companies to accept less-than-adequate audit procedures as part of their due diligence efforts. Related publications should expose the extent to which these actions enable Chinese and international companies to continue to sell into the United States products that are at risk of being made in whole or in part with Uyghur forced labor.

The U.S. Congress should conduct a detailed investigation of (1) relevant auditing practices, experiences, and standards of auditing firms used by US-based companies to assess forced labor risks in the PRC and the XUAR; and (2) the methodology used by global index providers such as MSCI, to assess the addition and removal of companies related to its ESG red flag notices, and in particular the method used to determine the removal of Volkswagen's red flag notice after the publication of the Löning audit statements. In the course of this investigation, Congress should obtain statements from auditing firms detailing their assessment of the ability to conduct credible social audits in Xinjiang, whether they would be willing to undertake such audits, and the conditions under which they would do so, and should require such statements to be made public. Auditing firms should submit written statements detailing the conceptual and practical limitations they see as inherent to conducting social audits in contexts of state-imposed forced labor. The resulting findings should be fed into public reports by the U.S. government or Congress on auditing conditions, such as the one proposed above. The investigation should involve public hearings involving MSCI, auditing firms, and companies with potential supply chain exposures Xinjiang, in order to raise public awareness of issues related to forced labor, social audits, and related ESG standards.

Congress should also conduct a hearing with representatives from Volkswagen, to investigate the circumstances of the audit of the SAIC-Volkswagen factory in Urumqi; clarify apparent contradictions between Volkswagen's initial statements about audit and subsequent qualifications made by Markus Löning and his team in media interviews and LinkedIn posts; the use of transferred Uyghur laborers to build the SAIC-Volkswagen test track in Turpan; and ethical questions surrounding its presence in the region.

Finally, Congress should enact legislation mandating that companies whose supply chains involve an elevated risk of being connected to products made in whole or in part with Uyghur forced labor to disclose their supply chains to the raw material level.

²²³ <https://www.ilo.org/publications/hard-see-harder-count-handbook-forced-labour-prevalence-surveys-third>

Appendix: List of Internal State Documents from Xinjiang on Forced Labor and Coercive Poverty Alleviation

Jinqi Tuopin. 2019. “Recent key tasks for poverty alleviation” / “Jinqi tuopin gongjian zhongdian gongzuo.” July 9. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/recent-key-poverty-alleviation-work/>.

This 2019 document from Yarkand Government identifies shortcomings in poverty alleviation work, and mandates a set of rectification measures. This includes guidelines for responding to the most “difficult” members of the population, such as withholding subsistence allowances for individuals who repeatedly refuse to participate in poverty alleviation projects, mandating that all villages establish “love supermarkets” to improve inner motivation, and coercing elderly persons to participate in seasonal labor transfers, including picking cotton.

Kashgar Stability Maintenance Group. 2017. “Notice on Printing and Distributing “Work Guidelines for the Lawful Detention of 21 Types of Strike-Hard Focus Targets” / Guanyu yinfa “yifa shouya 21lei yanda zhongdian duixiang gongzuo zhinan” tongzhi.” 7 February. Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/notice-on-printing-and-distributing-work-guidelines-for-the-lawful-detention-of-21-types-of-strike-hard-focus-targets-kashgar-2017/>.

This document outlines guidelines for detaining persons belonging to one of 21 types of target (focus) persons. They are to be subjected to “strike-hard detention,” which typically indicates a tougher form of detention than re-education. The 21 categories include a wide variety of individuals, including persons who photograph convenience police stations, fail to participate in government grassroots organizational arrangements, engage in various types of religious activities, or refuse to allow visits by government work teams.

“Kashgar Prefecture 2018-2020 “Targeted Poverty Alleviation Poor Households Information Collection Form” / “Kashi diqu 2018-2020 nian” n.d. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/kashgar-prefecture-2018-2020-targeted-poverty-alleviation-poor-households-information-collection-form-2/>.

The Kashgar prefecture government issued this form to gather information about poor households and categorize them during the most intensive period of poverty alleviation from 2018 to 2020. The first section of the form requires basic information about any given household, indicating levels of poverty, resettlement or relocation status, and assistance measures. The second section of the form requires an explanation for the causes of poverty, including “a mindset of waiting, relying, wanting,” “religious influence,” and “low cultural level.” Subsequent sections outline prescribed countermeasures and forecasted future income.

Khotan County. 2018. “Summary of Social Poverty Alleviation Work in Ottur Eriq Village” / “Outula’airikecun shehui fupin gonguo zongjie.” December 5. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/summary-of-social-poverty-alleviation-work-in-ottur-eriq->

[village/](#).

This 2018 document summarizes the work of the village-based work team from Khotan county No. 3 primary school. It outlines successes and areas for improvement. The document focuses heavily on the importance of helping locals develop strong Mandarin language skills, increase ideological work for farmers, cooperate with employment services to 'guide' surplus labor to join seasonal labor, and encourage teachers to enter the households to gather more information. Poor families were to be made aware of their deficiencies, subjected to strengthened "motivational education," and households considered to be poor because of "laziness" were sent to dedicated "education" activities.

"List of "Lazy Persons" and "Drunkards" from Village No.7 in Yarkand County" / Qi cun shachexian. n.d. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/list-of-lazy-persons-and-drunkards-from-village-no-7-in-yarkand-county/>.

This 2019 document issued by Yarkand County lists individuals identified as "lazy persons," "drunkards," and persons who do not participate in arranged activities.

Qiaolake. 2018. "Chipartopluk Village (Cholaq Terek Township) 2018 Work Summary and 2019 Work Ideas" / "Qiaolake tierke zhen qiba'er tuobuleige cun 2018nian gongzuo zongjie ji 2019nian gongzuo silu." Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/chipartopluk-village-cholaq-terek-township-2018-work-summary-and-2019-work-ideas/>.

This document outlines a range of government work achievements for 2018 and work priorities for 2019 for Chipartopluk village in Tekes County (Yili prefecture), related to poverty alleviation, grassroots party work, development and combating of "religious extremism". Among a range of work targets for 2019, the state planned to round up "all women and other surplus laborers" – 500 persons from only 391 households – to work in neighboring cities.

"Yarkand County Poverty Alleviation [No. 9] Develop the Pigeon Meat Industry and Open Doors to Building Wealth" Shache County. 2019. "Shachexian tuopin gongjian." June 18. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/yarkand-county-poverty-alleviation-no-9-develop-the-pigeon-meat-industry-and-open-doors-to-building-wealth/>.

This classified document discusses industrial poverty alleviation as a fundamental mechanism for lifting ethnic and rural households from poverty. The document describes a farmers' breeding cooperative which integrates centralized breeding of pigeon meat, geese, and other poultry as an example of industrial poverty alleviation. In explaining the success of poverty alleviation through this example, the document notes that shaming "lazy persons" is an important step to promoting people's "inner motivation."

Shache County. n.d. “Yarkand County Plan for Investigating Shortcomings in Assault-Style Poverty Alleviation in Townships and Counties” / “Tuopin gongjian duanban qingkuang modi fang’an.” November 8. Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/yarkand-county-plan-for-investigating-shortcomings-in-assault-style-poverty-alleviation-in-townships-and-counties/>.

This document mandates daily reporting of dozens of data points in order to identify shortcomings in township/village poverty alleviation work. This daily report template highlights the wide application of poverty alleviation requirements, including building love supermarkets and staffing village-based satellite factories with supervising officials.

Shufu County Commission. 2017. “Shufu County Disciplinary Inspection Commission Notice on the Problem of the Poor Implementation of Mass Work and Handling of this Situation” / “Guanyu dui luoshi qunzhong gongzuo.” Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/shufu-county-disciplinary-inspection-commission-notice-on-the-problem-of-the-poor-implementation-of-mass-work-and-handling-of-this-situation>.

This Shufu County Disciplinary Inspection Commission notification lists 25 accountability issues identified by the Mass Work Supervision Team of the Autonomous Region, including cases of local corruption or malpractice. For example, in several townships in Konasheher county, officials “forced” Uyghur villagers to work in textile and satellite factories for minimal pay.

Shufu County. n.d. “Shufu County Plan for the Division of Roles to Implement the Feedback from the Autonomous Region’s Party Committee’s Eighth Inspection Group” / “Shufuxian luoshi zizhiq dangwei di ba xunshi zu fankui yijian de zeren fenjie fang’an.” Xinjiang QQ Files. <https://www.xinjiangpolicefiles.org/shufu-county-plan-for-the-division-of-roles-to-implement-the-feedback-from-the-autonomous-regions-party-committees-eighth-inspection-group/>.

The document summarizes the findings of the regional inspection of the Shufu County Committee and its leading cadres. The Inspection Team noted that ideological work is weak and policy implementation imprecise. In one instance, poor households were accidentally given excessive resettlement benefits. To conceal this error, the authorities demanded immediate repayment of subsidies by (illegitimately) threatening re-education detention.

Tekes County. n.d. “One of the Action Plans of the ‘Major Reflection and Fixing Shortcomings’” / “Tekesi xian gongan’ju jin yi bu guanche luoshi ‘liangtou da, wa jian chan’ buqi yingshou jinshou duanban xingdong gongzuo fang’an.” Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/one-of-the-action-plans-of-the-major-reflection-and-fixing-shortcomings/>.

The Tekes County Political and Legal Affairs Commission circulates an action plan forcing the security agencies to reflect on and fix work shortcomings, with a focus on ensuring full implementation of mass internments: “resolutely round up all who should be rounded up.”

“Implement the Five Prevents- Promote Transformation - Action Plan for Making up for the Shortcomings of Education and Training Centers” / “Zhua wu fang cu zhuanhua bu qi jiao pei zhongxin duan ban xingdong fangan.” Xinjiang Police Files.

<https://www.xinjiangpolicefiles.org/implement-the-five-prevents-promote-transformation/>

This document lists implementation shortcomings related to the re-education camps, such as overcrowding and security issues, and outlines mandated steps for resolving them. This includes a discussion on how to implement detainee skills training and labor placement.

Kashgar Party Office Bulletin No.88. 2017. “Speeches of Comrades Li Ningping, Parhat Rozi, Chen Zhijiang and Dai Qing at the Meeting Promoting Poverty Alleviation to Reach Households and Persons with Precision” / “Li Ningping, Parhat Rozi, Chen Zhijiang, Dai Qing tongzhi zai diqu shendu pinkun tuopin gongjian jingzhun dao hu dao ren peixun tuijin hui shang de jianghua.” November 29. Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/kashgar-party-office-bulletin-no-88-2017/>

Kashgar Prefecture Party Secretary Li Ningping gives a speech in 2017 in which he exhorts party officials that poverty alleviation is closely intertwined with counterterrorism, social stability, and long-term economic prosperity. Li Ningping highlights that rural and ethnic populations require intensified and calculated measures to avoid extremism and join a modern and civilized society.

Yarkand Party Office Document No.2. 2019. “Notice on “Looking Back” Work Regarding the Rectification of Problems Related to the Full Implementation of Tackling Poverty Alleviation Through the “Winter Offensive” / “Guanyu quanli zuo hao tuopin gongjian “dongji gongshi” fupin lingyu wenti zhenggai “huitou kan” gongzuo de tongzhi.” January 21. Xinjiang Police Files. <https://www.xinjiangpolicefiles.org/yarkand-party-office-document-no-2-2019/>

This document issued by Yarkand County in 2019 identifies shortcomings in poverty alleviation work related to implementation of the “Winter Offensive” and mandates a set of rectification measures to counter implementation issues.

[THIS PAGE INTENTIONALLY BLANK]

PREPARED STATEMENT OF JIM WORMINGTON, HUMAN RIGHTS WATCH

Dear Congressman Smith, Senator Merkley, honorable Members of the Commission, thank you for the invitation to appear before you today.

The Car Industry Illustrates the Links between Global Supply Chains and Forced Labor in Xinjiang

The essential context for this hearing is the longstanding connection between major global industries and the Chinese government's human rights violations, including state-imposed forced labor programs targeting ethnic Uyghur and other Turkic groups. Human Rights Watch and other organizations have documented the links between forced labor programs in the Xinjiang Uyghur Autonomous Region (the Uyghur Region, or Xinjiang) and global supply chains, from the cotton in clothes and textiles, the polysilicon in solar panels, to the minerals and metals in both electric and gas-powered cars.

The car industry provides a compelling example of the links between global supply chains and the Chinese government's abuses in Xinjiang. Domestic and foreign manufacturers in China produced and exported more cars than any other country in the world in 2023. Chinese companies also produce and export billions of dollars of parts used by global carmakers, from electric vehicle batteries to alloy wheels. Many of the industry's biggest brands use China as a manufacturing and supplier base, a vital sales market, or both.

Companies manufacturing cars or sourcing parts from China risk exposure to the government's forced labor programs. Human Rights Watch released a report in February 2024 describing the links between aluminum, a vital material for car manufacturing, and forced labor in Xinjiang. Close to 10 percent of global aluminum is produced in Xinjiang, and our research showed that aluminum producers in the region, and the coal mines and coal plants that supply them, have participated in coercive labor transfers, a form of state-imposed forced labor. Aluminum from Xinjiang is shipped out of the region, melted down, and used to make aluminum alloys and aluminum products and is used by car manufacturers and other industries. International commodities traders also continue to purchase and trade aluminum from Xinjiang, further obscuring the links between Xinjiang and global supply chains.

Global carmakers are currently doing too little to address the risk of Uyghur forced labor in their aluminum supply chains. In our February 2024 report, we examined the aluminum sourcing policies and practices of five major carmakers—BYD, General Motors, Tesla, Toyota, and Volkswagen. We found problems in all five companies' sourcing practices, ranging from a lack of knowledge of the origin of the aluminum in their cars to a failure to take responsibility for joint ventures' sourcing practices.

Volkswagen, for example, which holds 50 percent of the equity in its joint venture with SAIC, a Chinese state-owned carmaker, has sought to downplay its responsibility for human rights impacts in its joint venture's supply chain. Volkswagen contends that, under German law, the company is only legally required to address human rights impacts in the supply chains of subsidiaries in which it has "decisive influence," which it says excludes SAIC-VW.

German government guidance, however, sets out a range of criteria for determining whether a company has "decisive influence," including "whether the subsidiary manufactures and exploits the same products or provides the same services as the parent company." SAIC-Volkswagen manufactures cars for the Chinese market under the Volkswagen brand. The law also applies to Volkswagen's direct suppliers, which could include SAIC-Volkswagen.

Companies in joint ventures also have a responsibility under the United Nations Guiding Principles on Business and Human Rights (the "UN Guiding Principles") to use their leverage to address the risk of forced labor in the joint venture's supply chain. Volkswagen has said the company "assumes responsibility . . . to use its leverage over its Chinese joint ventures to address the risk of human rights abuses." But when asked about potential links between SAIC-Volkswagen and an aluminum producer in Xinjiang, Volkswagen responded: "We have no transparency about the supplier relationships of the non-controlled shareholding SAIC-Volkswagen."

General Motors and Toyota, which also operate through joint ventures in China, did not provide written responses to our questions about their oversight of Chinese joint ventures, supply chain mapping, or the origin of their aluminum. General Motors instead said, "GM is committed to conducting due diligence and working collaboratively with industry partners, stakeholders, and organizations to address any potential risks related to forced labor in our supply chain." BYD also did not respond to questions about its efforts to address forced labor in its supply chain.

Tesla, which builds cars for China's domestic market and for export at its Shanghai Gigafactory, said that it had "in several cases" mapped its aluminum supply chain and had not found evidence of forced labor. However, the company did not specify how much of the aluminum in its cars remains of unknown origin.

Our research concluded that all five companies need to do more to map their supply chains for aluminum parts and identify and address potential links to Xinjiang. Confronted with an opaque aluminum industry and the threat of Chinese government reprisals for investigating links to Xinjiang, carmakers in many cases remain unaware of the extent of their exposure to forced labor.

Credible Social Auditing Is Not Possible in Xinjiang

The term social audits refers to a broad range of third-party inspections that purport to assess a company's compliance with specified human rights, labor, or environmental standards. The term is frequently used to refer to factory audits designed to assess labor conditions at the facility under inspection.

The risk of links to Uyghur forced labor in supply chains has led some companies, in the car industry and other sectors, to look to social audits to investigate labor conditions at factories in Xinjiang. Volkswagen, for example, in 2023 commissioned an audit of the risk of forced labor at the Xinjiang plant operated by a subsidiary of SAIC-Volkswagen.

The inherent limitations of social audits, however, and the threats to auditors and workers in Xinjiang, mean that companies should not commission or rely on audits in the region.

Human Rights Watch and other organizations have documented the limitations of factory audits in identifying labor abuses, including forced labor globally. Common problems include the inadequate time on the ground to conduct the audit; the failure to interview workers offsite in safe settings; conflicts of interest between the audit firm and paying clients; and successful efforts to deceive auditors by hiding actual working conditions.

The inherent problems of factory audits are exacerbated in Xinjiang, where the Chinese government's brutal repression means there is no valid means to verify that any workplace in the region is free of forced labor. Threats to workers in Xinjiang mean that interviews with workers, which are essential to the methodology of any labor or human rights investigation, cannot generate reliable information. The government's use of extrajudicial detention, torture, and enforced disappearance, as well as mass and intrusive surveillance, means any victim of forced labor would and should assume that providing truthful testimony to an auditor would result in government retaliation. At least five international audit firms had by 2020 determined they would no longer conduct audits in Xinjiang.

Volkswagen's 2023 audit of the Xinjiang plant, overseen by a firm run by Markus Löning, Germany's former commissioner for human rights, exemplifies the pitfalls of auditing in Xinjiang. Löning said in December 2023, when the audit was released, that "we could not find any indications or evidence of forced labor" at the plant and stated that "we conducted 40 interviews and were able to freely inspect the factory." He later admitted, however, that the main basis for the audit, which was conducted by a Shenzhen law firm with support from Löning, had been a review of documentation rather than interviews, which he said could be "dangerous." He also said that "even if they [workers] would be aware of something, they cannot say that in an interview."

Despite these flaws, the release of the Volkswagen audit resulted in MSCI, a financial rating agency, removing a "red flag" rating for the company's stock. On March 12, 2024, and following the release of the audit report, Human Rights Watch and 61 Uyghur, human rights, and labor organizations issued a statement calling on consultancies and auditors to immediately cease providing services in the Xinjiang Uyghur Autonomous Region. The statement also called on companies not to commission audits in the region, to exit the Uyghur Region at every level of their supply chains, and cease doing business with suppliers implicated in Uyghur forced labor.

Supply Chain Due Diligence Audits throughout China Are Highly Problematic

Stopping the use of audits at factories in Xinjiang is not, however, enough to address the role of audits in enabling links between global supply chains and Uyghur forced labor. Other organizations have documented how audits in other regions of China, including in the seafood industry, have failed to identify the presence of Uyghur forced labor at factories. In addition, companies frequently use "supply chain due diligence" audits of suppliers outside Xinjiang as a tool to verify whether suppliers have processes in place to avoid sourcing materials or products from

Xinjiang and other high-risk regions. Supply chain due diligence audits, however, are still constrained by the threat of Chinese government reprisals against auditors or their sources, creating obstacles for auditors seeking to safely investigate companies' supply chain links to forced labor.

Supply chain due diligence audits, rather than looking at labor conditions at the supplier's factory, instead or in addition consider whether the company has adequate responsible sourcing policies and practices to identify the source of its materials and products and to address the most important human rights and environmental risks in its supply chain. The audits frequently assess companies against supply chain due diligence standards such as the Organisation for Economic Co-operation and Development (OECD)'s Due Diligence Guidance for Responsible Business Conduct and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

The Chinese government's hostility to scrutiny of its treatment of Uyghurs makes it difficult for auditors conducting supply chain due diligence audits to investigate whether companies are effectively identifying and eliminating potential supply chain links to Xinjiang. The government has harassed companies or individuals that assist businesses to investigate their potential links to human rights abuses in China, including forced labor in Xinjiang. In March 2023, Chinese police closed the Beijing office of the consulting firm Mintz and detained five of its Chinese staff for questioning. Media reported that Mintz had conducted corporate due diligence work related to forced labor and supply chains in Xinjiang. In April 2023, a state news report stated that national security officials had penalized a Chinese national under counter-espionage laws for assisting a nongovernmental organization in labor rights investigations related to Xinjiang. Executives at other consulting firms told reporters in May 2023 that the government has warned them against conducting due diligence work related to Xinjiang.

The Chinese government in April 2023 also passed an expanded counter-espionage law that experts have warned could increase the government's power to investigate and prosecute foreign firms conducting research on local markets and business partners. In 2021, the Chinese government also enacted several anti-sanctions laws that could put companies with assets and personnel inside China at risk of sanction from Chinese regulators—or subject to civil liability—for taking actions to implement foreign laws such as the Uyghur Forced Labor Prevention Act. Companies are also concerned that, were their efforts to tackle forced labor in Xinjiang to become public, their business might be boycotted by Chinese consumers. In 2021, the decision by clothing company H&M to stop using cotton from Xinjiang led to its removal from Chinese online retail platforms as well as attacks on social media.

Human Rights Watch's research on aluminum illustrates the limitations of audits in assessing whether Chinese suppliers are sourcing responsibly and avoiding the risk of links to Uyghur forced labor. Our research examined in detail the Aluminium Stewardship Initiative (ASI), an audit program that assesses and "certifies" suppliers against social and environmental standards, including their responses to forced labor. Several car companies, including BMW, Mercedes, Tesla, and Volkswagen, refer to suppliers' audits under ASI as part of their efforts to source aluminum responsibly. ASI has not certified smelters in Xinjiang, but it has given manufacturers of aluminum products elsewhere in China a passing grade for their sourcing practices even where evidence suggests that those companies may have sourced aluminum from Xinjiang.

Chalco Ruimin, a subsidiary of state-owned aluminum producer Chinalco, is one of the companies certified by ASI. Chalco Ruimin's products include aluminum alloys and sheets for the automotive industry. There is evidence that Chalco Ruimin has sourced aluminum from Xinjiang. Xinjiang Zhonghe, a Xinjiang-based smelter, stated in 2021 and 2022 that it supplies aluminum products to Chalco Ruimin. Xinjiang Zhonghe stopped disclosing its downstream customers in 2023. As a member of the Chinalco group, Chalco Ruimin may also source aluminum from other Chinalco entities. Chinalco's trading arm has purchased aluminum from Xinjiang.

Although ASI's audit standards include criteria assessing companies' human rights and supply chain due diligence, the summary audit reports certifying Chalco Ruimin against ASI's standards contained no reference to Uyghur forced labor. ASI told Human Rights Watch that the auditor found "no critical human rights issues regarding child labor or forced labor" and stated that "Specific reference to 'Uyghur forced labor' was likely not incorporated in the audit report due to political sensitivities in China on this specific issue." The Chalco Ruimin policies that the auditors relied on to assess the company's sourcing, including the company's human rights impact assessment, also contained no reference to Uyghur forced labor and very little detail on how the company maps its supply chain to identify human rights risks.

The failure of both the summary audit report and the company's underlying sourcing policies to explicitly address the risk of Uyghur forced labor exemplifies the limitations of auditing in China. Kendyl Salcito, an aluminum industry expert who sits on ASI's Standards Committee and whose nongovernmental organization, NomoGaia, co-authored a Sheffield Hallam University report on Uyghur forced labor in automotive supply chains, told Human Rights Watch that using the political sensitivity of China's violations in Xinjiang as a reason not to discuss forced labor in audit reports "gives the Chinese government carte blanche to quash discussion of abuses in the Uyghur region. If auditors can't document links between aluminum producers and forced labor, how can ASI credibly claim to be auditing forced labor risks?" Salcito acknowledged ASI is in a "difficult position," because China's dominant role in primary aluminum production means that, "in order to be globally relevant, ASI needs to engage with Chinese operators," but expressed concern that the challenges of auditing in China, especially the Chinese government's hostility to auditors or auditees discussing Uyghur forced labor, made it very difficult for ASI to credibly assess whether Chinese companies are taking adequate steps to eliminate links to Xinjiang.

ASI, in response to Human Rights Watch's reporting on aluminum and Xinjiang, stated in February 2024 that it "firmly rejects HRW's characterization of ASI as a 'flawed' scheme with a failure to meaningfully investigate ... risks of links to forced labour." ASI acknowledged that, "auditing human rights risks in many contexts is challenging," but stated "that doesn't make the process 'inherently flawed' or worthless. The alternative is either nothing, or some other process of inquiry which will face the same challenges." ASI also noted that the companies referenced in Human Rights Watch's report were willing to be subject to follow-up audits in 2024 and that the auditors in question had been informed of Human Rights Watch's concerns on forced labor.

Audits Are Not a Solution to Forced Labor

The limitations of social audits, the impossibility of conducting audits in Xinjiang, and the growing concerns about the obstacles to credible audits in the rest of China mean that companies should not rely on audits either as evidence of the absence of forced labor at specific factories or as proof that a supplier is sourcing responsibly. Companies should instead map their supply chains and responsibly disengage from joint ventures, subsidiaries, or suppliers who continue to operate in or source materials or products from Xinjiang.

The continued links, however, between car companies and forced labor in Xinjiang, including the problematic role of audits in obscuring forced labor risks, makes it vital to increase congressional and executive oversight over the auditing and automotive industry.

To that end, Human Rights Watch respectfully urges that Congress:

- Hold hearings requesting that executives at major audit firms and certification schemes testify about the challenges of auditing in China, including but not exclusively in Xinjiang, and describe the efforts they are taking to ensure that their audits are not used to obscure or enable links to forced labor and other human rights violations in China.
- Hold hearings requesting that car company executives testify about the risk of Uyghur forced labor in their supply chains, including their joint ventures, and their efforts to respond to that risk. These hearings could build on the Senate Finance Committee's ongoing investigation into links to Uyghur forced labor and global carmakers.
- Hold hearings requesting that executives at major international commodities traders, including Glencore and Trafigura, testify about whether their firms source aluminum and other materials in Xinjiang, as well as other areas with high risk of links to human rights abuses, and the efforts the traders take to address the risk that they are purchasing and selling materials or products linked to forced labor and other human rights abuses.
- Write to the Forced Labor Enforcement Task Force to request that it make aluminum a "high-priority sector" under the Uyghur Forced Labor Prevention Act.
- Enact legislation that requires companies sourcing materials with a high risk of links to Xinjiang, such as cotton, polysilicon and aluminum, to disclose their supply chains at the raw material level to demonstrate that they are sourcing from outside Xinjiang.

PREPARED STATEMENT OF HON. CHRIS SMITH

Good morning, and welcome to today's hearing, which will look at the use of so-called "social audits" by companies whose supply chains originate in the People's Republic of China to cover up the existence of forced labor in those supply chains.

Back in the early 2000's, I read a book called *IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's Most Powerful Corporation*. I recall how shocked I was at the time at what the book revealed about an American corporation's complicity in aiding and abetting the Nazi regime, placing bottom-line greed over concern for humanity and turning a willing blind eye to the implications of their work.

Nor was IBM alone in this—books have been written about the ties the white-shoe law firm Sullivan & Cromwell had with the Nazis, for example. But I took some comfort in knowing that that was in the past.

Surely if there were evidence today of an evil regime's abuse of human rights—for example, the mass-scale detention of a despised ethnic and religious minority in concentration camps, forcing them to toil as practical slaves to produce goods for export—American corporations would shudder and shun any complicity with that.

Fast forward to today, however, and that is precisely what we see—corporate complicity in the grossest of human rights violations. Our last hearing revealed, for example, how Thermo Fisher Scientific, whose DNA markers have been used by police in the Tibet and Xinjiang Autonomous Regions to compile databases of the DNA of *millions* of Tibetans and Uyghurs, has also been implicated in the forced harvesting of human organs.

While Thermo Fisher Scientific may be the corporation whose behavior most closely mimics that of IBM before the beginning of the Second World War, our hearing today focuses on those manufacturers, suppliers, importers, and retailers whose supply chains in China are tainted by reliance upon forced labor to achieve the lowest prices, yet who rely on social auditing companies to obscure and whitewash that reliance.

We have known about corruption in the audit industry for a long time. Back in July 2012, I held a hearing where Li Qiang, the founder of China Labor Watch, testified as to audits. He said not only are audits conducted in China ineffective, but he said "they are actually corrupt." He went through examples of how auditors for corporations such as Apple ignored unfavorable facts, such as with regard to inadequate worker safety processes. He gave several examples of the bribing of auditors so that auditors' reports would not require the investment of millions in improving conditions in factories and plants.

Today, using the fig leaf that audits provide, corporations seek to convince consumers, regulators, and perhaps even their own consciences that their supply chains are clean and compliant with U.S. law, including the provisions of the Uyghur Forced Labor Prevention Act, or UFLPA, and section 301 of the Trade Act, both of which prohibit the importation of goods made with forced labor.

In a nutshell, however, as our witness Scott Nova will testify, "Social auditing, in practice, involves giving unqualified people inadequate time to pursue an unrealistic objective they have no incentive to achieve."

In a country such as the People's Republic of China, where independent labor unions do not exist, social controls prevent the free exchange of information, and recently passed national security laws make the disclosure of information that portrays China in a bad light a national security offense, social audits are particularly laughable.

But beyond aiding and abetting the human rights abuse that forced labor entails, companies whose supply chains are tainted also undercut American manufacturers at home, such as in the textile industry, whose ability to produce quality goods at an affordable price is undercut by importers who drive costs down by essentially utilizing slave labor. Such labor may come from prisons in the Chinese *laogai* system, or from Uyghurs detained in so-called "Vocational Skills Education and Training Centers," or otherwise assigned by Poverty Alleviation Through Labor Transfer programs to toil elsewhere in China.

These corporations profit from the sweat of the brows of Uyghurs and other labor abuse victims in China, while begging their fellow Americans seeking to earn a decent wage in factories in the United States.

I look forward to hearing our witnesses expose the deception inherent in the use of social audits to whitewash corporate complicity in labor rights abuse.

I would like to receive input on regulatory and legislative gaps that they think need to be plugged. I also would like to hear their thoughts in particular on enforcement of existing legislation, like the UFLPA, and I also would like to suggest that our securities laws—in particular, our 1934 Securities Exchange Act, and Rule

10b-5 promulgated under it—be put to greater use. That rule, as people are aware, prohibits “any untrue statement of material fact,” as well as any omission of material fact.

As we go through the annual reports and offering statements of publicly traded corporations, we should ask whether they are disclosing to their shareholders, and potential shareholders, that their supply chains may indeed be compromised by forced labor, in violation of U.S. law. Are they disclosing the potential loss of goodwill and harm to reputation which a company revealed to be benefiting from forced labor in their supply chain may undergo, to the detriment of share price?

To date, many corporations seem to be relying on these social audits to shield themselves from potential liability—social audits that today’s hearing, along with the good work that has been done by several of our witnesses, will show to be works of near fiction when it comes to accurately portraying the state of labor in the People’s Republic of China.

Compliance departments take note. As well as the law and accounting firms that sign off on corporate disclosures.

Following this hearing, I intend to write to the Securities and Exchange Commission—and I invite my Commissioner colleagues to join me—to ask that the SEC review disclosures by publicly traded companies to assess whether they contain any material misstatements or omissions with regard to forced labor in their supply chains—and if they do, to take enforcement action against them, levying fines.

While the SEC proposed rules in May 2022 to clarify how investment funds may promote adherence to voluntary “Environmental, Social, and Governance,” or ESG, standards—another fig leaf utilized by corporations to signal their virtue to consumers but which remain untethered to objective criteria—this is only a tentative first step that emphasizes the “E” in ESG and is addressed to investment funds, doing little to confront the issue of forced labor in supply chains.

Further, if corporations are not policing themselves, and the SEC is slow in responding, then I hope the plaintiffs’ bar will help discipline these companies seeking to recover any loss in shareholder value that results from the exposure of corporate audit-washing.

Finally, I also anticipate a future hearing wherein we invite auditing companies, such as the Löning company implicated in the Volkswagen scandal that we will hear about shortly, as well as whistleblowers and lowest-price retailers such as Walmart, to testify.

PREPARED STATEMENT OF HON. JEFF MERKLEY

Thank you, Chairman Smith, for scheduling this important hearing. For two decades this Commission has reported on how the Chinese government’s failure to provide basic human rights protections has had a detrimental effect on the lives of the people living in China.

Today, we are focusing on the fact that this same lack of protection has a negative impact on American consumers. This is not a new story. We have known for years that substandard worker rights and lack of transparency in China have resulted in defective imports, such as lead-based toys used by American children.

Our first witness, Deputy Undersecretary Thea Lee, who serves as a member of this Commission, has been a long-time expert and champion on this issue.

Four years ago, this Commission, based on the research of another of our witnesses, Adrian Zenz, and others, published a report showing how products made with the forced labor of Uyghurs and other Turkic peoples in China were coming into the United States. The fruit of this research was the Uyghur Forced Labor Prevention Act, which banned imports of such goods and helped spark a much wider awareness of the need to rid our supply chains of forced labor.

Key to the effort to know whether a supply chain is clean are the audits performed on the companies who are part of that chain. In 2021, the Biden administration issued the Xinjiang Supply Chain Business Advisory, which assessed that “in and of themselves, third-party audits are not a sufficient due diligence program, and may not be a credible source of information for indicators of labor abuses in the region.” With the enactment of our Uyghur Forced Labor Prevention Act, this warning became a hard reality for companies importing from China. They had to provide “clear and convincing evidence” that their products were not made with Uyghur forced labor.

This is the core question for today’s hearing: Are the audits that importers must cite to meet the law’s standard reliable, do they have integrity, or are they even genuine? Are reliable audits even possible in an environment where the Chinese government does not allow workers to speak freely, harasses auditors conducting

due diligence in Xinjiang, and prevents auditors from obtaining information needed for their job?

If a company cannot say with precise certainty, to our government, to its shareholders, and most importantly to American consumers, that its products do not contain forced labor, then it needs to stop doing business there.

Let's remember that our aim is not to punish companies simply because they do business in China. Our goal is to improve the human rights situation in China so that businesses can certify to us that their supply chain is free of forced labor and that their suppliers provide good working conditions and wages to their workers. And we ask these companies to partner with us in working toward that goal.

We have an impressive set of witnesses and I look forward to hearing their analysis and recommendations.

Thank you.

PREPARED STATEMENT OF HON. JAMES P. MCGOVERN

Good morning. I join my colleagues in welcoming our witnesses and the public to today's hearing on audits and certification of supply chains in China.

This hearing continues the work the Congressional-Executive Commission on China has done to shine a light on the use of forced labor by the People's Republic of China and to ensure that Congress is doing everything it can to bring an end to the practice.

We are motivated by the terrible toll of forced labor on those subjected to it, especially the Uyghur people of Xinjiang, and by its impact on Americans. U.S. consumers should not have to worry about whether the products they purchase are tainted by forced labor from China. U.S. workers and producers should not have to compete with companies that rely on forced labor.

Congress took a major step in 2021 by passing the bipartisan Uyghur Forced Labor Prevention Act (UFLPA), legislation that I was privileged to lead. The UFLPA creates a rebuttable presumption that all goods produced in the Xinjiang region of China are made with forced labor. This means the burden of proof lies with those who want to import goods into the U.S. to show that their supply chains are free of forced labor.

The logic behind the law was that it would create incentives for stakeholders, including the PRC, to change their practices. The good news is that companies have responded by implementing their economic, social, and governance, or ESG, policies and contracting social compliance audits to certify that the supply chains for their products are free of forced labor.

The problem, as we will hear today, is that even when these audits conform with industry-wide ESG standards, they may not be reliable in the Chinese context. This is both because the companies themselves pay for the audits and have a financial stake in clean findings, and because the PRC, instead of correcting course and ending the use of forced labor, has chosen to retaliate against those who do the audits or who cooperate with the auditors.

I want to be clear on this point: The PRC government could react to the world-wide concern that has been raised about its use of forced labor by taking the opportunity to end the practice—which, by the way, would be consistent with its obligations under International Labor Organization conventions, all of which China has ratified.

Instead, since 2021 the PRC has adopted laws, regulations, and practices that seem designed to limit the effectiveness of social audits in detecting the presence of forced labor in supply chains.

One example is an anti-foreign sanctions law that has been used at least once to go after a U.S. due diligence firm for collecting "Xinjiang-related sensitive information." A second is a broadened definition of espionage that came into play when PRC authorities detained staff at another due diligence firm that was reported to be conducting investigations into forced labor in supply chains linked to Xinjiang.

Of 29 firms listed by Social Accountability International as qualified to conduct certification inspections of manufacturers in China, five have announced they will no longer conduct social audits in Xinjiang because conditions simply do not allow them to do so.

In light of this, our question today is what more Congress can do to help reinforce the incentives in the UFLPA. Are there steps we could take to strengthen the integrity of auditing mechanisms and make them more independent? Are there other ways to foster increased transparency of supply chains that do not backfire on those who try to do the right thing?

Let me close by emphasizing that we are not here to force companies to leave China (our consistent goal is to help improve the human rights situation in China), but there is a possibility that the PRC's response so far to the global condemnation of its use of forced labor could lead companies to decide on their own that it is too risky to do business in China because the lack of human rights protections doesn't allow them to reliably comply with their own ESG policies.

Thank you.

Congressional-Executive Commission on China

Hearing on: FACTORIES AND FRAUD IN THE PRC: HOW HUMAN RIGHTS VIOLATIONS MAKE RELIABLE AUDITS IMPOSSIBLE

Written testimony by Dr. Alicia Hennig,
Business Ethics Researcher and Interim Professor at Technical University Dresden, Germany

30th April 2024

The Evolution of Forced Labor Research on China

By the end of 2018 at the latest, it became clear that Uyghurs and other members of the Turkic Muslim community in the northwestern Xinjiang Uyghur Autonomous Region (XUAR) were not only being held indefinitely in internment camps without trial, but that these growing camp structures were also linked to forced labor (Buckley & Ramzy 2018). Initial analysis of satellite imagery revealed industrial complexes on the grounds of what the Chinese government calls “re-education” camps (Killing et al. 2020). These first glimpses were associated with the production of textiles, tomatoes, and sugar. In this context, the clothing companies Adidas and C&A were the first German companies to come into the spotlight in 2019 (Dou & Deng 2019). Journalists also began to scrutinize the German car manufacturer Volkswagen due to its subsidiary in Ürümqi together with the company's Chinese joint venture partner SAIC (Brant 2019).

A first comprehensive list of 68 Global Fortune 500 companies from Europe linked to XUAR was compiled by Benjamin Haas/MERICCS and published by China File in September 2019. Later that year, leaks (The Xinjiang Papers, China Cables) revealed the brutal and systematic nature of the government's campaign against Uyghurs and other members of the Turkic Muslim community under then-Party Secretary Chen Quanguo (Ramzy & Buckley 2019; Allen-Ebrahimian 2019). In response to these findings and revelations, more and more German companies came under pressure to explain their ties to XUAR (Ankenbrand & Germis 2019).

Investigations into forced labor then took center stage. From 2021, the first detailed reports on forced labor in specific sectors in XUAR were published by Washington DC-based Horizon Advisory on solar (unpublished), on aluminum (2022), and again on solar (2024). Another study on the solar industry was conducted by Bloomberg (2021).

In early 2020, the Australian Strategic Policy Institute (ASPI) published the first comprehensive report on foreign corporate ties to XUAR, analyzing the links between detention camps, factories, and supply chains (Xu et al. 2020). This report identified 82 foreign and Chinese companies that may have directly or indirectly profited from forced labor. A previous publication by Zenz (2019) already revealed that forced labor was not limited to XUAR, but also occurred in other Chinese provinces through a sophisticated state-organized labor transfer program.

From May 2021, this line of research was extended by focusing on Chinese companies from specific sectors in XUAR. A number of such reports were published by researchers at the Helena Kennedy Center at the University of Sheffield UK (SHU). These reports have looked specifically at forced labor in the solar (Murphy & Elimä 2021, Crawford & Murphy 2023), cotton (Murphy et al. 2021), polyvinyl chloride (PVC) or vinyl (Murphy, Valette & Elimä 2022), and automotive (Murphy et al. with NomoGaia 2022) supply chains. The most recent of these studies was published by Human Rights Watch (HRW) on aluminum and the automotive sector in 2024. Over the years, more and more Chinese companies participating in

government programs related to forced or coerced labor have come to light, as well as foreign companies buying from such companies.

With this written testimony I seek to determine the type of ties German companies are having with XUAR and their exposure to state-sponsored forced labor risks associated with their business operations and physical presence in the region.

Methodological Approach

My assessment for this written testimony is based on the available studies mentioned above, media articles, publicly available company information, information provided by non-governmental organizations (NGOs), and academic publications.

For a general overview of German companies in XUAR, I reviewed available company lists and relevant studies to determine which German companies have ties to XUAR and the nature of those ties. I compiled available information into a table (please see Appendix 1) and checked for overlap of company names across studies. The scope of this statement is limited to companies mentioned in more than one report.

To provide a more specific assessment of the risks of forced labor associated with the business operations of German companies with ties to XUAR, I also reviewed the results of the studies included in my assessment for scientific reliability. I reviewed the studies for available methodologies, clear definitional boundaries, and a clear level of information about the Chinese suppliers (please see Appendix 2). In addition, I thoroughly analyzed publicly available company information, such as non-financial reports, group statements and codes of conduct, to assess the companies' approaches to risk management and human rights. Due to space limitations, my assessment is limited to three exemplary cases from the German automotive sector.

The assessment of forced labor risks is complemented by a discussion of the current state of social auditing in China and auditing in China more generally. This discussion is based on recent media articles, recent Chinese legislation and academic publications.

German Companies in XUAR—Overview

The first list by Haas (2019) broadly captured all companies with ties to XUAR and included 68 companies from various industries, 19 of which were German.¹ There were seven companies with supply chain ties to XUAR (Adidas, Bayer, BMW, Daimler, Mercedes-Benz, Metro, and Volkswagen), two with production sites (Volkswagen, BASF), two with offices or locations (Deutsche Bahn, Deutsche Post), three companies that sell equipment (Bosch, Siemens, and ThyssenKrupp), two that primarily provide services or support remotely (Munich Re Group, SAP), and one that builds energy facilities (Linde).

An overlap check with more detailed and recent studies by ASPI, SHU and HRW limited the original sample of 19 companies to eight. In addition, only these studies more specifically linked the companies' relationships to potential forced labor risks associated with their supply chains. The affected German companies are Adidas from the apparel sector; German

¹ However, a tie does not automatically imply potential risks with regard to complicity in forced labor or otherwise supporting the regime. For example, Lufthansa is holding a minority stake in an Airline catering company in XUAR. Deutsche Bank was lending money to a company in XUAR. As there is no more information provided beyond this, the implications weren't entirely clear.

carmakers BMW, Daimler, Mercedes-Benz and Volkswagen, and Bosch and Siemens from the technology/engineering sector.²

The studies reveal potential risks that appear to be concentrated in the following industry sectors: apparel/textiles, automotive, and technology. The corporate activities involved are: potentially sourcing materials from Chinese suppliers linked to forced labor in the case of Adidas, BMW, Daimler, MB, and VW; and selling to or developing technology for Chinese companies implicated in the state-sponsored repression of Uyghurs and other members of the Turkic Muslim community in XUAR. In the case of VW, additional risks arise from the fact that it also has plants in the disputed region via its JV. With a physical presence, a company is more exposed to the risks of forced labor directly at its own plant and on its own property.

Focus on German Automotive Companies

This section looks into three companies: BMW, Mercedes-Benz (MB) and Volkswagen (VW).

Basic Company Information

The three automakers have different positions in the Chinese market. VW's first joint venture (JV) dates back to 1987. Today, VW has JVs with three Chinese companies: SAIC, FAW and JAC, in which VW owns 50 percent, 40 percent and 75 percent, respectively. Its business in China includes 39 plants and employs 90,000 people. In 2023, the company sold 3.2 million cars in China³ (Annual Report 2023, 35). Sales in China (only including SAIC and FAW) for 2023 are EUR 87,328 million, which is about 27 percent of the group sales of EUR 322,284 million (*ibid.*, 294, 2). Sales are highest in Europe with 40 percent, followed by China with almost 36 percent and the USA with 10 percent (*ibid.*, 120).

While VW can be considered a pioneer, the other two German companies followed much later. MB did not enter China until 2001. The company has a JV with BAIC, which is divided into two locations, Beijing and Fujian. MB owns 49 percent and 50 percent, respectively. The JV includes three plants. In 2023, the company has sold 737,200 units in China (Annual Report 2023, 46). Revenue in China in 2023 is EUR 25,284 million, which is about 16 percent of group revenue of EUR 153,218 million (*ibid.*, 48). Unit sales are highest in China at 36 percent, followed by Europe at 21 percent and the US at 15 percent (*ibid.*, 33). BMW entered the Chinese market in 2003 and partnered with Brilliance. BMW owns 75 percent of this JV, which includes three plants and employs 26,000 people. In 2023, the company sold 826,257 units (Annual Report 2023, 67). The group turnover is 155,498 million EUR (there is no information about the turnover of BMW Brilliance in China) (*ibid.*, 10). Unit sales are highest in Europe with 37 percent, followed by China with about 32 percent, followed by the USA with about 15 percent (*ibid.*, 67).

Even this basic company information reveals significant differences between these three German automakers. From the number of JVs and plants to the number of cars sold in China and the revenue generated, VW is clearly larger than MB and BMW. However, the Chinese market plays an important role in terms of sales for all companies, accounting for more than 30 percent of their sales. All companies are also dependent on sourcing materials from China but only VW also has a plant in XUAR, which increases its exposure to the risk of forced labor. As early as 2013, when SAIC Volkswagen was about to open its new plant in Xinjiang, journalists described it as the riskiest location in China (Mattheis 2013).

² Chemical giant BASF is not mentioned in any study but frequently in the media and thus also belongs to the German companies exposed to forced labor risks in XUAR/China.

³ Audi sold another almost 730,000 cars in the premium and sports segment.

German Automotive Companies and Their Ties to XUAR

An analysis of information on German automakers with ties to XUAR provided in reports by ASPI (Uyghurs for Sale 2020), SHU (Driving Force 2022), and HRW (Asleep at the Wheel 2024) reveals varying degrees of exposure to state-sponsored forced labor risks associated with their operations—assuming these suppliers can actually be confirmed by the companies in question.

In these three reports, the following Chinese suppliers from various industries have been identified as being linked to state-sponsored forced labor: EVTech, Highbroad Advanced Material Co., Ltd. (ASPI 2020 report only), Ningbo Joyson Electronics Co., Ltd., Shenzhen Deren Electronics Co., Ltd. for electronic or other technical components; Chalco Ruimin (HWR 2024 report only), Jingwei Group, Minth Group, Shandong Nanshan Aluminum Co. Ltd. for aluminum parts; China Baowu Iron and Steel Group Co. for steel parts; and Camel Group, CATL, China Energy Lithium Co. for batteries.

The mentioned suppliers are said to supply BMW, MB and VW. BMW sources from **five** suppliers: CATL, China Energy Lithium, Jingwei Group, Minth Group and Shenzhen Deren; MB sources from **three** suppliers: CATL, Jingwei Group, and Shenzhen Deren; VW sources from **nine** suppliers: Camel Group, CATL, China Baowu Iron and Steel Group, Chinalco/Chalco, EVTech, Jingwei Group, Minth Group, Shandong Nanshan Aluminum, and Shenzhen Deren Electronics.⁴

German Automotive Companies and Human Rights Abuses in XUAR

In terms of specific allegations of human rights abuses and, more specifically, forced labor, each Chinese supplier's case is different (see Driving Force 2022).

Chinese suppliers Camel Group, China Baowu Iron and Steel Group and Xinjiang Asia-Europe Rare Metal are alleged to have participated in state-sponsored labor transfers within XUAR involving so-called “surplus labor” (CATL may participate in such programs in the future). Shenzhen Deren Electronics and UFLPA-listed Sichuan Mianyang Jingweida have allegedly participated in state-sponsored labor transfers outside XUAR, in the latter case explicitly involving the transfer of “surplus labor”. Shenzhen Deren Electronics allegedly installed additional surveillance equipment and security personnel in the course of receiving these labor transfers.

Camel Group, China Baowu Iron and Steel Group, Xinjiang Zhonghe (supplying Chinalco/Chalco, Jingwei, Minth Group, linked to BMW, MB and VW) and Sichuan Mianyang Jingweida (supplying EVTech, linked to VW) are allegedly involved in “education”, “training” and/or “vocational training”. In the case of Camel Group, this “pre-job” training was explicitly ideological and military in nature, lasting ten days on a closed campus from which participants were not allowed to leave. In the case of Sichuan Mianyang Jingweida, it was explicitly ideological and disciplinary. Such training programs in XUAR are now known to be coercive and propagandistic in nature. In addition, Xinjiang Zhonghe and China Baowu Iron and Steel Group participated in repressive government programs such as “employment assistance” and surveillance/control measures such as the *fanghuiju* campaign. The specific involvement of Shandong Nanshan Aluminum is difficult to determine.

Taken together, the allegations in these reports range from participation in state-sponsored labor transfers, to involvement in various forms of education—both of which involve coercion—to participation in repressive government programs related to surveillance and control of the Uyghur population and other members of the Turkic Muslim community.

⁴ Camel Group (relevant in the case of VW), Xinjiang Asia-Europe Rare Metal (allegedly supplies China Energy Lithium Co., relevant in the case of BMW) and Sichuan Mianyang Jingweida (allegedly supplies EVTech, relevant in the case of VW) are also listed on the UFLPA entity list (Homeland Security n.d.).

Different Types of Forced Labor

To adequately assess the responsibility and accountability of foreign companies and working measures on the national level it is crucial to clearly differentiate between the two types of forced labor Uyghurs and other members from the Turkic Muslim community are exposed to. In this section, I am drawing on work by Adrian Zenz (2023), as his differentiation has been also included in the UN High Commissioner's *OHCHR Assessment of human rights concerns* in August 2022.

One type of forced labor is associated with the Vocational Skills Education and Training Centers (VSETCs) and the *laojiao* 劳教 (re-education through labor) system in China more broadly. Here, former prisoners are forced to work in factory parks or elsewhere. It involves low-skilled work in manufacturing, for example, but is not associated with the cotton or polysilicon industries (Zenz 2023, 651). This forced factory work is essentially the final stage of a “gradual release process” after skill training (in the camps) and vocational training (in nearby factories) combined with re-education (ibid., 662). It is often characterized by almost no pay “and work in highly securitized environments” (ibid., 651). As lower security camps began to be closed in 2019, this probably also brought an end to this type of camp-based forced labor (ibid., 651).

The other type of forced labor is linked to the Chinese government's national poverty alleviation programs, specifically the “Poverty Alleviation through Labor Transfer” (转移就业脱贫) policy, which involves the transfer of so-called “rural surplus labor” (ibid., 650). This policy has been in place since 2017, and is linked to annual targets under Xi Jinping's national fight against absolute poverty. Under Xinjiang's 14th Five-Year Plan to Promote Employment (2021-25), this policy requires everyone to be mobilized for work, including students and the elderly. Employment rates must be kept stable, which means enforced retention of workers through surveillance and also indoctrination through “thought education”; state approval is required to leave work (ibid., 660). It was also reported that individuals were threatened with imprisonment if they refused to work under this system. Thus, its implementation is clearly based on coercion. This type of forced labor is associated with low-skilled work in the agricultural sector (harvesting crops), polysilicon production relevant to the renewable energy industry, and the coal industry (ibid., 651; HRW, 2024). These labor transfers are said to have increased since 2021 and “now constitute Xinjiang's primary forced labor system” (ibid.).

In brief, the two systems potentially overlap, as individuals may find themselves in similar work environments, but each system is based on different policies with different objectives and modes of implementation: While forced labor in the context of VSETCs is tied to the Chinese government's goal of “de-extremization” and involves former prisoners, labor transfers or so-called rural surplus labor serves precisely to prevent extremism in the eyes of the Chinese government (ibid., 663).

As I understand the allegations in the above reports, these are rather not related to VSETC forced labor, but to labor transfers. Accordingly, such transfers of surplus labor appear to be the main driver of alleged state-sponsored forced labor at Chinese suppliers.

German Automotive Companies and Measures for Human Rights Protection

All automotive companies in this sample have various measures in place to manage human rights risks in supply chains and to protect human rights. Measures typically include codes of conduct, corporate human rights policies, responsible sourcing guidelines or similar, adherence to voluntary global guidelines, whistleblowing mechanisms and a risk management approach (see Appendix 3 for details on BMW, MB and VW).

The responsibility of companies to protect human rights can be broadly divided into two categories: extra-legal and legal. For decades, this responsibility was only extra-legal and therefore voluntary, a so-called “soft law”. Numerous global organizations, such as the OECD, the UN and the ILO, have developed principles, guidelines and other instruments. These are aimed at self-regulation by companies. The companies in this sample all address the prohibition of forced labor in their documents and all adhere to the UN Guiding Principles, among others.

The companies also face reporting requirements under the UK Modern Slavery Act, as well as reporting and due diligence requirements regarding their environmental and social responsibilities under the German Supply Chain Responsibility Act (Lieferkettensorgfaltspflichtengesetz, LkSG). However, this trend towards the juridification of corporate human rights responsibilities is a more recent phenomenon⁵ and, particularly in Germany, the result of ineffective corporate self-regulation.⁶

On Audits in China

A social audit seeks to evaluate a company’s performance with regard to its social impact. In this context, measures and procedures in place and their effectiveness are reviewed and assessed. A corporation can use audits and certifications to demonstrate compliance with regulation (HRW 2022).

A report by Human Rights Watch in 2022 already highlighted a number of issues related to such audits, such as the pricing and the time allocated to the audits, which affect quality. When the audit is paid for by the supplier rather than the brand, conflicts of interest are even more pronounced, as suppliers may want to prevent negative findings from reaching the brand. Some consultancies specifically coach suppliers on how to manipulate audit mechanisms. The whole industry is very opaque, as no results are published. Moreover, audits as such can only report findings and make recommendations for improvement. The implementation of these recommendations still depends on the willingness of the supplier and/or the brand. HRW concludes that audits and certifications are “an inadequate tool to ensure respect for human rights and environmental standards” (HRW 2022, 4). Issues such as imposed time constraints, expectations of a favorable outcome, forged certificates, and audit manipulation have also been reported in the case of China (Rocafort 2020, Heras-Saizarbitoria & Boiral 2019, Bermingham & Zhou 2021).⁷ A recent report by China Labor Watch again highlights appalling working conditions in China’s consumer electronics sector (CLW 2023). In the case of China, all of these issues are also rooted in a general conflict between goals to improve society, such as environmental and social policies, and implementation at the local level, which often conflicts with economic goals (Du & Yi 2022). Furthermore, the prevalence of *guanxi* (social networks) increases conflicts of interest and plays a role in fraudulent audits (He et al. 2017, Bermingham & Zhou 2021). In addition, state-independent media is largely absent, so-called citizen journalists (civilian reporters) and critical citizens are systematically suppressed by the government (Hennig 2024).

⁵ An exception here is Section 307 of the US Tariff Act (1930). It seems, however, its enforcement has been difficult and it was never applied systematically (Congressional Research Service 2023).

⁶ The previous National Action Plan (2016-2020) was based on self-regulation and the voluntary implementation of the UN Guiding Principles. Yet, within four years less than 20 per cent of German companies implemented the UN Guiding Principles. The consequence was a juridification of corporate human rights responsibilities (Bundesministerium für Arbeit und Soziales n.d.).

⁷ This also applies to environmental protection. Local government officials are fabricating environmental reports, actively covering up companies’ environmentally harming practices (Cyranoski 2019). Legislation that promotes the disclosure of environmental data and preventing greenwashing is not in place yet (CMS Legal Services n.d.).

Aside from general issues, the recent revision of the *Anti-Espionage Law of the People's Republic of China* in April 2023, which took effect in July 2023, has implications for the consulting and auditing industry, as well as other multinational companies operating in China. The revision is said to significantly control and restrict access to data and information, while the definition of espionage is broad and its implications unclear, leaving considerable room for discretionary and arbitrary action (Allen n.d.). Recent crackdowns on auditing firms also do not signal a positive outlook for the industry (Palmer & Zhuang 2023). In light of these developments, independent third-party audits will become increasingly difficult, if not impossible, in China. Regardless, state-sponsored forced labor, and Uyghur forced labor in particular, is already an extremely sensitive issue that companies are unlikely to address in audit conclusions or publicly (HRW 2024). In XUAR, independent audits have been nearly impossible since 2020, as major auditing firms, including Germany's TÜV Süd, have left the region due to pervasive repression (Dohmen 2021).

Concluding Assessment of German Automotive Companies' Measures

Combining the basic company information with the information on their Chinese suppliers provides more context to each company's exposure to forced labor risks in their supply chains. VW, with its three JVs and 39 plants, is linked to nine Chinese suppliers that have been found to be involved in forced labor. VW also has a controversial plant in XUAR. BMW and MB have only one JV and 3 plants each. BMW has five Chinese suppliers, MB only three. VW generates more than three times as much revenue in China as MB and sells more than twice as many cars in the Chinese market as BMW and MB combined. As a result, VW's exposure is much higher than that of its competitors.

All three automakers have implemented a number of more or less similar measures to manage human rights risks in their supply chains. MB has even linked human rights targets to compensation (MB Sustainability Report 2023, 149). All companies state that their supplier/business partner code of conduct applies to all suppliers. They also all conduct n-tier supplier risk assessments, but with nuanced differences (please see Appendix 3 for details). BMW Brilliance audits n-tier suppliers in China based on a third-party audit program.⁸ No specific China-related information is available for the other two companies. Given the current political and regulatory environment in China, it remains unclear how many suppliers have been audited and how. In light of this, and the grave situation in XUAR, it is highly questionable to what extent the audit at VW last November, conducted by Löning - Human Rights & Responsible Business/Berlin⁹ and lawyers from a firm in Shenzhen, could provide any reliable conclusions.¹⁰

Thus, the ultimate question regarding companies and human rights risk management is not so much whether companies have a set of measures in place, but rather to what extent these measures still work in the context of an increasingly repressive China, and particularly a pervasively repressive XUAR. Effectiveness also depends on the extent to which these companies themselves are exposed to such risks by virtue of their level of investment and physical presence in China and, more specifically XUAR.

Conclusion

The conclusion of this assessment is that no matter what sophisticated measures and mechanisms companies currently have in place, their effectiveness is severely compromised

⁸ In the 2022 report, only 10 are mentioned, which cannot represent the full range as the supply chains downstream are not included.

⁹ Markus Löning conducted the audit himself but he also mentioned the limitations (VW 2023).

¹⁰ In this regard, it also needs to be questioned why MSCI accepted this audit and removed the red flags (Waldersee 2023).

in repressive environments such as China, and XUAR in particular. Moreover, the problem in XUAR goes much deeper than forced labor. Forced labor is only one of several observable features of a policy of repression and destruction that is quietly taking place there. Moreover, the situation will not substantially change until this policy of repression is ended. Under current Party Secretary Ma Xingrui “anti-terrorism” measures and the “Sinicisation of Islam” will continue (People’s Government of the Xinjiang Autonomous Region 2024). There is no reason why labor transfers involving surplus labor, which currently seem to be the main driver, would be discontinued in the near future. XUAR is a crucial region for economic growth in China and linked to the Belt-and-Road (BRI) initiative.

Our current set of governmental and corporate tools is only able to capture a part of it, namely all of this deeply entrenched ideology that is operationalized by the Chinese government and therefore visible. Everything else that is less visible, such as repressive government campaigns like *fanghuiju* that have been reported by escaped witnesses, is difficult to capture. But there are ways to expand the toolbox.

Recommendations to the U.S. Government

For businesses, China has become a minefield of rules and regulations. For many multinationals, complying with all these regulations has become overwhelming and they have left or plan to leave. For those who stay, as they are heavily invested in China, such as VW, the risk level will remain, but the current corporate tools are not entirely effective in managing the risks sufficiently.

I have three recommendations (which ideally should be considered by other governments as well).

- 1) In line with recommendations by HRW (2024, 10), I strongly recommend better mapping of supply chains to increase transparency and knowledge—and these need to be disclosed though not necessarily publicly. However, unlike HRW, I do not believe this should be done through self-regulation. Self-regulation is often a paper tiger: performance is not systematically assessed and there are no sanctions for non-compliance. As a result, to my knowledge, there is not a single voluntary global initiative that could achieve anything close to a level playing field in its respective area. Therefore, supply chain mapping must be made mandatory, especially for high-risk countries for forced labor such as China.
- 2) In addition to this, I strongly recommend more transparency on audits in designated high-risk countries for forced labor such as China.
- 3) In light of new legislation at the EU level (the Corporate Sustainability Due Diligence Directive (CS3D) and the introduction of a ban on forced labor), more cooperation is desired in terms of shared entity lists and implementation of mechanisms (rebuttal of evidence).

This testimony has the following appendices:

- Appendix 1—German companies with ties to XUAR (<https://tinyurl.com/mryzcenx>)
- Appendix 2—Source Reliability Assessment (<https://tinyurl.com/wpnz9wcy>)
- Appendix 3—German Automotive Companies and Measures for Human Rights Protection (complete version) and Assessment of German Automotive Companies Measures (complete version) (<https://tinyurl.com/2p7jze68>)
- Appendix 4—References (<https://tinyurl.com/57k9wzvt>)

“Truth in Testimony” Disclosure Form

1. Date of Hearing:
2. Hearing Title:
3. Your Name:
4. Organization, organizations, or government entity you are representing:
5. Position title:
6. Are you an active registrant under the Foreign Agents Registration Act (FARA)?

Yes

No

Knowingly providing material false information to this commission, or knowingly concealing material information from this commission, is a crime (18 U.S.C. 1001). This form may be made part of the hearing record.

Date _____

Witness Biographies

Thea Lee, Deputy Undersecretary of Labor for International Affairs

Thea Lee was named Deputy Undersecretary of Labor for International Affairs on May 10, 2021. She has been advocating for workers' rights, both domestically and internationally, for over thirty years. She was president of the Economic Policy Institute, a pro-worker Washington think tank, from January 2018 to May 2021, and an international trade economist at EPI in the 1990's.

From 1997 to 2017, Deputy Undersecretary Lee worked at the AFL-CIO, a voluntary federation of 56 national and international labor unions that represent 12.5 million working men and women. At the AFL-CIO, she served as deputy chief of staff, policy director, and chief international economist.

Ms. Lee has served on the State Department Advisory Committee on International Economic Policy, the Export-Import Bank Advisory Committee, and on the boards of directors of the National Bureau of Economic Research, the congressional Progressive Caucus Center, the Center for International Policy, and the Coalition on Human Needs, among others. She served on the U.S.-China Economic and Security Review Commission from 2018 to 2020. In 2022, she was appointed to the Congressional-Executive Commission on China.

Thea Lee holds a master's degree in economics from the University of Michigan at Ann Arbor and a bachelor's degree in economics cum laude from Smith College.

Scott Nova, Executive Director, Worker Rights Consortium

Scott Nova is Executive Director of the Worker Rights Consortium, an independent labor rights monitoring organization that has conducted investigations of working conditions in factories around the world, including in China, Vietnam, Myanmar, and other countries where severe restrictions on civil society pose special obstacles to labor rights inquiry.

Mr. Nova is a leading expert on the methodological aspects of labor rights investigation and on the practices and performance of corporate social auditors. He has written and spoken widely on the intersection of international commerce and worker rights.

Adrian Zenz, Senior Fellow and Director in China Studies, Victims of Communism Memorial Foundation

Dr. Adrian Zenz is Director in China Studies at the Victims of Communism Memorial Foundation, Washington, DC. His research focus is on China's ethnic policy, Beijing's campaign of mass internment, securitization and forced labor in the Xinjiang Uyghur Autonomous Region, public recruitment and coercive poverty alleviation in Tibet and Xinjiang, and China's domestic security budgets.

Dr. Zenz is the author of *Tibetanness' Under Threat*. He has played a leading role in the analysis of leaked Chinese government documents, including the "China Cables," the "Karakax List," the "Xinjiang Papers," and the "Xinjiang Police Files."

Jim Wormington, Senior Researcher and Advocate on Corporate Accountability, Human Rights Watch

Jim Wormington is a senior researcher and advocate in the Economic Justice and Rights Division at Human Rights Watch, where he works on extractive industries, supply chains, and other issues related to corporate accountability. He was previously a researcher in Human Rights Watch's Africa Division, covering human rights issues in West Africa. He is an English-trained barrister, a past member of QEB Hollis Whiteman Chambers, and was educated at Cambridge University (MA) and New York University School of Law (LLM). He recently co-authored the report, "Asleep at the Wheel: Car Companies' Complicity in Forced Labor in China."

