



Testimony of Nury Turkel

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House Committee on Ways and Means

***“Trade in America: Securing Supply Chains and Protecting the
American Worker - Staten Island”***

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Good morning, Chairman Smith, Ranking Member Neal, and honorable members of the committee. Thank you for the opportunity to testify at this crucial hearing on behalf of the U.S. Commission on International Religious Freedom (“USCIRF”). I am honored to be here with you today to testify on key red flags in our trade relationship with the People’s Republic of China.

USCIRF is statutorily mandated under the International Religious Freedom Act of 1998 to monitor religious freedom conditions in countries including China, Russia, Iran, India, Saudi Arabia, and Nigeria and make policy recommendations to the President, Secretary of State, and Congress. USCIRF has been monitoring and reporting on the Chinese government’s human rights abuses and religious persecution in the Uyghur region. Since 1999, as USCIRF recommended, secretaries of State have designated China as a Country of Particular Country (“CPC”) based on the Chinese government’s egregious religious freedom violations against ethnoreligious groups, including Uyghur Muslims, Tibetan Buddhists, and Chinese Christians.

My testimony will touch on the following key themes and policy recommendations.

- China’s state-sponsored forced labor as a tool of genocide
- The moral imperative to act on forced labor imports
- Modern-day state-imposed slave labor in China, the United States’ #1 source of imports

- Ensuring that US capital does not flow to bad-actor Chinese companies
- The private sector response to the Uyghur Forced Labor Prevention Act (“UFLPA”)
- Delays in implementation of Congressional mandate for the “Entity List,” a key mechanism of the UFLPA
- Flawed “stakeholder engagement” mechanisms on US trade enforcement
- *De minimus* entries pose a serious threat to the enforcement of U.S. trade rules
- The FCPA should be a model for new legislation for business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes

China’s state-sponsored forced labor as a tool of genocide

USCIRF has been closely monitoring the Uyghur situation in China, including the mass internment of Uyghur religious and social leaders in modern-day concentration camps and forced-labor facilities, pervasive digital surveillance, and transnational repression. We recommended for the US government take strong legislative and policy responses to stop the ongoing Uyghur genocide. We have held hearings on the issues involving Uyghurs, including forced labor practices. We supported and advocated for the passage of the UFLPA. Seven out of nine USCIRF commissioners have been sanctioned by China, which appears to be retaliation for our work monitoring, reporting, and advocating strong policy responses to the Uyghur genocide, in line with our Congressional mandate under the International Religious Freedom Act of 1998.

Religious persecution and modern-day slavery in China are closely linked. Human rights abuses can make people more vulnerable to slavery, which can then be used to suppress religious freedom. In China, the government is enslaving Uyghurs and other Turkic Muslims. This is part of a larger campaign of religious persecution and political repression.

In 2019, as shown in leaked government documents, the Xinjiang government actually supercharged its policy to put all Uyghurs in mandatory work placements. Instead of requiring that every household must have at least one member at a government-assigned place of work, the new policy was that *all* Uyghurs of working age must be in a government-assigned place of work.

To be clear: It’s state policy that all Uyghurs must be in forced labor. The government uses forced-labor placements to control the Uyghurs from birth to death.

The moral imperative to act on forced labor imports

DHS Under Secretary Rob Silvers has likened slave labor to cancer on our values, and I could not agree more. But in many ways, enforcing the law to cut out this cancer has not been undertaken with the urgency that such a malign presence should require.

The Uyghur genocide is entering its seventh year. And as this cancer continues to grow and even find justification from the business community, “Business as usual” has reached a turning point.

American consumers are becoming increasingly aware of the ways in which our proclaimed national values are not lining up with American corporate interests abroad. Thanks to the passage of the UFLPA, in spite of the heavy business lobbying activities, papering over forced labor in supply chains is no longer an option.

Ignoring modern-day slavery is morally unacceptable. It compromises the soul of our nation and sets a malign precedent globally. It is no longer pragmatic for companies to ignore the true character of the government systems in place in China that are utilizing such practices to profit. It is incumbent on our government to enforce the law, not as a box-checking exercise. While Nike references “Stop Asian Hate” in their Twitter biography, they have refused to address their company’s use of forced labor from people in China. The hypocrisy is sickening.

I was born in a re-education camp, where my mother was sent at the height of China’s infamous Cultural Revolution. My father had been sent to a separate forced labor camp. After Mao’s death and the release of millions from labor camps, I grew up witnessing Uyghur villagers forced to build irrigation systems and pick cotton. Uyghur forced labor is not a new problem. But as re-education camps and forced labor have returned to an industrialized, massive scale, the magnitude of this morally abhorrent practice mandates a response that is backed by political will.

The forced labor assignments are used to break up families and distribute Uyghurs thousands of miles away from home as prisoners of the state, to make products for domestic and international markets.

Uyghurs are suffering under a state plan targeting an ethnoreligious group for industrial forced labor on a scale not seen since the Holocaust. The forced-labor-placement policy is a core tool of the ongoing genocide – a tool for keeping people under surveillance, ripping families apart and separating parents from their children, and ensuring that people of marriageable age cannot form their own families. Forced labor is driving the near-complete erasure of the Uyghur people within a generation. This practice is at the profit-making center of atrocity crimes.

Non-governmental organizations and human rights groups have been sounding the alarm for years. The Uyghur Human Rights Project, alongside others, had done exemplary reporting and advocacy alongside outstanding trade-union and civil society partners in the Coalition to End Forced Labour in the Uyghur Region.

The UFLPA is a response to an extraordinary, horrific situation that should be unimaginable in the 21st Century.

The reputational risk for business is real. The regulatory enforcement requirements are high for a reason.

I am sure you can imagine the psychological impact that even I, as a proud American, have wrestled with on a daily basis when constantly confronted while shopping with top brands which claimed to have conducted numerous social audits on all its China suppliers while participating in the Chinese government's forced-labor scheme for Uyghurs. Knowing that my own dollars might be spent on goods produced with the slavery of my own friends and people is a sick, cruel reality.

This problem is not going to disappear or even be minimized. Effective enforcement from the relevant authorities will remain vital to our own nation's economic interests, particularly as the environment in China becomes more and more hostile to foreign businesses and as the ever-evolving means of concealing the origin of goods will no doubt be ongoing. Forced labor transfers within China and beyond will likewise necessitate closer scrutiny. And for the American worker, too, the unfair business practices imposed via competing with a country engaged in forced labor create an environment in which competition is truly impossible.

Let us be clear: **forced labor is the profit-making dimension of an ongoing genocide.** Business complicity must be taken completely off the table. The current laws must be fully enforced and even amended to ensure that the American people are not unwittingly complicit in powering a genocide with their dollars.

Modern-day state-imposed slave labor in China, the United States' #1 source of imports

Our government and Congress, in particular, have shown tremendous dedication and leadership by advancing ethical business practices through the passage of the UFLPA. Multiple Committees and Members are monitoring UFLPA implementation and planning oversight hearings in the next six weeks, at the one-year mark since the law came into effect on June 21, 2022.

I have a number of concerns and recommendations that I urge the Committee to consider in conjunction with those oversight hearings.

This Committee must keep front of mind that **China is America's top source of imports,¹ and it is China that is using forced labor as a tool of genocide.** At present, law firms are continuing to advertise their services for businesses seeking to understand and comply with the law. Companies are still seeking the services of supply-chain tracing services. Industry requests have consistently emphasized reducing the burden of compliance.² (See comments on COAC below). In short, many corporations have acted as though they have not been granted adequate time to comply. This genocide has been underway for nearly seven years. What more time is needed?

¹ United Nations COMTRADE database on international trade, US imports by country, 2022.

<https://tradingeconomics.com/united-states/imports-by-country>

² Commercial Customs Operations Advisory Committee (COAC), Intelligent Enforcement Subcommittee Forced Labor Recommendations, June 29, 2022, at

<https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/2022%2006%2029%2016%20term%20COAC%20June%2029%202022%20%20Recommendations%20Numbered%20537%20-581%20%20for%20posting.pdf>

A few CBP actions should show that much more enforcement is needed, not less. In the FY 2023 budget, Congress appropriated an additional \$70 million dedicated to UFLPA enforcement. A commensurate amount must be continued in FY2024 and future budgets. In addition, I urge Congress to appropriate adequate funding to ensure that slow decision-making by the Forced Labor Enforcement Task Force (FLETF), which must coordinate legal and enforcement decisions by seven separate agencies, does not impede robust enforcement of the law.

In 2020, U.S. Customs and Border Protection at the Port of Newark seized³ a 13-ton shipment of human hair products that were believed to have come from Uyghur prisoners and their forced labor. Uyghur, Uzbek, and Kazakh women who are camp survivors have testified that officials cut off their hair when they were taken into the Xinjiang concentration camps. The visceral imagery this should conjure in our minds is an accurate likening to historical atrocities. [Photo credit: CBP]



In late 2022, at the ports of Newark, Los Angeles, and Oakland, CBP detained⁴ shipments of red dates that were openly labeled as the product of the largest state-imposed forced-labor agency in China, the Xinjiang Production and Construction Corps (XPCC). This action was taken only after a Uyghur-American research nonprofit sent a report⁵ to CBP in August 2022, documenting that XPCC products were showing up on U.S. grocery shelves even after the UFLPA took effect in June. [Photo credit: CBP]



If UHRP, a small nonprofit I co-founded, can find evidence of such illegal imports, how many other products are yet to be uncovered?

³ ABC News, “After 13 tons of human hair products seized, US warns about importing from Xinjiang, China. Authorities in New York seized about \$800,000 worth imported goods from China,” July 4, 2022. <https://abcnews.go.com/International/us-issues-warning-companies-importing-xinjiang-china/story?id=71559507>

⁴ CBP, “Implementing the Uyghur Forced Labor Prevention Act: A Challenge Worth the Effort,” January 2023, <https://www.cbp.gov/frontline/implementing-uyghur-forced-labor-prevention-act>

⁵ Nuzigum Setwaldi, “[New UHRP Research Finds American Grocery Stores Selling Sanctioned Forced Labor Products](#),” August 28, 2022, Uyghur Human Rights Project.

Of equal concern is that at the time of the CBP detention, the Xinjiang Production and Construction Corps had already been under U.S. human rights sanctions for two years. Under Global Magnitsky sanctions imposed in July 2020, the XPCC was under a complete asset freeze.⁶ This asset freeze has not been in place for nearly three years, and it extends to any foreign person who has “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to, or in support of”⁷ the XPCC as a Magnitsky-sanctioned entity. To my knowledge, the Department of the Treasury, which is responsible for enforcing Magnitsky sanctions in consultation with the Secretary of State, has taken no action to impose penalties for the US persons – that is, the importers who have aided and abetted the importation of XPCC goods in violation of the OFAC designation that should block all XPCC-related transactions on U.S. soil.

The private sector response to the UFLPA

I commend those private-sector businesses who have taken steps to comply with the UFLPA and who attended, for example, the first-ever CBP Technical Expo on Forced Labor⁸ on March 14 and 15, 2023, where I was privileged to deliver a keynote address.

However, I remain concerned that some importers and some corporations are acting as though they need to be granted adequate time to comply. Hearings on the UFLPA began three years ago, in March 2020.⁹ The first “Xinjiang Business Supply Chain Advisory” was issued by four cabinet departments in July 2020,¹⁰ and re-issued in July 2021¹¹ by six cabinet departments, in updated form, at the urging of human rights groups.

I am certain that my own anger over the industry associations and retailers’ response is beyond justified. Forced labor is a sterile-sounding term. Let me be clear: this is modern-day slavery, carried out as part of an ongoing genocide.

Delays in several key implementation provisions, and the high risk of corporate misuse of the *de minimis* imports clause, represent ongoing attempts by companies to whitewash the reality: that one of America’s largest trading partners is targeting an ethno-religious group for permanent control through the instrument of forced labor.

⁶ “Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order,” July 31, 2020. See also <https://uhrp.org/sanctions/>

⁷ Executive Order 13818, December 20, 2017. [Federal Register :: Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption](https://www.federalregister.gov/documents/2017/12/20/2017-26346/blocking-the-property-of-persons-involved-in-serious-human-rights-abuse-or-corruption)

⁸ See <https://www.dvidshub.net/tags/video/cbp-forced-labor-technical-expo/page/1> and <https://www.cbp.gov/trade/forced-labor-technical-expo-2023/bios>

⁹ Congressional-Executive Commission on China (CECC), March 11, 2020.

<https://www.cecc.gov/events/roundtables/global-supply-chains-forced-labor-and-the-xinjiang-uyghur-autonomous-region>

¹⁰ Departments of the Treasury, Commerce, Homeland Security and State, “Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses in Xinjiang,” July 1, 2020. <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jul/Xinjiang-Supply-Chain-Business-Advisory.pdf>

¹¹ Departments of State, Treasury, Commerce, Homeland Security, Labor, and USTR, “Xinjiang Supply Chain Business Advisory,” July 13, 2021, at <https://www.dhs.gov/publication/xinjiang-supply-chain-business-advisory>

Delays in implementation of Congressional mandate for the “Entity List,” a key mechanism of the UFLPA

As we speak, the UFLPA’s “Entity List” of Chinese companies implementing the Chinese government’s state-imposed forced labor atrocities still stands at 20 unique entities,¹² untouched since the law came into effect nearly a year ago. All the named companies were already on other US human-rights sanctions lists from 2019 through 2021. Extensive solid research has been published since then. So, it is deeply disappointing that the USG government – with the research capacities of the seven different agencies that are part of the FLETF Task Force – has not been able to come up with even a single new entity to add to the list.

I associate myself with the Congressional testimony of Dr. Laura Murphy last month when she stated: **“It is hard to comprehend why still not even a single addition has been made to these lists, especially in light of the evidence provided by civil society organizations to FLETF that warrants the addition of potentially thousands more entities.”** As her testimony states, her own research team has provided a list of 55,000 companies operating in the Uyghur Region – that is, a region where the government used forced-labor placement as a direct tool of genocide.

Further, Dr. Murphy testified that her own published investigations alone have identified “at least 150 specific companies in the Uyghur Region and elsewhere in China,” for which there is “significant evidence of participation in state-sponsored labor transfer programs that are tantamount to forced labor.”¹³

In addition, FLETF has been slow to announce additional “priority sectors” – representing a high risk of violations of the UFLPA and Section 307 of the Tariff Act. It is encouraging that CBP is already scrutinizing additional industries beyond those originally identified in the Enforcement Strategy, such as aluminum.¹⁴ However, additional sectors are clearly at risk, and more such sectors should be announced. In July 2021, the USG government identified¹⁵ 20 “high-risk” sectors for Uyghur forced labor imports to the US:

¹² See: [Table of UFLPA Entity List unique vs total as posted 21 June 2022](#), provided by the Uyghur Human Rights Project.

¹³ Testimony of Professor Laura T. Murphy, Sheffield Hallam University Helena Kennedy Centre for International Justice, Hearing on “Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains,” Congressional-Executive Committee on China, April 18, 2023. <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Murphy%20--%20CECC%20UFLPA%20hearing%20FINAL%20--%20For%20Posting.pdf>

¹⁴ Miller & Chevalier, “Trade Compliance Flash: Prepare for CBP’s UFLPA Enforcement Against Aluminum Products,” January 13, 2023, at <https://www.millerchevalier.com/publication/trade-compliance-flash-prepare-cbps-uflpa-enforcement-against-aluminum-products>

¹⁵ See Annex 2, Departments of State, Treasury, Commerce, Homeland Security, Labor, and USTR, “Xinjiang Supply Chain Business Advisory,” July 13, 2021, at <https://www.dhs.gov/publication/xinjiang-supply-chain-business-advisory>

<u>Industry</u>
Agriculture (including such products as raw cotton, hami melons, korla pears, tomato products, and garlic)
Cell Phones
Cleaning Supplies
Construction
Cotton, Cotton Yarn, Cotton Fabric, Ginning, Spinning Mills, and Cotton Products
Electronics Assembly
Extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc)
Fake hair and human hair wigs, hair accessories
Food processing factories
Footwear
Gloves
Hospitality Services
Metallurgical grade silicon
Noodles
Printing Products
Renewable Energy (polysilicon, ingots, wafers, crystalline silicon solar cells, crystalline silicon solar photovoltaic modules)
Stevia
Sugar
Textiles (including such products as apparel, bedding, carpets, wool, viscose)
Toys

Flawed “stakeholder engagement” mechanisms on US trade enforcement

The Ways & Means Committee should examine the operations of the Commercial Customs Operations Advisory Committee (COAC).¹⁶ The membership consists of 100% private-sector representatives.¹⁷ It has no trade union or other worker representation and no members of nonprofits or other groups with expertise in Section 307 and other provisions of the US trade framework that protect worker rights, both of American workers and victims of human trafficking and forced labor around the world. I submit that the COAC committee is heavily weighted toward importers’ interests and not the national interest. I urge the Ways and Means Committee to disband this Advisory Committee if it is not reformed to remedy this fatal flaw.

I must commend the FLETF for holding all the UFLPA-related civil society engagement meetings required to date, as mandated under the law. The meetings have featured high-level participation of USG officials, from Under Secretary Silvers and CBP Executive Director for Trade Choy, to officials at the Department of Labor and the Department of State. In addition, I and my Uyghur Human Rights Project colleagues,

¹⁶ CBP, “Stakeholder Engagement: Commercial Customs Operations Advisory Committee (COAC),” at <https://www.cbp.gov/trade/stakeholder-engagement/coac>
¹⁷ CBP, Members of the 16th Term of the Commercial Customs Operations Advisory Committee (COAC), CBP, at <https://www.cbp.gov/trade/stakeholder-engagement/coac/members-16th-term-commercial-customs-operations-advisory-committee-coac>

along with other trade-union and NGO members of the Coalition to End Forced Labour in the Uyghur Region,¹⁸ have found FLETF officials to be courteous and welcoming of research and implementation feedback via the public feedback contact information provided on the DHS UFLPA website.¹⁹

Nevertheless, it remains a problem that our trade agencies have cordoned off stakeholder “engagement” to include only commercial interests and not workers’ interests. Engagement on UFLPA is further segregated under “forced labor,” as if enforcement of Section 307 of the Tariff Act is not really part of American trade enforcement. **I note again that China is America’s top source of imports,²⁰ and it is China that is using forced labor as a tool of genocide.** It is past time that Congress questions CBP as to whether American workers need a seat at the table in advising the government on “intelligent enforcement” of our trade laws.

***De minimis* entries pose a serious threat to the enforcement of U.S. trade rules**

CBP officials’ remarks at the Trade Facilitation and Cargo Security Summit on April 16 revealed serious problems with CBP’s capacity to police “*de minimis*” entries valued at \$800 or less.²¹ CBP data show that in 2022, less than half of *de minimis* shipments included data either through “Type 86 entry” or the “Section 321 data pilot program.”

Sal Ingrassia, former port director at the JFK Airport, which sees about one-third of the *de minimis* entries to the U.S., said that while the agency is glad brokers are providing Harmonized Tariff Schedule codes in the Type 86 test, “we still have a lot of concerns,” because CBP is finding the data is often not correct. According to an article in International Trade Today, CBP found “some type of violation” in 25% of shipments examined:

Ingrassia said ports identified *de minimis* shipments to examine and reported to the *de minimis* working group what they learned. “One-quarter of what we looked at had some type of violation,” he said. “It was alarming to see we had so many violations.” He said a large number of the violations were either an HTS misclassification “or unmanifested merchandise in the shipment, meaning that we had an e-commerce package or shipment with three items in it. Only one item was declared. That’s a real problem for us when we’re talking about entry Type

¹⁸ Coalition to End Forced Labour in the Uyghur Region, Steering Committee and Member organizations, at <https://enduyghurforcedlabour.org/>. See also Elizabeth Paton and Austin Ramzy, “Coalition Brings Pressure to End Forced Uighur Labor, More than 190 organizations have come together to demand an end to garments made by forced labor in China,” New York Times, July 23, 2020.

¹⁹ FLETF.PUBLIC.COMMENTS@hq.dhs.gov. See “Contact Us” at <https://www.dhs.gov/uflpa>.

²⁰ United Nations COMTRADE database on international trade, US imports by country, 2022.

<https://tradingeconomics.com/united-states/imports-by-country>

[United States Imports By Country \(tradingeconomics.com\)](https://tradingeconomics.com/united-states/imports-by-country)

²¹ Mara Lee, [Type 86 Test Revealing Compliance Weaknesses in Small Packages \(internationaltradetoday.com\)](https://internationaltradetoday.com), April 17, 2023

86.”... Ingrassia asked rhetorically: “How can we run a system like entry Type 86 without having correct information?”

A second shocking revelation was that in 25% of cases, CBP was simply unable to locate packages identified for inspection. These are the cases where CBP had asked companies to hold packages for inspection and then discovered that packages had already been released before CBP could inspect them.

A third disturbing issue was the statement by Brandon Lord, executive director of CBP's Trade Policy and Programs Directorate, that when CBP will require fewer data in the future, not more, saying that CBP will “mandate way less” than the combined data elements used in the Type 86 test and the Section 321 data pilot, according to International Trade Today.

The fourth question that should be examined by Congress is how CBP handles transshipment coming from a third country and not the country of origin – such as Canadian warehouses. The importing business community apparently favors the creation of a new arrangement, such as “Free Trade Zones” in third countries, to warehouse goods that could later be sold to consumers under the *de minimis* threshold. I urge the Ways and Means Committee to ensure that any successful arrangements do not compound the problems of serious gaps in CBP enforcement of forced-labor and other trade laws in relation to *de minimis* shipments.

The Los Angeles Field Office reportedly handles about a third of the national volume of *de minimis* packages. At the April Summit, the director of this office discussed a test operation that flagged “quite a few shipments” as non-compliant and pointed to the need for “advanced data” to flag shipments for enforcement, including health and safety risks, infringements on intellectual property or are of interest to other Partner Government Agencies, including narcotics and other contraband, and of course forced-labor goodies.

Finally, I urge this Committee to consider the implications of breakneck market growth of direct-to-consumer shipping of cheap goods from China by Shein, Temu, and similar companies. According to the US-China Security and Economic Review Commission, Shein has a “dominant” place in the “fast fashion sector, surging past Tiktok, Instagram, and Twitter to briefly become the most downloaded app in the United States in May 2022. This model depends on tariff-free access to American markets and, I argue, nearly a free pass on *de minimis* shipments to avoid compliance with other US trade laws. The April 2023 US-China Security and Economic Review Commission report²² cites heightened risks of “exploitation of trade loopholes; concerns about production processes, sourcing relationships, product safety, and use of forced labor; and violations of intellectual property rights.” The brief raises the alarm about the race by other

²² Nicholas Kaufman, “Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes,” U.S.-China Economic and Security Review Commission, April 14, 2023, at https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf

Chinese e-commerce platforms to copy this model, highlighting the “risks and challenges to U.S. regulations, laws, and principles of market access.”

In sum, I urge Ways & Means Committee to consider the dangers involved in the approximately 2 million *de minimis* packages per day brought into the United States. Of these, in 2022:

- One-half were shipped with zero digital data provided to US customs authorities.
- One-quarter of those flagged for inspection were never inspected because the importer failed to comply with the order to hold the items for inspection, and
- one-quarter of those inspected at JFK airport had “some type of violation.”

It is hard to believe that Congress intended for the “*de minimus*” provision, which has the singular intent of waiving tariffs on small shipments, to result in spotty or non-existent policing of Congress’s black-letter prohibitions on the importation of fake, dangerous, and forced-labor goods. It is past time for Congress to re-examine the assumption behind raising the threshold from \$200 to \$800 in the Trade Facilitation and Trade Enforcement Act of 2015. The loophole for egregious corporate and consumer complicity in China’s genocidal forced labor, and other evasions of US trade law (apart from tariffs), is simply too great.

The FCPA should be a model for new legislation for business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes

Using the U.S. antibribery regime under the Foreign Corrupt Practices Act of 1977 (FCPA) as a model, the United States should pass legislation to criminalize actions taken by business entities that are aiding, abating, facilitating, or incentivizing the violation of widely recognized human rights crimes such as genocide, forced labor, human trafficking, torture, and war crimes wherever in the world they occur. A new law modeled after the FCPA-based regime would clearly define the prohibited conduct by reference to existing U.S. statutes that criminalize grave human rights violations. Such legislation should

- address jurisdictional issues for both domestic and foreign companies gaining access to U.S. securities markets
- place the enforcement decisions in the hands of prosecutors instead of government entities such as the US Customs and Border Protection or private parties.
- compel companies to conduct internal investigations, report unethical business practices to the authorities, enhance compliance programs, create business and human rights due diligence programs, and ultimately enforce a corporate culture adhering to ethical business practices and respect for human rights.

Ensuring that US capital does not flow to bad-actor Chinese companies

Congress should pass legislation to prohibit access to US capital markets by malign foreign adversary companies that are under US sanctions for human rights or national

security reasons. As I argued in Foreign Affairs in 2021, in an article co-authored with Beth Van Schaak,²³ who is now U.S. Ambassador-at-Large for International Criminal Justice, Congress should ensure that no American is profiting from the construction of the open-air digital prison engulfing Xinjiang. Numerous publicly traded Chinese tech companies are included in emerging-market indexes held by public pension funds, university endowments, individual retirement plans, and investment portfolios. It is time to exclude these companies from U.S. capital markets.

Of the 64 PRC companies currently under U.S. sanctions for human rights crimes against Uyghurs, only 11 are banned from access to U.S. capital under President Biden's Executive Order 14038.²⁴ The American Financial Markets Integrity and Security Act of 2023, for example, would create an automatic investment ban on all affiliates and subsidiaries of the companies currently on the Commerce Department BIS export ban list for Uyghur atrocities, and those under other US national interest and national security sanctions.

Summary of Recommendations

- The Ways and Means Committee should conduct robust oversight hearings on the implementation of the UFLPA on or around June 21, 2023.
- In the FY 2023 federal budget, Congress appropriated an additional \$70 million dedicated to UFLPA enforcement. A commensurate amount must be continued in the FY2024 and future budgets.
- The Ways & Means Committee should examine the composition and role of the Commercial Customs Operations Advisory Committee (COAC), especially its heavy weighting toward the importer community to the exclusion of domestic producers and American workers.
- Congress should pass robust and enforceable country-of-origin labeling rules.
- Congress should pass new legislation modeled on the Foreign Corrupt Practice Act (FCPA) to address business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes
- Congress should pass legislation amending the Securities Exchange Act of 1934 to address the corrupt practices of foreign adversaries. Such legislation should define “corrupt intent” to include actions that excuse the genocide in the Uyghur Region (Xinjiang), advance the Chinese Communist Party’s (CCP) propaganda efforts, or “invest” in the core activities of the CCP or other foreign adversaries. Reference: [The Countering Corporate Corruption in China Act of 2023](#).

²³ Nury Turkel and Beth Van Schaack, “What America Owes the Uyghurs: A Plan for Stopping China’s Genocide,” Foreign Affairs, July 16, 2021, at <https://www.foreignaffairs.com/articles/china/2021-07-16/what-america-owes-uyghurs>

²⁴ Uyghur Human Rights Project, “64 Chinese companies under US sanctions for atrocity crimes against the Uyghur people,” at <https://uhrp.org/sanctions>

– Congress should pass legislation to prohibit access to US capital markets by malign foreign adversary companies that are under US sanctions for human rights or national security reasons. This bill would create an automatic investment ban on all affiliates and subsidiaries of the companies currently on the Commerce Department BIS export ban list for Uyghur atrocities, for example. Reference: [American Financial Markets Integrity and Security Act of 2023](#). See also the list of 60+ Chinese companies currently under US human-rights sanctions compiled by the Uyghur Human Rights Project.²⁵

– Congress should pass a [TSP Fiduciary Security Act](#) to update the fiduciary duty of the Federal Retirement Thrift Investment Board (FRTIB), which is tasked with managing the retirement savings of federal civil servants and military service members, through the nearly \$800 billion Thrift Savings Plan (TSP), to include national security considerations. Uyghur human rights groups have repeatedly raised the absurdity of Uyghur American service members’ and federal employees’ own retirement savings potentially financing the “genocide tech” and forced labor companies currently helping to implement the genocide in the Uyghur homeland.²⁶ References: [TSP Fiduciary Security Act of 2023](#), [TSP Act of 2022](#), [Prohibiting TSP Investment in China Act of 2022](#).

– Congress should pass the [Turn OFF THE TAP Act](#), to create a central ban on federal funds going to foreign firms explicitly identified through U.S. government blacklists, including dangerous Chinese companies.

²⁵ Uyghur Human Rights Project, “64 Chinese companies under US sanctions for atrocity crimes against the Uyghur people,” at <https://uhrp.org/sanctions>

²⁶ Uyghur Human Rights Project, “Federal Retirement Savings Must Not Be Invested in Chinese Corporate Human Rights Abusers,” May 19, 2022, at <https://uhrp.org/statement/federal-retirement-savings-must-not-be-invested-in-chinese-corporate-human-rights-abusers/> and Uyghur American Association