

NOTE

The Link Between Trade and Human Rights: Combating Human Rights Abuses in Xinjiang

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INTRODUCTION

In the Xinjiang Uyghur Autonomous Region of China (Xinjiang), an examination of a government-sanctioned program establishing training centers claimed to be a voluntary opportunity for the Uyghur people and other predominately Muslim ethnic minorities¹ to gain vocational skills and to respond to threats of “terrorism” in the region illustrates the true nature of the program: one in which systematic abuses and efforts of cultural erasure are carried out against the

1. The Uyghurs and other predominately Muslim ethnic minorities, namely Kazakhs, Kyrgyz, Uzbeks, and Huis, predominately make up the population of the Xinjiang region and are victims of the abuses carried out by the Chinese government in the region. OFF. OF THE HIGH COMM’R, U.N. HUM. RTS., OHCHR ASSESSMENT OF HUMAN RIGHTS CONCERNS IN THE XINJIANG UYGHUR AUTONOMOUS REGION, PEOPLE’S REPUBLIC OF CHINA 1 n.1 (2022), <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf> [<https://perma.cc/54HR-LPKG>]. However, for clarity and because the majority of victims are members of the Uyghur ethnic group, this Note primarily refers to those affected by China’s forced labor regime as “Uyghurs.”

Uyghur people.² In reality, these programs involve numerous human rights abuses,³ including torture, mass detention, forced labor, and even death.⁴ Uyghurs are detained because they are classified as “suspicious,” “untrustworthy,” or as a “terrorist” or “extremist.”⁵ In these camps, detainees are stripped of their autonomy, forced to speak Mandarin rather than their native language, prevented from practicing Islam, and regimented to a program for “ideological transformation.”⁶ Mansur, a farmer detained in a detention center, described his experience of torture:

That day two guards came to my cell. They said I would be interrogated. . . . If I told them I had been praying, I had heard that I would get sentenced for 20 or 25 years. So I told them I never prayed. Then they became upset. They said, “All that time with livestock, you became an animal too!” Then they hit me with a chair until it broke. . . . I fell to the floor. I almost fainted. . . . Then they put me on the chair again. They said, “this guy hasn’t changed yet, he needs to stay [in the camp] longer” . . . then they radioed the guards, who helped me back to the cell.⁷

Once detainees “graduate” from these re-education camps, they are not met with freedom, but rather are transferred and forced to work at “training placements,” which include factory or farm work.⁸ Aldiyar, who worked at a factory following release from a camp, described the working conditions:

2. See AMNESTY INT’L, “LIKE WE WERE ENEMIES IN A WAR”: CHINA’S MASS INTERNMENT, TORTURE AND PERSECUTION OF MUSLIMS IN XINJIANG 23 (2021), <https://xinjiang.amnesty.org/#case-SR128> [<https://perma.cc/27GK-W67A>].

3. While other instances of major human rights violations—including evidence of torture, sexual violence, and crimes against humanity of forcible transfer and persecution—have been committed against the Uyghurs, this Note focuses narrowly on instances of forced labor given its focus on international trade mechanisms. See OFF. OF THE HIGH COMM’R, *supra* note 1, at 21–25; ADRIAN ZENZ, JAMESTOWN FOUND., COERCIVE LABOR AND FORCED DISPLACEMENT IN XINJIANG’S CROSS-REGIONAL LABOR TRANSFER PROGRAM: A PROCESS-ORIENTED EVALUATION 39–49 (2021), <https://jamestown.org/wp-content/uploads/2021/03/Coercive-Labor-and-Forced-Displacement-in-Xinjiangs-Cross-Regional-Labor-Transfers-A-Process-Oriented-Evaluation.pdf?x75295> [<https://perma.cc/99LF-VL6U>]; HUM. RTS. WATCH & MILLS LEGAL CLINIC, “BREAK THEIR LINEAGE, BREAK THEIR ROOTS”: CHINESE GOVERNMENT CRIMES AGAINST HUMANITY TARGETING UYGHURS AND OTHER TURKIC MUSLIMS 12–39 (2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> [<https://perma.cc/C3CD-QNN5>]. However, these allegations warrant further discussion and action by the international community to put an end to these violations and hold the Chinese government accountable for the abuses against the Uyghur people.

4. See AMNESTY INT’L, *supra* note 2, at 7; *Chinese Persecution of the Uyghurs*, U.S. HOLOCAUST MEM’L MUSEUM, <https://www.ushmm.org/genocide-prevention/countries/china/chinese-persecution-of-the-uyghurs> [<https://perma.cc/2UDJ-VFGK>] (last visited Mar. 29, 2024); John Sudworth, *Xinjiang Police Files: Inside a Chinese Internment Camp*, BBC NEWS (May 24, 2022), <https://www.bbc.co.uk/news/resources/idt-8df450b3-5d6d-4ed8-bdcc-bd99137eadc3> [<https://perma.cc/F7EE-FDKN>].

5. AMNESTY INT’L, *supra* note 2, at 8.

6. *Id.* at 63–65.

7. *Id.* at 102 (alteration and omissions in original). All testimony from this source maintains the pseudonyms provided to the victims by Amnesty International.

8. *Id.* at 126–27.

[After I was released from the camp] they ordered me not to leave my house for 10 days. . . . After a week they called me back and they registered me and made a list of people who had been in the camp. Then they gathered all the people on the list, and we went to a garment factory. We didn't have a choice but to go there. . . . The salary was low. It was impossible to take care of my family with the salary. The first month [we were paid] 200 RMB [31 USD] The factory was on the outskirts of [redacted] county seat. Only ethnic minorities were working in the factory – Uyghurs, Kazakhs, and Hui. The [only] Han were the heads of the factory. . . . The factory made clothes, gloves, and bags.⁹

Other Uyghurs are forced to work in factories after family members are taken to camps, with one victim of forced labor noting that “if one family [member] was in a camp you had to work so the father or husband can get out quickly.”¹⁰ In addition to being forced to work nine-hour days, Uyghur laborers are then forced to undergo hours of classes of Mandarin and Chinese Communist Party propaganda.¹¹ These accounts of former detainees in these re-education camps detail the horrific conditions Uyghurs are facing under the guise of a purportedly “legal” vocational training program.¹²

China's actions in Xinjiang garnered attention on the international stage following a United Nations (UN) statement in 2018 that one million members of the Uyghur ethnic group were being detained.¹³ However, China's focus on the Uyghur people can be traced back to the early twenty-first century. As the population of Xinjiang is historically one of the poorest in China, “labor transfer programs” have been in place since the early 2000s to transfer rural Uyghurs to factory jobs across China.¹⁴ However, following a series of violent attacks in the region in 2014, the treatment of the Uyghurs appears to have shifted from one of providing job opportunities and combating poverty to one that is attempting

9. *Id.* at 127 (alterations and omissions in original).

10. *Id.* at 128 (alteration in original).

11. See Alison Killing & Megha Rajagopalan, *The Factories in the Camps*, BUZZFEED NEWS (Jan. 4, 2021, 4:26 PM), https://www.buzzfeednews.com/article/alison_killing/xinjiang-camps-china-factories-forced-labor [<https://perma.cc/XR6L-VG8G>]; VICKY XIUZHONG XU, DANIELLE CAVE, JAMES LEIBOLD, KELSEY MUNRO & NATHAN RUSER, INT'L CYBER POL'Y CTR., AUSTL. STRATEGIC POL'Y INST., UYGHURS FOR SALE: 'RE-EDUCATION', FORCED LABOUR AND SURVEILLANCE BEYOND XINJIANG 8, 10 (2020), <https://www.aspi.org.au/report/uyghurs-sale> [<https://perma.cc/WE48-2SZA>].

12. See Adrian Zenz, *Beyond the Camps: Beijing's Long-Term Scheme of Coercive Labor, Poverty Alleviation and Social Control in Xinjiang*, J. POL. RISK (Dec. 10, 2019), <https://www.jpolrisk.com/beyond-the-camps-beijings-long-term-scheme-of-coercive-labor-poverty-alleviation-and-social-control-in-xinjiang/> [<https://perma.cc/7DV9-B8BL>]; *Vocational Education and Training in Xinjiang*, CHINA: THE ST. COUNCIL (Aug. 17, 2019, 9:24 AM), http://english.www.gov.cn/archive/whitepaper/201908/17/content_WS5d57573cc6d0c6695ff7ed6c.html [<https://perma.cc/U4XX-9H8T>].

13. *Official PRC Response to Human Rights Violations*, U. B.C.: XINJIANG DOCUMENTATION PROJECT, <https://xinjiang.sppga.ubc.ca/timelines/prc-response-human-rights-violation/> [<https://perma.cc/JP9U-5ZYN>] (last visited Mar. 29, 2024); see OFF. OF THE HIGH COMM'R, *supra* note 1, at 16.

14. See ZENZ, *supra* note 3, at 9, 11. For a more detailed account of the evolution of forced labor in the Xinjiang region, see Adrian Zenz, *The Conceptual Evolution of Poverty Alleviation Through Labour Transfer in the Xinjiang Uyghur Autonomous Region*, 42 CENT. ASIAN SURV. 649, 656–60 (2023).

cultural erasure of the Uyghur people through a series of “de-radicalization” and “re-education” schemes.¹⁵ President Xi Jinping called for an “effective educational remolding and transformation of criminals” and likened Islam to a virus that would require “interventionary treatment.”¹⁶ These camps are a part of that scheme, designed with the intention to “deradicalize” the Xinjiang region, which the government has accused of facing extremism.¹⁷ This “deradicalization” is done through “re-education,” as the government believes educating Uyghurs in traditional Han Chinese ways will rid the region of extremism.¹⁸ Additionally, the rise of Chinese nationalism and President Xi Jinping’s efforts to fuse ethnic groups into one “indivisible China” are illustrated in the incorporation of Chinese Communist Party and Han Chinese-centralized instruction¹⁹—Mandarin lessons, “lectures warning against Islamic zeal and preaching gratitude to the Communist Party,” and singing the Chinese national anthem²⁰—in the camps, illustrating how these camps are also being used to “destroy [the Uyghurs] and to assimilate [them]” into the Han Chinese culture.²¹

Beginning in 2017, the labor transfer programs became more coercive and reports of Vocational Education and Training Centers emerged.²² The Chinese

15. See ZENZ, *supra* note 3, at 11–12, 14; Austin Ramzy & Chris Buckley, ‘*Absolutely No Mercy*’: *Leaked Files Expose How China Organized Mass Detentions of Muslims*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>; NATHAN RUSER, JAMES LEIBOLD, KELSEY MUNRO & TILLA HOJA, INT’L CYBER POL’Y CTR., AUSTR. STRATEGIC POL’Y INST., CULTURAL ERASURE: TRACING THE DESTRUCTION OF UYGHUR AND ISLAMIC SPACES IN XINJIANG 7–33 (2020), <https://www.aspi.org.au/report/cultural-erasure> [<https://perma.cc/2XVL-KFS5>] (discussing case studies illustrating the destruction of cultural heritage through destruction of mosques and other religious sites).

16. Ramzy & Buckley, *supra* note 15.

17. See *id.*

18. See Emily Feng, *Forced Labour Being Used in China’s ‘Re-education’ Camps*, FIN. TIMES (Dec. 15, 2018), <https://www.ft.com/content/eb2239aa-fc4f-11e8-aebf-99e208d3e521> (noting a report in the Xinjiang Daily newspaper run by the Chinese Communist Party, which published that “[a] life distorted by religious extremism needs to be saved. A soul poisoned by religious extremism needs to be awakened After vocational skills education and training, the students clearly identified right from wrong, changed their minds and broke with their dark past, ushering in a new life”); CHINA: THE ST. COUNCIL, *supra* note 12.

19. Chris Buckley, Vivian Wang & Joy Dong, *One Nation Under Xi: How China’s Leader Is Remaking Its Identity*, N.Y. TIMES (Oct. 11, 2022), <https://www.nytimes.com/2022/10/11/world/asia/xi-jinping-china-nationhood.html>.

20. Chris Buckley & Austin Ramzy, *Inside China’s Push to Turn Muslim Minorities into an Army of Workers*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2019/12/30/world/asia/china-xinjiang-muslims-labor.html>.

21. AMNESTY INT’L, *supra* note 2, at 8–9, 85; see James Millward, *China’s New Anti-Uyghur Campaign: How the World Can Stop Beijing’s Brutal Oppression*, FOREIGN AFFS. (Jan. 23, 2023), <https://www.foreignaffairs.com/china/chinas-new-anti-uyghur-campaign> (noting the re-education camps “contribute to China’s broader colonial policy to Sinicize the region by moving Han people into Xinjiang and suppressing Uyghur birth rates”); HUM. RTS. WATCH & MILLS LEGAL CLINIC, *supra* note 3, at 10 (discussing the Chinese government’s “aggressiv[e] . . . assimilationist policies in ethnic minority regions” driven by nationalism and Islamophobia).

22. See ZENZ, *supra* note 3, at 12; AMNESTY INT’L, *supra* note 2, at 23; Zenz, *supra* note 14, at 650 (“[L]abour transfers evolved from an in itself legitimate socio-economic policy that has now come to be part of a multi-faceted atocracy.”).

government claims these are job-training centers that use “mild methods” to combat Islamic extremism while increasing social stability in the region through employment and advertises the centers as providing high standards of living and education for free.²³ In reality, these training centers are re-education camps that use indoctrination, interrogation, and cultural and religious suppression to strip the Uyghur people of their independent identity and subsequently provide a pipeline for the exploitation of the Uyghur people through forced labor.²⁴ While China argues that these centers are used to combat terrorism and extremism,²⁵ Uyghurs are sent to these facilities for offenses including praying in public, fasting, wearing a veil, growing a long beard, or carrying illegal political and religious books, illustrating that these offenses are signs of practicing Islam or otherwise tied to these ethnic groups’ cultural identities.²⁶ Among other abuses reported to occur in these facilities,²⁷ forced labor has been reported by survivors, credible NGOs, and the United Nations Office of the High Commissioner for Human Rights (OHCHR).²⁸

Allegations of forced labor occur in two contexts: (1) the “de-extremification” campaign involving “graduates” of re-education camps and (2) the “poverty alleviation” program involving “rural surplus” workers.²⁹ The first program involves people in the re-education camps who “graduate” and are then placed in factories through the de-extremification campaign’s “camp-to-labour” pipeline and

23. Ramzy & Buckley, *supra* note 15; see ZENZ, *supra* note 3, at 10; CHINA: THE ST. COUNCIL, *supra* note 12 (“Specifically, in cases of unlawful and criminal acts of terrorism and extremism, not all offenders or criminals should be prosecuted by [prosecutorial] organs and convicted and sentenced by judicial organs. . . . In order to implement the principle of addressing both the symptoms and root causes, State laws and local regulations have stipulated measures intended to help people involved in terrorist and extremist activities to find employment and reintegrate into society through education.”).

24. See *supra* notes 1–12 and accompanying text; Ramzy & Buckley, *supra* note 15.

25. See CHINA: THE ST. COUNCIL, *supra* note 12.

26. See AMNESTY INT’L, *supra* note 2, at 12–13, 27; HUM. RTS. WATCH & MILLS LEGAL CLINIC, *supra* note 3, at 2, 17–18 (listing verdicts of those imprisoned, including a conviction for “inciting ethnic hatred and discrimination” for telling others ‘what is *haram* and *halal*’); Adrian Zenz, *Innovating Penal Labor: Reeducation, Forced Labor, and Coercive Social Integration in the Xinjiang Uyghur Autonomous Region*, 90 CHINA J. 27, 39 (2023); Ivan Watson & Ben Westcott, *Watched, Judged, Detained*, CNN, <https://www.cnn.com/interactive/2020/02/asia/xinjiang-china-karakax-document-intl-hnk/> [<https://perma.cc/LAC7-LXJ5>] (last visited Feb. 6, 2024) (quoting a leading scholar on China’s policies in Xinjiang, Adrian Zenz, saying “[t]he document clearly shows . . . that the re-education camps are not for people who have been convicted of anything at all. They are simply for people who fall into some kind of general category of general suspicion or who have simply practiced their own religion” (omission in original)); RUSER ET AL., *supra* note 15, at 3 (stating that the Chinese government is seeking to “erode and redefine the culture of the Uyghurs and other Turkic-speaking communities” to “render those indigenous cultural traditions subservient to the ‘Chinese nation’”).

27. See *supra* note 3 and accompanying text.

28. See AMNESTY INT’L, *supra* note 2, at 23; ZENZ, *supra* note 3, at 39; OFF. OF THE HIGH COMM’R, *supra* note 1, at 37–38; U. B.C.: XINJIANG DOCUMENTATION PROJECT, *supra* note 13; XINJIANG VICTIMS DATABASE, <https://shahit.biz/eng/#filter> [<https://perma.cc/TU7Y-YB95>] (last visited Apr. 9, 2024); XU ET AL., *supra* note 11, at 6; Letter from Josh Zinner, Chief Exec. Officer, Interfaith Ctr. on Corp. Resp., to Mark Morgan, Acting Comm’r, U.S. Customs & Border Prot. (Aug. 28, 2020), <https://laborrights.org/sites/default/files/publications/Section%201307%20Petition%20Xinjiang%20August%2028%202020-2%20table.pdf> [<https://perma.cc/WN4G-23Q4>].

29. ZENZ, *supra* note 3, at 9–10.

“seamless” transfer to employment.³⁰ These factories located near the re-education camps are referred to as “poverty alleviation workshops” and are incentivized by the Chinese government to specifically hire “persons in re-education.”³¹ Re-education camps are typically located within the Uyghur’s home region of Xinjiang.³²

The second program in which forced labor occurs facilitates the transfer of people deemed “surplus labor” from Xinjiang to other areas of China as part of the “poverty alleviation” program and “labor transfer scheme.”³³ The government defines “surplus labor” as people living outside of the re-education camps who are farmers, seasonal workers, or lack jobs.³⁴ This program began in the early 2000s but became coercive once internment in the re-education camps began.³⁵ Here, laborers have not been subjected to the re-education camps but instead are recruited in their homes by government workers wishing to transform people in “backward” areas into people who “want to work” after undergoing militarized worker training.³⁶ This training includes political indoctrination and education following work in the factory.³⁷ Fearing internment for resisting, Uyghurs leave their homes and jobs to be placed in factory work throughout China, often beyond the Xinjiang region.³⁸ The labor transfer scheme furthers the government’s goal

30. *Id.*; OFF. OF THE HIGH COMM’R, *supra* note 1, at 38; Zenz, *supra* note 14, at 651; see Ruth Ingram, *When ‘Poverty Alleviation’ Means Forced Labor for Uyghurs*, CHINA PROJECT (Oct. 26, 2023), <https://thechinaproject.com/2023/10/26/when-poverty-alleviation-means-forced-labor-for-uyghurs/> [<https://perma.cc/MNV3-NJ2A>].

31. ZENZ, *supra* note 3, at 10; see Zenz, *supra* note 26, at 41–42.

32. See ZENZ, *supra* note 3, at 8.

33. *Id.* at 9–11.

34. LAURA T. MURPHY & NYROLA ELIMÄ, HELENA KENNEDY CTR. FOR INT’L JUST., SHEFFIELD HALLAM UNIV., IN *BROAD DAYLIGHT: UYGHUR FORCED LABOUR AND GLOBAL SOLAR SUPPLY CHAINS* 10 (2021), <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight> [<https://perma.cc/P4M6-P6PH>]; see Killing & Rajagopalan, *supra* note 11.

35. ZENZ, *supra* note 3, at 11–13; see XU ET AL., *supra* note 11, at 10.

36. XU ET AL., *supra* note 11, at 6, 8, 12; ZENZ, *supra* note 3, at 12–13; see Buckley & Ramzy, *supra* note 20; Zenz, *supra* note 14, at 650 (noting the purpose of re-education camps is to “‘cure’ persons already ‘infected’ with the ‘virus’ of ‘religious extremism,’” while the labor transfer scheme is meant to “preventively inoculate those who are not yet ‘infected’”).

37. Ingram, *supra* note 30; Ruth Ingram, *Business Is Booming in Northwest China—So Is Uyghur Slave Labor*, BITTER WINTER (Nov. 29, 2023), <https://bitterwinter.org/business-is-booming-in-northwest-china-so-is-uyghur-slave-labor/> [<https://perma.cc/9YHE-4RUH>]; see AMNESTY INT’L, *supra* note 2, at 9.

38. See Zenz, *supra* note 14, at 653–54, 659–60 (confirming through witness testimony that those who refused state work assignments were sent to internment camps); John Sudworth, *‘If the Others Go I’ll Go’: Inside China’s Scheme to Transfer Uyghurs into Work*, BBC (Mar. 2, 2021), <https://www.bbc.com/news/world-asia-china-56250915> [<https://perma.cc/C5TX-Y3KT>]; Buckley & Ramzy, *supra* note 20; WILLIAM DREXEL, UYGHUR HUM. RTS. PROJECT, *KASHGAR COERCED: FORCED RECONSTRUCTION, EXPLOITATION, AND SURVEILLANCE IN THE CRADLE OF UYGHUR CULTURE* 51 (2020), https://docs.uhrp.org/pdf/UHRP-Kashgar-Coerced-Report-06_03_20%20Final.pdf [<https://perma.cc/Q7NF-VQWZ>]; Patrick Greenfield, Amy Hawkins & Manisha Ganguly, *BP and Spotify Bought Carbon Credits at Risk of Link to Forced Uyghur Labour in China*, GUARDIAN (Nov. 13, 2023, 8:06 AM), <https://www.theguardian.com/environment/2023/nov/13/carbon-credits-at-risk-of-link-to-uyghur-forced-labour-bought-by-bp-and-spotify> [<https://perma.cc/5XMB-29WN>] (“[In the context of labor transfer programs.] [i]t’s very difficult for a Uyghur to say no. And since 2017, it’s become impossible to say no, because the alternative is [they] go to the reeducation camp.”).

of changing the demographic composition of the Xinjiang region by concurrently reducing the Uyghur population density and encouraging Han Chinese people to move to the region.³⁹

While China argues the purpose of this program is to promote economic development in the region, forced labor is present in both the factories employing persons in re-education from the re-education camps and labor transfer schemes for surplus labor.⁴⁰ Workers are “subjected to intimidation and threats,”⁴¹ placed in a situation of vulnerability,⁴² restricted in their freedom of movement,⁴³ isolated from non-Uyghur workers,⁴⁴ forced to work in “abusive working conditions,”⁴⁵ and subjected to excessive overtime.⁴⁶ Though the government has spread misinformation about these programs, such as the wages for these positions,⁴⁷ leaked government documents coupled with the increased surveillance and targeting of these minority groups illustrate that the true purposes of these programs include cultural assimilation and erasure, reducing the concentration of Uyghurs while increasing the percentage of Han Chinese in Xinjiang, and “reduc[ing] labor costs” for companies.⁴⁸

39. ZENZ, *supra* note 3, at 14–15.

40. *See id.* at 8–9, 20–21. The International Labour Organization (ILO) indicators of forced labor include (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical and sexual violence, (6) intimidation and threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working and living conditions, and (11) excessive overtime. *See generally* SPECIAL ACTION PROGRAMME TO COMBAT FORCED LAB., INT’L LAB. OFF., ILO INDICATORS OF FORCED LABOUR (2012), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf [<https://perma.cc/27KS-NGCR>]; INT’L LAB. ORG., HARD TO SEE, HARDER TO COUNT: HANDBOOK ON FORCED LABOUR SURVEYS 148–51, 168–70 (2024), <https://www.ilo.org/media/514706/download> [<https://perma.cc/J6QG-QFRN>] (providing additional guidance and indicators for state-imposed forced labor and noting its unique complexities such as powerful coercive pressures by the state, pervasive state policies, and its systemic nature).

41. XU ET AL., *supra* note 11, at 6 (including “the threat of arbitrary detention, and being monitored by security personnel and digital surveillance tools”).

42. *Id.* (including “threats to family members back in Xinjiang”); AMNESTY INT’L, *supra* note 2, at 112 (working in factories to get family members released from detention facilities quicker).

43. XU ET AL., *supra* note 11, at 6 (including “fenced-in factories and high-tech surveillance”).

44. *See id.* (including being isolated from Han workers by being forced to live in separate dorms and transported on dedicated trains).

45. *Id.* (including “political indoctrination, police guard posts in factories, ‘military-style’ management, and a ban on religious practices”).

46. *Id.* (including being forced to participate in Mandarin classes and political indoctrination sessions after work).

47. *See* ADRIAN ZENZ, NEW LINES INST. FOR STRATEGY & POL’Y, COERCIVE LABOR IN XINJIANG: LABOR TRANSFER AND THE MOBILIZATION OF ETHNIC MINORITIES TO PICK COTTON 18 (2020), <https://newlinesinstitute.org/wp-content/uploads/20201214-PB-China-Cotton-NLISAP-MJL.pdf> [<https://perma.cc/27KS-NGCR>].

48. ZENZ, *supra* note 3, at 6, 13–15; *see also* AMNESTY INT’L, *supra* note 2, at 126–27; *Decision to Revise the “Xinjiang Uighur Autonomous Region Regulation on De-extremification,”* CHINA L. TRANSLATE, <https://www.chinalawtranslate.com/en/decision-to-revise-the-xinjiang-uighur-autonomous-region-regulation-on-de-extremification/> [<https://perma.cc/ZMZ7-GTZN>] (last visited Apr. 10, 2024) (promulgated by the Standing Committee of the 13th People’s Congress of the Xinjiang Uighur Autonomous Region on Oct. 9, 2018); Ramzy & Buckley, *supra* note 15; DREXEL, *supra* note 38, at 41, 50–51.

Forced labor remains present in Xinjiang, though its structure has begun to shift. Scholars note a lack of evidence of policies regarding camp-linked labor since 2019 and suggest that the government has renamed many re-education camps as formal prisons or detention centers.⁴⁹ However, there is evidence of increased focus on the use of the labor transfer scheme to transform agricultural workers into industrial workers using coercion and intensified monitoring.⁵⁰ Despite China's statement that the last re-education camp closed in 2019, satellite images illustrate that factories are continuing to be built adjacent to these facilities.⁵¹ This restructuring and institutionalization of the forced labor scheme in the region creates additional complexities for determining the pervasiveness of forced labor in these facilities and labor transfer programs.⁵² Coercion in the labor transfer scheme is less overt and therefore more difficult to detect than in the re-education camp factories.⁵³ Former detainees may work alongside workers who did not go through the program, making it difficult to distinguish between manufacturing projects made by forced labor and those that are not.⁵⁴ Government subsidies incentivize companies to build in the region and hire workers from these programs.⁵⁵ For example, reports indicate that companies who relocated or built in the region were exempted from corporate income tax for two years.⁵⁶ Companies participating in the poverty alleviation and re-education programs span a multitude of industries, predominantly cotton, polysilicon,

49. See Zenz, *supra* note 14, at 663, 667 (noting the “camp-to-labour” policy appears to no longer be processing new victims, but that prison labor has likely increased); *China: Events of 2023*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2024/country-chapters/china> [<https://perma.cc/FPF3-N4LC>] (last visited May 26, 2024) (noting that despite the apparent closure of many political education camps, half a million “Uyghurs and other Turkic Muslims remain in prison”); Sudworth, *supra* note 4; Ingram, *supra* note 30.

50. See Zenz, *supra* note 14, at 660–61, 663–65, 667; Ingram, *supra* note 30 (noting that the long-term plan of the government is to “strengthen and institutionalize its policy of compulsory labor among the entire rural Uyghur population of Xinjiang”); Adrian Zenz, *Forced Uyghur Labor Undergirds Xinjiang’s Export Boom*, HILL (Nov. 9, 2023, 8:00 AM), <https://thehill.com/opinion/international/4300097-forced-uyghur-labor-undergirds-xinjiangs-export-boom/> [<https://perma.cc/4JYD-YD4B>]; Zenz, *supra* note 26, at 28.

51. See Feng, *supra* note 18; HUM. RTS. WATCH & MILLS LEGAL CLINIC, *supra* note 3, at 34; Killing & Rajagopalan, *supra* note 11; *cf.* Zenz, *supra* note 14, at 665 (describing plans to construct “village satellite factories”).

52. See Ingram, *supra* note 30; Ingram, *supra* note 37 (highlighting that forced labor in the region given this shift in focus is now “less visible but more pervasive and cannot be detected by traditional means”).

53. See Ingram, *supra* note 30; Zenz, *supra* note 50 (“[The] new strategy also serves to cleverly circumvent international audits, which rely on visual inspections and worker interviews to evaluate workplace coercion. The workplaces in question do not feature camp-like security measures, creating the appearance of voluntary employment. International fact-finding missions visiting these sites are of little use, because Uyghurs under the Chinese Communist Party’s oppression in these settings will not speak candidly to interviewers.”).

54. See Zenz, *supra* note 12; DREXEL, *supra* note 38, at 49; ZENZ, *supra* note 47, at 19 (“However, in a system where the transition between securitization and poverty alleviation is seamless, and where the threat of extralegal internment looms large, it is impossible to define where coercion ends and where local consent may begin.”).

55. See Zenz, *supra* note 12; MURPHY & ELIMÄ, *supra* note 34, at 17; Zenz, *supra* note 14, at 662; Zenz, *supra* note 26, at 31, 41; Ingram, *supra* note 37.

textiles, and tomato products.⁵⁷ Due to the number of industries impacted and the transfer of workers to other regions, these programs implicate numerous supply chains across China.⁵⁸ Approximately 2.5 million Uyghurs have been subjected to forced labor through these programs.⁵⁹ However, given the lack of transparency from the Chinese government and the use of two concurrent programs implementing forced labor, it is difficult to confirm if this number could be greater.⁶⁰

The United States government took action in response to these forced labor accounts in Xinjiang. From 2019 to 2021, U.S. Customs and Border Protection (CBP) issued twelve Withhold Release Orders (WRO) detaining goods from China suspected of being produced with forced labor.⁶¹ During this same time, the Department of Commerce added numerous companies to its Entity List following a determination that they accepted or utilized forced labor, restricting the importation of goods connected to these companies.⁶² The Departments of Treasury and State issued sanctions and visa restrictions against government officials responsible for or complicit in the abuses in Xinjiang.⁶³ Additionally, Congress passed the Uyghur Human Rights Policy Act of 2020 by near-unanimous consent to encourage the President to impose sanctions on foreign persons he deemed responsible for the abuses of ethnic minorities in Xinjiang.⁶⁴ The Act mandated reports to Congress from the State Department, the Director of National Intelligence, and the Federal Bureau of Investigation on issues involving government oppression of Uyghurs.⁶⁵ Most recently, Congress passed the

56. See MURPHY & ELIMÄ, *supra* note 34, at 17; see also U.S. DEP'T OF STATE, DEP'T OF THE TREASURY, U.S. DEP'T OF COM., DHS, OFF. OF THE U.S. TRADE REPRESENTATIVE & DEP'T OF LAB., XINJIANG SUPPLY CHAIN BUSINESS ADVISORY: RISKS AND CONSIDERATIONS FOR BUSINESSES AND INDIVIDUALS WITH EXPOSURE TO ENTITIES ENGAGED IN FORCED LABOR AND OTHER HUMAN RIGHTS ABUSES LINKED TO XINJIANG, CHINA 7–8 (2021), <https://ofac.treasury.gov/recent-actions/20210713> [<https://perma.cc/Z2WV-2W86>].

57. See *Against Their Will: The Situation in Xinjiang*, U.S. DEP'T LAB.: BUREAU OF INT'L LAB. AFFS., <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang> [<https://perma.cc/D35C-ZDJC>] (last visited Apr. 10, 2024); IRINA BUKHARIN, C4ADS, EVERYBODY'S BUSINESS: THE XINJIANG GOODS ENTERING GLOBAL SUPPLY CHAINS 12–16 (2022), <https://c4ads.org/issue-briefs/everybodys-business/> [<https://perma.cc/XC6F-73KC>]; ZENZ, *supra* note 47, at 6–7, 9.

58. See BUKHARIN, *supra* note 57, at 12–16.

59. See Zenz, *supra* note 14, at 654.

60. See ZENZ, *supra* note 3, at 6–7; Raj Bhala, *China's Uyghurs, Human Rights, and America's Trade Sanctions*, 19 J. NAT'L HUM. RTS. COMM'N INDIA 101, 107 (2020); DREXEL, *supra* note 38, at 49.

61. *Withhold Release Orders and Findings List*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> [<https://perma.cc/6KPA-YA65>] (last visited Apr. 10, 2024).

62. See U.S. DEP'T OF STATE ET AL., *supra* note 56, at 6, 21–22; *UFLPA Entity List*, DHS, <https://www.dhs.gov/uflpa-entity-list> [<https://perma.cc/6ZRQ-KVZF>] (last visited Apr. 10, 2024); Press Release, U.S. Dep't of Com., Commerce Department Adds Five Chinese Entities to the Entity List for Participating in China's Campaign of Forced Labor Against Muslims in Xinjiang (June 24, 2021), <https://www.commerce.gov/news/press-releases/2021/06/commerce-department-adds-five-chinese-entities-entity-list> [<https://perma.cc/E4B7-H73F>].

63. See U.S. DEP'T OF STATE ET AL., *supra* note 56, at 22–23.

64. Bhala, *supra* note 60, at 106–08.

65. See *id.* at 107; U.S. DEP'T OF STATE ET AL., *supra* note 56, at 18.

Uyghur Forced Labor Prevention Act (UFLPA) in December 2021, which uses trade as a mechanism to combat human rights abuses in a region of the world that is inextricably connected to the global supply chain.⁶⁶

This Note examines the instances of forced labor in the Xinjiang region of China against the Uyghur people and discusses mechanisms in the international trade system that can be used to combat not only these abuses, but instances of forced labor across the globe. Part I introduces the United States' UFLPA—an expansion of Section 307 of the 1930 Tariff Act that classifies goods originating from or connected to the Xinjiang region as presumptively made with forced labor. It describes the provisions of the UFLPA and evaluates its effectiveness thus far by detailing its impact on China, as well as its effects on the U.S. economy and global supply chain. Part II analyzes the effectiveness of the UFLPA as a ban targeted at imports connected to the Xinjiang region by comparing its impact to a broad ban applied on a neutral basis to all instances of forced labor using the European Union Proposal as an example. In addition, because targeted bans are made more effective with parallel import bans from other countries, this Part discusses the challenges of parallel bans being implemented due to the pervasiveness of China's Belt and Road Initiative. These considerations all impact the effectiveness of a targeted ban like the UFLPA and its ability to effect change in China to stop the coercion of the Uyghur people into forced labor.

Because of the mixed effects of the UFLPA and the challenges posed by a targeted ban on forced labor, this Note calls for the international trade system to implement mechanisms through the World Trade Organization (WTO) and trade agreements to combat instances of forced labor. Part III discusses how the WTO currently relegates forced labor protections to the more ineffective International Labour Organization (ILO) and argues that the public morals exception of *General Agreement on Tariffs and Trade (GATT)* Article XX could allow human rights, specifically the right of protection against forced labor, to be safeguarded through the WTO framework. This Note recognizes that the UFLPA on its face likely violates the most-favored nation principle of the WTO in that it imposes a trade restriction on China that is not applied to other WTO members. However, this Part argues that since a targeted ban aimed to combat forced labor should fall under the public morals exception, the UFLPA may meet the test for the exception under Article XX. However, given the suspension of the WTO Appellate Body and the unlikelihood of this determination being made in the near future, Part IV calls for alternative mechanisms in the international trading system that should be used to combat forced labor. This Note proposes nontariff measures such as import bans and trade agreements with labor clauses and calls on corporations to conduct due diligence to allow for greater supply chain transparency. This Note concludes that all these measures taken in conjunction provide the strongest chance to combat forced labor against the Uyghur people.

66. Uyghur Forced Labor Prevention Act (UFLPA), Pub. L. No. 117–78, 135 Stat. 1525 (2021).

I. THE UFLPA AND ITS EFFECTIVENESS

The Uyghur Forced Labor Prevention Act derives its authority from Section 307 of the Tariff Act of 1930, which prohibits the import of products “mined, produced, or manufactured wholly or in part by forced labor.”⁶⁷ The UFLPA specifically applies to those imports produced or manufactured in whole or in part from the Xinjiang region or by laborers working in poverty alleviation programs that are located in regions outside Xinjiang.⁶⁸ The UFLPA’s effects on influencing China to halt these forced labor programs are inconclusive given the ability of companies in the region to circumvent the ban.⁶⁹ However, the U.S. economy and companies operating in the global supply chain have felt the effects of the UFLPA in part because of the difficulty in parsing out whether companies’ supply chains can be traced back to Xinjiang.⁷⁰

A. THE UYGHUR FORCED LABOR PREVENTION ACT

The UFLPA builds on Section 307 of the Tariff Act of 1930 by classifying all goods mined, produced, or manufactured in whole or in part in Xinjiang or by laborers working with the government through the poverty alleviation program as goods produced with forced labor under Section 307.⁷¹ Such goods are prohibited from entering the United States.⁷² This prohibition also includes goods made by workers who are transported out of the region to other parts of China through the poverty alleviation scheme.⁷³

Under a typical Section 307 action, U.S. Customs and Border Protection, which enforces Section 307, investigates whether a good is made with forced labor following an allegation.⁷⁴ If CBP finds information gathered during the investigation “reasonably but not conclusively indicates” the good was a product of forced labor, CBP issues an order to withhold the release of goods (WRO).⁷⁵ A WRO allows goods to be detained by CBP at the port unless importers can prove

67. CHRISTOPHER A. CASEY, CATHLEEN D. CIMINO-ISAACS & MICHAEL A. WEBER, CONG. RSCH. SERV., IF11360, SECTION 307 AND IMPORTS PRODUCED BY FORCED LABOR 1 (2023) (citing 19 U.S.C. § 1307).

68. See UFLPA § 3(a).

69. See *infra* Section I.B.

70. See *infra* Section I.C.

71. See UFLPA § 3(a).

72. *Id.*; see also *id.* § 1(1).

73. See *id.* § 2(d)(2)(A); OFF. OF STRATEGY, POL’Y & PLANS, U.S. DHS, STRATEGY TO PREVENT THE IMPORTATION OF GOODS MINED, PRODUCED, OR MANUFACTURED WITH FORCED LABOR IN THE PEOPLE’S REPUBLIC OF CHINA 49 (2022) [hereinafter FLETf STRATEGY], https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf [<https://perma.cc/U2MH-P7RR>].

74. CASEY ET AL., *supra* note 67, at 1. See generally ANASUYA SYAM & MEG ROGGENSACK, HUM. TRAFFICKING LEGAL CTR., IMPORTING FREEDOM: USING THE U.S. TARIFF ACT TO COMBAT FORCED LABOR IN SUPPLY CHAINS (2020), https://www.htlegalcenter.org/wp-content/uploads/Importing-Freedom-Using-the-U.S.-Tariff-Act-to-Combat-Forced-Labor-in-Supply-Chains_FINAL.pdf [<https://perma.cc/F8CJ-UF94>] (describing in detail the process of initiating a Section 307 action, the evidence required, and how it can be used as a tool to combat forced labor in supply chains).

75. CASEY ET AL., *supra* note 67, at 1.

an absence of forced labor in the supply chain.⁷⁶ These WROs under a typical Section 307 action target specific goods from specific producers, and if an importer fails to successfully contest a WRO, the goods are destroyed by CBP.⁷⁷ Prior to the UFLPA, CBP found a few products originating from Xinjiang to be made with forced labor and blocked their entry under Section 307's broad ban on any product produced by forced labor.⁷⁸

As of June 21, 2022, the UFLPA expanded upon Section 307 by establishing a rebuttable presumption that *all* goods produced or manufactured in the Xinjiang region or by an entity included on the UFLPA Entity List are made with forced labor, permitting them to be seized by CBP.⁷⁹ To overcome the rebuttable presumption, the burden is on the importer to prove “by clear and convincing evidence” that the goods or components of the goods were not produced with forced labor.⁸⁰ This flips the burden in a typical Section 307 action in which an investigation is initiated by an external allegation or an internal suspicion that a product is produced using forced labor, and, if forced labor is found, the CBP Commissioner issues a WRO preventing entry of the merchandise.⁸¹ Additionally, while WROs issued under Section 307 can be contested by an importer demonstrating “every reasonable effort” has been made to determine the source and type of labor used to produce components,⁸² CBP must determine by “clear and convincing evidence” that goods covered by the UFLPA were not made with forced labor.⁸³ This means the burden of proof under the UFLPA's rebuttable presumption is much greater than in a typical Section 307 action. Therefore, goods tied to Xinjiang must overcome a greater burden to be imported under the UFLPA than in a typical Section 307 action, providing greater protection against goods made with forced labor in the region.

Additionally, there is no *de minimis* exception—if a component of a product is produced or raw material is mined with forced labor from the region, the completed product is barred from entry.⁸⁴ Practically, this provision means that a good in which any component part, no matter how minimal, originates from Xinjiang or is made with forced labor connected to the region can be denied entry into the United States, even if that good is imported from a country other than China. Therefore, even component parts of a product shipped from China to another country for incorporation into a final product can prevent that product

76. *See id.*

77. *Id.*

78. See Marti Flacks & Madeleine Songy, *The Uyghur Forced Labor Prevention Act Goes into Effect*, CTR. FOR STRATEGIC & INT'L STUD. (June 27, 2022), <https://www.csis.org/analysis/uyghur-forced-labor-prevention-act-goes-effect> [<https://perma.cc/LHN5-D6RN>].

79. UFLPA, Pub. L. No. 117–78, § 3, 135 Stat. 1525, 1529 (2021); FLETTF STRATEGY, *supra* note 73, at 8.

80. *See* UFLPA § 3(b)(2).

81. CASEY ET AL., *supra* note 67, at 1.

82. *Id.*

83. UFLPA § 3(b)(2).

84. FLETTF STRATEGY, *supra* note 73, at 49.

from being imported into the United States if those components are from Xinjiang or made using forced labor in another region.⁸⁵ This means that the UFLPA can impact a wide array of imports from across the globe, not just those originating from China.

The UFLPA also empowered the Forced Labor Enforcement Task Force (FLETF) to develop an enforcement strategy to address goods produced with forced labor in China that are implicated in the government's re-education and poverty alleviation programs.⁸⁶ The FLETF was originally established under the United States–Mexico–Canada Agreement to monitor enforcement of Section 307.⁸⁷ While the UFLPA applies equally to all goods from the region, the FLETF Strategy and CBP's *Uyghur Forced Labor Prevention Act: U.S. Customs and Border Protection Operational Guidance for Importers* report name high-priority sectors for enforcement that are especially likely to be impacted by the forced labor regime.⁸⁸ The determination of high priority sectors was made based on reports from credible NGOs and survivors of the forced labor regime.⁸⁹ These sectors include cotton and its byproducts, apparel and textiles, silica-based products, and tomato products.⁹⁰ All of these sectors contain workers that are placed in either factories or fields near re-education camps in Xinjiang and in neighboring areas in eastern China.⁹¹ The FLETF released its updated strategy in July 2023, which added new entities to the UFLPA Entity List for the first time since the list was first released.⁹² The updated strategy also highlighted the FLETF's intention to target products beyond the four high-priority sectors, including automobile components and aluminum.⁹³

85. *See id.* at 8, 49.

86. UFLPA § 2(c).

87. FLETF STRATEGY, *supra* note 73, at 6.

88. *See id.* at 27–28; U.S. CUSTOMS & BORDER PROT., U.S. DHS, CBP No. 1793-0522, UYGHUR FORCED LABOR PREVENTION ACT: U.S. CUSTOMS AND BORDER PROTECTION OPERATIONAL GUIDANCE FOR IMPORTERS 16–17 (2022), https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf [<https://perma.cc/B8DS-W4V8>]. The CBP's Importer Guidance is intended to provide operational guidance to importers in navigating the UFLPA and is meant to complement the guidance from the FLETF. *Id.* at 4.

89. FLETF STRATEGY, *supra* note 73, at 18, 27–29.

90. *Id.* at 27–28; U.S. CUSTOMS & BORDER PROT., *supra* note 88, at 16–17.

91. *See* FLETF STRATEGY, *supra* note 73, at 27–28.

92. OFF. OF STRATEGY, POL'Y & PLANS, U.S. DHS, 2023 UPDATES TO THE STRATEGY TO PREVENT THE IMPORTATION OF GOODS MINED, PRODUCED, OR MANUFACTURED WITH FORCED LABOR IN THE PEOPLE'S REPUBLIC OF CHINA 7 (2023) [hereinafter UPDATED FLETF STRATEGY 2023], https://www.dhs.gov/sites/default/files/2023-08/23_0728_plcy_uflpa-strategy-2023-update-508.pdf [<https://perma.cc/U4V9-D4NV>]; *see* Press Release, Off. of the U.S. Trade Representative, Forced Labor Enforcement Task Force Publishes Updated Uyghur Forced Labor Prevention Act Strategy (Aug. 1, 2023), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/august/forced-labor-enforcement-task-force-publishes-updated-uyghur-forced-labor-prevention-act-strategy> [<https://perma.cc/2CTZ-YPV6>]; Alexis Chandler & Ludmilla Kasulke, *DHS Adds Two Entities, Eight Subsidiaries to UFLPA Entity List*, SQUIRE PATTON BOGGS: GLOB. SUPPLY CHAIN L. BLOG (June 15, 2023), <https://www.globalsupplychainlawblog.com/supply-chain/dhs-adds-two-entities-eight-subsidiaries-to-uflpa-entity-list/> [<https://perma.cc/9Z39-FA4B>].

93. UPDATED FLETF STRATEGY 2023, *supra* note 92, at 16.

The FLETF Strategy also provides guidance to importers on diligence required to overcome the UFLPA's rebuttable presumption.⁹⁴ Due diligence, such as through a credible audit,⁹⁵ is one of the major requirements to overcome the UFLPA's rebuttable presumption that goods produced in Xinjiang or elsewhere in China through the poverty alleviation programs are made with forced labor.⁹⁶ The FLETF specifically mentions that the difficulty of conducting a credible audit because of the integration of forced labor throughout the economy, its mixing with voluntary labor, and government incentives for businesses is not a valid excuse that will overcome the rebuttable presumption.⁹⁷ Mapping the entire supply chain is another measure to overcome the rebuttable presumption, as goods imported to the United States that are not from Xinjiang but contain inputs from companies sourcing from within the region risk CBP detention because it is difficult to verify the import is not tainted.⁹⁸ Importers are also encouraged by the FLETF to require suppliers to conduct diligence of their upstream suppliers and build in consequences in supplier contracts for upstream suppliers who identify forced labor and fail to take corrective action.⁹⁹

Overall, the UFLPA creates a high burden to overcome for importers whose supply chains are connected to Xinjiang. Additionally, given the practice of transporting laborers to other parts of China, this Act implicates supply chains extending beyond Xinjiang, creating potentially broad-sweeping effects on the United States, China, and businesses located in third countries across a multitude of important industries.¹⁰⁰

B. THE UFLPA'S IMPACT ON CHINA AND HALTING HUMAN RIGHTS ABUSES IN XINJIANG

Given the lack of transparency within the country and the Chinese government's continued denial that forced labor is occurring in Xinjiang,¹⁰¹ uncertainty exists as to whether the UFLPA will lead to change in the region.¹⁰² The satellite images showing expansion of re-education camps and factories in recent years

94. FLETF STRATEGY, *supra* note 73, at 41–45.

95. According to the FLETF, a credible audit includes the following core elements: (1) unannounced arrival at the site when workers are likely to be present; (2) examination of the ILO indicators of forced labor; (3) interviews with workers, management, and recruiters in the interviewee's native language and free from government or employer intimidation; (4) unrestricted access to the worksite and associated locations; and (5) review of documents to provide proof of compliance and corroborate discrepancies. *Id.* at 44.

96. *See id.* at 41–45.

97. *Id.* at 44; see Ian Urbina, *The Uyghurs Forced to Process the World's Fish*, NEW YORKER (Oct. 9, 2023), <https://www.newyorker.com/news/news-desk/the-uyghurs-forced-to-process-the-worlds-fish> (describing the ways in which companies can circumvent audits that require disclosure of workers involved in the labor transfer scheme).

98. FLETF STRATEGY, *supra* note 73, at 45–46.

99. *Id.* at 46.

100. *See infra* Section I.B (discussing China's use of third countries to circumvent the UFLPA).

101. See Ana Swanson, *Global Car Supply Chains Entangled with Abuses in Xinjiang*, *Report Says*, N.Y. TIMES (Dec. 6, 2022), <https://www.nytimes.com/2022/12/06/business/economy/global-car-supply-chains-xinjiang-forced-labor.html> (stating the Chinese government referred to allegations as “the lie of the century”).

102. *See The Second Press Conference by Xinjiang Uyghur Autonomous Region on Xinjiang-Related Issues in Beijing*, EMBASSY CHINA KINGDOM BELG. (Jan. 12, 2021, 5:33 PM), http://be.china-embassy.gov.cn/eng/zt/xinjiangEN1/202103/t20210310_10165109.htm [<https://perma.cc/9Z39-FA4B>]; Joel Slawotsky,

are concurrent with previous U.S. sanctions and WROs surrounding goods in the region.¹⁰³ This illustrates that prior U.S. actions restricting trade with the region¹⁰⁴ have not reduced instances of forced labor or impacted the growth of the forced labor scheme, but rather these programs appear to continue expanding as evidenced by the continued growth of factories near re-education camps. While the UFLPA goes further than previous measures in restricting trade with China, its effectiveness on pressuring China to end the forced labor regime has yet to be realized. Roadblocks to the UFLPA's effectiveness are present both in China's politics and from a trade perspective.

From a political standpoint, the Chinese government shows no signs of slowing down the program but instead touts plans to "intensify efforts" in the region.¹⁰⁵ During the public comment period prior to the passage of the UFLPA, multiple Chinese companies denied forced labor allegations and called for the law's revocation.¹⁰⁶ In fact, support for Chinese businesses has increased within China since the passage of the UFLPA—Chinese brand ambassadors have cut ties with brands speaking out against forced labor in the region, and state media continues to call for support of Xinjiang businesses.¹⁰⁷ The Chinese government also passed a countersanctions law that can penalize companies who adjust their supply chains in order to comply with western sanctions.¹⁰⁸ Despite the United States' continued commitment to address concerns about abuses in the Xinjiang

The Weaponization of Human Rights in US-China Trade Policy: Impacts and Risks, 56 J. WORLD TRADE 547, 555–56 (2022).

103. See Killing & Rajagopalan, *supra* note 11; U.S. DEP'T OF STATE ET AL., *supra* note 56, at 21–23.

104. See *supra* notes 61–65 and accompanying text.

105. See *Outline of the 14th Five Year Plan (2021-2025) for National Economic and Social Development and Vision 2035 of the People's Republic of China*, PEOPLE'S GOV'T FUJIAN PROVINCE (Aug. 9, 2021, 9:15 AM), https://www.fujian.gov.cn/english/news/202108/t20210809_5665713.htm [<https://perma.cc/75DR-S5JS>] ("We will intensify efforts and implement more targeted and effective policies to promote large-scale development in the western region."); see also Daniel C.K. Chow, *China's Defense of Its Human Rights Policies*, 10 PENN ST. J.L. & INT'L AFFS. 1, 46–47 (2022). This is also reflected in the shift to labor transfer schemes as the primary form of forced labor in the region. See *supra* notes 49–53 and accompanying text.

106. See Aksu Huafu, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States (Mar. 9, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0067> [<https://perma.cc/S55N-5ENZ>].

107. See Alexandra Stevenson, *China's Forced-Labor Backlash Threatens to Put N.B.A. in Unwanted Spotlight*, N.Y. TIMES (Apr. 12, 2021), <https://www.nytimes.com/2021/04/09/business/china-nba-anta-xinjiang.html>; Lili Pike, *Has the U.S. Campaign Against Uyghur Forced Labor Been Successful?*, FOREIGN POL'Y (Aug. 21, 2023, 4:45 PM), <https://foreignpolicy.com/2023/08/21/china-us-forced-labor-uyghur-xinjiang-uflpa/>; Many Koetse, "Support Xinjiang MianHua!" – *China's Social Media Storm over Xinjiang Cotton Ban*, WHAT'S ON WEIBO (Mar. 28, 2021), <https://www.whatsonweibo.com/support-xinjiang-mianhua-chinas-social-media-storm-over-xinjiang-cotton-ban/> [<https://perma.cc/J7DE-LULV>] (discussing social media responses from influencers in the wake of the Better Cotton Initiative's suspension of activities in Xinjiang).

108. See Adrian Zenz, *Unemployment Monitoring and Early Warning: New Trends in Xinjiang's Coercive Labor Placement Systems*, CHINA BRIEF, June 17, 2022, at 16, <https://jamestown.org/program/unemployment-monitoring-and-early-warning-new-trends-in-xinjiangs-coercive-labor-placement-systems/> [<https://perma.cc/B4JP-4UGV>] (noting this law can make companies less likely to publicly commit to divesting from supply chains linked to Xinjiang in order to bolster their diligence efforts).

region,¹⁰⁹ it appears unlikely that the UFLPA itself will trigger instant political change for the government to eliminate the practice of forced labor in Xinjiang.

There is also uncertainty from an international trade perspective. Exports from Xinjiang increased by a record forty-seven percent from October 2022 to October 2023.¹¹⁰ On the other hand, U.S. imports from the region hit a two-year high in July 2022 but have since declined by ninety percent.¹¹¹ While trading between Xinjiang and the United States has declined, exports from the region continued to grow from year to year.¹¹² Looking at the numbers, it does not appear that the UFLPA's anticipated economic pressure has been fully realized given that the region's exports continue to grow, though there has been a decrease in trade from the region to the United States since the UFLPA has been in effect for nearly two years.¹¹³ While the UFLPA's relatively recent passage could be a reason for this lack of realized economic pressure, the region's top trading partners tell a different story.¹¹⁴ Much of the increase in Xinjiang's exports can be attributed to increased trade with Central Asia.¹¹⁵ Forty-three percent of the region's exports are apparel, footwear, and textiles, most of which are sent to Central Asia.¹¹⁶

109. See Emily Feng & Vincent Ni, *4 Takeaways From President Biden's 'Very Blunt' Meeting with China's Xi Jinping*, NPR (Nov. 14, 2022, 12:14 PM), <https://www.npr.org/2022/11/14/1136459450/biden-xi-meeting> [<https://perma.cc/9FE9-B4PW>] (discussing President Biden's meeting with President Xi Jinping in which he voiced concerns about abuses in Xinjiang); UPDATED FLETF STRATEGY 2023, *supra* note 92, at 11, 15–16 (illustrating the FLETF's continued commitment to strengthening the UFLPA through partnership with NGOs and requests for increased funding); Marti Flacks, *What's Next for the Uyghur Forced Labor Prevention Act?*, CTR. FOR STRATEGIC & INT'L STUD. (June 21, 2023), <https://www.csis.org/analysis/whats-next-uyghur-forced-labor-prevention-act> [<https://perma.cc/BN53-6VXY>] (noting the UFLPA's bipartisan support and proposals to extend its enforcement); John Brew, Laurel Saito & Martín Yerovi, *Congress Increases CBP's Forced Labor Enforcement Budget to More Than \$100 Million*, CROWELL: INT'L TRADE L. (Feb. 8, 2023), <https://www.cmtradelaw.com/2023/02/congress-increases-cbps-forced-labor-enforcement-budget-to-more-than-100-million/> [<https://perma.cc/2CQ8-3UTN>] (stating Congress has increased the budget for UFLPA enforcement to over \$100 million).

110. See Luna Sun, *China Trade: Xinjiang Defies Western Sanctions as Foreign Trade Hits Record High, Surges by 47%*, S. CHINA MORNING POST (Oct 24, 2023, 9:00 PM), <https://www.scmp.com/economy/economic-indicators/article/3239005/china-trade-xinjiang-defies-western-sanctions-foreign-trade-hits-record-high-surges-47?>; Zenz, *supra* note 50 (citing a forty-nine percent increase).

111. See Jacob Fromer & Ji Siqi, *Xinjiang Exports to US Hit Two-Year High Despite Uyghur Forced Labour Prevention Act Taking Effect*, S. CHINA MORNING POST (Sept. 1, 2022, 3:30 AM), <https://www.scmp.com/news/china/article/3190901/xinjiang-exports-us-hit-two-year-high-despite-uyghur-forced-labour?>; Simon Glover, *Xinjiang Exports to US Down 90% Since UFLPA*, ECOTEXTILE NEWS (Mar. 28, 2023), <https://www.ecotextile.com/2023032830532/labels-legislation-news/xinjiang-exports-to-us-down-90-since-ufpa.html>.

112. See *Xinjiang Uyghur Autonomous Region*, OEC, https://oec.world/en/profile/subnational_chn/xinjiang-uyghur-autonomous-region [<https://perma.cc/9AJR-CPR9>] (last visited Feb. 6, 2024).

113. Pike, *supra* note 107 (calling Xinjiang's economy "unscathed" following the passage of the UFLPA).

114. The region's top importers include Kyrgyzstan, Kazakhstan, Tajikistan, Russia, and Uzbekistan. OEC, *supra* note 112.

115. See *id.*; Ingram, *supra* note 37; Sun, *supra* note 110.

116. AMY K. LEHR & MARIEFAYE BECHRAKIS, CTR. FOR STRATEGIC & INT'L STUD., *CONNECTING THE DOTS IN XINJIANG: FORCED LABOR, FORCED ASSIMILATION, AND WESTERN SUPPLY CHAINS 4* (2019), <https://www.csis.org/analysis/connecting-dots-xinjiang-forced-labor-forced-assimilation-and-western-supply-chains> [<https://perma.cc/XP8J-3X2L>].

With the UFLPA restricting exports to the United States and China's goal to increase trade and strengthen economic cooperation with Central Asia, this trading could likely increase.¹¹⁷ Additionally, this reduction in exports to the United States does not necessarily indicate a decline in forced labor in the region.

Rather than reducing the use of forced labor in response to the UFLPA, businesses in China have restructured their supply chains to circumvent the ban in addition to increasing trade with other partners. For example, cotton in Xinjiang, which is already largely used in production domestically, has shown a shift to greater domestic consumption in other regions of China in lieu of exporting.¹¹⁸ In this way, forced laborers are still used in the cotton production process, but this cotton harvested with forced labor will not be in the purview of the UFLPA since these cotton products will be utilized domestically in textile products rather than exported as a raw material. Additionally, shipment of Xinjiang cotton to other regions of China for export complicates the ability to determine the effectiveness of the UFLPA in reducing instances of forced labor purely on an analysis of exports from the region. This shift to using cotton domestically as an input for textile products exported from other regions will likely be a mechanism to circumvent enforcement of the UFLPA, as it will be more difficult for customs officials to trace these goods back to Xinjiang.¹¹⁹ There are also indications that Chinese companies impacted by the UFLPA are creating separate batches for shipments to the United States and elsewhere—one of “Xinjiang-free” materials

117. See *id.*; Ingram, *supra* note 37 (noting that China “uses its neighbors to make up for its losses due to trade sanctions” in reference to increased trade with Central Asian countries); Barry van Wyk, *China's Trade with Central Asia — Mostly Via Xinjiang — Topped \$50 Billion in April*, CHINA PROJECT (May 18, 2023), <https://thechinaproject.com/2023/05/18/chinas-trade-with-central-asia-mostly-via-xinjiang-topped-50-billion-in-april/> [https://perma.cc/N2E3-LRZP] (showing trade with Central Asia has increased “mostly via Xinjiang”); Justin Burke, *Central Asia: Trade with China Registers Strong Growth During First Half of 2023*, EURASIANET (July 26, 2023), <https://eurasianet.org/central-asia-trade-with-china-registers-strong-growth-during-first-half-of-2023> [https://perma.cc/8VT6-RW5A]; *Xinjiang Sees Significant Trade Growth with Central Asia in Jan-April*, CHINA: THE ST. COUNCIL (May 22, 2023, 5:14 PM), https://english.www.gov.cn/news/202305/22/content_WS646b327cc6d03ffcca6ed47e.html [https://perma.cc/X6TX-4NPZ] (illustrating the Chinese government's continued focus on increasing trade with Central Asia). *But see* Niva Yau, *How Dependent Is Too Dependent on China? Central Asia May Soon Find Out.*, ATL. COUNCIL (May 20, 2023), <https://www.atlanticcouncil.org/blogs/new-atlanticist/how-dependent-is-too-dependent-on-china-central-asia-may-soon-find-out/> [https://perma.cc/74HU-Y2LS] (discussing that Central Asian countries may also come to realize association with China's mistreatment of Uyghurs is not in their best interests).

118. See FRED GALE & ERIC DAVIS, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., ERR-307, CHINESE COTTON: TEXTILES, IMPORTS, AND XINJIANG 3 (2022), <https://www.ers.usda.gov/publications/pub-details/?pubid=104393> [https://perma.cc/GP56-MZWP]; see also Ji Siqi, *Why Has the US Ban on Xinjiang's Tomato Exports Had Such Limited Effect?*, S. CHINA MORNING POST (Oct. 9, 2022, 8:00 AM), <https://www.scmp.com/economy/article/3195195/why-has-us-ban-xinjiangs-tomato-exports-had-such-limited-effect> [https://perma.cc/R5NP-CGGN] (noting tomato processing companies suggest increasing sales to the domestic market to address risks and uncertainties caused by the UFLPA).

119. See US-China Bus. Council, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States (Mar. 10, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0167> [https://perma.cc/DZQ7-D6KW].

and the other with inputs from the region.¹²⁰ While U.S. consumers may not receive products made with forced labor in this instance,¹²¹ the Uyghurs that are part of the re-education or poverty alleviation programs will still be forced to produce those goods, which will be exported elsewhere, and companies will continue to benefit from forced labor. Recent reports of forced labor in the seafood industry—a sector that was not named a priority during the UFLPA’s initial implementation—reveals that “blind spot[s]” still exist in the law and forced labor remains pervasive in a multitude of industries even following the UFLPA’s passage.¹²² Finally, lawmakers have highlighted a loophole under Section 307 that provides exemptions for direct-to-consumer shipments valued under \$800.¹²³ This allows companies to use this exemption to avoid scrutiny of small packages sent directly to consumers rather than shipped in bulk to warehouses and therefore slip through the cracks of the UFLPA’s ban.¹²⁴

Despite Chinese companies’ shifting of their supply chains to mitigate the UFLPA’s effects rather than eliminating forced labor, there are signs that multinational companies sourcing from China are shifting business out of China to other countries to avoid the use of forced labor in response to the UFLPA.¹²⁵ Those multinational companies moving out of China have shifted production to other Asian countries like Vietnam or back to the United States.¹²⁶ Additionally,

120. See MURPHY & ELIMÄ, *supra* note 34, at 45–46; see also Pike, *supra* note 107 (“In the solar sector, companies are simply bifurcating their supply chains—creating a Xinjiang-free line for the U.S. while continuing to supply other global clients from factories in the region.”); cf. Damien Cave, *How ‘Decoupling’ from China Became ‘De-risking,’* N.Y. TIMES (May 22, 2023), <https://www.nytimes.com/2023/05/20/world/decoupling-china-de-risking.html> (discussing bifurcated supply chains in the broader context of an economic decoupling from China).

121. These goods may still end up in the United States if they are shipped to third countries as inputs and then incorporated into finished products that are shipped by suppliers in that country to U.S. consumers. See *infra* notes 156–61 and accompanying text.

122. Olivia Enos, *Emerging Lines in the Fight to End Uyghur Forced Labor*, FORBES (Nov. 1, 2023, 4:41 PM), <https://www.forbes.com/sites/oliviaenos/2023/11/01/emerging-lines-in-the-fight-to-end-uyghur-forced-labor/>; see Urbina, *supra* note 97; see also FLETF STRATEGY, *supra* note 73, at 18 (discussing high-priority sectors following the UFLPA’s passage).

123. See Flacks, *supra* note 109.

124. *Id.* (“When retailers ship foreign-made products in bulk to the United States and store them in local warehouses, as they often do as part of a fast-delivery business model, they are subject to the UFLPA. Foreign-based e-commerce sites often avoid the cost of maintaining U.S. warehouses by shipping products directly from the country of origin to the consumer.”). Shein is a company that has gained particular scrutiny for using this exemption, as it has been connected to the Xinjiang region. See *id.*; Alexandra Wexler, *Fast-Fashion Giant Shein Faces South Africa Probe Over Import Practices*, WALL ST. J. (Mar. 13, 2023, 9:52 AM), https://www.wsj.com/articles/fast-fashion-giant-shein-faces-south-africa-probe-over-import-practices-91bff4e0?mod=article_inline; Ingram, *supra* note 37.

125. See MURPHY & ELIMÄ, *supra* note 34, at 46; cf. Kevin J. Fandl, *Is China’s Rise the WTO’s Demise?*, 52 GEO. J. INT’L L. 575, 630 (2021).

126. See Keith Johnson & Robbie Gramer, *The Great Decoupling*, FOREIGN POL’Y (May 14, 2020, 5:48 PM), <https://foreignpolicy.com/2020/05/14/china-us-pandemic-economy-tensions-trump-coronavirus-covid-new-cold-war-economics-the-great-decoupling/> [<https://perma.cc/C39B-7WWH>] (highlighting Vietnam as a new location for production of goods in the wake of a greater decoupling from China); see also MURPHY & ELIMÄ, *supra* note 34, at 46 (describing how a solar cell manufacturer “may be looking outside China for its supply”); Fandl, *supra* note 125, at 630 (suggesting that “foreign companies in China may rethink their supply chains”).

some international brands have changed their behavior in response to abuses in Xinjiang.¹²⁷ For example, the Better Cotton Initiative has stopped auditing and certifying firms in Xinjiang based largely on concerns surrounding the poverty alleviation scheme.¹²⁸ If these actions continue on a broader scale, businesses shifting their supply chains out of China to other countries could possibly cause a further economic decoupling from China, which is already illustrated in transactions affected by tariffs and export controls.¹²⁹

The ability of these shifting supply chains to impact China's behavior towards the Uyghurs is debatable. As one possible consequence of these shifting supply chains, Western countries with import bans similar to the UFLPA could form one trading block,¹³⁰ and a separate, China-centric trading block would emerge of

127. See Eva Dou, Jeanne Whalen & Alicia Chen, *U.S. Ban on China's Xinjiang Cotton Fractures Fashion Industry Supply Chains*, WASH. POST (Feb. 22, 2021, 5:00 AM), www.washingtonpost.com/world/asia_pacific/china-cotton-sanctions-xinjiang-uyghurs/2021/02/21/a8a4b128-70ee-11eb-93bec10813e358a2_story.html (noting Patagonia announced its exit from the Xinjiang region, Gap prohibited suppliers from directly and indirectly sourcing materials from Xinjiang, and Ikea stopped all shipments to the United States containing Xinjiang cotton); Megan Doyle, *Stopping US Imports from Xinjiang: So Far So Good?*, VOGUE BUS. (Oct. 30, 2023), <https://www.voguebusiness.com/sustainability/stopping-us-imports-from-xinjiang-so-far-so-good> (“Companies are looking deeper into their supply chains than they have ever looked before. And, in that regard, this law has been an overwhelming success.”).

128. John Sudworth, *China's 'Tainted' Cotton*, BBC NEWS (Dec. 2020), <https://www.bbc.co.uk/news/extra/nz0g306v8c/china-tainted-cotton> [<https://perma.cc/XDC2-ZV4E>].

129. See Brendan Murray & Ramsey Al-Rikabi, *Why Prospect of US-China 'Decoupling' Is Getting Serious*, WASH. POST (Aug. 11, 2023, 12:40 PM), https://www.washingtonpost.com/business/2023/08/11/what-is-us-china-decoupling-and-how-is-it-happening/e33f195c-3867-11ee-ac4e-e707870e43db_story.html (explaining the U.S.–China relationship “is starting to show a ‘general pattern’ of decoupling”); Michael Hirsh, *The U.S. and China Haven't Divorced Just Yet*, FOREIGN POL'Y (June 22, 2022, 5:34 PM), <https://foreignpolicy.com/2022/06/22/united-states-china-decoupling-business-ties/> (warning that a hard decoupling with total separation of the United States' and China's economies would be devastating to both nations, yet noting “[s]ome experts believe much more decoupling will occur slowly on its own, particularly as human rights concerns begin to affect consumer decisions”); A. Michael Spence, *Destructive Decoupling*, COUNCIL ON FOREIGN RELS. (Apr. 4, 2023, 1:33 PM), <https://www.cfr.org/article/destructive-decoupling> [<https://perma.cc/3VKY-6JX8>].

130. Cf. Johnson & Gramer, *supra* note 126 (highlighting trends in Europe to roll back trading ties with China in the recent decades). No other country has enacted a ban directed specifically at China and the Xinjiang situation like the UFLPA. In fact, for a while, Section 307 was one of the only laws that restricted imports made with forced labor. See IRENE PIETROPAOLI, OWAIN JOHNSTONE & ALEX BALCH, *MODERN SLAVERY & HUM. RIGHTS POL'Y & EVIDENCE CTR., EFFECTIVENESS OF FORCED LABOUR IMPORT BANS* 2, 4 (2021), <https://www.modernslaverypec.org/resources/forced-labour-import-bans> [<https://perma.cc/GT28-CT27>]; Pike, *supra* note 107. Canada and Mexico have recently enacted broad bans on goods made with forced labor, and the EU Proposal banning goods made with forced labor is expected to come into effect by the summer of 2024 at the earliest. *Id.*; *How the EU's Ban on Products Made with Forced Labor Will Affect Your Company*, WORLDFAVOR, <https://blog.worldfavor.com/how-the-eus-ban-on-products-made-with-forced-labor-will-affect-your-company> [<https://perma.cc/CKX7-XT3J>] (last visited Apr. 14, 2024). None of these measures recently enacted or proposed specifically target Xinjiang. CAN. BORDER SERVS. AGENCY, MEMORANDUM D9-1-6, GOODS MANUFACTURED OR PRODUCED BY PRISON OR FORCED LABOUR (2021), <https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html> [<https://perma.cc/PN5V-U9GH>]; Acuerdo Que Establece las Mercancías Cuya Importación Está Sujeta a Regulación a Cargo de la Secretaría del Trabajo y Previsión Social, Diario Oficial de la Federación [DOF] 17-02-2023 (Mex.), formato HTML, https://www.dof.gob.mx/nota_detalle.php?codigo=5679955&fecha=17/02/2023#gsc.tab=0 [<https://perma.cc/HV8Z-F4MY>];

countries that are more concerned about the economic impact of ceasing trade with China and less concerned about labor standards in trade.¹³¹ In the event companies suddenly leave China and China is unable to find new sources of foreign investment to keep their pace of development,¹³² then the UFLPA may have effects on China's economic growth, which could ideally put pressure on the government to stop these abuses.

However, given China's robust export market, entrenched trade partnerships through the Belt and Road Initiative,¹³³ and the global economic consequences of a bifurcated world economy,¹³⁴ the current discussions surrounding a broader economic decoupling seen between the United States and China indicate a more likely result would be a shift in global partnerships and for both countries to diversify their trading partners rather than create rival trading blocs.¹³⁵ The practical consequences of a full economic decoupling could prove costly,¹³⁶ and decoupling in direct trade with companies in China "may only serve to deepen the indirect linkages between [the] US and China through the industrial supply chains of their trade partners," meaning that companies will remain linked to China indirectly through third party suppliers in other countries still trading with China, even if the companies themselves no longer directly source from China.¹³⁷ While

Aristeo Lopez & Sally Alghazali, *North American Countries Finally Align on Forced Labor Regulations*, REUTERS (Apr. 28, 2023, 11:50 AM), <https://www.reuters.com/legal/legalindustry/north-american-countries-finally-align-forced-labor-regulations-2023-04-28/>.

131. See Slawotsky, *supra* note 102, at 568–70; Hirsh, *supra* note 129; Jason Douglas & Tom Fairless, *It's U.S. vs. China in an Increasingly Divided World Economy*, WALL ST. J. (Nov. 3, 2023, 12:01 AM), <https://www.wsj.com/economy/trade/economy-us-china-tariffs-trade-investment-1c58d24e> ("Washington continues to raise the heat on China with investment curbs and export bans, while China reorients large parts of its economy away from the West toward the developing world.").

132. See Fandl, *supra* note 125, at 629 ("If . . . companies suddenly leave China, China will need to find new sources of foreign investment quickly in order to keep their development going.").

133. See *infra* Section II.B.

134. See Clark Packard, *The High Costs of a "Hard" Decoupling from China*, CATO INST. (June 22, 2023, 2:41 PM), <https://www.cato.org/blog/high-costs-hard-decoupling-china> [<https://perma.cc/2Q58-Y3LB>].

135. See *id.* (discussing the difficulties of decoupling); Murray & Al-Rikabi, *supra* note 129 (noting it may be too soon to definitively say there will be rival trading blocs, and flagging the use of the term "derisking" rather than decoupling by the European Union and the United States).

136. Packard, *supra* note 134 (discussing economic decoupling with China on a broad scale beyond Xinjiang, and noting that "[p]ractically speaking, in order to operationalize a hard economic break with China, the U.S. would need to hire dramatically more customs agents as well as export control and investment monitors to police everyday transactions"); Stephen S. Roach, *US-China Decoupling by the Numbers*, PROJECT SYNDICATE (July 26, 2023), <https://www.project-syndicate.org/commentary/us-china-decoupling-derisking-has-deleterious-economic-effects-by-stephen-s-roach-2023-07> [<https://perma.cc/5NNX-U2DH>] (noting Treasury Secretary Janet Yellen claimed a complete economic decoupling from China would prove "disastrous").

137. Caroline Freund, Aaditya Mattoo, Alen Mulabdic & Michele Ruta, *US-China Decoupling: Rhetoric and Reality*, CEPR: VOXEU (Aug. 31, 2023), <https://cepr.org/voxeu/columns/us-china-decoupling-rhetoric-and-reality> [<https://perma.cc/UEV2-XS44>]; see Tamás Mészáros, *A Reality Check on China-US Decoupling*, DIPLOMAT (Mar. 22, 2023), <https://thediplomat.com/2023/03/a-reality-check-on-china-us-decoupling/> (noting that "[a]n immediate and decisive decoupling from China remains unlikely," and "economic realities" limit fully isolating China due to its role in regional trade); Adam Posen, *America's Zero-Sum Economics Doesn't Add Up*, FOREIGN POL'Y (Mar. 24, 2023, 6:00 AM), <https://foreignpolicy.com/2023/03/24/economy-trade-united-states-china-industry-manufacturing-supply-chains->

a decoupling in terms of goods produced with forced labor would not be a complete economic decoupling from China, given the integration of forced labor programs throughout China's economy, the economic consequences of a decoupling from products made with forced labor would still be great.¹³⁸ The realities of countries greatly reducing trade with China in order to pressure the government to stop the state-run programs involving forced labor is complicated by these economic consequences of a break from China.¹³⁹ Therefore, the UFLPA's ability to exert economic pressure on the Chinese government to alter its policies towards the Uyghurs is likely weaker than necessary to effect change absent other trade mechanisms¹⁴⁰ and must overcome a slew of geopolitical and economic challenges to truly prove effective.

C. EFFECTS ON THE U.S. ECONOMY AND GLOBAL SUPPLY CHAIN

While the UFLPA's effects on forced labor in China have been debatable thus far, the United States and global supply chain have felt the effects of the import ban.¹⁴¹ Not only has the ban affected the U.S. economy and importing processes, but it has had implications for how companies structure their supply chains globally.

1. The UFLPA's Effects on the U.S. Economy

Despite only being in effect since June 2022, the UFLPA has greatly impacted U.S. imports. As of April 2024, nearly two years after the UFLPA went into effect, CBP has detained over 8,000 shipments worth over \$3.32 billion.¹⁴² The CBP estimates 11.5 million shipments per year could be subject to seizure under the UFLPA.¹⁴³ The solar industry has already felt profound effects—seized shipments of solar panels are primarily from companies that account for a third of the supply to the United States and implicate an estimated forty percent of U.S. solar projects in the wake of increased demand for clean energy.¹⁴⁴ Additionally,

biden/ [https://perma.cc/HK9J-SW8H] (“A unilateral U.S. withdrawal from commerce with China would be partially offset by other economies taking up market share where the United States no longer operated. If anything, it would increase the arbitrage opportunities for other countries and for companies headquartered elsewhere to trade and invest where the United States ceased to do so.”).

138. See Roach, *supra* note 136.

139. See Packard, *supra* note 134.

140. See *infra* Part IV; see also Doyle, *supra* note 127 (“[R]esearchers believe instances of forced labour in Xinjiang are on the rise, indicating that it will take more than external economic sanctions to see benefits for . . . Uyghurs and other Muslim minorities working in forced labour conditions.”).

141. See Doyle, *supra* note 127 (“[The UFLPA] has had clear impacts on trade. The benefits for China's Uyghur population are less certain.”).

142. *Uyghur Forced Labor Prevention Act Statistics*, U.S. CUSTOMS & BORDER PROT. (May 15, 2024), <https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics> [https://perma.cc/JL59-A9WZ]; Nichola Groom, *Exclusive: U.S. Blocks More than 1,000 Solar Shipments over Chinese Slave Labor Concerns*, REUTERS (Nov. 11, 2022, 12:33 PM), <https://www.reuters.com/world/china/exclusive-us-blocks-more-than-1000-solar-shipments-over-chinese-slave-labor-2022-11-11/>.

143. Louann Troutman, *Analysis: How the US Is Using Trade Rules for Non-Trade Reasons*, BLOOMBERG L. (Nov. 13, 2022, 9:00 PM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-how-the-us-is-using-trade-rules-for-non-trade-reasons>.

144. Groom, *supra* note 142; Phred Dvorak, *Solar-Panel Shortage Snarls U.S. Green-Energy Plans*, WALL ST. J. (Nov. 29, 2022, 9:00 AM), https://www.wsj.com/articles/solar-panel-shortage-snarls-u-s-green-energy-plans-11669671279?mod=article_inline. While the process for screening goods detained

Sheffield Hallam University released a report detailing the presence of forced labor in the automotive industry supply chain, causing the U.S. Senate Finance Committee to open an inquiry into automakers' use of forced labor in their supply chains.¹⁴⁵

The cotton industry has a pervasive impact on U.S. supply chains.¹⁴⁶ Xinjiang is inextricably tied to the industry, as it produces twenty percent of the world's cotton.¹⁴⁷ The region produced eighty-four percent of China's cotton in 2018, with less than one percent of China's cotton supply exported and the rest used internally to produce textiles and apparel.¹⁴⁸ Since the majority of cotton appears to be used internally in China's apparel industry, finished products from China have a high likelihood of including this cotton and therefore can be implicated by forced labor.¹⁴⁹ Consequently, as thirty-three percent of U.S. imports of apparel come from China, the risk for importers of these products being produced at least in part with forced labor and thus prohibited by the UFLPA is high.¹⁵⁰ In fact, sixteen percent of cotton-based apparel in the United States tested positive for Xinjiang cotton in 2021.¹⁵¹ The labor transfer scheme is inextricably tied to the cotton industry, as many laborers are required to manually pick cotton in southern Xinjiang or harvest cotton in other regions of China.¹⁵² Additionally, cotton from Xinjiang is often processed into garments in third countries, which then are shipped to the United States, clouding the ability of customs agents to determine that the goods are tainted by forced labor.¹⁵³ In response, many companies are faced with either shifting their supply chains out of the region or undergoing

by CBP has become quicker and polysilicon production out of China has shifted to meet demand needs in the United States, there is still uncertainty that this shift in production is having an effect on preventing forced labor. *See* Pike, *supra* note 107.

145. *See* Yuka Hayashi, *Tesla, GM Among Car Makers Facing Senate Inquiry into Possible Links to Uyghur Forced Labor*, WALL ST. J. (Dec. 22, 2022, 3:36 PM), <https://www.wsj.com/articles/tesla-gm-among-car-makers-facing-senate-inquiry-into-possible-links-to-uyghur-forced-labor-11671722563?page=1>; LAURA MURPHY, KENDYL SALCITO, YALKUN ULUYOL & MIA RABKIN, HELENA KENNEDY CTR. FOR INT'L JUST., SHEFFIELD HALLAM UNIV., DRIVING FORCE: AUTOMOTIVE SUPPLY CHAINS AND FORCED LABOR IN THE UYGHUR REGION 1, 6–10 (2022), <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force> [https://perma.cc/Q2ER-3ARB].

146. *See* Alexandra Stevenson & Sapna Maheshwari, 'Escalation of Secrecy': *Global Brands Seek Clarity on Xinjiang*, N.Y. TIMES (May 29, 2022), <https://www.nytimes.com/2022/05/27/business/cotton-xinjiang-forced-labor-retailers.html>; Catherine Early, *Regulatory Crackdown on Slavery in Cotton Supply Chains a Wake-Up Call for Fashion Brands*, REUTERS (Aug. 20, 2023, 4:28 AM), <https://www.reuters.com/sustainability/society-equity/regulatory-crackdown-slavery-cotton-supply-chains-wake-up-call-fashion-brands-2023-08-20/>.

147. Early, *supra* note 146.

148. LEHR & BECHRAKIS, *supra* note 116, at 4.

149. *See id.*

150. *See id.*

151. Stevenson & Maheshwari, *supra* note 146; HELENA KENNEDY CTR. FOR INT'L JUST., SHEFFIELD HALLAM UNIV., ISSUE BRIEF 3, PRODUCTS MADE WITH FORCED LABOR IN THE UYGHUR REGION 4 (2023), <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/evidence-briefs/shu-brief-3-products-made-with-forced-labor-in-the-uyghur-region.pdf> [https://perma.cc/ZKR2-FKTC].

152. ZENZ, *supra* note 47, at 7.

153. *See* Millward, *supra* note 21.

extensive supply chain mapping required to overcome the UFLPA's rebuttable presumption, which is challenging given the lack of clarity in the region.¹⁵⁴ Even those companies that relocate their supply chains may still be faced with uncertainty about whether cotton fibers can be traced to Xinjiang.¹⁵⁵ The concentration of the cotton industry in the region and the challenges that come with shifting supply chains and conducting due diligence mean the UFLPA creates challenges for companies tied to the industry.

2. The UFLPA's Impact on the Global Supply Chain

Since the United States is the world's largest importer, the UFLPA affects the supply chains of a wide array of multinational companies importing goods into the United States, regardless of whether these companies import from China, countries using goods as inputs from Xinjiang, or upstream suppliers involved in the poverty alleviation program.¹⁵⁶ However, it can be difficult to identify products or entities implicated in forced labor throughout the supply chain. Lack of visibility in the supply chain given the lack of independent auditors in the region reduces transparency in the raw materials stage of production, where forced labor often takes place.¹⁵⁷ Additionally, the use of raw materials made with forced labor that are then directly exported from Xinjiang to one of the 177 countries that receive imports from the region causes the commingling of the tainted materials with inputs not made with forced labor.¹⁵⁸ The international transshipment of goods from companies in Xinjiang to a trade partner outside China that ships the product to the United States under another declared country of origin makes the goods more likely to evade detection.¹⁵⁹ Given these transparency issues

154. See Stevenson & Maheshwari, *supra* note 146; *supra* notes 94–99 and accompanying text.

155. See Stevenson & Maheshwari, *supra* note 146.

156. See U.S. DEP'T OF STATE ET AL., *supra* note 56, at 4, 8–9, 14; *Countries & Regions*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions#:~:text=Goods%20Imports> [<https://perma.cc/Q6NB-Y2Y7>] (last visited May 26, 2024).

157. See FLETF STRATEGY, *supra* note 73, at 12; US-China Bus. Council, *supra* note 119, at 1; Louisa Greve, Uyghur Hum. Rts. Project, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States 2 (Mar. 10, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0162> [<https://perma.cc/P5ZY-VDEU>]; cf. Zenz, *supra* note 14, at 665 (explaining that local audits are an ineffective means of objectively evaluating whether the labor transfer scheme is coercive given Uyghurs' inability to speak freely); Ingram, *supra* note 37 ("International fact-finding missions and audits are powerless to determine the real conditions under which Uyghurs work and employees are scared to blow the whistle on their employers.").

158. See FLETF STRATEGY, *supra* note 73, at 13; U.S. CUSTOMS & BORDER PROT., *supra* note 88, at 4.

159. See FLETF STRATEGY, *supra* note 73, at 13–14; Doyle, *supra* note 127; Human Trafficking Legal Center, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States 2–3 (Mar. 10, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0123> [<https://perma.cc/7HHH-VN6Q>]; US-China Bus. Council, *supra* note 119, at 1; Richard Vanderford, *U.S. Official Warns Against Efforts to Defy Forced-Labor Crackdown*, WALL ST. J. (Nov. 17, 2022, 2:40 PM), <https://www.wsj.com/articles/u-s-official-warns-against-efforts-to-defy-forced-labor-crackdown-11668714008?page=1> (stating a

coupled with the high bar of extensive supply chain mapping and due diligence required to rebut the presumption of the UFLPA,¹⁶⁰ many suppliers have chosen instead to shift their production to other countries to attempt to avoid the additional costs of diligence and implications of conducting business with suppliers throughout China that may be connected to companies in Xinjiang as an upstream supplier.¹⁶¹

The transfer of Uyghur workers to factories outside Xinjiang further complicates the global supply chain implications of the UFLPA. An estimated 32,000 “rural surplus labourers” in 2019 alone were transferred out of Xinjiang to other parts of China, with an estimated total of over 80,000 workers transferred between 2017 and 2019.¹⁶² With the pervasiveness of “pairing assistance” programs where companies are encouraged by the government to establish branches in Xinjiang, as well as the broad transfer of workers across the rest of China, many multinational companies have benefitted from forced labor by former re-education camp detainees and workers recruited from the region.¹⁶³ One study identified eighty-two companies benefitting directly or indirectly from labor transfer programs and fifty-four companies implicated in forced labor practices in the region.¹⁶⁴ These include well-known brands across a range of sectors such as Apple, BMW, Nike, and Samsung.¹⁶⁵ However, given retaliation by China against companies that make public statements against the abuses in Xinjiang or eliminate Xinjiang factories from their supply chain, companies may find themselves stuck between compliance with the UFLPA and maintaining a business presence in China.¹⁶⁶

Department of Homeland Security undersecretary “warned that the use of transshipments—shipping to an intermediate destination to obscure a good’s ultimate origin—wouldn’t fool Customs”).

160. See *supra* notes 94–99 and accompanying text (noting measures such as due diligence, credible audits, and supply chain mapping as measures to overcome the rebuttable presumption).

161. See FLETF STRATEGY, *supra* note 73, at 45 (suggesting that corrective action “may be limited to terminating the relationship with the supplier”); MURPHY & ELIMÄ, *supra* note 34, at 46; James Fox, *Impact of the Uyghur Forced Labor Prevention Act on Vietnam Exports to the US*, VIET. BRIEFING (July 6, 2022), <https://www.vietnam-briefing.com/news/impact-of-the-uyghur-forced-labor-prevention-act-on-vietnam-exports-to-the-us.html/> [<https://perma.cc/P4A7-MSQM>]; Peter S. Goodman, ‘OK, Mexico, Save Me’: After China, This Is Where Globalization May Lead, N.Y. TIMES (Aug. 8, 2023), <https://www.nytimes.com/2023/01/01/business/mexico-china-us-trade.html?searchResultPosition=8> (illustrating businesses are considering Mexico and Central America as alternatives for sourcing in response to the UFLPA); Ana Swanson & Jeanna Smialek, *Factories May Be Leaving China, but Trade Ties Are Stronger than They Seem*, N.Y. TIMES (Aug. 31, 2023), [nytimes.com/2023/08/29/business/economy/china-us-trade-supply-chain.html](https://www.nytimes.com/2023/08/29/business/economy/china-us-trade-supply-chain.html); Huileng Tan, *Supply Chains May Be Moving Out of China and into Asia — but They Aren’t Really Decoupling from the Country*, BUS. INSIDER (Sept. 19, 2023, 9:55 PM), <https://www.businessinsider.com/trade-supply-chains-china-separating-southeast-asia-off-shoring-decouple-2023-9/>; MURPHY ET AL., *supra* note 145, at 51.

162. XU ET AL., *supra* note 11, at 14.

163. See *id.* at 14, 27; Zenz, *supra* note 12.

164. XU ET AL., *supra* note 11, at 27.

165. *Id.*; Ana Swanson, *Nike and Coca-Cola Lobby Against Xinjiang Forced Labor Bill*, N.Y. TIMES (Jan. 20, 2021), <https://www.nytimes.com/2020/11/29/business/economy/nike-coca-cola-xinjiang-forced-labor-bill.html>.

166. See FLETF STRATEGY, *supra* note 73, at 14–15; Dou et al., *supra* note 127; Stevenson, *supra* note 107; Zenz, *supra* note 108, at 16.

Companies face the most exposure risk to the UFLPA through supplier relationships outside Xinjiang since most goods produced in Xinjiang are for internal consumption and the labor transfer scheme implicates factories in other regions.¹⁶⁷ Consequently, the UFLPA likely impacts companies with business located throughout China, particularly companies involved in high-priority sectors such as textiles and silicon products. This could generate wide-sweeping effects on the supply chain through delays as importers attempt to conduct due diligence to overcome the rebuttable presumption or shift to suppliers outside of China to avoid liability.

II. THE EFFECTIVENESS AND PRACTICAL REALITIES OF TARGETED IMPORT BANS

The UFLPA is just one mechanism that can be used to combat forced labor. Other countries have proposed or enacted broad bans on forced labor that prevent all goods made using forced labor—not restricted to a certain country or region—from being imported into the country.¹⁶⁸ This Part analyzes the UFLPA as an import ban targeted at the specific issue of Xinjiang compared to a broad ban on forced labor globally through a comparison with a proposal by the European Union (EU). While a targeted ban is likely more effective than a broad ban at combating the specific abuses in Xinjiang given China's unique position, targeted bans are likely less effective in the absence of parallel import bans.¹⁶⁹ However, the likelihood of similar parallel import bans being enacted to target Xinjiang is complicated by China's Belt and Road Initiative, which ties countries' economic and infrastructure interests to China's strong belief in its sovereignty when it comes to addressing forced labor and the Uyghur people.

A. BROAD BANS ON FORCED LABOR AS AN ALTERNATIVE: THE EUROPEAN UNION PROPOSAL

Import bans addressing forced labor are not common.¹⁷⁰ For a while, Section 307 was one of the only import bans designed to prevent the importation of goods made with forced labor.¹⁷¹ Only recently have other countries begun to enact bans designed to combat forced labor.¹⁷² The European Commission of the EU presented an import ban proposal in September 2022 to further its efforts to combat forced labor.¹⁷³ However, unlike the UFLPA, these bans enacted by other countries and proposed by the EU are broad bans on forced labor similar to

167. See LEHR & BECHRAKIS, *supra* note 116, at 9.

168. See *supra* note 130 and accompanying text.

169. See *infra* Section II.B.

170. See PIETROPAOLI ET AL., *supra* note 130, at 4.

171. See *id.* at 2, 4.

172. See Pike, *supra* note 107 (noting Canada and Mexico have broad bans on forced labor but lack the United States' "enforcement capability").

173. *Proposal for a Ban on Goods Made Using Forced Labour*, EUR. PARLIAMENT (Nov. 24, 2023), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2023\)739356](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)739356) [<https://perma.cc/LEC4-DNJH>].

Section 307, while the UFLPA is targeted specifically to goods tied to Xinjiang.¹⁷⁴

This Section provides an overview of the European Union's proposal and explains the similarities and differences between this proposal and the UFLPA as a means of comparing a broad ban on forced labor with a ban targeted specifically at the situation in Xinjiang. It concludes with a determination of which ban is preferable for combating forced labor in Xinjiang, noting the design of the UFLPA is more conducive to addressing the unique and complicated situation facing the Uyghur people.

1. The EU Proposal Explained

The Proposal for a Regulation of the European Parliament and of the Council on Prohibiting Products Made with Forced Labour on the Union Market (EU Proposal) is a proposed broad ban that prohibits all products made with forced labor from entering the market.¹⁷⁵ In order for an investigation into whether a product violates this prohibition to be initiated, either the European Commission or a Member State's competent authority—the entity that a Member State designates as responsible for enforcing the regulation—must determine that there is “substantiated concern” that a product was made with forced labor.¹⁷⁶ The entity making this determination is the lead competent authority for the particular allegation and is responsible for assessing submissions, conducting investigations, and making decisions pertaining to an allegation that a product is made with forced labor.¹⁷⁷ A Member State's competent authority would act as the lead competent authority for suspected forced labor taking place in its territory, while the European Commission would act as the lead competent authority for alleged forced labor outside of the EU.¹⁷⁸ An investigation may also be initiated following a submission to competent authorities of an alleged violation of the prohibition.¹⁷⁹

Following an investigation, products found to be made with forced labor are suspended from export or circulation on the EU market.¹⁸⁰ If the competent authority does not request that customs authorities maintain suspension of the good suspected of violating the ban from free circulation on the market within

174. *See id.*; Lopez & Alghazali, *supra* note 130.

175. *Proposal for a Regulation of the European Parliament and of the Council on Prohibiting Products Made with Forced Labour on the Union Market*, art. 3, COM (2022) 453 final (Apr. 23, 2024) [hereinafter EU Proposal], https://www.europarl.europa.eu/doceo/document/TA-9-2024-0309_EN.pdf [<https://perma.cc/B5VL-7CQQ>].

176. *Id.* arts. 2(q), 5, 18(1). “Substantiated concern” is determined based on facts available to competent authorities from the database of forced labor risk areas and products, stakeholder consultations, submissions, and the results of a preliminary investigation in which the lead competent authority must request information from the economic actor as to relevant actions taken to identify, mitigate, terminate, or remediate risks of forced labor in their supply chains and operations. *Id.* arts. 14 (3), 17.

177. *Id.* art. 2(q).

178. *Id.* art. 15.

179. *Id.* pmb. ¶ 38, art. 9(1)–(2).

180. *Id.* art. 28.

four days of the suspension, then the product would be released by customs authorities onto the market.¹⁸¹ The scope of the EU Proposal extends beyond imports to a prohibition on exporting products made with forced labor.¹⁸² The EU Proposal would also apply to products that are already available on the market but have not yet reached the end user, allowing for competent authorities to withdraw the products and destroy them.¹⁸³

The EU Proposal also would create processes for determining which products to prioritize in enforcement of the ban. It calls for competent authorities to focus their investigations on operators who are closest in the supply chain to where the risk of forced labor is likely to occur and to consider the size and resources of operators, the share of the part suspected to have been made with forced labor in the final product, the quantity of products concerned, and the scale and severity of the suspected forced labor.¹⁸⁴ It would create a database of forced labor risks in specific geographic areas or focus on specific products to aid in enforcement.¹⁸⁵ The proposal would also establish the Union Network Against Forced Labour Products (Union Network) composed of representatives from each Member State that would aid in coordination and cooperation between states enforcing the ban.¹⁸⁶ While the Union Network would aid in coordination among Member States, each Member State is responsible for making its own determination on the outcomes of investigations and prioritization of enforcement across sectors and regions.¹⁸⁷

The final text of the regulation was adopted by the European Parliament in April 2024 after undergoing multiple iterations by the European Commission, Council, and Parliament.¹⁸⁸ For example, proposed amendments by the European Parliament were not adopted that would have reversed the burden of proof *only* for goods in high risk sectors, requiring the company rather than competent authorities to prove the imported products were not made with forced labor—a similar burden to the UFLPA.¹⁸⁹ In order for the EU Proposal to go into effect, it

181. *Id.* arts. 28–29.

182. *Id.* arts. 1, 3.

183. *Id.* pmbl. ¶¶ 48, 53, arts. 1(2), 20(4).

184. *Id.* pmbl. ¶ 42, art. 14(2), (4).

185. *Id.* art. 8.

186. *Id.* art. 6.

187. *See id.* art. 20. Notably, decisions by a competent authority in one Member State are to be enforced by competent authorities in another Member State if they involve the same products from the same supply chain. *Id.* art. 20(8).

188. *See* Jennifer F. Revis, Jessica Mutton, Emily Thomson, Ariel Leung & Bibi Badcock-Scruton, *European Union: European Council Approves Forced Labour Regulation*, BAKER MACKENZIE: GLOB. SUPPLY CHAIN COMPLIANCE (Apr. 2, 2024), <https://supplychaincompliance.bakermckenzie.com/2024/04/02/european-union-european-council-approves-forced-labour-regulation/> [<https://perma.cc/9MJA-BZVH>]; Press Release, Eur. Parliament, Products Made with Forced Labour to Be Banned from EU Single Market (Apr. 23, 2024, 1:04 PM), <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20551/products-made-with-forced-labour-to-be-banned-from-eu-single-market> [<https://perma.cc/DHY5-9WES>].

189. *See* Press Release, Eur. Parliament, Towards an EU Ban on Products Made with Forced Labour (Oct. 16, 2023), <https://www.europarl.europa.eu/news/en/press-room/20231016IPR07307/towards-an->

must be ratified by each Member State, and it likely will not come into effect until the summer of 2024 at the earliest.¹⁹⁰ Once formally ratified, Member States have three years to begin applying the regulation.¹⁹¹

2. Comparing Broad Versus Targeted Import Bans: The EU Proposal and the UFLPA

The EU Proposal shares the same goal as the UFLPA; however, it differs in many respects. While the UFLPA is narrowed to items from Xinjiang or made through the poverty alleviation program by ethnic minorities, the EU Proposal is a proposed broad ban applied on a neutral basis to all instances of forced labor.¹⁹² In contrast to the rebuttable presumption of the UFLPA, the EU Proposal is more akin to a typical Section 307 tariff. Violations would be found following an investigation based on substantiated concerns from the lead competent authority that an item was produced using forced labor or by a submission that the item violated the prohibition of products made with forced labor.¹⁹³ The EU Proposal extends beyond the UFLPA in that it would apply to both imports and exports.¹⁹⁴ It also is broader than the UFLPA in its application to products already on the market, allowing for goods made with forced labor to be removed from the market and destroyed at any point before they reach the end user.¹⁹⁵

The EU Proposal and UFLPA are similar to each other in certain respects. Both create a review process for the decision that a product was made with forced labor.¹⁹⁶ The UFLPA covers all goods from Xinjiang or made with forced labor in another region of China, regardless of whether they come from an entity on the Entity List or a high-priority sector; the EU Proposal would require compliance with the ban regardless of whether the item comes from a region or is a specific product mentioned in the database.¹⁹⁷ The Union Network also parallels the FLETF in that the Union Network would be composed of representatives from Member States to make enforcement more effective.¹⁹⁸

The EU Proposal has strengths that the UFLPA lacks. Forced labor occurs around the world,¹⁹⁹ so the EU Proposal's broad geographic scope could have a

eu-ban-on-products-made-with-forced-labour [<https://perma.cc/RXQ8-E98R>]; see generally EU Proposal, *supra* note 175 (lacking a provision of this sort).

190. See *supra* note 188 and accompanying text.

191. Press Release, Eur. Parliament, *supra* note 188.

192. EU Proposal, *supra* note 175, art. 3; UFLPA, Pub. L. No. 117–78, § 3, 135 Stat. 1525, 1529 (2021).

193. EU Proposal, *supra* note 175, pmbl. ¶ 38, arts. 2(q), 9(1)–(2), 18(1).

194. *Id.* arts. 1, 3. The UFLPA, by contrast, applies only to imports. UFLPA § 3.

195. EU Proposal, *supra* note 175, pmbl. ¶¶ 48, 53, arts. 1(2), 20(4).

196. *Id.* art. 21; UFLPA § 3; see FLETF STRATEGY, *supra* note 73, at 38–39.

197. EU Proposal, *supra* note 175, arts. 8, 14(3); UFLPA § 3; see FLETF STRATEGY, *supra* note 73, at 28.

198. EU Proposal, *supra* note 175, art. 6(3).

199. See INT'L LAB. ORG., WALK FREE & INT'L ORG. FOR MIGRATION, GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 24 (2022), <https://www.ilo.org/publications/major-publications/global-estimates-modern-slavery-forced-labour-and-force-d-marriage> [<https://perma.cc/G96C-WS4T>]; Flacks & Songy, *supra* note 78.

deterrent effect for acts of forced labor occurring beyond China by exerting economic pressure through prohibiting the import of products made with forced labor from other regions of the world where forced labor is present. Additionally, the UFLPA restricts only Chinese goods or goods with inputs from China, which on its face would likely violate the most favored nation (MFN) principle²⁰⁰ under Article I of the World Trade Organization's (WTO) central treaty, the *General Agreement on Tariffs and Trade (GATT)*, conflicting with the United States' WTO obligation to not discriminate against countries in the application of trade measures.²⁰¹ The EU Proposal more likely conforms to WTO obligations, as it would impose this ban neutrally to all WTO members, rather than on one specific country.

From the perspective of importers with multinational ties in their supply chains, the EU Proposal would be preferable because investigations would be initiated for violations in contrast to the rebuttable presumption of the UFLPA.²⁰² Typical Section 307 investigations prior to and outside of the scope of the UFLPA also are initiated by the government.²⁰³ The clear and convincing evidence standard of the UFLPA is a higher burden of proof than these broad bans.²⁰⁴ Importers facing the UFLPA are likely to either claim that the goods are not affected by the ban or shift their supply chain rather than produce evidence to meet this standard, which would be costly for the importer.²⁰⁵ The EU Proposal puts the burden of proof on the competent authority initiating the investigation to have a "substantiated concern" of forced labor, reducing the likelihood of complete supply chain reconfiguration.²⁰⁶ CBP may face a strain on resources in enforcing the UFLPA due to the rebuttable presumption and forced labor's integration throughout China implicating a wide array of imports.²⁰⁷ The EU Proposal calls for prioritizing goods for investigation based on where the operator

200. The MFN principle is one of the foundational principles of the central treaty of the World Trade Organization (WTO), the *General Agreement on Tariffs and Trade (GATT)*. General Agreement on Tariffs and Trade art. I, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]. The MFN principle is an obligation that if a state enacts trade measures that grant favor for one country, they must do the same for all other WTO members. *Principles of the Trading System*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm [<https://perma.cc/Z9CZ-7Q76>] (last visited May 15, 2024). The opposite principle is true in that one state cannot be treated less advantageously than other states. *Most-Favored-Nation Clause*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/economics/most-favored-nation-clause/> [<https://perma.cc/2ATW-N236>] (last visited Feb. 7, 2024). States are relieved from this obligation if they enter into a free trade agreement with one or more countries, but all states party to the agreement must be treated equally. For further discussion, see *infra* Section III.B.2.

201. See *infra* Section III.C; GATT, *supra* note 200, art. I; SARAH JOSEPH, BLAME IT ON THE WTO? A HUMAN RIGHTS CRITIQUE 101 (2011).

202. See *supra* notes 179–83 and accompanying text.

203. See CASEY ET AL., *supra* note 67, at 1.

204. See UFLPA, Pub. L. No. 117–78, § 3(b)(2), 135 Stat. 1525, 1529 (2021).

205. See Fromer & Siqi, *supra* note 111.

206. See EU Proposal, *supra* note 175, pmb. ¶ 47, art. 18(1).

207. See FLETF STRATEGY, *supra* note 73, at 35–40; Am. Clean Power Ass'n, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur

is in the value chain, the size of operators, the share of the suspected part in the final product, the quantity of products concerned, and the scale of forced labor.²⁰⁸ The scope of seizures is thus narrowed to the most high-impact items, keeping items made with forced labor off the market and focusing resources to the most impactful goods. This contrasts with the UFLPA's absence of a *de minimis* standard, which companies argued would be difficult to enforce given that very small amounts of product, such as polysilicon or cotton, are difficult to trace in a finished product.²⁰⁹ Therefore, the EU Proposal would be more importer-friendly, reducing the burden on businesses who inevitably have an impact in the shaping of these policies through lobbying efforts and public comment.²¹⁰

However, despite the argument this broad ban allows easier compliance for companies, the crux of the UFLPA is that it seeks precisely to shift that burden of proof to private companies to demonstrate compliance rather than placing the burden on the government to affirmatively find noncompliance.²¹¹ With the EU Proposal's more limited enforcement focused on high-impact goods, products made with forced labor would still be allowed to slip through the cracks into the economy. In the event of a strain of CBP's resources towards enforcing the ban with its rebuttable presumption, the solution to this issue lies in increased funding and resources for CBP rather than reverting to a broad ban like the EU Proposal that resembles Section 307's methods of investigation and only narrows seizure to the most high-impact items.

Additionally, the UFLPA does have advantages with respect to enforcement. The EU Proposal calls for goods seized to be released after four days if the competent authorities do not request to keep the suspension.²¹² Considering the volume of goods and multiple factors involved in weighing whether an investigation should be instigated, goods made with forced labor could be released for circulation on the market or for exportation. The proposal itself recognizes this, noting that release is not deemed proof of compliance.²¹³ Given that the proposal allows for the suspension of products from the market at any given point before they

Autonomous Region, into the United States 5 (Mar. 11, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0163> [<https://perma.cc/2KL8-CBER>].

208. EU Proposal, *supra* note 175, pmb1. ¶ 42, art. 14(2), (4); see Nazak Nikakhtar, Timothy C. Brightbill, Nova J. Daly & Paul A. Devamithran, *European Commission Proposes Ban on Forced Labor Products in EU*, WILEY (Sept. 16, 2022), <https://www.wiley.law/alert-European-Commission-Proposes-Ban-on-Forced-Labor-Products-in-EU> [<https://perma.cc/B6X2-LM44>].

209. See FLETF STRATEGY, *supra* note 73, at 42; Beveridge & Diamond, Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States (Mar. 10, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0177> [<https://perma.cc/Y8SS-ZF6W>].

210. See Swanson, *supra* note 165; DHS, Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States, 87 Fed. Reg. 3,567 (Jan. 24, 2022).

211. See UFLPA, Pub. L. No. 117-78, § 3, 135 Stat. 1525, 1529 (2021).

212. EU Proposal, *supra* note 175, arts. 28–29.

213. *Id.* art. 29(2).

reach the end user, goods found to be made with forced labor following their release could, in theory, be resuspended if they have not yet reached the end user.²¹⁴ However, those that have reached the end user are not covered by the proposal.²¹⁵ Because of the UFLPA's rebuttable presumption, goods are automatically seized unless a contrary finding is made.²¹⁶ While these seizures may impose costs for businesses,²¹⁷ goods produced using forced labor are less likely to slip through the cracks and into the market.

While the scope of the EU Proposal is one of its appeals, it is also a drawback. Despite the proposal's creation of a database to identify geographic and product risks and a communication system to exchange product risk information between competent authorities, its broad scope could make it difficult for the competent authorities to engage in supply chain tracing and due diligence to discover information related to forced labor and balance the factors to consider.²¹⁸ With the proposal's broad scope and limited resources, it is inevitable that not all products, companies, and sectors impacted by forced labor will be prioritized, thereby spreading the reach of the ban across the globe but potentially diluting its impact on each individual forced labor regime, diminishing its effectiveness. That the UFLPA is narrowly tailored to goods and labor from persecuted groups in Xinjiang and further prioritized by high-priority sectors provides clear guidance for CBP and supply chain due diligence for importers attempting to rebut the presumption.²¹⁹ Additionally, the centralized enforcement of the UFLPA with CBP in conjunction with other agencies might be preferable to the EU Proposal's decentralized approach, as the European Commission or a state's competent authority investigates following substantiated concern and that decision is followed by the other states.²²⁰ These final decisions are adopted across the EU, but the determinations themselves are made by the lead competent authority for each case.²²¹ While there is coordination, each state makes a determination based on balancing the considerations for determining goods to exclude, leaving discretion in the law.²²²

214. *See id.* arts. 1(2), 28.

215. *Id.* art. 1(2).

216. UFLPA § 3.

217. *See supra* notes 142–44 and accompanying text; Am. Clean Power Ass'n, *supra* note 207; Footwear Distrib. & Retailers of Am., Comment on Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States 10 (Mar. 10, 2022), <https://www.regulations.gov/comment/DHS-2022-0001-0160> [<https://perma.cc/T5TX-8D4P>].

218. *See* EU Proposal, *supra* note 175, arts. 7, 8.

219. *See* UFLPA §§ 2(d)(1), 2(d)(2)(B)(viii); FLETF STRATEGY, *supra* note 73, at 27–28.

220. *See* EU Proposal, *supra* note 175, arts. 18(1), 20(1), (4)–(8).

221. *Id.* art. 20(1), (4)–(8).

222. *See id.* arts. 14–19, 31. Notably, for allegations of forced labor outside the EU in which the European Commission is the lead competent authority, determinations, in theory, would be consistent given that the Commission is the lead authority for all such cases. *Id.* arts. 15, 20(4)–(6). However, this discretion would exist for allegations of forced labor in Member States, in which each Member State would act as the competent authority in its specific case. *Id.* arts. 15, 20(8).

On balance, the UFLPA as an import ban targeted to address the instances of forced labor tied to Xinjiang would be more effective than a broad ban at creating pressure to cease these human rights abuses. There are strong arguments to be made that unless the entire Xinjiang region is barred from trade, the economic effects will not be strong enough to pressure change to occur.²²³ Adrian Zenz, one of the leading scholars on China's policies toward the Xinjiang region, highlights a "strong moral imperative" for companies to "fully divest [their] supply chains from any product that is made in whole or in part with raw materials or forced labor from Xinjiang" and supports a rebuttable presumption from the international community that all products from Xinjiang are tainted with forced labor.²²⁴ If the UFLPA as a targeted ban is found to violate MFN principles,²²⁵ it and other targeted bans should not be used because use would be contrary to the WTO obligation to not discriminate between trading partners.²²⁶ However, there is an argument that the UFLPA may not violate these standards because targeted import bans to address forced labor, if designed properly, should fall under the public morals exception to the MFN principle, thereby allowing for discriminatory application of trade regulations.²²⁷ While the EU Proposal would likely be a more effective way to combat forced labor on a global scale rather than parallel bans on a country-by-country basis like the UFLPA, given a targeted ban's ability to concentrate focus and economic pressure to a particular forced-labor regime and the previous failures of a broad ban like Section 307 on making an impact against China's treatment of the Uyghurs,²²⁸ the UFLPA would likely be a mechanism that could generate more pressure and cause for change of conditions in the

223. See ZENZ, *supra* note 3, at 26; Zenz, *supra* note 108, at 16–17; *China: US Should Fully Apply New Forced Labor Law*, HUM. RTS. WATCH (Mar. 11, 2022, 1:00 AM), <https://www.hrw.org/news/2022/03/11/china-us-should-fully-apply-new-forced-labor-law> [<https://perma.cc/9B3E-KC6H>] ("Companies with operations, suppliers, or sub-suppliers in Xinjiang should quickly exit the region or risk seeing their goods seized at the US border and their businesses subject to civil and criminal penalties."). *But see* XU ET AL., *supra* note 11, at 29 (noting the response to the abuses in Xinjiang should not involve a "knee-jerk rejection of Uyghur or Chinese labour," and suggesting alternatives, including targeted sanctions).

224. ZENZ, *supra* note 3, at 26; *see also* Killing & Rajagopalan, *supra* note 11 ("Corporations should stop producing in, and sourcing from, Xinjiang . . . There is no way to produce responsibly in the region until the forced labor and broader repression ends." (quoting Scott Nova, the executive director of the Worker Rights Consortium)); *Guardians & Offenders: Examining State-Imposed Forced Labour*, WALK FREE: GLOB. SLAVERY INDEX, <https://www.walkfree.org/global-slavery-index/findings/spotlights/examining-state-imposed-forced-labour/> [<https://perma.cc/FTU8-UUZQ>] (last visited May 28, 2024) ("Where state-imposed forced labour exists . . . and if operating in line with the UN Guiding Principles has become impossible. . . ., withdraw from sourcing goods and services from that country, region, industry, or company as necessary.").

225. The determination of whether a country's action violates the MFN principle occurs through the WTO dispute settlement process. A state party can bring a claim to the WTO and initiate proceedings if they believe a country's trade measure is in violation of MFN. *A Unique Contribution*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm [<https://perma.cc/HHU9-SX5N>] (last visited May 15, 2024). *See infra* note 292 and accompanying text for further discussion on the WTO dispute settlement process.

226. *See supra* note 200 and accompanying text (explaining the MFN principle).

227. *Infra* Sections III.B–C.

228. *See* PIETROPAOLI ET AL., *supra* note 130, at 2, 7; *supra* notes 101–04 and accompanying text (discussing the expansion of re-education centers that occurred concurrently with prior enforcement actions).

region. Even though the results have been mixed so far, the UFLPA has impacted the supply chains of corporations that were not affected by the broad ban of the previous Section 307 regime,²²⁹ illustrating that there is evidence that targeted bans enacted by multiple countries could be more advantageous in pushing for an end to the forced labor regime in Xinjiang.

* * *

In addition to the UFLPA, other countries should enact import bans targeted at combating forced labor regimes tied to Xinjiang instead of, or preferably in addition to, broad bans aimed at combating forced labor across the globe. The objection that targeted bans would be a violation of the MFN principle should not prevent a state's adoption, as there is a viable argument that these targeted measures could be upheld under the public morals exception.²³⁰ Parallel targeted bans could increase economic pressure while curbing the issue of Chinese companies creating dual supply chains.²³¹ However, political challenges, such as China's Belt and Road Initiative, indicate the likelihood of parallel bans is more complicated in reality.

B. THE PRACTICAL CHALLENGES OF PARALLEL IMPORT BANS: BELT AND ROAD COUNTRIES

China's Belt and Road Initiative (BRI), the program in which Chinese banks and companies finance a wide range of infrastructure projects in countries around the world, plays a key role in weighing the impact of the UFLPA.²³² The BRI has a major influence on economic and political considerations of many parts of the world, and, as such, it is necessary to evaluate the UFLPA in a global context in order to fully understand how geopolitical considerations impact the ban's effectiveness. Import bans targeted at one country are made much more effective by parallel import bans by other countries directed at the target country.²³³ Without parallel import bans, the issues of dual supply chains and shifting production to

229. See *supra* Sections I.B–C.

230. See *infra* Sections III.B–C.

231. See *supra* note 120 and accompanying text (discussing the practice of Chinese companies creating separate batches of goods with “Xinjiang-free” materials shipped to the United States and inputs from the Xinjiang region shipped elsewhere).

232. See JENNIFER HILLMAN & DAVID SACKS, COUNCIL ON FOREIGN RELS., CHINA'S BELT AND ROAD: IMPLICATIONS FOR THE UNITED STATES 2 (2021), <https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/> [<https://perma.cc/44HX-T3VP>].

233. Cf. Richard N. Haass, *Economic Sanctions: Too Much of a Bad Thing*, BROOKINGS (June 1, 1998), <https://www.brookings.edu/articles/economic-sanctions-too-much-of-a-bad-thing/> [<https://perma.cc/ZF2W-877B>] (illustrating the problems with unilateral sanctions); Patrick M. Weber & Gerald Schneider, *How Many Hands to Make Sanctions Work? Comparing EU and US Sanctioning Efforts*, EUR. ECON. REV., Nov. 2020, at 1, 5–6 (noting multilateral sanctions affect the economy more strongly than unilateral sanctions); David S. Cohen & Zachary K. Goldman, *Like It or Not, Unilateral Sanctions Are Here to Stay*, 113 AM. J. INT'L L. UNBOUND 146, 146 (2019) (“In pursuit of this coercive objective, it is generally—but not always—the case that sanctions are more effective when they are imposed multilaterally, and the broader the coalition the better. This is because multilateral sanctions leverage the diverse sources of pressure that coalition partners can bring to bear on a target and carry with them the legitimacy of broad international support.”).

circumvent the ban are exacerbated.²³⁴ Therefore, analyzing China's influence through the BRI is essential to understanding the United States' ability to influence other countries to enact similar, parallel import bans.²³⁵

The BRI plays a key part in allowing China to influence countries around the world in the sphere of human rights. In its role as a major creditor and trade partner, particularly to developing countries, China leverages this position to influence these countries to not challenge its practices in the sphere of human rights.²³⁶ By closely tying these countries' economies with itself through dependence on its financing, China is able to increase its self-sufficiency while simultaneously pressuring countries to remain silent in the sphere of international discourse regarding the persecution of Uyghurs throughout China.²³⁷

Not only does the BRI provide China with the ability to control discourse surrounding Xinjiang, but the region is inextricably linked to the BRI.²³⁸ Xinjiang is a core region in the BRI and is a part of China's strategy to increase trade and investment with Central Asia, South Asia, and the Middle East.²³⁹ The region's top five export destinations—Kyrgyzstan, Kazakhstan, Russia, Tajikistan, and Uzbekistan—are all part of the BRI.²⁴⁰ Given the political influence China exerts over countries within the BRI and America's reduced influence, it may be difficult for the United States to influence key countries doing business with the region to implement similar trade measures to combat abuses in Xinjiang, which may then reduce the overall impact of nontariff measures like the UFLPA absent parallel import bans.²⁴¹

234. See Cave, *supra* note 120 (discussing bifurcated supply chains); Paddy Hirsch, *Why Sanctions Don't Work – But Could If Done Right*, NPR (Apr. 11, 2023, 6:30 AM), <https://www.npr.org/sections/money/2023/04/11/1169072190/why-sanctions-dont-work-but-could-if-done-right> [<https://perma.cc/B6XF-6CC3>].

235. See Pike, *supra* note 107; Millward, *supra* note 21 (discussing other governments who have “joined Washington’s campaign” against China to protect the Uyghurs).

236. See HILLMAN & SACKS, *supra* note 232, at 8, 10.

237. See *id.* at 18, 50; Daniel C.K. Chow, *How China Uses International Trade to Promote Its View of Human Rights*, 45 GEO. WASH. INT'L L. REV. 681, 718, 722 (2013); see also Amy Hawkins, *China's Human Rights Record Criticised at UN as It Faces Rare Scrutiny of Policies*, GUARDIAN (Jan. 23, 2024, 1:08 PM), <https://www.theguardian.com/world/2024/jan/23/china-human-rights-record-criticised-un-faces-rare-scrutiny-of-policies> [<https://perma.cc/R4XR-KWX9>] (noting that countries that are economically dependent on China praised its human rights record at a UN meeting in January 2024 and quoting the former China director for Human Rights Watch in saying that increased “Chinese government rhetoric in the recommendations made by governments . . . indicat[es] a level of control over the process or influence of the process”).

238. See Zenz, *supra* note 108, at 15; GALE & DAVIS, *supra* note 118, at 18–19, 40.

239. Adrian Zenz, *‘Thoroughly Reforming Them Towards a Healthy Heart Attitude’: China's Political Re-Education Campaign in Xinjiang*, 38 CENT. ASIAN SURV. 102, 103 (2019); GALE & DAVIS, *supra* note 118, at 18–19; see also Sun, *supra* note 110 (noting Xinjiang's trade with BRI countries increased by nearly 50% in the first three quarters of 2023).

240. OEC, *supra* note 112; see Christoph Nedopil, *Countries of the Belt and Road Initiative (BRI)*, GREEN FIN. & DEV. CTR. (2023), <https://greenfdc.org/countries-of-the-belt-and-road-initiative-bri/> [<https://perma.cc/3V7R-ZG9A>].

241. See HILLMAN & SACKS, *supra* note 232, at 42; Ingram, *supra* note 37.

China's exertion of its influence through the BRI to silence pushback on the persecution of Uyghurs has already been realized. A month after a finding by the United Nations Office of the High Commissioner for Human Rights (OHCHR) that human rights abuses were occurring in the region, the UN Human Rights Council rejected initiating a debate on the situation of human rights in Xinjiang by a vote of 17–19.²⁴² Included in the votes against the debate were close partners such as Pakistan, Kazakhstan, Uzbekistan, Venezuela, and Gabon, all of which are BRI countries.²⁴³ In fact, China has also previously ensured Pakistan—a predominantly Muslim country and key BRI partner—would not speak out about abuses against Muslim minorities within Xinjiang.²⁴⁴ When asked how he reconciles Pakistan and China's economic relationship with China's treatment of the Uyghurs in a 2019 interview, Prime Minister Imran Khan cited Pakistan's "special relationship" with China, noting Pakistan "[does not] make public statements" because that is "the way China functions."²⁴⁵ Additionally, Pakistan cited the risk of alienating China in its explanation of why it rejected the motion for a debate on China's abuse of the Uyghurs.²⁴⁶ The short time between the publication of China's abuses in the report by the UN's chief human rights advocate and the vote against hosting the debate on these abuses illustrates the strength of the economic and political influence China has over many of its BRI partners and how this influence may be used in the context of perpetuating human rights

242. *Human Rights Council Adopts 21 Texts and Rejects One Draft Decision, Extends Mandates on Older Persons, Right to Development, Arbitrary Detention, Mercenaries, Slavery, Indigenous Peoples, Safe Drinking Water and Sanitation*, U.N. HUM. RTS. OFF. HIGH COMM'R (Oct. 6, 2022), <https://www.ohchr.org/en/news/2022/10/human-rights-council-adopts-21-texts-and-rejects-one-draft-decision-extends-mandates> [https://perma.cc/LA9E-UF8N]; see also *China: Xinjiang Vote Failure Betrays Core Mission of UN Human Rights Council*, AMNESTY INT'L (Oct. 6, 2022), <https://www.amnesty.org/en/latest/news/2022/10/china-xinjiang-vote-failure-betrays-core-mission-of-un-human-rights-council/> [https://perma.cc/Z8EU-8L23] (highlighting the dissonance of the UN Human Rights Council ignoring its own findings when voting against holding a debate on the human rights situation in China's Xinjiang region).

243. See Chun Han Wong & James T. Areddy, *U.N. Human Rights Council Rejects Holding Xinjiang Debate*, WALL ST. J. (Oct. 6, 2022, 1:32 PM), <https://www.wsj.com/articles/u-n-human-rights-council-rejects-holding-xinjiang-debate-11665077578>; U.N. HUM. RTS. OFF. HIGH COMM'R, *supra* note 242; Nedopil, *supra* note 240.

244. HILLMAN & SACKS, *supra* note 232, at 39; cf. Omer Kanat & Peter Irwin, *Governments Call Out Widespread Atrocities at UN Human Rights Review of China*, UYGHUR HUM. RTS. PROJECT (Jan. 23, 2024, 5:00 PM), <https://uhrp.org/statement/governments-call-out-widespread-atrocities-at-un-human-rights-review-of-china/> [https://perma.cc/B8MU-YTEB] ("Muslim-majority countries have failed to even mention the persecution of Uyghurs, except a few . . . It is shameful." (quoting Dolkun Isa, President, World Uyghur Cong.)).

245. See Richard N. Haass, *A Conversation with Prime Minister Imran Khan of Pakistan*, COUNCIL ON FOREIGN RELS. (Sept. 23, 2019), <https://www.cfr.org/event/conversation-prime-minister-imran-khan-pakistan-0> [https://perma.cc/WB5S-CKVR].

246. See Emma Farge, *U.N. Body Rejects Debate on China's Treatment of Uyghur Muslims in Blow to West*, REUTERS (Oct. 6, 2022, 10:30 PM), <https://www.reuters.com/world/china/un-body-rejects-historic-debate-chinas-human-rights-record-2022-10-06>; Rana Siu Inboden, *Going on Offense Against Authoritarians at the UN Human Rights Council and Beyond*, JUST SEC. (July 10, 2023), <https://www.justsecurity.org/87190/going-on-offense-against-authoritarians-at-the-un-human-rights-council-and-beyond/> [https://perma.cc/QFF6-MHS2] (discussing authoritarian regimes working together to undermine votes for accountability on the UN Human Rights Council and to "shield[] each other from human rights scrutiny").

abuses. This influence closely ties China's trade initiatives to human rights, as China partners with BRI countries who are also accused of human rights abuses.²⁴⁷

While China does participate in Free Trade Agreements (FTA),²⁴⁸ it prefers to include substantive provisions of trade agreements through Memoranda of Understanding (MoUs) or cooperation agreements between countries.²⁴⁹ These MoUs are the highest level of an agreement between BRI members and contain conditions for China's financing, sometimes including specific projects to be developed with Chinese investment, while cooperation agreements have more general terms related to a shared intent for China and the country to collaborate.²⁵⁰ Cooperation agreements and MoUs are distinct from FTAs in that they are not legally binding.²⁵¹ The BRI accounts for thirty-seven percent of global gross domestic product (GDP), with 151 countries across all income levels (including eighteen countries in the EU) signing these MoUs to become members.²⁵² China's trade with BRI countries has grown more rapidly than with non-BRI countries, and its exports to these countries exceed its imports.²⁵³ China prefers bilateral trade agreements but has increasingly entered into multilateral trade agreements, which often do not contain clauses relating to labor conditions.²⁵⁴ The lack of formal agreements and the preference for MoUs with many BRI countries allow China to have more flexibility in these relationships, as the agreements are less transparent and contain fewer requirements for China to uphold.²⁵⁵ This lack of transparency may also exacerbate the levels of debt that many of

247. HILLMAN & SACKS, *supra* note 232, at 42–44 (giving examples of Kyrgyzstan, Myanmar, Sri Lanka, and Pakistan).

248. A Free Trade Agreement (FTA) is “an agreement between two or more countries where the countries agree on certain obligations that affect trade.” *Free Trade Agreement Overview*, INT'L TRADE ADMIN., <https://www.trade.gov/free-trade-agreement-overview> [<https://perma.cc/BSQ6-AWAJ>] (last visited May 15, 2024). These agreements can include reduced tariffs between states and overall result in reduced trade barriers, making it predictable, transparent, and often cheaper for companies to export products to trading partners within countries that are party to the agreement. *Id.*

249. See Ronald C. Brown, *China Moving the Belt and Road Initiative into Latin American Countries: Chinese Free Trade Agreements and Labor Implications*, 42 HOUS. J. INT'L L. 85, 104–05 (2019) (stating China was a party to thirteen FTAs as of mid-2015, eight of which had no labor provisions and five of which had very weak references).

250. See Jack Nolan & Wendy Leutert, *Signing Up or Standing Aside: Disaggregating Participation in China's Belt and Road Initiative*, BROOKINGS (Oct. 2020), <https://www.brookings.edu/articles/signing-up-or-standing-aside-disaggregating-participation-in-chinas-belt-and-road-initiative/> [<https://perma.cc/CWL3-NE5K>].

251. *Id.*

252. Nedopil, *supra* note 240; see David Sacks, *Countries in China's Belt and Road Initiative: Who's In and Who's Out*, COUNCIL ON FOREIGN RELS.: ASIA UNBOUND (Mar. 24, 2021, 8:00 AM), <https://www.cfr.org/blog/countries-chinas-belt-and-road-initiative-whos-and-whos-out> [<https://perma.cc/7Q8L-DE8D>]; *How Is the Belt and Road Initiative Advancing China's Interests?*, CHINAPOWER (Nov. 3, 2023), <https://chinapower.csis.org/china-belt-and-road-initiative/> [<https://perma.cc/M9LG-34ES>]; *World Datasets*, INT'L MONETARY FUND, <https://www.imf.org/external/datamapper/profile/WEOWORLD> [<https://perma.cc/E79X-PYU5>] (last visited May 15, 2024).

253. HILLMAN & SACKS, *supra* note 232, at 34.

254. Chow, *supra* note 237, at 715–16, 722.

255. See HILLMAN & SACKS, *supra* note 232, at 33–34.

these countries face by preventing other BRI countries from assessing the fairness of their contract terms.²⁵⁶ These informal agreements heighten power asymmetries and increase the indebtedness of BRI countries, which contribute to China's ability to exert economic and political influence over their BRI partners.²⁵⁷

China's political and economic influence through the BRI poses challenges for the effectiveness of targeted import bans.²⁵⁸ The expectancy of reciprocity for respect towards "sovereignty issues" like political views and human rights between China and BRI countries coupled with increased debt levels for BRI countries reduces the possibility that many countries would be willing to enact import bans similar to the UFLPA.²⁵⁹ If countries are too afraid to speak out against China on its policies in Xinjiang out of fear of offending President Xi Jinping and losing BRI projects,²⁶⁰ it is unlikely that an import ban targeting the region would be a possibility for many of these countries. The United States will likely be unable to use its leverage in these countries to enact parallel import bans, especially since many BRI countries and China's trading partners are often countries that the United States does not trade with.²⁶¹ In the absence of other parallel import bans, other mechanisms in the international trade system should be examined as a means of combating forced labor, including the WTO.

III. THE WTO'S ROLE IN COMBATING FORCED LABOR

Currently, the WTO does not recognize labor issues as falling within its purview, but rather sees the International Labour Organization (ILO) as the competent body to address labor issues.²⁶² However, given the ILO's inability to authorize measures in the event of a country's noncompliance with labor standards, the WTO should play a greater role in combating instances of forced labor.²⁶³ The ability for people to be free from forced labor can be incorporated into the WTO framework by recognizing targeted trade measures enacted in furtherance of this goal under the public morals exception to the MFN principle.

256. *See id.* at 27–28, 33–34.

257. *See* Ernst-Ulrich Petersmann, *International Settlement of Trade and Investment Disputes over Chinese 'Silk Road Projects' Inside the European Union* 5–6, 11 (Eur. Univ. Inst. Dep't of L., Working Paper No. 2020/02, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3584173 [https://perma.cc/PU26-5TRQ].

258. *See* Jihye Lee, 'We Are Not Decoupling': G-7 Leaders Agree on Approach to 'De-Risk' from China, CNBC (May 22, 2023, 12:12 AM), <https://www.cnbc.com/2023/05/22/g-7-leaders-de-risk-china.html> [https://perma.cc/D7BV-FJV9] (noting examples of China using economic coercion on countries that it is "not happy with from a geopolitical perspective"); Cave, *supra* note 120 (highlighting the threat of coercion from being economically intertwined with China).

259. *See* Chow, *supra* note 237, at 722; Bhala, *supra* note 60, at 111 & n.8.

260. *See* Bhala, *supra* note 60, at 111 & n.8.

261. *See* HILLMAN & SACKS, *supra* note 232, at 42; Chow, *supra* note 237, at 723.

262. *Labour Standards: Consensus, Coherence and Controversy*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm [https://perma.cc/H79G-RRF9] (last visited May 15, 2024).

263. *See* Gary Burtless, *Workers' Rights: Labor Standards and Global Trade*, BROOKINGS (Sept. 1, 2001), <https://www.brookings.edu/articles/workers-rights-labor-standards-and-global-trade/> [https://perma.cc/F3EZ-C68N].

A. THE CURRENT FRAMEWORK OF LABOR ISSUES: THE ILO'S PRIMACY OVER THE WTO

The WTO's current stance regarding labor is simple—labor issues belong to the ILO.²⁶⁴ The WTO recognizes core labor standards, including the prohibition against forced labor, but sees the ILO as the competent body to address labor issues.²⁶⁵ The WTO and the ILO collaborate through WTO participation in ILO body meetings, document exchange, and informal cooperation between the two organizations' Secretariats.²⁶⁶ The debate of whether the WTO should incorporate labor standards has existed since the WTO's conception and is still controversial.²⁶⁷

There are two schools of thought regarding whether trade actions can be used to impose labor standards, which in turn would bring labor issues within the WTO's mandate as the body responsible for operating the global system of trade rules and the forum in which to settle trade disputes.²⁶⁸ Those in favor of the WTO's consideration of labor rights argue that including these issues will incentivize governments to improve conditions for workers.²⁶⁹ Those in opposition, including many developing countries, see the intertwining of trade and labor standards as a “guise for protectionism” by developed countries to undermine the comparative advantage of developing countries that have lower labor costs.²⁷⁰ Therefore, they argue, these provisions do not belong in the WTO and instead belong to the ILO.²⁷¹ These countries argue labor standards improve through economic growth, while sanctions to enforce labor standards would instead perpetuate poverty and delay improvement of labor standards.²⁷²

264. See *Trade and Labour Standards*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm [<https://perma.cc/ADL3-W5T5>] (last visited May 15, 2024). In fact, the only WTO provision dealing explicitly with labor is Article XX(e) of *GATT*, which includes an exception for measures “relating to the products of prison labour.” *GATT*, *supra* note 200, art. XX(e); see JOSEPH, *supra* note 201, at 104.

265. WORLD TRADE ORG., *supra* note 262 (“There is a clear consensus: all WTO member governments are committed to a narrower set of internationally recognized ‘core’ standards . . . [including] no forced labour . . .”); see Maria Artuso & Carolan McLarney, *A Race to the Top: Should Labour Standards Be Included in Trade Agreements?*, 40 *VIKALPA* 1, 4 (2015).

266. See WORLD TRADE ORG., *supra* note 264. But see Aleydis Nissen, *Can WTO Member States Rely on Citizen Concerns to Prevent Corporations from Importing Goods Made from Child Labour?*, 14 *UTRECHT L. REV.* 70, 73 (2018) (arguing that, in reality, the WTO and ILO “do not collaborate to a great extent”).

267. See WORLD TRADE ORG., *supra* note 264. At the Singapore Ministerial Conference in 1996, the WTO “declared that the ILO was the competent body to negotiate labour standards, not the WTO.” PASCAL LAMY, *THE GENEVA CONSENSUS: MAKING TRADE WORK FOR ALL* 98 (2013). It “rejected the use of labour standards for protectionist purposes” and noted that promoting further trade would contribute to the promotion of labor standards. *Id.* The issue was raised again at the Seattle Ministerial Conference in 1999 with no agreement, and at the 2001 Doha Ministerial Conference, the WTO reaffirmed its previous declaration that labor issues were in the province of the ILO. WORLD TRADE ORG., *supra* note 262.

268. See *The WTO*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/thewto_e.htm [<https://perma.cc/GET3-2T3Z>] (last visited May 15, 2024).

269. WORLD TRADE ORG., *supra* note 264.

270. *Id.*

271. See *id.*; Sayed M. Zonaid, *Trading in Human Rights: Questioning the Advance of Human Rights into the World Trade Organization*, 27 *FLA. J. INT'L L.* 261, 274 (2015).

272. WORLD TRADE ORG., *supra* note 264.

However, this current framework of labor standards belonging to the province of the ILO does not sufficiently provide deterrence for actors who employ forced labor.²⁷³ Unlike the WTO, the ILO cannot authorize retaliatory measures for non-compliance but instead can only provide assistance to member countries to bring their laws into compliance.²⁷⁴ The ILO has attempted to address the situation in Xinjiang given that China previously ratified four ILO conventions.²⁷⁵ China ratified two additional conventions in August 2022—the ILO Forced Labour Convention (No. 29) and Abolition of Forced Labour Convention (No. 105).²⁷⁶ The ILO expressed hope that China’s recent ratification of these conventions would create “renewed momentum” to combat forced labor through cooperation with the government.²⁷⁷ However, the ILO also expressed concern that the labor scheme in Xinjiang was in violation of the Discrimination (Employment and Occupation) Convention and called for China to “immediately cease the racial harassment of the Uyghur people” and “repeal provisions . . . that impose deradicalization duties on enterprises.”²⁷⁸ China responded that the accusation was “groundless,” maintained that the discriminatory practices were nonexistent, and called for the Committee of Experts to make “impartial comments based on facts.”²⁷⁹ This illustrates a major critique of the ILO, in that there is little penalty for failure to enforce conventions aside from bad publicity.²⁸⁰ Additionally, the ILO has a low rate of ratification, and conventions ratified by members may not

273. Adrian Zenz, one of the most prominent scholars on China’s programs directed towards the Uyghur people in Xinjiang, argues that the ILO indicators of forced labor do not adequately capture the coercive and political rather than purely economic nature of the labor transfer schemes. See generally Adrian Zenz, *Measuring Non-Internment State-Imposed Forced Labor in Xinjiang and Central Asia: An Assessment of ILO Measurement Guidelines*, J. HUM. TRAFFICKING, Nov. 20, 2023. Zenz notes that the ill-suited nature of these indicators is likely why China ratified ILO conventions related to forced labor, as it likely believes these programs would be able to evade a negative evaluation under the indicators. See *id.* at 2. The ILO has since released new guidance and indicators specific to state-imposed forced labor that may better address the political nature of labor transfer schemes. See INT’L LAB. ORG., *supra* note 40, at 148–51, 168–70.

274. Burtless, *supra* note 263.

275. INT’L LAB. ORG., APPLICATION OF INTERNATIONAL LABOUR STANDARDS 2022: REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS 431, 433, 514, 683 (2022), <https://www.ilo.org/resource/conference-paper/ilc/110/2022-report-application-international-labour-standards> [https://perma.cc/Y6Z9-8EUX].

276. INT’L LAB. ORG. ET AL., *supra* note 199, at 53; *Ratifications of C029 – Forced Labour Convention, 1930 (No. 29)*, INT’L LAB. ORG. [hereinafter *Ratifications of C029*], https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312174 [https://perma.cc/59LQ-3GKL] (last visited May 15, 2024); *Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105)*, INT’L LAB. ORG. [hereinafter *Ratifications of C105*], https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250 [https://perma.cc/B5HP-NRF9] (last visited May 15, 2024).

277. INT’L LAB. ORG. ET AL., *supra* note 199, at 53.

278. INT’L LAB. ORG., DISCUSSION ON THE GENERAL SURVEY, ON THE REPORT OF THE JOINT ILO-UNESCO COMMITTEE OF EXPERTS AND ON THE SITUATION CONCERNING PARTICULAR COUNTRIES 227 (2022), <https://www.ilo.org/resource/record-proceedings/ilc/110/report-committee-application-standards-part-two-discussion-general-survey> [https://perma.cc/J6KZ-GYJN].

279. *Id.* at 228.

280. See Burtless, *supra* note 263.

be implemented into their domestic laws.²⁸¹ In fact, the United States itself is largely noncompliant with the ILO, failing to ratify six of the eight conventions on core labor standards.²⁸² Therefore, China's ratification of these conventions says little about the ILO's ability to combat forced labor. As the ILO's primary mechanism of enforcement is through public pressure,²⁸³ it seems this method may be ineffective for China given the existing public outcry against treatment of Uyghurs and China's denial of forced labor programs. However, given the WTO's role in regulating rules of trade between nations and actions by countries in the international trade system, there is a mechanism within the WTO framework for trade measures enacted as a means of combating forced labor, such as targeted import bans, to be utilized—the public morals exception.²⁸⁴

B. CREATING AND ENFORCING LABOR STANDARDS UNDER THE WTO FRAMEWORK

The WTO believes labor issues belong with the ILO. However, trade and labor rights are inextricably linked, as evidenced through China's understanding with BRI trade partners to remain silent about political issues, including the forced labor allegations in Xinjiang.²⁸⁵ Despite the ILO's role in raising international awareness of countries who are noncompliant, the ILO's effectiveness in influencing compliance with conventions dwindles when a country is uninfluenced by public criticism. This is where the WTO may have a role to play in protecting core labor rights. There is room within the WTO framework under its central treaty, the *GATT*, to allow Member States to promote protection of the most basic labor rights using the public morals exception.

1. Integrating Trade Mechanisms Combating Forced Labor in the WTO Framework

To quell protectionist concerns, labor rights protected in the WTO framework could be limited to fundamental, core labor rights protected under international human rights law. These core rights would focus on rights such as freedom of association, protection against forced labor, protection against child labor, and protection against discrimination at work rather than focus on setting specific standards for health and safety conditions, working hours, and the right to unionize.²⁸⁶ Focusing on these rights would, in theory, limit the consequences of

281. See Renee Chartres & Bryan Mercurio, *A Call for an Agreement on Trade-Related Aspects of Labor: Why and How the WTO Should Play a Role in Upholding Core Labor Standards*, 37 N.C. J. INT'L L. 665, 686–87 (2012).

282. Austin Chad Cohen, Note, *Trading Places: With the United States in Retreat, Who Writes the International Rules for Trade?*, 47 GA. J. INT'L & COMPAR. L. 539, 551 (2019).

283. See Shuhong Yu & Malik Zia-ud-Din, *International Trade Agreements and Their Relation to Core Labor Standards*, J. POL. & L., Sept. 2018, at 33, 40.

284. See WORLD TRADE ORG., *supra* note 268.

285. See Chow, *supra* note 237, at 718, 722.

286. See WORLD TRADE ORG., *supra* note 262. These core rights are embodied in various international human rights treaties that many developing countries are a party to. See International Covenant on Civil and Political Rights art. 8(3)(a), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; European Convention on Human Rights art. 4, Nov. 4, 1950, E.T.S. 5; African Charter on

protectionism for developing countries as they are not consequences of development (like a low minimum wage) but rather are violations of core human rights found in human rights conventions that many WTO members are signatories to and have a responsibility to protect.²⁸⁷ Because forced labor is seen as legally distinct from slavery and therefore does not share slavery's *jus cogens* status which supersedes other forms of international law,²⁸⁸ forced labor has not explicitly been declared as a nonderogable right and therefore falls under international human rights law through its prohibition in the *International Covenant on Civil and Political Rights (ICCPR)* and other international human rights treaties.²⁸⁹ The WTO framework and other principles of international law, such as human rights, should not be read in isolation but rather "in harmony."²⁹⁰

Human rights have only been raised indirectly in WTO dispute settlement, resulting in limited litigation on the issue.²⁹¹ Dispute settlement in the WTO consists of the Dispute Settlement Body, which establishes "panels" to consider disputes among states, and the Appellate Body as the adjudicative authority hearing appeals of reports from a Dispute Settlement Body panel.²⁹² In *US–Gasoline*, the

Human and People's Rights art. 5, June 27, 1981, 1520 U.N.T.S. 217 (providing freedom from "exploitation and degradation").

287. See *Members and Observers*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [<https://perma.cc/3QCE-BEBM>] (last visited May 15, 2024); *Ratification Status for CCCR – International Covenant on Civil and Political Rights*, U.N. HUM. RTS. TREATY BODIES, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en [<https://perma.cc/V4TV-57MR>] (last visited May 15, 2024); see also Ioana Cismas, *The Integration of Human Rights in Bilateral and Plurilateral Free Trade Agreements: Arguments for a Coherent Relationship with Reference to the Swiss Context*, CURRENTS: INT'L TRADE L.J., Summer 2013, at 3, 14 (discussing how delinking trade and human rights may give a country a competitive advantage, but at the expense of workers employed through forced labor).

288. Jocelyn Getgen Kestenbaum, *Prohibiting Slavery & the Slave Trade*, 63 VA. J. INT'L L. 51, 57, 65–66 (2022); see *Article 4: Freedom from Slavery and Forced Labour*, EQUAL. & HUM. RTS. COMM'N (June 3, 2021), <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-4-freedom-slavery-and-forced-labour> [<https://perma.cc/X9GK-UQDU>] (discussing the distinction between forced labor and slavery in the context of the UK Human Rights Act).

289. ICCPR, *supra* note 286, art. 8(3)(a); Kestenbaum, *supra* note 288, at 66, 69; Stefan Lorenzmeier, *WTO and Human Rights*, in *THE INFLUENCE OF HUMAN RIGHTS ON INTERNATIONAL LAW* 147, 148 (Norman Weiß & Jean-Marc Thouvenin eds., 2015); see Peter Hilpold, *WTO Law and Human Rights: Bringing Together Two Autopoietic Orders*, 10 CHINESE J. INT'L L. 323, 355 (2011).

290. Rachel Harris & Gillian Moon, *GATT Article XX and Human Rights: What Do We Know from the First 20 Years?*, 16 MELB. J. INT'L L. 432, 443 (2015).

291. See *id.* at 434.

292. WORLD TRADE ORG., *supra* note 225. In the WTO dispute settlement system, countries must first attempt to settle the dispute amongst themselves before turning to the Dispute Settlement Body. *Id.* The Dispute Settlement Body is made up of all WTO members and establishes "panels" to consider a dispute, which then issue a report following each country's presentation of its arguments. *Id.* A final report from a Dispute Settlement Body panel may only be rejected by consensus of the Dispute Settlement Body and otherwise becomes a Dispute Settlement Body ruling or recommendation. *Id.* Both sides may appeal the report to the Appellate Body, which consists of seven permanent members who can then uphold, modify, or reverse the panel report. *Id.* If no satisfactory compensation is agreed upon between parties, the complaining side can ask the Dispute Settlement Body for permission to retaliate by suspending concessions or other obligations against the other side. *Id.* For more information, see the chart provided at *The Panel Process*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm [<https://perma.cc/YG98-7JGD>] (last visited May 15, 2024).

Appellate Body found the application of other law, such as international human rights law, can influence the WTO regime.²⁹³ Under the Vienna Convention on the Law of Treaties, which provides guidelines for treaty interpretation, a Dispute Settlement Body panel or the Appellate Body can consider law outside of WTO agreements to “clarify the existing provisions of . . . agreements in accordance with the customary rules of . . . international law.”²⁹⁴ That the Appellate Body can consider other international law provisions when analyzing a country’s compliance with WTO standards opens the door for human rights considerations in interpretations of WTO obligations, including its interpretation of the public morals exception.²⁹⁵

2. Combating Forced Labor Under the *GATT*: The Public Morals Exception

Measures such as import bans like the UFLPA could violate the MFN principle under Article I of the *GATT* and the national treatment principle under Article III by discriminating between like goods made in the targeted country.²⁹⁶ The MFN principle prevents a country from discriminating against another country by requiring trade measures to be applied equally to all WTO members, while the national treatment principle requires imported and locally produced goods to be treated the same once on the market.²⁹⁷ However, these import bans would not be found to violate the *GATT* if they fell into one of the general exceptions under Article XX.²⁹⁸ These general exceptions exempt measures that would typically violate the *GATT*, such as those that are discriminatory against one country under MFN, for the purpose of public policy goals enumerated as the exceptions in the article.²⁹⁹

293. Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, 17, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996) [hereinafter *US—Gasoline*] (“[T]he *General Agreement* is not to be read in clinical isolation from public international law.”).

294. Zonaid, *supra* note 271, at 271 (quoting Understanding on Rules and Procedures Governing the Settlement of Disputes art. 3.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401); *see* Lorenzmeier, *supra* note 289, at 150–52; Harris & Moon, *supra* note 290, at 17–18 (noting the Appellate Body “clarified that, when conducting an analysis under art. 31(3)(c), the relevant question was not whether the latter rules ‘applied’, but, rather, whether they were to be taken into account in determining the meaning of the WTO agreement”).

295. Cismas, *supra* note 287, at 3 (quoting a legal counselor for the WTO Secretariat saying that “a good faith interpretation of the provisions of the WTO . . . should lead to a reading and application of WTO law consistent with human rights”).

296. *See GATT*, *supra* note 200, arts. I, III; JOSEPH, *supra* note 201, at 101; Nissen, *supra* note 266, at 76–77.

297. WORLD TRADE ORG., *supra* note 200; CORP. FIN. INST., *supra* note 200.

298. *See GATT*, *supra* note 200, art. XX; Zonaid, *supra* note 271, at 268–70.

299. *See* Brandon L. Bowen, Note, *The World Trade Organization and Its Interpretation of the Article XX Exceptions to the General Agreement on Tariffs and Trade, in Light of Recent Developments*, 29 GA. J. INT’L & COMPAR. L. 181, 183–85 (2000); WORLD TRADE ORG., ANALYTICAL INDEX OF THE *GATT*: ARTICLE XX GENERAL EXCEPTIONS 562 (2012), https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art20_e.pdf [<https://perma.cc/AD5D-A46P>].

The application of the Article XX exceptions was enumerated in the *US–Gasoline* report by the Appellate Body. In *US–Gasoline*, the Appellate Body analyzed whether the U.S. Clean Air Act’s baseline rules for gasoline to be sold on the market qualified as an exception to discrimination under the *GATT*.³⁰⁰ The Appellate Body found the measures met the exception of Article XX(g) for measures “relating to the conservation of exhaustible natural resources,” but failed to meet the test in the chapeau, or introductory paragraph, of Article XX because it was a “disguised restriction on international trade.”³⁰¹ Therefore, the Appellate Body found that the baseline rules of the Clean Air Act did not qualify as an exception to discrimination under the *GATT*.³⁰² Though the case was focused on the application of Article XX(g), *US–Gasoline* established a two-step test for any exception under Article XX to apply to a trade measure. First, the measures must fall into one of the exceptions under the article.³⁰³ Second, the measure must meet the requirements of the chapeau of Article XX.³⁰⁴

a. Interpreting Article XX(a)

Human rights, including protections against forced labor, would best be protected under the public morals exception encompassed in Article XX(a) of the *GATT*.³⁰⁵ Public morals under *GATT* Article XX(a) are “standards of right and wrong conduct maintained by or on behalf of a community or nation,” are influenced by each member state’s prevailing values, and are therefore defined by national standards alone.³⁰⁶ The *EC–Seal Products* dispute, which challenged the European Communities’ prohibition on the importation of seal products that provided exceptions only to the European Communities and select third countries, spoke to the issue of how to define standards of conduct in light of differing moral values between countries.³⁰⁷ *EC–Seal Products* asks if the public concern indeed

300. *US–Gasoline*, *supra* note 293, at 9–11.

301. *Id.* at 18–19, 29.

302. *Id.* at 29.

303. *Id.* at 22.

304. *Id.*

305. See *GATT*, *supra* note 200, art. XX(a); Nissen, *supra* note 266, at 78 (noting the OHCHR stated public morality is “inseparable from human rights”). Notably, the EU Proposal notes in its preamble that it is “a matter of *public moral* concern that products made with forced labour could be available on the Union market or exported to third countries without an effective mechanism to ban or withdraw such products,” possibly implying that the European Commission believes the proposal is in line with the public morals exception of the *GATT*. EU Proposal, *supra* note 175, pmb. ¶ 15 (emphasis added).

306. Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, ¶ 7.759, WTO Doc. WT/DS363/R (adopted Jan. 19, 2010); Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 3.292, WTO Doc. WT/DS285/R (adopted Apr. 20, 2005) [hereinafter *US–Gambling*] (applying to Art. XIV of the General Agreement on Trade in Services (GATS)); Panel Report, *European Communities–Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 7.631, WTO Docs. WT/DS400/R, WT/DS401/R (adopted June 18, 2014) [hereinafter *EC–Seal Products*, Panel Report]; see also Lorenzmeier, *supra* note 289, at 153–54.

307. *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds401_e.htm [<https://perma.cc/RR2W-9UEP>] (last visited May 15, 2024).

exists and whether that concern falls in the scope of public morals as defined and applied by the Member in its territory.³⁰⁸ Though left unresolved by the Panel, there is a suggestion the Appellate Body would define public morals flexibly, allowing for international standards and human rights law to be included in the understanding of public morals.³⁰⁹ Given the Dispute Settlement Body panel and Appellate Body accepted that a ban on imported seal products was “necessary to protect public morals,” this decision related to animal welfare seemingly could allow for the public morals exception’s extension to import restrictions based on human rights violations.³¹⁰ Additionally, the Panel’s consideration of “international doctrines” in its analysis illustrates the court’s willingness to analyze international standards for determining the existence of public morals, which could extend to core labor standards like the prohibition against forced labor in international norms and agreements outside the WTO.³¹¹

Article XX(a) requires the measure to be “necessary to protect public morals.”³¹² In evaluating necessity, the Appellate Body looks at whether there is an alternative, less trade-restrictive measure that could have been reasonably employed to achieve the desired objective.³¹³ It conducts a holistic, fact-specific “weighing and balancing” test that looks at the importance of the objective, the extent of the measure’s contribution to the objective, and the measure’s trade-restrictiveness.³¹⁴ The alternative measure must make at least an equal contribution to the objective, preventing the Dispute Settlement Body from second-guessing the extensiveness of the state’s measures to address a risk.³¹⁵ There is no materiality requirement for the measure to contribute to the objective such as stopping the problematic practice; however, the more trade-restrictive the measure, the more extensively the Dispute Settlement Body will search for alternatives.³¹⁶ The more narrowly a state defines the objective, the fewer alternatives will meet the threshold.³¹⁷

308. Harris & Moon, *supra* note 290, at 465; Nissen, *supra* note 266, at 79–80.

309. See Nissen, *supra* note 266, at 82; *EC–Seal Products*, Panel Report, *supra* note 306, ¶ 7.409; Harris & Moon, *supra* note 290, at 453; Meredith Kolsky Lewis, *Human Rights Provisions in Free Trade Agreements: Do the Ends Justify the Means?*, 12 LOY. U. CHI. INT’L L. REV. 1, 20 (2014).

310. See GATT, *supra* note 200, art. XX(a); Lewis, *supra* note 309, at 20 (“[I]t is arguably incongruous to allow import restrictions based on a moral objection to inhumane slaughter methods of seals, but to prohibit such restrictions based on a moral objection to violations of fundamental human rights (such as child labor).”); Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.290, WTO. Doc. WT/DS400/AB/R, WT/DS401/AB/R (adopted June 18, 2014) [hereinafter *EC–Seal Products*, Appellate Body]; *EC–Seal Products*, Panel Report, *supra* note 306, ¶ 7.639.

311. See Nissen, *supra* note 266, at 82; *EC–Seal Products*, Panel Report, *supra* note 291, ¶ 7.409.

312. GATT, *supra* note 200, art. XX(a).

313. Harris & Moon, *supra* note 290, at 456.

314. *Id.* at 454.

315. *Id.* at 468–69; see *EC–Seal Products*, Appellate Body, *supra* note 310, ¶ 5.263.

316. Harris & Moon, *supra* note 290, at 455–56; Joanna Langille, *The Trade-Labour Relationship in the Light of the WTO Appellate Body’s Embrace of Pluralism*, 159 INT’L LAB. REV. 569, 581 (2020).

317. Harris & Moon, *supra* note 290, at 468–69.

One challenge that human rights measures may face in compliance with Article XX exceptions is extraterritoriality, or whether a country can impose its public morals standards on the production or processing method of an exporting country, which in effect would be transferring the morals of the importing state to the exporting state and thus be coercive to changing the policies in other states.³¹⁸ However, both the Dispute Settlement Body panel and Appellate Body in *EC–Seal Products* upheld an import ban on seal products based on concern for the hunting method taking place in territories outside the EU, diminishing strict adherence to extraterritoriality and suggesting that the public morals exception may extend extraterritorially to be applied to a production or processing method of another country.³¹⁹ However, this ban was justified on the basis of addressing domestic regulatory concerns within the regulating state’s own territory rather than solely for purposes beyond the state’s territory.³²⁰ Therefore, it could be argued that counteracting human rights abuses through import bans could be seen as protecting the public morals of that state’s citizens by protecting them from buying products made unethically, which would not be an extraterritorial application of the public morals exception.³²¹ The framing of these import bans as a way of protecting the morals of a regulating state’s *own* citizens by shielding them from products made with forced labor rather than as attempting to influence the practices of another state would not be an extraterritorial application of the public morals exception, but rather would be justified for domestic regulatory concerns—an argument the Appellate Body has upheld on two previous occasions.³²²

b. The Chapeau of Article XX

Many measures that have passed the test of an exception failed the test in the chapeau.³²³ This introductory paragraph of Article XX states that the measure must “not [be] applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail,” and it must not be “a disguised restriction on international trade.”³²⁴ The chapeau is meant to be a safeguard against abusive use of these exceptions for protectionist purposes and is thus a high bar.³²⁵ Because of its strictness, the

318. See Lorenzmeier, *supra* note 289, at 152; JOSEPH, *supra* note 201, at 106.

319. See *EC–Seal Products*, Panel Report, *supra* note 306, ¶¶ 7.625, 7.631; *EC–Seal Products*, Appellate Body, *supra* note 310, ¶ 5.201; Lorenzmeier, *supra* note 289, at 155; Hilpold, *supra* note 289, at 365; Harris & Moon, *supra* note 290, at 454.

320. See Harris & Moon, *supra* note 290, at 454 n.113 (noting the Appellate Body “has not yet ruled on whether a measure may be justified under art XX solely for purposes beyond its territory, for example, for protecting exhaustible natural resources in foreign territory”).

321. See JOSEPH, *supra* note 201, at 109; Langille, *supra* note 316, at 575, 582; Gregory Shaffer, *Governing the Interface of U.S.–China Trade Relations*, 115 AM. J. INT’L L. 622, 661 (2021) (applying this argument to the context of the UFLPA).

322. See Harris & Moon, *supra* note 290, at 454 n.113.

323. *Id.* at 458.

324. GATT, *supra* note 200, art. XX.

325. JOSEPH, *supra* note 201, at 115; Langille, *supra* note 316, at 585; Harris & Moon, *supra* note 290, at 476 (“The [Appellate Body] will continue to apply rigorous testing under the chapeau and it

chapeau may prohibit measures that are motivated by genuine concerns but have protectionist implications or constitute de facto arbitrary discrimination.³²⁶

Nearly all measures brought forward under this exception failed the test of the chapeau.³²⁷ Only one case out of the forty-four brought under the general exceptions—*EC–Asbestos*—satisfied all of the requirements to qualify as an exception under Article XX, specifically Article XX(b) related to human health and life.³²⁸ The Dispute Settlement Body panel found that no discrimination occurred between countries where the same conditions prevailed, and therefore it was unnecessary to determine whether the measure’s application was arbitrary or unjustifiable.³²⁹ Consequently, there has still never been a measure that has met the chapeau as a measure that was discriminatory between countries yet was upheld because it was not arbitrary or unjustifiable discrimination.

Obligations of states under the WTO are not meant to displace other human rights obligations held by member states through human rights conventions and treaties.³³⁰ In complying with their obligations within the WTO regime, states must continue to uphold human rights measures under other treaties to which they are signatories.³³¹ These include obligations of states under the *ICCPR*, the *Forced Labour Convention* and *Abolition of Forced Labour Convention* of the ILO, the *Palermo Protocol*, the *European Convention on Human Rights*, and *African Charter on Human Rights and People’s Rights*, all of which address forced labor either explicitly or impliedly.³³² Therefore, the *GATT* should be

seems that any hint of favouring particular interests in a way unjustified with reference to the overarching objective will doom the measure to WTO non-compliance.”).

326. See Langille, *supra* note 316, at 575, 579 (arguing only measures that are actually protectionist should constitute a violation, which would better protect labor rights than the current interpretation of the chapeau).

327. See *US–Gasoline*, *supra* note 293, at 29 (finding measures discriminatory in favor of U.S. companies); *US–Gambling*, *supra* note 306, ¶ 6.993 (finding the measures were a disguised restriction on trade rather than designed to protect public morals); Appellate Body Report, *United States–Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 186, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998) (finding treating different countries in different ways without justification was discriminatory); JOSEPH, *supra* note 201, at 115.

328. PUB. CITIZEN, ONLY ONE OF 44 ATTEMPTS TO USE THE GATT ARTICLE XX/GATS ARTICLE XIV “GENERAL EXCEPTION” HAS EVER SUCCEEDED: REPLICATING THE WTO EXCEPTION CONSTRUCT WILL NOT PROVIDE FOR AN EFFECTIVE TPP GENERAL EXCEPTION 1–2 (2015), https://www.citizen.org/wp-content/uploads/general-exception_4.pdf [https://perma.cc/6LQJ-6QSG].

329. Panel Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, ¶¶ 8.227–.230, WTO Doc. WT/DS135/R (adopted Apr. 5, 2001) [hereinafter *EC–Asbestos*].

330. See *supra* notes 287–90 and accompanying text.

331. See U.N. HUM. RTS. TREATY BODIES, *supra* note 287; *Ratifications of C029*, *supra* note 276; *Ratifications of C105*, *supra* note 276; 46 *Member States*, COUNCIL EUR., <https://www.coe.int/en/web/portal/46-members-states> [https://perma.cc/4P5K-LB6E] (last visited May 15, 2024); *Member States*, AFR. UNION, https://au.int/en/member_states/countryprofiles2 [https://perma.cc/U7JQ-LPEZ] (last visited May 15, 2024).

332. See *supra* note 286 and accompanying text; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, arts. 3, 9, 11, Nov. 15, 2000, 2237 U.N.T.S. 319; Forced Labour Convention art. 1, June 28, 1930, 39 U.N.T.S. 55, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [https://perma.cc/GXL6-QPA7]; Abolition of

interpreted in line with international human rights law and should allow for measures upholding these obligations. Since the WTO allows for other treaty obligations to be read concurrently in the interpretation of a state's obligations under the WTO, and given that states can define public morals to include protecting against human rights abuses, *GATT* Article XX(a) should be read in tandem with international human rights law and encompass these protections—including measures protecting against forced labor.

C. THE UFLPA AND THE PUBLIC MORALS EXCEPTION

The UFLPA on its face appears to violate the MFN principle under Article I of the *GATT*. Since the UFLPA applies only to goods made in Xinjiang or other parts of China made using forced labor, it treats products originating in China differently than other like products.³³³ This would likely be the case irrespective of how the term “like product” is defined. Goods imported from high-priority sectors (such as textiles) originating in China would be treated unequally in comparison to the same goods originating in another country as long as that good did not use any inputs from the region. If looking at “like” as defined by goods made using forced labor, the UFLPA would not be applied equally to other countries who use forced labor, as there are many countries around the world using forced labor that this ban would not apply to.³³⁴ Since the statute is not designed to be generally applicable but rather is focused on goods connected to Xinjiang, the statute treats “like” goods made with forced labor in China unequally to goods made with forced labor in other countries, violating the MFN principle. While those goods would likely be covered by Section 307 tariffs, which prevent the importation of goods made using forced labor, the UFLPA is more restrictive with its rebuttable presumption and therefore likely contrary to MFN.³³⁵ The UFLPA could likely be upheld under the public morals exception to the MFN principle as a mechanism combating forced labor and, therefore, would not be in violation of the United States' obligations. However, given the current state of the WTO with the Appellate Body suspended,³³⁶ a finding through the Dispute

Forced Labour Convention art. 1, June 25, 1957, 320 U.N.T.S. 291, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 [<https://perma.cc/9C5L-Z56B>].

333. See UFLPA, Pub. L. No. 117–78, § 3, 135 Stat. 1525, 1529 (2021); *GATT*, *supra* note 200, art. I.

334. See Brown, *supra* note 249, at 118–26; INT'L LAB. ORG. ET AL., *supra* note 199, at 24; Langille, *supra* note 316, at 573–74.

335. See UFLPA § 3; CASEY ET AL., *supra* note 67, at 1.

336. The Appellate Body has been unable to review appeals since November 2020 due to ongoing vacancies in appointed members. *Appellate Body*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm [<https://perma.cc/8CE5-7WZG>] (last visited May 15, 2024). The Trump Administration did not appoint new members to the Appellate Body as members' terms expired, causing ongoing vacancies that have yet to be filled. Simon Lester, *Ending the WTO Dispute Settlement Crisis: Where to from Here?*, INT'L INST. FOR SUSTAINABLE DEV. (Mar. 2, 2022), <https://www.iisd.org/articles/united-states-must-propose-solutions-end-wto-dispute-settlement-crisis> [<https://perma.cc/4EDW-PSY5>]. Currently, the Dispute Settlement Body is still able to establish panels, but parties either have the option of adopting these panels or appealing these panel reports. *Id.* With no Appellate Body to hear the appeal, these reports are “appealed ‘into the void’” where they sit waiting to be heard until the Appellate Body can be reestablished. *Id.*

Settlement system of the WTO that the UFLPA meets the public morals exception is unlikely any time soon.

1. The UFLPA and the Public Morals Exception

The UFLPA would likely be upheld under the public morals exception. To be upheld, it must meet the test of the public morals exception: public concern must exist regarding a “standard of right and wrong conduct maintained by or on behalf of a community or nation,” and the measure must be necessary to protect that public moral given the absence of a less trade-restrictive alternative.³³⁷ It must also meet the test of the chapeau.³³⁸

In analyzing whether public concern exists and if the United States defines forced labor as an issue concerning public morals, the Appellate Body could look to outcry from nongovernmental organizations, the media, and international consensus.³³⁹ For example, U.S. Trade Representative Katherine Tai’s trade strategy of naming combating forced labor as a trade objective could be evidence of domestic policy, showing that forced labor is an issue of public morals.³⁴⁰ This public statement could illustrate that the United States is focusing its policy objectives on forced labor prevention and that this issue is valued by the U.S. government as a standard of wrong conduct maintained on behalf of the United States, making forced labor a matter of public concern for the government and its citizens.

As for the measure’s necessity, the objective is arguably important given its status as a core labor standard and the pervasiveness of the forced labor programs.³⁴¹ Additionally, given that there is no materiality requirement, the mixed effects of the UFLPA so far on combating the situation of forced labor in Xinjiang would not weigh heavily against the UFLPA in the balancing test.³⁴² Regarding trade restrictiveness, there is an argument that the narrow tailoring of the UFLPA to China-only products would have the least impact on trade flows rather than a broad ban on products made with forced labor such as the EU measure, which would have greater effects on trade.³⁴³ Given this narrowed tailoring, the United States would have a strong argument that there is no reasonably available alternative to this unilateral import restriction that would be at least as effective to protect public morals absent further international cooperation.³⁴⁴ The

337. See *supra* Section III.B.

338. *US–Gasoline*, *supra* note 293, at 22.

339. See Harris & Moon, *supra* note 290, at 464. See generally AMNESTY INT’L, *supra* note 2; Ramzy & Buckley, *supra* note 15.

340. Press Release, Off. of the U.S. Trade Representative, USTR Announces the Development of a Focused Trade Strategy to Combat Forced Labor (Jan. 25, 2022), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/january/ustr-announces-development-focused-trade-strategy-combat-forced-labor> [<https://perma.cc/QC2M-ZPXX>].

341. See *supra* Introduction; WORLD TRADE ORG., *supra* note 262.

342. See *supra* Sections I.B–C.

343. See Harris & Moon, *supra* note 290, at 468 (stating a targeted measure may have a minimal restriction on trade).

344. See Nissen, *supra* note 266, at 79.

UFLPA would likely withstand the test of the public morals exception considering the concern about forced labor within U.S. society and politics coupled with the measure's narrowed tailoring.

Whether the UFLPA would meet the test of the chapeau carries more uncertainty. On the one hand, it could be argued this narrowed tailoring of the UFLPA to goods originating in Xinjiang or elsewhere in China as opposed to a broad ban is not arbitrary discrimination but rather would aid in enforcement and tracing of goods, and it is the least trade-restrictive means of accomplishing the goal of eliminating forced labor.³⁴⁵ Additionally, the pervasiveness of forced labor in the supply chain and scale of poverty alleviation programs shows the targeting to this specific forced labor regime is not arbitrary but rather necessary in meeting the overall objective of combating forced labor.³⁴⁶ This necessity is further illustrated by the fact that Section 307, a long-standing act generally prohibiting the importation of all goods made with forced labor, has failed to address instances of forced labor among the Uyghur people.³⁴⁷

However, targeting only goods from China may be seen as arbitrary because the UFLPA does not apply to other countries where similar forced labor conditions prevail.³⁴⁸ Even if the objective was defined as targeting state-run forced labor programs, other countries implementing state-run forced labor would not be targeted and therefore treated unequally.³⁴⁹ In the alternative, a targeted ban with a scope focused on state-run forced labor programs globally would retain some of the benefits of a narrowly tailored targeted ban like the UFLPA³⁵⁰ but may stand a better chance at surviving the test of the chapeau on the basis of discrimination. Targeted bans on supply chains contaminated by forced labor are more likely to be nonarbitrary than broad bans; however, since the UFLPA essentially targets all supply chains that trace back to the region, the Act may operate like a de facto blanket ban on goods from China and be seen as discriminatory.³⁵¹ Additionally, if the UFLPA is deemed to be utilized on a protectionist basis, it could be considered a disguised restriction on international trade and fail the test of the chapeau.³⁵² Given the difficulty of overcoming the test of the chapeau, this outcome is highly likely. With the limited precedent regarding human rights concerns,³⁵³ limited litigation of Article XX exceptions (none of which are related to labor

345. See *supra* Section II.A.

346. See ZENZ, *supra* note 3, at 26.

347. See 19 U.S.C. § 1307; *supra* notes 51–60 and accompanying text.

348. See Brown, *supra* note 249, at 118–26; INT'L LAB. ORG. ET AL., *supra* note 199, at 23–24; Nissen, *supra* note 266, at 82–83 (discussing how *EC-Seal Products* failed the test of the chapeau because it did not impose like sanctions on countries with similar conditions); Zenz, *supra* note 273, at 4–7 (discussing state-imposed coercive labor regimes in Uzbekistan, Turkmenistan, and Tajikistan that are similar to those in Xinjiang).

349. See INT'L LAB. ORG. ET AL., *supra* note 199, at 25, 50–53.

350. See *supra* Section II.A (comparing and contrasting broad versus targeted import bans).

351. See Harris & Moon, *supra* note 290, at 437, 468.

352. GATT, *supra* note 200, art. XX.

353. See Harris & Moon, *supra* note 290, at 434.

abuses),³⁵⁴ and the high bar to overcome discrimination in the chapeau,³⁵⁵ the narrow focus of the UFLPA to goods from China would be a complex issue for a WTO panel or the Appellate Body—if reinstated—to resolve.³⁵⁶

2. Practical Challenges of the UFLPA and Trade Measures Aimed at Forced Labor in the WTO System as It Stands

A definitive ruling by the WTO Dispute Settlement Body on whether the UFLPA meets the public morals exception is unlikely. China could bring a case to the WTO that the UFLPA is in violation of MFN, but the Appellate Body suspension means this dispute would likely go unresolved.³⁵⁷ Disputes may still be brought in front of a Dispute Settlement Body panel even with the suspension of the Appellate Body.³⁵⁸ If a dispute settlement panel found in favor of China, the United States would likely appeal the panel finding which, in the absence of an Appellate Body, would be an “appeal into the void” that remains unheard during this period of suspension, rather than adopt the panel report and accept the finding against it, leaving the dispute unresolved and allowing the UFLPA to remain in place.³⁵⁹ If China lost, it would also likely “appeal into the void” or institute retaliation.³⁶⁰ Given the suspension of the Appellate Body, there would not be a definitive decision as to whether an import ban to combat forced labor such as the UFLPA would fall under *GATT* Article XX(a) because any panel decision would likely be appealed by the losing party, making it unresolved and the decision unenforceable.³⁶¹ Additionally, it is unlikely China would bring this case to the WTO because it would bring more attention to the allegations in the region, as well as call for fact-finding in determining if the UFLPA was necessary under the public morals exception. While the decision of whether the UFLPA meets the public morals exception will likely be uncertain for the foreseeable future, it remains possible that other targeted bans aimed at core labor rights issues may arise in the interim against a country with a greater likelihood than China to bring

354. See Shaffer, *supra* note 321, at 660–61 (noting that the lack of procedural, substantive, and injury criteria for the public morals exception should be elaborated under new trade rules to safeguard against “social dumping”).

355. See JOSEPH, *supra* note 201, at 115.

356. See Harris & Moon, *supra* note 290, at 467; Chow, *supra* note 105, at 47 (arguing the Xinjiang tariffs would not be upheld in WTO dispute settlement); Nissen, *supra* note 266, at 78; *supra* note 336 and accompanying text (explaining the suspension of the Appellate Body).

357. See Lester, *supra* note 336.

358. *Id.*

359. See *id.*; Chow, *supra* note 105, at 40 n.247; JENNIFER HILLMAN, INST. OF INT’L ECON. L., GEORGETOWN UNIV. L. CTR., THREE APPROACHES TO FIXING THE WORLD TRADE ORGANIZATION’S APPELLATE BODY: THE GOOD, THE BAD AND THE UGLY? 2 (2018), <https://www.wita.org/atp-research/three-approaches-to-fixing-the-world-trade-organizations-appellate-body-the-good-the-bad-and-the-ugly/> [https://perma.cc/86Z9-RA4C]; see also *supra* note 292 and accompanying text (explaining how the WTO Dispute Settlement System functions when the Appellate Body is operating).

360. See Lester, *supra* note 336; see also HILLMAN, *supra* note 359, at 2 (describing how countries “are likely to take matters into their own hands by engaging in unilateral retaliation” rather than waiting “for their appeal to be completed”).

361. See Lester, *supra* note 336.

the case before the Dispute Settlement Body, which could then provide a more definitive ruling on whether trade measures combating forced labor may be upheld under the exception.³⁶² This uncertainty also highlights the need for employing other trade mechanisms to combat China's abuses against the Uyghurs.³⁶³

Some countries are opposed to the push for labor issues to be protected in trade policy initiated by the United States. In the development of fisheries subsidies regulations in 2021, the United States called for a provision including penalties for activities associated with the use of forced labor, but this proposal was blocked by a number of WTO members, including China and India.³⁶⁴ One of the calls for the WTO to protect labor rights is that a new WTO agreement regarding protections against labor abuses should be enacted rather than simply trying to enforce these rights through the current *GATT* Article XX out of fears that the "mere invocation" of human rights to waive obligations would cause a race to the bottom of protectionist barriers.³⁶⁵ However, because the WTO is member-driven and requires consent of members for decisions, it is highly likely that China would block any agreement pertaining to labor issues given its stance that labor issues are part of the sovereignty of a country and should be left to (or left out of) individual trade agreements and its historical resistance to the movement of including workers' rights in the WTO.³⁶⁶ Similar to their actions during the UN Human Rights Council vote, China's allies would likely also block such an

362. Cf. Robert Howse, *Unappealable but Not Unappealing: WTO Dispute Settlement Without the Appellate Body*, INT'L INST. FOR SUSTAINABLE DEV. (July 17, 2023), <https://www.iisd.org/articles/policy-analysis/wto-dispute-settlement-without-appellate-body> [<https://perma.cc/LK2U-8KWF>] (noting that WTO members continue to bring disputes before Dispute Settlement Body panels despite the suspension of the Appellate Body).

363. See *infra* Sections IV.B–C.

364. See Chen-Ju Chen, *Current Development of Fisheries Subsidies Regulations After the Failure of WTO Doha Round Negotiations with a Focus on the Asia-Pacific Region*, 17 ASIAN J. WTO INT'L HEALTH L. & POL'Y 41, 73–74 (2022); *WTO Fisheries Subsidies Talks Consider Forced Labor, S&DT*, INT'L INST. FOR SUSTAINABLE DEV. (June 21, 2021), <https://sdg.iisd.org/news/fisheries-subsidies-talks-consider-forced-labor-sdt/> [<https://perma.cc/GTC2-KE8U>]; Press Release, Off. of the U.S. Trade Representative, United States Urges WTO Members to Address Forced Labor on Fishing Vessels in Ongoing Fisheries Subsidies Negotiations (May 26, 2021), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-urges-wto-members-address-forced-labor-fishing-vessels-ongoing-fisheries-subsidies> [<https://perma.cc/46H8-99P7>]; Kirtika Suneja, *India Voices Concern Over US' Forced Labour Proposal Amid Subsidy Talks*, ECON. TIMES (Oct. 28, 2021, 8:54 AM), <https://economictimes.indiatimes.com/news/india/india-voices-concern-over-us-forced-labour-proposal-amid-subsidy-talks/articleshow/87324839.cms> [<https://perma.cc/7UMW-W2EQ>].

365. Zonaid, *supra* note 271, at 274; see LAMY, *supra* note 267, at 108; Hilpold, *supra* note 289, at 343–44.

366. See Chow, *supra* note 237, at 710; Ming Du & Qingjiang Kong, *Explaining the Limits of the WTO in Shaping the Rule of Law in China*, 23 J. INT'L ECON. L. 885, 903 (2020); Hilpold, *supra* note 289, at 342; Dennis Shea, *The WTO Can Help Shine a Spotlight on Forced-Labor Practices in Xinjiang's Cotton Industry*, CTR. FOR STRATEGIC & INT'L STUD. (Apr. 27, 2021), <https://www.csis.org/analysis/wto-can-help-shine-spotlight-forced-labor-practices-xinjiangs-cotton-industry> [<https://perma.cc/FU2N-D537>]; *Whose WTO Is it Anyway?*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm#TheWTOismember-driven,consensusamongallmemberegovernments [<https://perma.cc/SUS4-4VET>] (last visited May 15, 2024).

agreement.³⁶⁷ Additionally, given the fears from some developing countries about trade and labor standards being used as a guise for protectionism, it is uncertain that these countries would vote in favor unless such an agreement were limited to core labor standards.³⁶⁸ Even WTO Director-General Ngozi Okonjo-Iweala cautioned against targeting China, as it makes it more likely to “get a lot of resistance,” illustrating the unlikelihood that the WTO would take any action against China directly in the current system.³⁶⁹

At a minimum, the WTO should collaborate more with the ILO, since any WTO agreement or Appellate Body decision stating protection against human rights abuses meets the public morals exception is unlikely or indefinitely unavailable.³⁷⁰ Professors Sungjoon Cho and César F. Rosado Marzán suggest increased collaboration in the context of the WTO providing advice to the ILO on trade impacts of proposed regulatory schemes and declaring whether ILO conventions meet exceptions under *GATT* Article XX.³⁷¹ For example, the WTO could declare that the *Abolition of Forced Labour Convention* and *Forced Labour Convention* would meet the public morals exception, adding legal legitimacy to these conventions. While the WTO framework should include core labor standards and other fundamental human rights while limiting it to those within its purview to combat protectionism, it is unlikely it will anytime soon.

IV. ARE NONTARIFF MEASURES THE WAY FORWARD?

The UFLPA is a step in the right direction of countries enacting nontariff measures to combat instances of forced labor by trading partners. However, these mechanisms on their own are likely insufficient in enacting change in government policies of forced labor. This is especially true given the complicated nature of the situation in China due to China’s Belt and Road Initiative, its interconnectedness with the global supply chain, and its ability to circumvent the UFLPA in the absence of parallel import bans.³⁷² Therefore, other mechanisms such as labor clauses in trade agreements should be enacted in tandem with nontariff measures to bolster protections against forced labor in the international trade regime.³⁷³ Private companies can also play a huge role in combating forced labor by increasing their own due diligence to better understand where their goods are being

367. See Jamey Keaten, *UN Rights Body Rejects Western Bid to Debate Xinjiang Abuses*, AP NEWS (Oct. 6, 2022, 11:31 PM), <https://apnews.com/article/voting-rights-religion-china-geneva-middle-east-64078b301797f08b7f32e147c185c77f> [<https://perma.cc/MP47-AL2S>].

368. See Chow, *supra* note 237, at 710; WORLD TRADE ORG., *supra* note 264.

369. See Philip Blenkinsop, *Targeting China with Trade Reforms Will Not Work – WTO Head*, REUTERS (Apr. 26, 2021, 7:13 AM), <https://www.reuters.com/world/asia-pacific/targeting-china-with-trade-reforms-will-not-work-wto-head-2021-04-26/>.

370. See Sungjoon Cho & César F. Rosado Marzán, *Labor, Trade, and Populism: How ILO-WTO Collaboration Can Save the Global Economic Order*, 69 AM. U. L. REV. 1771, 1783 (2020); LAMY, *supra* note 267, at 107–08.

371. See Cho & Rosado Marzán, *supra* note 370, at 1783.

372. See *supra* Sections I.B & II.B.

373. See *infra* Section IV.B.

sourced from and the conditions of the workers along the supply chain.³⁷⁴ These mechanisms are each examined in turn but should be activated in conjunction to holistically combat forced labor and to deal specifically with the crisis in Xinjiang.

A. NONTARIFF MEASURES: THE UFLPA

Nontariff measures targeting forced labor would need to be applied on a neutral basis to avoid violating MFN or should be crafted to meet the public morals exception under *GATT* Article XX(a).³⁷⁵ Import bans applied on a neutral basis like the EU Proposal would not only be in compliance with WTO principles but could also be a way to combat forced labor on a broad scale.³⁷⁶ Targeted bans crafted to meet the public morals exception can concentrate the economic pressure of broad bans to specific instances of forced labor regimes and address the enforcement concerns of broad bans.³⁷⁷ However, the UFLPA as a unilateral sanction will likely not be as effective for changing China's behavior in the absence of parallel import bans from other countries.³⁷⁸ Broad bans and bans targeted to a specific situation like that of Xinjiang need not be mutually exclusive, as illustrated by the concurrent regime of typical Section 307 tariffs and the UFLPA.³⁷⁹

There is evidence that countries are moving in the direction of enacting nontariff measures to combat forced labor. Mexico and Canada are bound under a free trade agreement (FTA), the United States–Mexico–Canada Agreement (USMCA), “to adopt laws prohibiting goods made with forced labor from entering their markets”—Canada's broad prohibition against forced labor entered into force in 2020, while Mexico's prohibition went into effect in May 2023.³⁸⁰ While G7 members plan to take action to combat forced labor in Xinjiang, they have yet to adopt parallel bans.³⁸¹ Without parallel targeted import bans, the issues of companies circumventing the UFLPA by reconfiguring their supply chains to ship goods to third countries initially and by creating dual supply chains will be exacerbated.³⁸² Bans like the UFLPA would be more impactful if Central Asian countries, as the top export destinations for the region, would enact parallel bans.

374. See *infra* Section IV.C.

375. See *supra* Section III.B.

376. *GATT*, *supra* note 200, art. I.

377. See *supra* Section II.A (comparing and contrasting the advantages of broad and targeted bans).

378. See Chow, *supra* note 105, at 41; *supra* notes 233–35 and accompanying text (describing the importance of parallel targeted bans).

379. See *supra* Section I.A (describing the UFLPA and Section 307 tariffs).

380. Flacks & Songy, *supra* note 78; Agreement Between the United States of America, the United Mexican States, and Canada art. 23.6, Nov. 30, 2018 [hereinafter USMCA], <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [<https://perma.cc/45KL-5SPB>]; Lopez & Alghazali, *supra* note 130.

381. See Press Release, The White House, Fact Sheet: G7 to Announce Joint Actions on Forced Labor in Global Supply Chains, Anticorruption, and Ransomware (June 13, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/fact-sheet-g7-to-announce-joint-actions-on-forced-labor-in-global-supply-chains-anticorruption-and-ransomware/> [<https://perma.cc/35BS-HD4B>].

382. See FLETF STRATEGY, *supra* note 73, at 13–14; Richard Vanderford, *EU Looks to Follow Tough U.S. Action on Forced Labor*, WALL ST. J. (Oct. 31, 2022, 5:30 AM), <https://www.wsj.com/articles/eu-looks-to-follow-tough-u-s-action-on-forced-labor-11667208602?page=1>.

However, their relationship with China through the BRI makes this unlikely to occur.³⁸³ Nonetheless, the volume of trade affected by the UFLPA will likely still cause companies to adjust their supply chains.³⁸⁴

Given the EU Proposal and other countries' enactment of nontariff measures,³⁸⁵ these broad bans are a step in the right direction to a focus on using nontariff measures to combat forced labor regimes. Additionally, the heightened focus on the situation in Xinjiang, the recently enacted and proposed broad import bans addressing forced labor, and legislation focused on increased supply chain due diligence indicate a trend toward a focus on preventing forced labor, hopefully leading more countries to follow in the United States' and EU's footsteps to adopt similar barriers for goods made with forced labor.³⁸⁶ However, broad bans alone will be less impactful than targeted bans, and targeted bans will be less effective absent parallel bans.³⁸⁷ Therefore, while the nontariff measures like the UFLPA show promise in affecting the behaviors of companies, the effectiveness of the UFLPA in changing *China's* behavior is more unclear and, unfortunately, more unlikely in the absence of supplementary trade mechanisms like trade agreements and corporate social responsibility.³⁸⁸

B. TRADE AGREEMENTS

The implementation of labor clauses in bilateral and regional trade agreements is a viable alternative to unilateral import bans and avoids the complications involved with including these provisions in the WTO framework.³⁸⁹ This is especially true given the suspension of the Appellate Body and the consensus requirement, which requires all "major decisions," including plurilateral agreements involving only a subset of states, to be met with no formal objections by any member in order to pass.³⁹⁰

383. See OEC, *supra* note 112; HILLMAN & SACKS, *supra* note 232, at 42.

384. See *supra* notes 127–32 and accompanying text.

385. See generally EU Proposal, *supra* note 175; Pike, *supra* note 107 (describing Canada and Mexico's bans on forced labor).

386. See Millward, *supra* note 21; Pike, *supra* note 107 (describing Canada and Mexico's bans on forced labor); Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2021 (Cth) sch 1 item 2 (Austl.) (describing a ban Australia proposed on forced labor that lapsed); *German Supply Chain Due Diligence Act (SCDDA) Explained*, IBM (Oct. 26, 2022), <https://www.ibm.com/blog/german-supply-chain-due-diligence-act-scdda-explained/> [<https://perma.cc/8M2B-UKU6>] (describing Germany's supply chain due diligence legislation); Heidi Solheim Nordbeck & Catharina Torp, *Norwegian Transparency Act*, DNV, <https://www.dnv.com/services/norwegian-transparency-act-245751> [<https://perma.cc/R8PG-AXTB>] (last visited May 15, 2024) (explaining Norway's supply chain transparency legislation).

387. See *supra* notes 127–32 and accompanying text.

388. PIETROPAOLI ET AL., *supra* note 130, at 1 ("The drivers of forced labour in supply chains are complex and any single regulatory intervention, such as an import ban, is unlikely on its own to be effective at reducing forced labour in a sustainable way, meaning import bans should be carefully considered alongside other regulatory and non-regulatory levers.")

389. See Zonaid, *supra* note 271, at 291–92; see also Ronald C. Brown, *A New Leader in Asian Free Trade Agreements? Chinese Style Global Trade: New Rules, No Labor Protections*, 35 UCLA PAC. BASIN L.J. 1, 6 (2017) (describing the connection between trade agreements and global labor standards).

390. See WORLD TRADE ORG., *supra* note 366. Consensus does not necessarily require unanimity—as long as no member objects, the consensus requirement is met. Americo B. Zampetti, Patrick Low &

When new trade agreements are negotiated, countries can include terms in these agreements that explicitly protect fundamental human rights, including labor rights.³⁹¹

The United States and the EU both use trade agreements to address fair labor standards; however, these agreements take slightly different forms. The United States has often used bilateral FTAs as a vehicle to include its idea of fair labor and requires partners to adopt these standards.³⁹² The EU typically uses multilateral trade agreements as opposed to the United States' approach of bilateral trade agreements to seek cooperation with Asia.³⁹³ While bilateral trade agreements would allow the United States and EU more negotiating power to ensure labor provisions are incorporated into agreements, countries concerned about labor provisions being a guise for protectionism would be more likely to sign on to multilateral agreements where their bargaining power is greater and they can better protect their interests.³⁹⁴ Therefore, multilateral trade agreements that address core labor standards already incorporated in various human rights treaties would have a higher likelihood of countries signing on to agreements with labor clauses incorporated.

Commonly, the EU and United States use "WTO-plus" agreements that give countries WTO concessions and condition economic incentives on increased human rights compliance, including in the labor sphere.³⁹⁵ This mechanism allows countries to set their own human rights standards rather than forcing the WTO to decide whose definition of human rights it should adhere to.³⁹⁶ However, it also allows for countries to completely neglect human rights standards in their FTAs, leaving those who are most vulnerable unprotected.³⁹⁷ The right to non-compulsory, compensated labor is so fundamental that countries should not be able to essentially contract it away.

Many countries currently do not include labor clauses in their FTAs.³⁹⁸ For example, the Regional Comprehensive Economic Partnership (RCEP), the world's largest free trade pact, has no labor chapter.³⁹⁹ The lack of human rights measures included in negotiations of treaties is a common theme among regional trade agree-

Petros C. Mavroidis, *Consensus Decision-Making and Legislative Inertia at the WTO: Can International Law Help?*, 56 J. WORLD TRADE 1, 4 (2022).

391. See Diane A. Desierto, *The Human Costs of Exiting and Revising Trade and Investment Agreements: Local Community Interests, Human Rights, and Global Politics*, 32 EMORY INT'L L. REV. 1039, 1045 (2018).

392. Chow, *supra* note 237, at 711; see Brown, *supra* note 389, at 6.

393. Petersmann, *supra* note 257, at 1, 5–6.

394. See Kimberly Amadeo, *Pros and Cons of Multilateral Trade Agreements*, BALANCE (Apr. 21, 2022), <https://www.thebalancemoney.com/multilateral-trade-agreements-pros-cons-and-examples-3305949> [<https://perma.cc/ZWS3-26DH>]; Lewis, *supra* note 309, at 4–5.

395. Zonaid, *supra* note 271, at 292.

396. *Id.* at 293.

397. See Chow, *supra* note 237, at 715–16.

398. See Brown, *supra* note 389, at 14.

399. See Steve Charnovitz, *Using Trade Strategies to Combat Forced Labor*, INT'L ECON. L. & POL'Y BLOG (Aug. 10, 2022), <https://ielp.worldtradelaw.net/2022/08/using-trade-strategies-to-combat-forced-labor.html> [<https://perma.cc/9TBM-DL5L>]; Cohen, *supra* note 282, at 543, 573; Desierto, *supra* note 391, at 1055.

ments contemplated by countries in Asia-Pacific, Africa, and Latin America.⁴⁰⁰ China's trade agreements also often include either no labor provisions at all or only contain provisions in Memoranda of Understanding (MoUs) lacking enforcement mechanisms, meaning violations of labor provisions in MoUs have no trade repercussions for China or the other signatory if they are not followed.⁴⁰¹ China may move to prioritizing its own multilateral and bilateral agreements as an alternative to the WTO, particularly as the Appellate Body remains suspended and as the push for including labor protections grows.⁴⁰² Trade agreements such as the RCEP that lack protection for labor rights can be seen as appealing to some signatories, such as developing countries who shy away from binding labor standards.⁴⁰³ In these circumstances, trade agreements may actually do more harm to labor rights in the absence of an overarching system like the WTO to ensure these protections.

A provision protecting worker's rights must have teeth to make an impact on eradicating forced labor. For example, the failed Trans-Pacific Partnership (TPP), while seemingly innovative in extending restrictions to inputs produced by forced labor in non-TPP countries, included an obligation only to "discourage" rather than prohibit imports of goods made with forced labor.⁴⁰⁴ Additionally, United States and EU trade agreements generally lack enforcement mechanisms.⁴⁰⁵ If trade agreements are to be a viable means of combating human rights abuses, they must not be vague and must instead explicitly state how countries can abide by human rights provisions.⁴⁰⁶ This can be done by including a non-exhaustive list of human rights treaties that trade partners must fulfill their obligations to if they are a signatory under the agreement.⁴⁰⁷ Upholding these rights should be an essential element of consent of the parties, which allows for unilateral action such as suspension of the FTA in case of a breach.⁴⁰⁸ An example of strong language from the USMCA is that the labor violation need not be proven by a competitive disadvantage, but more broadly must simply be shown to "affect[] trade" and be systemic, which allows for greater worker protection.⁴⁰⁹ Additionally, the rapid response mechanism of the USMCA, an expedited dispute settlement mechanism for workers' rights, allows for remedies to be imposed on specific facilities using

400. See Desierto, *supra* note 391, at 1055; Brown, *supra* note 389, at 12.

401. Brown, *supra* note 389, at 14–15.

402. See Petersmann, *supra* note 257, at 11–12.

403. See Cohen, *supra* note 282, at 568.

404. See Alvaro Santos, *The Lessons of TPP and the Future of Labor Chapters in Trade Agreements* 13–14 (Georgetown Univ. L. Ctr., Working Paper No. 3, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3245894 [<https://perma.cc/6EYP-ZGZW>]; Cohen, *supra* note 282, at 550–52.

405. Lewis, *supra* note 309, at 5.

406. See Cohen, *supra* note 282, at 555.

407. See Cismas, *supra* note 287, at 10.

408. See *id.* at 9–10; Shaffer, *supra* note 321, at 661–62.

409. See USMCA, *supra* note 380, art. 23.5; Alvaro Santos, *The New Frontier for Labor in Trade Agreements*, in *WORLD TRADE AND INVESTMENT LAW REIMAGINED: A PROGRESSIVE AGENDA FOR AN INCLUSIVE GLOBALIZATION* 215, 222 (Alvaro Santos et al. eds., 2019).

forced labor, such as suspension of preferential tariff treatment in response to labor violations, strengthening enforceability.⁴¹⁰

Including labor standards in trade agreements would strengthen adherence to the ILO by allowing countries to revoke trade concessions in the event of a breach of these provisions, which in turn would provide more strength to the organization given its current lack of enforcement mechanisms.⁴¹¹ The United States will also gain more credibility in enforcing ILO standards in its FTAs if it ratifies core provisions, as the lack of ratification of core international human rights treaties perpetuates the critique of American exceptionalism in international law, highlighting that the United States negotiates treaties and enforces international legal standards for other countries but refuses to ratify these same provisions itself.⁴¹² In developing countries where there may be a lack of political desire to enforce labor standards and skepticism about the protectionist intentions behind such trade agreements, there may be a gravitation towards trade agreements that lack these provisions.⁴¹³ However, because many of the developing countries worried about protectionism are also signatories to international human rights treaties obligating them to uphold core standards like the prohibition against forced labor, including these core provisions can provide a middle ground that assuages fears of protectionism while bolstering protections for rights these countries have already signed on to protect.⁴¹⁴ Given a greater acceptance of social clauses between developed and developing countries in trade agreements as well as “WTO-plus” clauses that provide greater economic opportunity, including labor clauses in trade agreements is a feasible way to work towards eliminating instances of forced labor among trading partners.⁴¹⁵

A plurilateral agreement between WTO members to protect workers’ rights is an alternative to FTAs. Bilateral agreements can be less favorable for developing countries because their unequal bargaining power may lead to greater concessions, but plurilateral multiparty negotiations would resolve this disparity.⁴¹⁶ An open plurilateral agreement would be the best of both worlds—it would only bind

410. USMCA, *supra* note 380, art. 31.19; *Chapter 31 Annex A; Facility-Specific Rapid-Response Labor Mechanism*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism> [<https://perma.cc/8NFL-DSAS>] (last visited May 15, 2024).

411. See Artuso & McLarney, *supra* note 265, at 6; BRANDON J. MURRILL, CONG. RSCH. SERV., R44630, U.S. WITHDRAWAL FROM FREE TRADE AGREEMENTS: FREQUENTLY ASKED LEGAL QUESTIONS 13 (2016), <https://sgp.fas.org/crs/misc/R44630.pdf> [<https://perma.cc/WL9C-5HZ2>] (describing actions a country can take when a party to a trade agreement breaches the agreement); Burtless, *supra* note 263.

412. See Cohen, *supra* note 282, at 551; Yu & Zia-ud-Din, *supra* note 283, at 43; Petersmann, *supra* note 257, at 5 (discussing US non-participation in multilateral human rights treaties); Anu Bradford & Eric A. Posner, *Universal Exceptionalism in International Law*, 52 HARV. INT’L L.J. 3, 8–10, 35–44 (2011).

413. See Artuso & McLarney, *supra* note 265, at 6.

414. See *supra* notes 331–32 and accompanying text (listing relevant human rights treaties and their signatories).

415. See Artuso & McLarney, *supra* note 265, at 7.

416. See Lewis, *supra* note 309, at 12–13.

members who accepted its terms while applying on an MFN basis,⁴¹⁷ allowing non-participants to benefit at zero cost and assume no obligations.⁴¹⁸ A plurilateral agreement would incorporate “WTO-plus” rules into the WTO framework, halting further fragmentation of the trading system and allowing access to WTO dispute settlement for these issues.⁴¹⁹ If a coalition of the willing engaged in plurilateral negotiations, developing countries who may be hesitant about labor provisions could be given differential treatment like longer phase-in periods, as is typical with other WTO provisions.⁴²⁰ Limiting the plurilateral agreement to core labor standards could also help quell protectionist fears, since these standards are already implicitly protected in the WTO framework.⁴²¹ However, solely relying on trade agreements as the way forward for protecting human rights is insufficient in that the worst human rights offenders largely do not participate in the WTO or FTAs.⁴²² Therefore, other measures should be considered in addition to trade agreements, such as those by private actors.

C. CORPORATE SOCIAL RESPONSIBILITY AS AN INTEGRAL MECHANISM
FOR COMBATING FORCED LABOR

With the rise of corporate social responsibility initiatives,⁴²³ companies should look to their supply chains for evidence of forced labor not only to avoid violation of the law, but also to avoid negative consumer reactions and increase transparency. Companies should seek to avoid the “race to the bottom” of demanding relaxed labor standards in exchange for investing in a country, which only perpetuates unequal bargaining power and instances of forced labor.⁴²⁴ A key action companies can take is conducting proper due diligence in their supply chains through independent auditors and inspections.⁴²⁵ Supply chain mapping is crucial for determining if goods are implicated with forced labor, as the poverty alleviation scheme’s broad reach across China implicates many industries at various points in the production process.⁴²⁶ In places such as Xinjiang where independent

417. Plurilateral agreements that apply on an MFN basis are only binding among signatories but extend the benefits of the treaty to all WTO members under the MFN principle, allowing all countries, even those that are not parties to the agreement, to not be disadvantaged by the existence of the agreement if they chose not to sign on. See Rudolf Adlung & Hamid Mamdouh, *Plurilateral Trade Agreements: An Escape Route for the WTO?* 8, 10 (World Trade Org. Econ. Rsch. & Stat. Div. Working Paper No. ERSD-2017-03, 2017). By not signing on, these countries do not have to abide by the terms of the treaty, but trade concessions apply to them, meaning they are not disadvantaged if they choose to not sign on or instead assume obligations at a later stage. See *id.* at 10.

418. See *id.* at 5, 9, 22–23.

419. See *id.* at 6, 22–23.

420. See Lewis, *supra* note 309, at 14–16.

421. See *supra* Sections III.A–B.

422. See Lewis, *supra* note 309, at 8–11.

423. See Christian Vidal-León, *Corporate Social Responsibility, Human Rights, and the World Trade Organization*, 16 J. INT’L ECON. L. 893, 894 (2013).

424. See Yu & Zia-ud-Din, *supra* note 283, at 34.

425. See XU ET AL., *supra* note 11, at 29.

426. See *id.*; FLETF STRATEGY, *supra* note 73, at 45–46; Ngosong Fonkem, *Human Rights & U.S. Foreign Policy: A Tough Approach to Trade Issues*, WIS. LAW., July–Aug. 2021, at 24, 29; *Supply Chain Mapping, The First Step to Achieving Control*, ID FACTORY, <https://theidfactory.com/blog/>

auditing may be next to impossible given the pervasiveness of the program or factories that use forced labor but refuse to address their involvement, it would be appropriate for companies to terminate those supplier relationships.⁴²⁷ Companies can look to expand to suppliers or factories outside of China while remaining conscious to avoid locations that may use forced labor or raw materials produced in Xinjiang.⁴²⁸ The Securities and Exchange Commission's guidance on China-specific disclosure obligations for public companies may also cause an increase in company compliance, as companies may be forced to report ties to Xinjiang and could face backlash from customers and investors.⁴²⁹

In addition to utilizing these crucial diligence measures, compliance officers must implement processes to gain a strong understanding of how forced labor regimes are structured in the various countries in which they operate or from which they source. For example, state-run forced labor programs operate very differently than forced labor implemented by entities in the private sector and are one of the most difficult forms of modern slavery to address, as it is the government spearheading these programs.⁴³⁰ Therefore, the supply chain restructuring and diligence required differs for involvement with a single supplier using forced labor versus a supplier who operates in a country with a state-run forced labor program touching multiple factories, regions, and industries. Gaining an understanding of how forced labor exists in the countries of partners along the entire supply chain will allow diligence officers to understand how measures to increase compliance may be circumvented and to determine the effectiveness of diligence mechanisms in truly eliminating forced labor from their supply chains. In the case of the UFLPA, understanding the unique challenges of compliance with the Act given the pervasiveness of forced labor throughout China, mechanisms of evasion, challenges of detection, and role of third countries in the shipment of component parts will allow diligence officers to truly understand the challenges of supply chain

fashion-supply-chain-mapping-tips-and-tricks/ [https://perma.cc/B7G5-Q83R] (last visited May 26, 2024) (“The only way for companies to ensure ‘clean’ supply chains is by mapping them down the raw materials using auditable, verifiable data.”); *UFLPA Compliance: How One Volkswagen Part Led to Thousands of Impounded Luxury Cars*, RESILINC (Feb 27, 2024), <https://www.resilinc.com/blog/uflpa-compliance-volkswagen-china-part/> [https://perma.cc/6J4S-5JD4] (citing a lack of supply chain visibility as the reason thousands of Volkswagen vehicles were impounded by CBP).

427. See XU ET AL., *supra* note 11, at 29; FLETF STRATEGY, *supra* note 73, at 44; Swanson, *supra* note 101; Urbina, *supra* note 97; Zenz, *supra* note 108, at 16 (noting that in-person supply chain auditing is not feasible because the state punishes those who speak out).

428. See MURPHY & ELIMÁ, *supra* note 34, at 46–47; Fonkem, *supra* note 426, at 29.

429. *Sample Letter to Companies Regarding China-Specific Disclosures*, SEC (July 17, 2023), https://www.sec.gov/corpfin/sample-letter-companies-regarding-china-specific-disclosures#_edn1 [https://perma.cc/UL2U-PM3R] (noting that companies may need to make disclosures on any material impacts caused by the UFLPA, including “material compliance risks” and “material supply chain disruptions” from operating in or working with counterparties in Xinjiang); see XU ET AL., *supra* note 11, at 29.

430. Madeleine Schulz, *Modern Slavery Is on the Rise. Fashion's Role Remains Steady*, VOGUE BUS. (May 25, 2023), <https://www.voguebusiness.com/sustainability/modern-slavery-is-on-the-rise-fashion-remains-steady>; INT'L LAB. ORG., *supra* note 199, at 14, 25, 36–37, 39–43 (describing the differences between forced labor in the private economy and state-imposed forced labor programs).

mapping in order to make the necessary changes to comply with the law.⁴³¹ For example, if a compliance officer understands how the poverty alleviation scheme works to transport Uyghurs to other regions of China against their will, they can better understand that they need to look to suppliers in regions of China beyond Xinjiang to ensure that these suppliers are not engaging in forced labor.⁴³² Without this understanding, companies may find they are not in compliance with the UFLPA, even if they are not sourcing from the Xinjiang region. Therefore, to ensure compliance with the UFLPA, compliance officers should strive to understand how the forced labor regime against the Uyghurs operates and changes over time.

Some companies have spoken out publicly regarding forced labor in Xinjiang, either halting purchases from the region or confirming suppliers in China were not involved in forced labor.⁴³³ One Hong Kong-headquartered yarn company shifted production out of Xinjiang to Vietnam due to sanctions.⁴³⁴ Patagonia also shifted production out of the Xinjiang region, and Gap has prohibited suppliers from sourcing products or components of products from the region, directly or indirectly.⁴³⁵ This illustrates some companies' increased willingness to adapt their business models to account for human rights abuses in their supply chains.

Consumers should demand that companies not just shift production from the region for their U.S. imports, but also eliminate suppliers implicated by forced labor from their supply chains completely. Doing so will help prevent the shift of these goods made with forced labor to countries that don't have similar import bans. Executive-level buy-in is also crucial to the success of eliminating forced labor from a company's supply chain, and company leadership should make this a priority.⁴³⁶ Given the widely available public information regarding the forced labor schemes tied to Xinjiang, the UFLPA Entity List explicitly naming companies tied to forced labor in the region, and importer guidance from the Forced Labor Enforcement Task Force (FLETF) on conducting diligence, companies are on notice about the pervasiveness of forced labor in China and provided with mechanisms to work to eliminate these companies from their supply chains.⁴³⁷ In the words of the U.S. Customs and Border Protection (CBP), "Companies can no longer claim ignorance as an excuse."⁴³⁸ Without corporate action, government trade restrictions have no teeth.

431. See *supra* Introduction & Sections 1.B–C.

432. See *supra* Introduction.

433. Dou et al., *supra* note 127.

434. *Id.*

435. *Id.*

436. See Doyle, *supra* note 127 ("There are certainly companies that have taken [the UFLPA] seriously Of those that have, the one common denominator . . . is some level of leadership or executive level buy-in." (alteration in original)).

437. See generally, e.g., ZENZ, *supra* note 3; AMNESTY INT'L, *supra* note 2; OFF. OF THE HIGH COMM'R, *supra* note 1; FLETF STRATEGY, *supra* note 73.

438. Dou et al., *supra* note 127; see HUM. RTS. WATCH, *supra* note 223.

CONCLUSION

While trade measures are not the only way to combat forced labor,⁴³⁹ they are a key part of the solution. The UFLPA's specific effects are yet to be fully known, but it cannot be implemented in isolation. The UFLPA may cause supply chain disruption, but it will likely not be strong enough to push China toward ending the persecution of the Uyghurs considering China's trading partners through the BRI and methods of circumventing the Act. In light of the current suspension of the Appellate Body and Ambassador Tai's inclusion of combating forced labor in global supply chains as a priority, inclusion of the prohibition on forced labor and other core labor standards into the framework of the WTO—through a plurilateral agreement or recognizing human rights through the public morals exception—should be one of the U.S. Trade Representative's goals and on the agenda for reforming the WTO in its current state.⁴⁴⁰

Parallel import restrictions on goods made with forced labor, and the inclusion of labor clauses in bilateral and regional trade agreements with enforcement through unilateral action in addition to dispute settlement, would strengthen protection of core labor standards. One of the most impactful ways to combat forced labor is for companies operating in regions where forced labor is prevalent, like Xinjiang and other regions of China, to eliminate these suppliers from their supply chains and seek opportunities with trading partners who do not implement forced labor regimes. Low-cost labor should not come at the expense of forcing people to work against their will, and companies should be willing to shoulder that burden, particularly considering the rise of corporate social responsibility and consumer interest in ethical supply chains. While the UFLPA may have flaws, the Act, coupled with similar trade measures from other countries, inter-governmental cooperation, and consumers demanding corporate accountability for supply chains, may be a start to putting pressure on China to end a program designed to promote the growth of China's economy at the expense of the cultural erasure of the Uyghur people.⁴⁴¹

439. See Doyle, *supra* note 127 (highlighting that the motivations behind Uyghur forced labor regimes are not purely economic, but rather primarily political, complicating potential solutions to the problem); Zenz, *supra* note 14, at 651–53 (noting that economic and political goals coexist related to the labor transfer scheme).

440. Press Release, Off. of the U.S. Trade Representative, *supra* note 340.

441. Millward, *supra* note 21 (“If the world keeps up the economic and rhetorical pressure, it can convince China to end its efforts to repress and assimilate the non-Han peoples of Xinjiang.”).