

Introduction

The Global Legal Action Network (GLAN) and the World Uyghur Congress (WUC) welcome the opportunity to make a submission to the public consultation on the EU Commission’s proposal for a regulation prohibiting products made with forced labour on the Union market (the “**Proposed Regulation**”).¹

About GLAN

GLAN is a UK based non-profit organisation that works with affected communities to pursue innovative legal actions across borders to challenge powerful actors involved in human rights violations and systemic injustice. GLAN has offices in London and Galway.

About WUC

The World Uyghur Congress is an international organisation that represents the collective interest of the Uyghur people. The WUC promotes democracy, human rights and freedom for the Uyghur people through peaceful, nonviolent, and democratic means to determine their future. The WUC was founded in 2004 and advocates for the civil, political, social, cultural, and economic rights of the Uyghur people within international institutions, such as the EU and UN.

¹ This submission is made without prejudice to GLAN and WUC’s ongoing efforts to combat and ultimately prevent the importation of materials produced or extracted with forced labour under the current or any future legal framework. In particular, this submission is made without prejudice to ongoing and any future efforts to obtain relief through Court action.

Submission

1. We are particularly concerned with goods comprising and containing cotton, textile and apparel produced in the East Turkistan region of China (better known to the international community by the name Xinjiang or the Xinjiang Uyghur Autonomous Region (“Xinjiang”/”XUAR”). This submission thus focuses on XUAR-related issues given the seriousness of the well-documented human rights abuses amounting to crimes against humanity and genocide being committed there and the fact that state-imposed, region-wide forced labour is a core component of these abuses. Our concern is all the more urgent given that imports into the EU from XUAR are increasing.² We have laid out the evidence relating to forced labour in XUAR at **Annex 1**.
2. We note that on 9 February 2022, Seanad Éireann passed a unanimous motion³ accepting the findings of the Uyghur Tribunal in London which issued a judgment finding that evidence proved beyond reasonable doubt that crimes against humanity including torture and genocide were being committed in XUAR.⁴ Ireland’s position in negotiations on the Proposed Regulation should include consideration of its obligation to prohibit such atrocity crimes given that the prohibition of atrocity crimes and forced labour are *jus cogens* norms. We note that the Irish Constitution enshrines a commitment to the rule of international law with this commitment forming a “core principle of Irish foreign policy”.⁵ Our primary concern with the Proposed Regulation is that in its current form it fails to

² EURACTIV, *EU imports from Xinjiang rose by 34% in 2022*, 2 February 2023.

³ Seanad Éireann, *Uyghur Tribunal: Motion*, 9th February 2022.

⁴ The Uyghur Tribunal, *Uyghur Tribunal Judgment*, 9th December 2021.

⁵ Department of Foreign Affairs and Trade, *International Law*, accessed 16 October 2023. See also Irish Constitution, Article 29.3. In a speech at the United Nations General Assembly in 2022 the Irish Government representative when speaking about *jus cogens* norms noted the Government’s position on ending breaches of *jus cogens* norms: “We particularly welcome the clear manner in which the Conclusions set out – in Conclusion 19 - the particular **legal consequences of serious breaches of peremptory norms. States shall cooperate to bring any such serious breach to an end and they shall not recognise as lawful a situation created by such a serious breach.**” (emphasis added) Sixth Committee United Nations General Assembly 77th Session, *Statement of Ireland on Agenda item 77: Report of the International Law Commission on the work of its seventy-third session*, New York, 25 October 2022.

meaningfully address situations state-imposed forced labour namely but not exclusively, the forced labour of the Uyghur people.

3. The WUC was a signatory to a joint letter dated 13 September 2023 about the Proposed Regulation sent to MEPs on the European Parliament's Committees on Internal Market and the International Trade Committees.⁶ We endorse its contents in full and in particular draw attention to these concerns classified as “fundamental”:

- *To be implementable, the proposed legislation should foresee appropriate lower evidentiary standards to initiate the investigation and to adopt a decision. The available sanctions should, similarly, be adapted as appropriate. For example, the US Customs and Border Protection authorities¹ use “reasonable but not conclusive” as the evidentiary standard to issue a “Withhold Release Order” that allows the re-exportation of goods subject to the order, but uses the “conclusive evidence, i.e., probable cause that the goods were made with forced labour” to issue a final decision (called “forced labour finding”) which then allows authorities to seize the goods, as currently foreseen in the European Commission proposal.*
- *Avoid that due diligence measures reported by companies could be used as a defence against the opening of a full investigation. In particular, social audits and certifications cannot be deemed sufficient defence to ward off an investigation.*
- *The European Commission should be designated as a competent authority (art. 12), to be able to conduct politically sensitive investigations (such as ones linked to state-imposed forced labour (SIFL)) or to contribute to the investigation process when appropriate and, in particular, when investigating in third countries is required.*

⁶ World Uyghur Congress, *Joint Letter: Red lines to the Regulation on “prohibiting products made with forced labour on the Union market”*, (COM(2022) 453), 12 September 2023.

- *The Regulation should establish a rebuttable presumption of forced labour on specific product groups (like all cotton or all tomatoes) from specified countries or regions (such as Turkmenistan or the Uyghur Region) that would lead to a ban of these specific product groups...*
4. In addition, we endorse in particular that letter's concerns which it classified as "significant":
- *When a final decision is made on goods being made partly or in whole with forced labour and thus banned, that decision should be extended to all products from the same production site(s) in that country or group of production sites in that country at minimum.*
- ...
- Specific regions where a presumption of state imposed forced labour has been established should be listed as such in the database.*
5. We will address these concerns throughout this submission following the structure of the proposed consultation questions.
6. We continue to endorse earlier statements signed by us and colleague organisations in October 2022,⁷ and endorse Anti-Slavery International and the ECCHR's Model Law⁸ as well as their continued advocacy⁹ on this proposal. We endorse Anti-Slavery International's submission to this consultation process.
7. We note and welcome the European Parliament's Internal Market and Internal Trade Committees' (hereinafter the "Parliament") adopted position but point out

⁷ *Civil Society Statement on the Proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market*, Brussels, 11 October 2022.

⁸ For example: Anti-Slavery International and ECCHR, *Progressing the proposed EU Regulation on prohibiting products made with forced labour: A Model Law*, November 2022.

⁹ Anti-Slavery International and ECCHR, *Anti-Slavery International and European Center for Constitutional and Human Rights response to the European Commission Call for Evidence on the proposed EU forced labour instrument to "keep the EU market free from products made, extracted or harvested with forced labour, whether they are made in the EU or elsewhere in the world."*, June 2022.

where gaps still exist which we hope Ireland can address in negotiations, thus we are calling on Ireland to ensure Parliament's position is adopted but also to go further to ensure the most robust instrument possible is ultimately agreed

Consultation Question 1: General views or comments on the proposed regulation

8. As noted above, we are of the view that the Proposed Regulation, whilst welcome, will not fully address our concerns regarding goods made using forced labour in XUAR that are being imported into the EU, even if Parliament's amendments are accepted in full in negotiations. Our view is that the Proposed Regulation needs to be further substantially amended on the below key areas to be fit for purpose.

1. Evidentiary standards

9. We submit that the evidentiary standard for the opening of an investigation in the Proposed Regulation as well as the evidentiary standard for enforcement actions currently drafted is too high for the instrument to be effective.
10. In the US, the Tariff Act prohibits the importation of goods made using forced labour. US Customs and Border Protection (CBP) has responsibility for implementing this prohibition which it does through the issuance of "Withhold Release Orders" (WRO). The evidentiary standard applied by CBP for the initiation of an inquiry and the issuance of a WRO is based on the existence of reasonable suspicion, rather than requiring conclusive evidence of the use of forced labour: a WRO is issued when there is "credible information indicating that merchandise produced using forced labour is being, or is likely to be, imported into the United States."¹⁰ The standard of reasonable suspicion allows for a proactive approach in tackling forced labour concerns, enabling the CBP to take action based on credible information and the likelihood of forced labour involvement.

¹⁰ U.S. Customs and Border Protection, *How does CBP enforce 19 U.S.C. § 1307?*, accessed 12 October 2023.

11. There is no WRO equivalent in the Proposed Regulation. Article 6(4)(a) and (b) allow for decisions to, respectively, prohibit the placement of goods on the EU market and withdraw goods already on the market. While both decisions could be considered as similar in their scope to a WRO, there is no nuance permitted in the rationale of the decision to separate these decisions from the seizing of goods as foreseen in Article 6(4)(c). Lowering the evidentiary standard for opening the investigation such that a valid complaint is sufficient and thus using the concept of “substantiated concern” as a basis of decisions as in Article 6(4)(a) and (b) would allow an alignment with the US Tariff Act. This would facilitate compliance by companies and prevent Europe being a dumping ground for goods pushed back from entering the US market. It would also facilitate the exchange of information between enforcement authorities.

12. We submit that the current evidentiary standard of “substantiated concern” in order to open an investigation, in Articles 4 and 5 of the Proposed Regulation, should be substituted with the lower standard of “reasonable but not conclusive concern” which will enable more investigations to be initiated ensuring that the instrument achieves its stated purpose. The unreasonably high evidentiary threshold coupled with an unrealistically brief timeframe (90 working days pursuant to Parliament’s amendment to Article 6(1)) to conduct an investigation in order to meet that threshold are not workable. The evidentiary standard required for a final enforcement decision should also be required.

Recommendation: Lower the evidentiary standard for the opening of investigations from “substantiated” to “reasonable but not conclusive” concern, lengthen the timeframe for an investigation and lower the evidentiary standard for enforcement actions.

Recommendation: Allow for progressive decisions to be made separately i.e.: a prohibition to place the product on the market when there is a substantiated concern of forced labour and a decision to seize the goods only when a violation of Article 3 is established.

2. Due Diligence

13. The Proposed Regulation places substantial emphasis on due diligence measures, including as an available defence to an investigation under the Proposed Regulation into suspected use of forced labour. It is widely recognised that due diligence measures are not feasible or indeed possible on the ground in XUAR such that these provisions are ineffectual in respect of the XUAR situation.¹¹
14. The proposal reinforces reliance on due diligence as well as other internal policies (such as value chain mapping) operated by individual companies which is wholly ineffective in the case of the cotton industry connected to XUAR given the impossibility of conducting audits, meaningfully or in some cases at all, in the context of forced labour that is state-imposed or indeed for other systemic exploitation cases. The proposal also does not introduce a requirement for all importers to undertake mandatory supply chain mapping and disclosure, another

¹¹ See for example: Clean Clothes Campaign, *Fig Leaf for Fashion. How social auditing protects brands and fails workers*, September 2019 which heavily criticises the social audit industry for protecting brands at the expense of its purported mission. For example, in 2019 cotton supplier Esquel, which has been widely implicated in the use of forced labour, hired consulting firm ELEVATE to audit its facilities in XUAR. Esquel used the audit findings, which confirmed no forced labour at the facilities, to lobby the US government to remove Esquel from the sanctions list implemented to tackle forced labour in cotton supply chains. However, in response to the Clean Clothes Campaign report ELEVATE admitted that “social audits are not designed to capture sensitive labor and human rights violations such as forced labor and harassment” (at p.72 of the Clean Clothes Campaign report), illustrating that the audit findings in respect of forced labour at Esquel’s facilities in XUAR were meaningless. Another example is Adidas’ partnership with the Huafu company. The issue is reflected in the UK government’s Overseas Business Risk Guidance for China, which states that “[b]usinesses should be aware that conducting due diligence in Xinjiang is challenging due to limits on access, including for auditors; the fact that it is highly unlikely that workers will be able to speak freely; and the extent and severity of human rights violations occurring there. Taking full account of these challenges, we strongly recommend UK businesses undertake careful and robust due diligence to ensure their operations do not directly or indirectly contribute to human rights violations.”

essential tool in combating forced labour that is state-imposed and endemic to an entire industry.¹²

15. As due diligence and other measures are not possible on the ground in XUAR these measures are void of any effect in that context and our recommendations above to push for region and industry wide bans are the only way to remedy this shortcoming. We welcome that the Parliament's position removes the defence of due diligence by deleting Article 4(6). However, the shortcomings in the evidentiary threshold and investigation timeline noted above still cause concern and an over-reliance on due diligence must not be reflected in the final text.

Recommendation: That due diligence measures reported by companies be removed as an available defence against initiation of a comprehensive investigation.

3. European Commission as competent authority

16. We welcome the Parliament's addition of the Commission to Chapter II; this is vital. The Proposed Regulation only provides for Member States to designate competent authorities responsible for the implementation of the Regulation (Article 12). It is imperative that the European Commission also be designated as a competent authority under Article 12, empowering it to conduct investigations of a politically sensitive nature, including those related to state-imposed forced labour. Member States conducting their own investigations could each invest substantial time and resources, risking both duplication of efforts and that their decision-making processes may be influenced by the potential repercussions on their bilateral relations with China including the threat of "counter-sanctions".

¹² *Civil Society Statement on the Proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market*, Brussels, 11 October 2022 and Anti-Slavery International, *Improving the proposed EU regulation to ban forced labour products: a model law*, 10 November 2022.

17. Additionally, the European Commission should have the authority to investigate, particularly in cases where investigations in third countries are required.

Recommendation: That the European Commission be designated as a competent authority.

4. Burden of proof

18. The burden of proof in the Proposed Regulation rests entirely on the Member States' competent authorities who would have to conduct the necessary research to establish that the goods are made with forced labour (Recital 26). It is an important difference with the US Uyghur Forced Labour Prevention Act (UFLPA) which operates with a rebuttable presumption that goods from XUAR are produced using forced labour and where the burden is shifted to the importers to prove that any goods they wish to import have not been produced using forced labour. This reversal of the burden of proof is appropriate in the context of XUAR given the endemic nature of state-imposed forced labour throughout its supply chains, in particular, in the cotton industry, and the inability for companies operating there to conduct audits to detect forced labour. The EU Parliament has stated in respect of the burden of proof resting on Member States rather than importers that "this is a key element that may hinder the successful implementation of a forced labour products prohibition due to enforcement difficulties"¹³

19. We welcome Parliament's introduction of a rebuttable presumption. However, its position has its limits, and we are calling on the Irish Government to go further in its negotiations. The Parliament's amendments allow for a reversal of the burden of proof where the Commission has designated a particular geographic region and economic sector subject to a rebuttable presumption of forced labour. However, the text as amended does not allow for the detention of products caught by the

¹³ European Parliament, *Trade-related Policy Options of a Ban on Forced Labour Products*, Brussels 2022, at 8.

presumption pending a final determination, nor does it determine by when this final determination should be made (i.e. how long does an economic operator have to prove that its product has not been made with state-imposed labour). Only products explicitly targeted in a final decision by a competent authority are subject to seizure. Therefore, the reversal of the burden of proof in any case does not yet in practice result in the effect of preventing the importation and circulation of affected goods. It is imperative that the protections envisaged by this legislative measure are not rendered illusory. We recommend that Ireland advocates to extend the presumption of forced labour and reversal of the burden of proof for designated products to allow for detention of affected products pending final determinations or an alternative arrangement that would achieved the desired objective of the proposed measure.

Recommendation: Introduce a rebuttable presumption for specific products, industries, production sites, regions and countries that have a significant incidence of forced labour and ensure that goods under such a presumption cannot enter the EU market.

5. Final decisions should trigger an automatic ban on all the production sites of impugned goods in that country.

20. Once a final decision is made regarding goods that are partially or entirely produced using forced labour and subsequently prohibited, such decision should be expanded to encompass all products originating from the same production site(s) within that country or group of production sites within that country, automatically as a minimum requirement.

Recommendation: automatically ban all goods from production site(s) of the impugned goods in a country after a final decision

6. State-imposed forced labour

21. The Proposed Regulation does not explicitly address state-imposed forced labour or systemic exploitation, nor do the Parliament amendments adequately address such situations. As drafted, it is an instrument predominantly suitable for addressing situations where individual companies have employed forced labour, and it provides investigative mechanisms appropriate to such circumstances. In its current form it is not suitable for tackling situations of region-wide state-imposed forced labour which infect an entire industry as is the case in respect of the cotton industry connected to XUAR. We therefore do not believe this proposal will be effective unless its scope is broadened to allow for tackling situations where forced labour affects entire regions and/or industries. Placing the majority of decision-making responsibility on Member States, consequently, will result in a lack of any decision being made. Therefore, as stated above, the European Commission should be appointed as a competent authority in its own right such that it can take EU-wide decisions in cases of state-sponsored forced labour, and list a relevant region, product group, or industry, in the database enabling Member States to implement the prohibition. We welcome the Parliament's amendments on this point and call on Ireland to ensure that the Commission is kept as a competent authority in the final text.

22. By way of example, in recognition of the severity of the situation in XUAR, the United States since January 2021 has been enforcing import bans from XUAR on whole product groups, culminating in the UFLPA which now presumptively bans the import of all goods from XUAR unless the importer can demonstrate they were not made using forced labour. We note that the EU has now become a 'dumping ground' for Uyghur forced labour products no longer eligible for import into the United States, making it all the more important that any proposed EU mechanism to prohibit forced labour be fit for purpose in preventing the import of forced labour products from XUAR.

23. We do not believe that the Proposed Regulation in its current form will be effective to prohibit products made with state-imposed forced labour from being made

available on the EU market and therefore recommend Ireland push for a ban on entire regions, whole product groups and industries.

Recommendation: That the proposal be extended to automatically exclude entire regions, product groups, and industries that have been substantiated to be afflicted by forced labour, and these should then be listed in the database.

7. Victim-centred approach

24. We welcome Parliament's position on confidentiality for complainants and that remediation be a condition for lifting a ban. It is essential that victims of forced labour are supported to ensure that they are provided with meaningful redress and reparations.¹⁴ We endorse the advocacy of civil society groups active on this issue¹⁵ and call on the Irish Government to adopt a victim-centred approach to the upcoming negotiations. Effective remedies should be available to all affected rightsholders (victims and survivors) (both inside and outside the EU). We endorse the position as laid out in the above-referenced joint letter dated 13 September 2023¹⁶ that:

*The inclusion of **remedies for all workers** (both EU and non-EU based) trapped in forced labour must be a crucial point of the legislation. The provision of remedy – including compensation and back wages – should be a prerequisite to the lifting of a ban in particular (Art 6.6). These remedies should be defined through meaningful **stakeholder engagement and ideally include the victims themselves when and wherever possible.***

***All complainants should be protected**, whether or not they are based in the EU and thus under the scope of the Whistleblower directive. This implies that*

¹⁴ See, for example: Anti-Slavery International, *Improving the proposed EU regulation to ban forced labour products: a model law*, 10 November 2022.

¹⁵ See, for example: *Civil Society Statement on the Proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market*, Brussels, 11 October 2022 and Anti-Slavery International, *Improving the proposed EU regulation to ban forced labour products: a model law*, 10 November 2022.

¹⁶ World Uyghur Congress, *Joint Letter: Red lines to the Regulation on "prohibiting products made with forced labour on the Union market"*, (COM(2022) 453), 12 September 2023.

all complainant's information should be treated as confidential (Art. 10.3 and Art. 25).

25. As noted by Anti-Slavery International:

The EU must engage affected and at-risk workers and their representatives in a safe and confidential way.

*The **views and interests of affected and potentially affected workers** must be taken into account in all stages of the law.*

As set out in our model law, when an investigation is opened, the authorities (the European Commission or EU Member State authorities) should meaningfully and safely consult workers and their representatives, such as civil society, trade unions and other groups.

The benefits of this approach would include:

- a. Information directly from those affected would help mitigate any unintended consequences that could result from imposing a product ban*
- b. Workers could use bans as leverage to improve conditions on the ground, enable remedy, as described above, and access justice in front of European courts*
- c. Likewise, workers and trusted representatives can also give accurate insight into whether remedy has been provided*
- d. The identity of people issuing complaints and informing investigations should be **kept confidential** to protect from any possible retaliation.¹⁷*

¹⁷ Anti-Slavery International, [Improving the proposed EU regulation to ban forced labour products: a model law](#), 10 November 2022.

Recommendation: That confidential engagement from victims and at-risk workers and their representatives is secured, and that adequate redress is obtained for all victims of forced labour.

Recommendation: The proposal should include more victim-centred language and provisions and provide effective remedies should be available to all affected rightsholders (victims and survivors) (both inside and outside the EU).

8. Sustainability

26. It is regrettable that the Commission's proposal calls for the destruction of goods which are found to be in contravention to the prohibition (Article 6) and we welcome Parliament's amendments providing for donation and recycling where appropriate. The EU's own emphasis on waste reduction, sustainable consumption and production, responsible consumption and production patterns should inform Ireland's position on adopting the above recommendation on region and industry wide bans which would stop the arrival of tainted goods in the first place. Alternatives to destruction of goods which otherwise arrive should be advocated for in the negotiations.¹⁸

Recommendation: Advocate for more sustainable alternatives to the destruction of goods.

Consultation Question 2: Is the proposed regulation an appropriate, proportionate and well targeted approach to ensure that products made using forced labour cannot enter or leave the European Union?

¹⁸ Marie de Pinieux & Nadia Bernaz, *Doing Business in Xinjiang: Import Bans in the Face of Gross Human Rights Violations against the Uyghurs* (2023) 16 Erasmus L Rev 61, p. 67 suggests giving the goods to charities and cites ABA- BALANCING BUYER AND SUPPLIER RESPONSIBILITIES Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0. at fn 106.

27. We strongly submit that the Proposed Regulation is not a panacea for forced labour goods and unless civil society's asks are acted upon and the proposal is substantially amended, we do not believe it will be effective in ensuring all products made with forced labour are prohibited from entering the EU. As it stands, it is not robust enough to tackle gross systemic and systematic and state-imposed forced labour.

Consultation Question 3: Does the proposed regulation capture all necessary elements to address forced labour?

28. See above under Question 1.

Consultation Question 4: Are there any additional objectives that should be included in the proposal? What are they?

29. An additional objective should be included in the Proposed Regulation so that it aims not only to contribute to the global fight against forced labour but furthermore, that it contributes to combating atrocity crimes, specifically crimes against humanity such as torture as well as genocide which are bound up in systems of state-imposed forced labour. Its objective should be to combat States profiting from international crimes and should recall all States' responsibility to have a zero-tolerance policy against internationally wrongful acts.

Consultation Question 5: How do you think the proposed regulation can be effectively enforced, for example, EU-wide competent authority, Member State competent authority/authorities?

30. We submit that the proposal should include the European Commission as a competent authority capable of making a decision, at least in cases of state-imposed forced labour. We welcome Parliament's position on this point. Without this addition the proposal fails to meaningfully tackle state-imposed forced labour, for the reasons already addressed above. The inclusion of the Commission as a

competent authority will ensure that bilateral relations do not interfere with enforcement action and will streamline the process and make it more efficient.

Consultation Question 6: How should economic operators be supported to meet their obligations under this proposed regulation?

31. The Parliament's text is proposing a myriad a guidance and support measures for economic operators (in particular for SMEs). However, the text currently only considers that the Union "may" develop "accompanying measures to support the efforts of companies, and in particular SMEs, civil society organizations," (Article 26(2)). We submit that the current text is unbalanced, as it under-represents victims and Civil Society Organisations (CSOs) in favour of economic operators. In light of this, we suggest that Ireland advocates not only for all the support outlined in the Parliament amendments, but also advocates for an increased level of support for CSOs, trade unions and other victim associations, both within and outside the European Union.

Recommendation: That the final text is balanced and provides sufficient support for CSOs, trade unions and other victim associations, both within and outside the EU.

Conclusion

32. The Proposed Regulation does not yet adequately address circumstances involving state-imposed forced labour that pervades an entire industry, as is evident in the case of the cotton industry linked to XUAR. This is still the situation despite Parliament's amendments which we hope the Irish Government will advocate for in the Council's position. Acknowledging that the Irish Government is dedicated to addressing human rights concerns at the EU level, we call on the Irish government to take the lead on advocating for not only Parliament's amendments but also the recommendations we have set out in this submission during the negotiations on the Proposed Regulation. We remain available for any further information you may require.

Summary of recommendations

1. That a lower evidentiary standard be applied for the opening of investigations, from “substantiated” to “reasonable but not conclusive” concern.
2. Lengthen the timeframe for an investigation.
3. Allow for progressive decisions to be made separately i.e.: a prohibition to place the product on the market when there is a substantiated concern of forced labour and a decision to seize the goods only when a violation of Article 3 is established.
4. Lower the evidentiary standard for enforcement actions.
5. That due diligence measures reported by companies be removed as an available defence against the initiation of a comprehensive investigation.
6. It is recommended that the European Commission be designated as a competent authority.
7. It is recommended that a rebuttable presumption for specific products, industries, production sites, regions and countries that have a significant incidence of forced labour is introduced and ensure that goods under such a presumption cannot enter the EU market.
8. Final decisions should trigger an automatic ban on all the production sites of those goods in that country.
9. That the proposal be extended to include entire regions, product groups, and industries that have been substantiated to be afflicted by forced labour and that they should be added to the database.
10. It is recommended that confidential engagement from victims and at-risk workers and their representatives is secured, and that adequate redress is obtained for all victims of forced labour.
11. It is recommended that a victim-centred approach is adopted, and that the proposal should include more victim-centred language and provisions and provide effective remedies should be available to all affected rightsholders (victims and survivors) (both inside and outside the EU).

12. It is recommended that alternatives to the destruction of tainted goods are explored.
13. It is recommended that the final text is balanced and provides sufficient support for CSOs, trade unions and other victim associations, both within and outside the EU.

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ANNEX 1

Background

1. Uyghurs are ethnically and culturally a Turkic people living in XUAR, who speak their own language and align themselves culturally with the other central Asian countries that border XUAR. They practise a moderate form of Islam and lead predominantly secular lives. A detailed overview of the evidence is provided in Part I of this letter, however the position can be summarised at the outset as follows:

- There is substantial and credible evidence from a varied range of sources that Chinese authorities have detained well over one million Uyghurs and other Turkic people in internment camps in XUAR.¹⁹ In addition to detention, Uyghurs in these camps are routinely subjected to inhuman and degrading treatment including torture, humiliation and sexual violence. Furthermore, those who have not been interned in camps have been forcibly assigned to work in factories throughout XUAR under conditions of detention and forced labour. Among those who have published detailed reports on the situation in XUAR are Human Rights Watch,²⁰ Amnesty International,²¹ and the Australian Strategic Policy Institute.²² A legal opinion prepared by Alison Macdonald QC and colleagues at Essex Court Chambers on the instructions of our client (“**The Macdonald Opinion**”) has concluded that there is a ‘very credible case that acts carried out by the Chinese government against the Uyghur people in XUAR amount to crimes

¹⁹ See for example: Chinese Human Rights Defenders, *China: Massive Numbers of Uyghurs & Other Ethnic Minorities Forced into Re-education Programs* 3 August 2018; Adrian Zenz, ‘*Thoroughly reforming them towards a healthy heart attitude: China’s political re-education campaign in Xinjiang*’, 5 September 2018.

²⁰ Human Rights Watch, *Break Their Lineage, Break Their Roots*, 19 April 2021.

²¹ Amnesty International, ‘*Like We Were Enemies in a War: China’s Mass Internment, Torture, and Persecution of Muslims in Xinjiang*’, 10 June 2021.

²² E.g. Australian Strategic Policy Institute (ASPI), *Uyghurs for Sale*, 1 March 2020.

against humanity and the crime of genocide.²³ It represents the largest mass incarceration of an ethnic group since the Holocaust.

- While access to the regime has become increasingly restricted, there is less information about the human rights abuses in XUAR today. The latest “strike hard” campaign in Hotan prefecture prevented focused on Uyghur gatherings and religious acts in the summer of 2023.²⁴ During President Xi’s speech in Urumqi in August 2023, he stated that “social stability” remained the priority in the region and claimed that so-called “counterterrorism” policies and Sinicization of Islam must continue and be deepened.²⁵ Party-media reports that President Xi also called for ‘positive propaganda’, and that “targeted efforts should be made to rebut any inaccurate and negative press”, which underlines the difficulties in accessing detailed and updated information about these human rights abuses.²⁶
- Three core components of this persecution involve forcing Uyghurs to pick cotton,²⁷ work in textile factories inside or adjacent to camps, and work under wholly coercive conditions in factories in industrial parks in XUAR and in inland China. The scale of forced labour in XUAR’s prisons, internment camps and industrial parks is such that a number of experts have concluded that any cotton product made in whole or in part with

²³ Alison Macdonald QC and others, *International criminal responsibility for crimes against humanity and genocide against the Uyghur population in Xinjiang*, legal opinion prepared on the instructions of the World Uyghur Congress, the Global Legal Action Network and the Uyghur Human Rights Project, 26 January 2021.

²⁴ Mehriban, *China conducts a 100-day ‘strike hard’ campaign against Uyghurs*, *Radio Free Asia*, 14 July 2023.

²⁵ Stuart Lau, *China’s Xi doubles down on hardline Xinjiang Policy*, *Politico*, 26 August 2023.

²⁶ *Ibid.*, Referencing Cai Qi, *Xi Jinping: Firmly grasp the strategic positioning of Xinjiang in the overall situation of the country and better build a beautiful Xinjiang in the process of Chinese-style modernization*, *Xinhuanet*, 26 August 2023.

²⁷ Adrian Zenz, NewLines Institute for Strategy and Policy, *Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton*, 14 December 2020. The executive summary states: “The evidence shows that in 2018, three Uyghur regions alone mobilized at least 570,000 persons into cotton-picking operations through the government’s coercive labor training and transfer scheme. Xinjiang’s total labor transfer of ethnic minorities into cotton picking likely exceeds that figure by several hundred thousand... The data presented in this report provides strong evidence that the production of the majority of Xinjiang”. The report is further addressed in an investigation by the BBC, *China’s ‘tainted’ cotton*, 14 December 2020.

cotton originating in XUAR should be presumed to have involved forced labour at some point in its supply chain.²⁸ Indeed, the Macdonald Opinion lists the crime of enslavement as one of the specific sets of conduct constituting a crime against humanity taking place in XUAR.²⁹

- Large numbers of international companies with a major presence in Ireland source cotton from Chinese companies with significant operations in XUAR. Audits of companies operating in XUAR are unreliable due to the coercive conditions created by the Communist Party of China (“CCP”).³⁰ Such audits should be given extremely limited, if any, weight.³¹ There is currently no cotton production facility or factory in XUAR that has been independently verified as not using forced labour, nor can there be, given China’s unwillingness to allow independent assessors into its territory.³² Over 80% of Chinese cotton originates in XUAR.

²⁸ See, e.g. Adrian Zenz, *Xinjiang’s New Slavery: Coerced Uighur Labor Touches Almost Every Part Of The Supply Chain – Foreign Policy*, 11 December 2019.

²⁹ Macdonald Opinion, *supra* footnote 23, para 81 onwards.

³⁰ E.g. Bethany Allen-Ibrahimian, *State Dept. fears Chinese threats to labour auditors*, Axios, 24 June 2021.

³¹ See the report of the Clean Clothes Campaign, *Fig Leaf for Fashion. How social auditing protects brands and fails workers*, September 2019 which heavily criticises the social audit industry for protecting brands at the expense of its purported mission. For example, in 2019 cotton supplier Esquel, which has been widely implicated in the use of forced labour, hired consulting firm ELEVATE to audit its facilities in XUAR. Esquel used the audit findings, which confirmed no forced labour at the facilities, to lobby the US government to remove Esquel from the sanctions list implemented to tackle forced labour in cotton supply chains. However, in response to the Clean Clothes Campaign report ELEVATE admitted that “social audits are not designed to capture sensitive labor and human rights violations such as forced labor and harassment” (at p.72 of the Clean Clothes Campaign report), illustrating that the audit findings in respect of forced labour at Esquel’s facilities in XUAR were meaningless. Another example is Adidas’ partnership with the Huafu company. The issue is reflected in the UK government’s Overseas Business Risk Guidance for China, which states that “[b]usinesses should be aware that conducting due diligence in Xinjiang is challenging due to limits on access, including for auditors; the fact that it is highly unlikely that workers will be able to speak freely; and the extent and severity of human rights violations occurring there. Taking full account of these challenges, we strongly recommend UK businesses undertake careful and robust due diligence to ensure their operations do not directly or indirectly contribute to human rights violations.”

³² Sophie Richardson, Human Rights Watch, *China’s “Untenable Operating Environment” for Business in Xinjiang*, 25 October 2020 which notes that the Better Cotton Initiative, which promotes sustainably grown and responsibly harvested cotton, ceased all its activities in XUAR in October 2020 after concluding that XUAR is “an increasingly untenable operating environment.” The article goes on to note that “[t]his is similar to decisions made recently by other independent auditing firms and major brands. In September, apparel giant H&M cut ties to an indirect supplier in Xinjiang out of concerns about “forced labour and discrimination of ethnoreligious minorities.” Days later, five firms that had been hired by companies to

I: Evidence Relating to Forced Labour In XUAR

(i) Background: Crackdown On Minorities In XUAR

2. The severe crackdown by the Chinese government on Uyghurs and other ethnic groups in the XUAR region has been widely documented by human rights organisations, witnesses and experts since around 2016, in particular since the enactment of the Xinjiang Uyghur Autonomous Region Regulation on De-Extremification on 29 March 2017.³³ Central to this crackdown has been the widespread extrajudicial incarceration of members of these ethnic groups in a network of internment camps throughout the region.

3. Dr. Adrian Zenz, a recognised expert on Chinese government policies and in XUAR in particular, has published extensively his findings based on analysis of primary source leaked Chinese government documents. According to Dr Zenz, approximately 1.8 million Uyghurs and individuals from other ethnicities have been extrajudicially incarcerated in such camps, which include what he terms Vocational Training Internment Camps (“VTICs”) as well as other “re-education” facilities.³⁴ Zenz’s research has found that:

“VTICs are administered by newly established ‘education and training bureaus’ (ETBs) that fall under the authority of the criminal justice system and are funded from domestic security budgets. They are neither funded nor

assess the integrity of their Xinjiang supply chains —Sumerra LLC, Bureau Veritas SA, TÜV SÜD, RINA SpA, and Worldwide Responsible Accredited Production—said they would no longer provide that service in that region.”

³³ Unofficial translation [here](#). In relation to the crackdown, see generally Human Rights Watch, *Break Their Lineage, Break Their Roots*, *supra* footnote 20, and ASPI *The Architecture of Repression: Unpacking Xinjiang’s Governance*, 19 October 2021.

³⁴ Journal of Political Risk, *“Wash Brains, Cleanse Hearts” Evidence from Chinese Government Documents about the Nature and Extent of Xinjiang’s Extrajudicial Internment Campaign*, 11 November 2019, at p. 30. See also generally Center for Strategic & International Studies (CSIS), *Connecting the Dots in Xinjiang: Forced Labour, Forced Assimilation and Western Supply Chains*, 16 October 2019, and ASPI, *Documenting Xinjiang’s Detention System*, September 2020.

managed by the regular education system. The classified document [reviewed by Zenz] mandates that every county in XUAR must have an ETB.”³⁵

4. Zenz has also found on the basis of official documentation and other corroborating evidence that “VTICs and/or re-education camps [have been established] in at least each township and urban district.”³⁶ On the basis that “XUAR has a total of 119 city-level, prefectural and county-level administrative units, along with 1,079 township-level administrative units,” he concludes as follows:

“If each county and township had just one re-education center or VTIC, the region’s camp network would number around 1,200 facilities. [...] In addition, XUAR has at least 119 detention centers, one per administrative unit above township level. Likely, there are more than that. That means that the region has probably somewhere between 1,300 and 1,400 extrajudicial internment facilities (excluding prisons).”³⁷

5. In late 2020 and 2021, BuzzFeed News published its investigation that uncovered the rapid building expansion of the internment camp network in XUAR since 2017.³⁸
6. As to the purpose of the internment campaign, Zenz notes that “there is abundant evidence from government documents that there are several types of dedicated re-education facilities in XUAR, and that the officially-stated primary goal of the VTICs is not ‘vocational training’ but ‘transformation through education’”³⁹ The evidence enclosed with this letter shows that far from being for genuine educational purposes, the purpose of the camps is to give effect to the state’s overarching aim of eradicating Uyghur identity in the name of national security, and the camps in

³⁵ Journal of Political Risk, *Wash Brains, Cleanse Hearts Report*, *supra* footnote 34, at p. 2.

³⁶ *Ibid.*, at p. 20.

³⁷ *Ibid.*

³⁸ BuzzFeed News, *Part 1: Built to Last*, 27 August 2020 and *Part 5: China Can Lock Up A Million Muslims In Xinjiang At Once*, 21 July 2021.

³⁹ Journal of Political Risk, *Wash Brains, Cleanse Hearts Report*, *supra* footnote 34, p. 2.

fact operate like prisons.⁴⁰ As already referenced, this is supported by the fact that the ETBs administering the camps fall under the criminal justice system and are funded from domestic security budgets. Furthermore, Zenz also notes that “[o]fficial government documentation repeatedly and unambiguously testifies to the fact that XUAR’s VTICs engage in known and pre-existing forms of coercive and abusive political re-education.”⁴¹

7. While the internment camps provide “the coercive backbone that underpins all other aspects of the government’s crackdown against Uyghurs and other ethnic minorities,”⁴² in XUAR, that crackdown is not confined to these camps; it extends to wider persecution and repression aimed at eradicating Uyghur identity, including birth prevention, family separation and the destruction of cultural property.⁴³ Citing government documents, Zenz notes:

“All minority persons in XUAR are therefore now to be in care, education, training, work, approved (improved) farming, or on state subsidies (unable to work, elderly). Everyone must be in a state-designated or state-approved place. [...] It has been said that all of XUAR has become an open-air prison, with the difference of internment and non-internment being a matter of degree.”⁴⁴

8. Amidst the government’s assault on Uyghur culture and religion to change their thinking, Uyghurs in XUAR live in a state of fear and self-censorship.⁴⁵ The clear objective of the programme is to eliminate Uyghurs’ culture and religion – according to government documents leaked to the New York Times, “[f]reedom is

⁴⁰ Zenz, Journal of Political Risk, *The Karakax List: Dissecting the Anatomy of Beijing’s Internment Drive in Xinjiang*, 17 February 2020. See also Zenz, *The Xinjiang Police Files*, and ICJ, *Exposed: China’s Operating Manuals for Mass Internment and Arrest by Algorithm*, 24 November 2019..

⁴¹ Journal of Political Risk, *Wash Brains, Cleanse Hearts Report*, *supra* footnote 34, at p. 10. See also; Human Rights Watch, *Break Their Lineage, Break Their Roots*, *supra* footnote 20.

⁴² ASPI, *Documenting Xinjiang’s Detention System*, *supra* footnote 34, at p. 5.

⁴³ Human Rights Watch, *Break Their Lineage, Break Their Roots*, *supra* footnote 20 at p.25-40.

⁴⁴ Zenz, Journal of Political Risk, *Beyond the Camps: Beijing’s Long-Term Scheme of Coercive Labor, Poverty Alleviation and Social Control in XUAR*, 17 October 2019 at pp. 3-4.

⁴⁵ Jo Smith Finlay, *Now We Don’t Talk Anymore*, 28 December 2018.

only possible when this ‘virus’ in their thinking is eradicated and they are in good health.”⁴⁶

9. Numerous statements have condemned the Chinese government’s practices in XUAR. A joint statement issued on 1 November 2019 by 12 UN mandate holders expressed concern about what it termed “increasing practices of arbitrary detention, enforced disappearance, absence of judicial oversight and procedural safeguards and restrictions of the right to freedom of expression, the right to freedom of thought, conscience and religion, the right to freedom of peaceful assembly, the right to education and the right to freedom of movement within an increasingly securitized environment, particularly for designated minorities, notably Uyghurs and Tibetans.”⁴⁷ More recently the situation in XUAR, including deprivation of liberty, persecution, torture, murder and sexual violence, has been recognised as credibly constituting crimes against humanity and/or genocide by a wide range of international legal and political actors including Human Rights Watch⁴⁸, Amnesty International⁴⁹, the Newlines Institute⁵⁰ and several national parliaments.⁵¹ The EU has imposed sanctions coordinated with the US, Canada and the UK for “systemic violations against Uyghurs”.⁵² In particular, Ireland was among twenty-two countries to express similar concerns in a joint letter sent on 8 July 2019 to the UN High Commissioner for Human Rights⁵³ and among 40 countries that made a joint statement to UN Human Rights Council 47 on 22 June 2021.⁵⁴

⁴⁶ New York Times, *Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims*, 16 November 2019.

⁴⁷ This statement is available [here](#).

⁴⁸ Human Rights Watch, *Break Their Lineage, Break Their Roots*, *supra* footnote 20.

⁴⁹ Amnesty International, *Like We Were Enemies In A War, PRC’s Mass Internment, Torture and Persecution of Muslims in Xinjiang*, June 2020.

⁵⁰ Newlines Institute, *The Uyghur Genocide: An Examination of China’s Breaches of the 1948 Genocide Convention*, March 2021. See also Alison Macdonald QC and others, *International Criminal Responsibility for Crimes Against Humanity and Genocide Against the Uyghur Population in the XUAR*, *supra* footnote 23.

⁵¹ The US Department of State and the parliaments of the United Kingdom, Canada, the Netherlands and others.

⁵² European Parliament, *EU sanctions to four Chinese individuals and a Chinese entity on human rights violations; Counter-sanctions by the PRC*, March 2021.

⁵³ This letter is available [here](#).

⁵⁴ This statement is available [here](#).

(ii) The Subjecting Of Ethnic Groups In XUAR To Forced Labour

10. A key mechanism enabling and implementing the forced labour aspect of the subjugation of minorities in XUAR is ‘Xinjiang Aid’ – a state-mandate programme of investment in XUAR that incentivises “coastal” Chinese companies to set up subsidiary factories in XUAR and benefit from government subsidies and cheap labour organised by the state authorities. The programme involves “pairing” eastern provinces with specific regions in XUAR and providing companies with various different options for how they can participate. A report by the Center for Strategic & International Studies (CSIS) (“the **CSIS Report**”)⁵⁵ describes in detail the way in which the Xinjiang Aid programme works:

“First, eastern companies are to invest substantially in factories in Xinjiang. They gave more than \$2 billion in the “pairing” program in 2018. In some instances, eastern companies build and run factories in Xinjiang. In other cases, publicly available documents suggest that they provide money to help build such factories and industrial parks as a joint venture. To complement this, company employees and Party cadres are sent to Xinjiang to assist with reeducation and vocational training.

The second main element of the pairing program is called a “school + enterprise + industry” model, by which minorities from reeducation and vocational training programs are sent to work in enterprises in Xinjiang owned by the paired eastern companies. As researchers have highlighted, some of these eastern companies paid to build factories and industrial parks that were developed to incorporate “reeducated” workers and poor minorities. As a result, these eastern companies provided material support to

⁵⁵ CSIS, *Connecting the Dots in Xinjiang*, *supra* footnote 34.

the government's efforts to "reeducate" ethnic minorities through these factories, potentially including through forced labor.

11. The U.S. State Department's 2020 Trafficking in Persons report notes the various ways in which the Xinjiang Aid programme can operate:

"Authorities offer subsidies incentivizing Chinese companies to open factories in close proximity to the internment camps and to receive transferred detainees at satellite manufacturing sites in other provinces. Local governments receive additional funds for each inmate forced to work in these sites at a fraction of minimum wage or without any compensation. The government has transported tens of thousands of these individuals to other areas within XUAR and to other provinces for forced labor under the guise of poverty alleviation and industrial aid programs."⁵⁶

12. The relevant point for present purposes is that, as The CSIS Report concluded, "the use of forced labor is geographically widespread rather than limited to only certain regions of XUAR."⁵⁷ The aim of Xinjiang Aid is to maintain political stability and control by entwining industry with the internment camps and wider forced labour programmes. Zenz has identified three separate mechanisms through which the state seeks to place the vast majority of adult Uyghurs and other ethnic populations, both men and women, into different forms of coercive or at least involuntary, labor-intensive factory work."⁵⁸ He refers to these transfer mechanisms as "flow schemes", explaining:

"While all three flow schemes operate on different levels of coercion, with flow 1 representing the highest coercion level, all of them share significant similarities. They all serve a primary stability maintenance goal by

⁵⁶ US Department of State, *Trafficking in Persons Report 2020*, at p. 156.

⁵⁷ CSIS, *Connecting the Dots in Xinjiang*, *supra* footnote 34, at p. 11.

⁵⁸ Zenz, Journal of Political Risk, *Beyond the Camps*, *supra* footnote 44, at p. 1.

implementing “de-extremification” and transforming people’s minds. All three conduct thought education, political indoctrination, and end up placing minorities into controlled, full-time labor environments. The result is greater state control, reduced family interaction and influence, and reduced intergenerational cultural, linguistic and religious transmission.”⁵⁹

13. Flow 1 comprises individuals in VTICs who are subsequently “‘released’ into fully coercive forms of labor” while Flows 2 and 3 comprise “transfers of persons in general society outside the internment camp network.”⁶⁰ Regarding Flow 1, Zenz notes:

“In some instances, VTICs are directly located within industrial parks. For example, a document pertaining to the Lop County (Hotan Prefecture) Industrial Park states that the park’s north campus has a vocational training camp (教培中心), and together with the vocational training school there are 7,000 persons in these two facilities. Overall, the park hosts 155 companies. This also means that these companies very likely recruit a mix of VTIC and non-VTIC labor, representing different levels of coercion and involuntariness.”⁶¹

14. Adrian Zenz has also recently written on the evolution of “Flow 1” camp systems in XUAR, comparing them to the prior system of penal labour reform. VSETCs start with intensive re-education, and then culminate in enforced post-internment labour. Zenz notes this is an ‘essential prerequisite for the system’s primary goal of long-term assimilation and coercive integration of resistant ethnic groups into Beijing’s social order.’ Through Chinese “prison studies” debates and government documents, Zenz argues these punitive measures have evolved with the intention

⁵⁹ *Ibid.*, at p. 6.

⁶⁰ *Ibid.*, at p. 4.

⁶¹ *Ibid.*, at p. 7.

of making the wider crackdown on the Uyghur people economically sustainable.

15. Similarly, the report by the Australian Strategic Policy Institute entitled *Documenting XUAR's Detention System* (the “**ASPI Detention System Report**”), which is based on “the largest database of XUAR’s detention facilities in existence”, observes that “[c]amps are also often co-located with factory complexes, which can suggest the nature of a facility and highlight the relationship between arbitrary detention in XUAR and forced labour.”⁶² The granular operation of how Flow 1 transfers take place was revealed in 2020 in the leaked Chinese government documents called the ‘Karakax List’, analysed by both Zenz and the Uyghur Human Rights Project.⁶³
16. Flow 2 relates to the “centralized training of rural surplus laborers” through tightly-controlled state-organised and supervised transfers of groups of Uyghur and other workers of particular ethnic groups to securitised work and training in factories.⁶⁴ In respect of this category, Zenz notes that “[t]he government has detailed plans and quotas for the ‘training for the purpose of changing employment’ (转移就业技能培训) of ‘poor household labor’” and, furthermore, that “[c]ompanies can implement this training themselves or else have it implemented by local training institutions such as vocational schools.”⁶⁵ Differentiating these transfers from Flow 1, Zenz states

“The government of the People’s Republic of PRC (PRC) operates two. The first [large-scale, state-sponsored programs of forced labor in Xinjiang] places “graduates” from vocational internment camps into factory jobs that are often located close to the aforementioned camps.... Another takes rural

⁶² ASPI, *Documenting Xinjiang’s Detention System*, *supra* footnote 34, at p. 5.

⁶³ Zenz, *The Karakax List*, *supra* footnote 40. See also Uyghur Human Rights Project (UHRP), *Ideological Transformation: Records of Mass Detention from Qaraqash Hotan*, 18 February 2020.

⁶⁴ Zenz, *Journal of Political Risk*, *Beyond the Camps*, *supra* footnote 44 at p. 9.

⁶⁵ *Ibid.*, p. 10.

surplus laborers from minority regions and assigns them mandatory training and job placements, which include seasonal labor such as picking cotton...

But the region's coercive labor scheme is far more encompassing than the internment drive. Hundreds of thousands of so-called rural surplus laborers are also receiving what is termed "centralized" job training in closed facilities. Two thirds of this supposed training typically consists of military drills and political indoctrination. The main difference between this training scheme and the internment camps is that its duration is shorter and fixed. Both are equally involuntary: Minority regions are assigned annual quotas for the numbers of trained surplus laborers that they must produce."⁶⁶

17. Zenz further comments on the conditions of work to which the Flow 2 workers are subjected, which further demonstrates their involuntary nature:

"Of significant interest are also the actual working conditions of those who undergo rural surplus laborer training. A report about graduates from such centralized training sessions in Aksu Prefecture's textile manufacturing states that these newly-baked workers eat and sleep on the factory compounds, and they do so for at least several years. It is unlikely that most or all of them would willingly choose to be separated from their core social and family circles and their cherished cultural environments, even if the new jobs would earn them a higher income."⁶⁷

18. Thus Zenz concludes that "XUAR's employment scheme for rural surplus laborers outside the internment system contains a significant amount of involuntary aspects. It is unclear whether this form of employment is in fact much more voluntary than that of VTIC graduates."⁶⁸ In the Jamestown Report, he comments

⁶⁶ Zenz, Jamestown Foundation, *Coercive Labor and Forced Displacement in Xinjiang's Cross-Regional Labour Transfer Program*, March 2021.

⁶⁷ Zenz, Journal of Political Risk, *Beyond the Camps*, *supra* footnote 44, at p. 12.

⁶⁸ *Ibid.*, p. 13.

on further Chinese government documents he has analysed relating to Flow 2, which include subjecting labourers to centralised “political thought education” training, “group-style” transfers in batches with accompanying officials and security guards and on-site management of workers by officials who also function as security guards. Zenz confirms that these transfers are not optional and failure to comply can be seen as grounds for internment in the camps.⁶⁹

19. Zenz concludes that the government documents give “strong and authoritative evidence for large-scale, coercive stated-driven recruitments into labor transfers ... intended to “reduce labor costs” for companies” and that “labor transfers represent a long-term measure to promote “assimilation” and “reduce Uyghur population density”, clearly indicating that the purpose of these transfers is political rather than economic.

20. Finally, Zenz addresses Flow 3, “sending work to people’s doorstep” (送工作到家门口), which he describes as “probably the most intrusive social re-engineering of Uyghur and other Turkic minority societies in XUAR”.⁷⁰ He describes how government documents often refer to “finegrained poverty alleviation” or “precise poverty alleviation” to mean that the scheme involves targeting every single citizen until everyone who is capable of working is trained and working – if not through the Flow 1 or Flow 2 transfers describe above, then through yet another channel through coercion into work in local satellite factories in rural villages. This is Flow 3. Zenz explains:

“These so-called satellite factories may, in the long term, have the most pervasive and destructive impact on Uyghur society. The degree of involuntariness of this form of labor is the most complex. On the one hand,

⁶⁹ Zenz, Jamestown Foundation, *Coercive Labor and Forced Displacement in Xinjiang's Cross-Regional Labour Transfer Program*, *supra* footnote 66.

⁷⁰ Zenz, Journal of Political Risk, *Beyond the Camps*, *supra* footnote 44 at Section 7.0

village work teams “encourage” women to enter full-time factory work through various means, including changing their “thinking”. This arguably represents a form of involuntary labor, but direct evidence of coercion, such as based on formalized or centralized trainings, is weaker than for flows 1 or 2. However, the satellite factory scheme is at times closely linked to VTIC labor (flow 1).”⁷¹

21. In terms of the enormous scale of this, Zenz notes that a government document disclosed that a satellite factory was to be built for every two villages in XUAR.⁷² Flow 3 involves ‘village based work teams’ being sent into rural XUAR villages, a deliberately intrusive and oppressive programme involving CCP cadres being despatched into every Uyghur home, to forcibly live with Uyghur families. They conduct surveillance, identify individuals for de-extremification detention in the internment camps, and ceaselessly ‘encourage’ (pressure) resistant families, including ‘freeing’ women of their children by setting up state run nurseries and ‘freeing’ farmers of their land by confiscating it, until they ‘agree’ to go work in factories. Refusal or resistance is considered an indicator of extremism which may lead to internment in one of the camps.⁷³

22. Zenz thus observes in relation to both Flow 2 and Flow 3 that “even non-VTIC labor involves different degrees of coercion. In XUAR's currently extremely securitized and fear-based social environment, there is very limited (if any) space for voluntary choices.”⁷⁴

(iii) Forced Labour In Prisons In XUAR

⁷¹ *Ibid.*, at Section 7.1.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*, p. 9. See also Joanne Smith Finlay, Central Asian Studies Journal, *Securitization, insecurity and conflict in contemporary XUAR: has PRC counter-terrorism evolved into state terror?*, March 2019.

23. In addition to those subject to forced labour in XUAR under the three “flow schemes” described above, forced labour in formal prisons has historically formed and continues to form part of the labour economy in China and XUAR in particular.⁷⁵ According to a report by the Citizen Power Institute (CPI) entitled *Cotton: The Fabric Full of Lies – A Report on Forced and Prison Labor in XUAR, China, and the Nexus to Global Supply Chains* (“**The CPI Report**”), the total number of people who have been detained on foot of a judicial decision (as distinct from those in extra-judicial internment) in XUAR “is likely between 500,000 to 800,000.”⁷⁶ There is, furthermore, a disproportionately high concentration of prisons in XUAR compared to the rest of the country – for example there are over 70 prisons in the XUAR compared to a mere 25 in Shandong Province despite the latter having a population over four times larger.⁷⁷

24. There are two major systems of prison labour in XUAR: (i) the prison network operated by the XUAR Production and Construction Corps (“XPCC”); and (ii) the prison network run by the local XUAR government.⁷⁸ The CSIS Report states:

“Although some portions of the XUAR prison system are run by the provincial government, the [XPCC] administers its own prison system and associated factories. The XPCC is a unique paramilitary organization that provides border defense, builds and administers towns, and engages in commercial activities. The XPCC has long employed prison labor at a large scale, using inmates sent to remote XUAR from the rest of China.”⁷⁹

⁷⁵ Citizen Power Institute (CPI), *Cotton: The Fabric Full of Lies – A Report on Forced and Prison Labor in XUAR, China, and the Nexus to Global Supply Chains*, April 2019, at pp. 8, 14 and 19, available at **Annex 2**. “The use of prison labor for economic development and making profits is a long-standing policy and practice in China.” This is explicitly provided for under Chinese law, which requires people who are serving prison sentences to work as part of their sentence. See also Qiu Yang, Chinese Law and Policy Review, *ILO Fundamental Conventions and Chinese Labor Law: From a Comparative Perspective*, 2006, at pp. 30-32.

⁷⁶ *Ibid.*, at p. 19.

⁷⁷ *Ibid.*, p. 5.

⁷⁸ The CPI Report *supra* footnote 75 and the CSIS report (*supra* footnote 34) both address these prison labour systems.

⁷⁹ CSIS, *Connecting the Dots in Xinjiang*, *supra* footnote 34, at p. 8.

25. The XPCC operates like ‘a state within a state’ in XUAR, reporting directly to the Chinese government. The CPI Report notes that The XPCC’s Public Security Bureau administers security and policing for the areas under the XPCC’s jurisdiction, that the XPCC operates at least 30 prisons in XUAR and at least three ‘re-education’ facilities. It states that the XPCC is responsible for “the largest and longest-running judicial forced labor system in China”⁸⁰ and its “prison system is designed to be a prison labor system.”⁸¹ The XPCC was sanctioned by the EU, UK, US and Canada in March 2021 for gross human rights violations, including “large-scale arbitrary detentions and degrading treatment inflicted upon Uyghurs and people from other Muslim ethnic minorities, as well as systematic violations of their freedom of religion or belief, linked, inter alia, to the XPCC’s implementation of a large-scale surveillance, detention and indoctrination programme targeting Muslim ethnic minorities”. In particular, the reasons for the sanctions included that “the XPCC uses Uyghurs and people from other Muslim ethnic minorities as a forced workforce, in particular in cotton fields. As the organisation in charge of security policies within the XPCC, the XPCC Public Security Bureau is responsible for the systematic use of forced labour.”⁸²

(iv) The Use Of Forced Labour In Cotton Production In Or Connected To XUAR

26. While forced labour is used in the production of a range of goods in XUAR, forced labour from across the spectrum of prison labour and all three “flows” of workers described above is particularly endemic in the cotton sector.

27. In respect of prison labour, both the XPCC and the XUAR government operate conglomerates of cotton factories and companies for whose benefit the prisoners in their respective prisons are forced to work; these are de facto prison enterprises

⁸⁰ CPI Report, *supra* footnote 75 at p. 14.

⁸¹ *Ibid.*, p. 16.

⁸² European Parliament, *EU sanctions to four Chinese individuals and a Chinese entity on human rights violations; Counter-sanctions by the PRC*, March 2021.

– in some cases the factories are physically situated inside prisons themselves.⁸³ The production of cotton in XUAR therefore already existed as a major industry prior to 2014 but thereafter dramatically expanded and was transformed into a vehicle for the measures being imposed by the state on Uyghurs and other minorities. As the CPI Report notes, in May 2014 China’s internment campaign began “when the [Chinese Communist Party] decided to grow XUAR’s textile/apparel industry as a multifaceted strategy to stabilize XUAR.”⁸⁴ To implement the plan, XUAR built a series of textile development areas, each of which “have corresponding major prisons run by either XUAR or the XPCC.”⁸⁵ The CPI Report further states:

“Since 2014, XUAR has added nearly half a million new cotton/textile/apparel jobs under its expansion plan. These workers are essentially from these so-called ‘rural surplus labourers’ in Southern XUAR. Some of them have voluntarily participated in the program but many are the extrajudicial forced labourers.

“... the most strong evidence that has connected the dots between the “reeducation camps” and forced labour in Xinjiang’s textile/apparel industry can be found in a speech delivered by Mr. Sun-Ruizhe, vicepresident of the PRC National Textile and Apparel Council, to senior industry representatives. In his speech, Mr. Sun said that Xinjiang planned to recruit from three main sources to increase the textile and garment sector’s workforce. These three sources include “impoverished households, relatives of the three types of people, and reeducation campers.” Three types of people means those who are convicted prisoners, detainees, and the camp inmates.”⁸⁶

⁸³ CPI Report, *supra* footnote 75, at pp. 31-45.

⁸⁴ *Ibid.*, p. 32.

⁸⁵ *Ibid.*, p. 21.

⁸⁶ *Ibid.*, pp. 24-25. The CSIS report (*supra* footnote 34) makes similar conclusions about the connection between the forced labour programmes and the cotton and textiles industry.

28. Zenz similarly states:

“The strategy for moving vast numbers of rural minority populations into wage labor is predicated upon low-skilled, labor-intensive industries that only require a limited amount of job training. In particular, this centers around the manufacturing of textiles and garments, electronic product assembly, footwear, toys, furniture, specialty handicraft, and similar products. Among these, textile and garment production are the main focus. By 2023, XUAR wants to have 1 million workers in textile and garment industries, with 650,000 of them coming from the southern Uyghur majority regions.”⁸⁷

29. In 2019, cotton industry publication Jernigan Global reported on the scale of uptake of Xinjiang Aid within the textile industry, reporting that by that stage the XUAR textile and apparel sector was already estimated to be near the size of the entire textile and apparel industry of Turkey, with cotton use nearing eight million bales or more annually:

“The government’s program of massive subsidies has resulted in almost every major Chinese textile and apparel company locating a factory in the region. Subsidies include free land, lower electricity cost, low cost loans, transportation subsidies, and even subsidized labor. The subsidies have been successful in attracting a record amount of fixed asset investment in textiles and apparel plants to Xinjiang.”⁸⁸

30. Internal Chinese government documents explicitly recognise 2014 onwards as a discrete “high-speed development” phase in the history of XUAR’s textile industry, characterised by rapid growth and development driven by Xinjiang Aid and the

⁸⁷ Zenz, Journal of Political Risk, *Beyond the Camps*, supra footnote 44, at p. 3.

⁸⁸ Jernigan Global, *Issue No. 1028: Xinjiang Cotton Textile Industry Under Threat Due To Forced Labor*, 22 July 2019.

flows of involuntary labour transfers.⁸⁹ They hail the increase in the capacity of the textile and garment industry parks across XUAR, enabled by these forced labour programmes, as the driver for XUAR's economic progress.⁹⁰

31. In addition to the evidence set out above that the transfer of workers to these factories is in the first instance involuntary, the conditions of coercion and detention in which the workers are often subsequently kept compounds the evidence that the labour is forced. In the expansive industrial parks in particular, in which large-scale textile operations have been built since 2014, Chinese documents confirm that workers are held in “highly militarised, increasingly securitised [conditions], and in several ways not dissimilar to the vocational internment camps”, an approach that “sought to maximise “iron-like” discipline, obedience, and the production of standardised behaviour”.⁹¹ Uyghur workers are described as being under “paramilitary management”.⁹² Witness testimonies detail the grim reality of the securitised conditions within the factories, including police guards, body searches, interrogations, and prohibitions on leaving the factory or the on-site dormitories in which they are forced to live.⁹³

32. The United States Xinjiang Supply Chain Business Advisory of July 2021 stated clearly that companies operating within the confines of, or even adjacent to, these industrial parks involved in the government's poverty alleviation efforts are at risk of forced labour:

“There is evidence of forced labor, under the guise of “vocational training” obtained using threats, force, detention, debt bondage, and other abusive practices occurring in the internment camps, large industrial parks, PRC

⁸⁹ Xinjiang Cotton Textile Industry, *Social Responsibility Report*, January 2021, p.4-7.

⁹⁰ *Ibid.*, p.19

⁹¹ Zenz, Jamestown Foundation, *Coercive Labor and Forced Displacement in Xinjiang's Cross-Regional Labour Transfer Program*, *supra* footnote 66.

⁹² *Ibid.*

⁹³ See testimonies of [Qelbinur Sidik](#) and [Gulzira Auelkhan](#) and to the Uyghur Tribunal, dated 4 June and 12 September 2021. See also Darren Byler, *How companies profit from forced labour in Xinjiang*, September 2019.

companies outside Xinjiang, and among the non-detained rural residents of Southern Xinjiang where the majority of Uyghurs live ... There have been reports of Vocational Training Centers located within and adjacent to industrial parks.”⁹⁴

33. It is also important to note that forced labour in the cotton sector in XUAR is not confined to factories which manufacture cotton. It is also widespread in the preparation of XUAR’s cotton fields and in the subsequent harvesting of cotton.⁹⁵ The EU sanctions specifically recognised that the XPCC ““uses Uyghurs and people from other Muslim ethnic minorities as a forced workforce, in particular in cotton fields.” In December 2020, Zenz published a report setting out in detail how hundreds of thousands of ethnic minorities are being forced to pick cotton in XUAR through the government’s coercive labour schemes.⁹⁶ He notes that cotton picking by hand, dominated by coercive labour transfers, is particularly prevalent in southern XUAR, which produces three quarters of the region’s cotton and 99.4% of its highest quality long-staple cotton.⁹⁷ Cotton pickers are subjected to the same close supervision and intense indoctrination as factory workers, accompanied at all times by government cadres who act as “security staff”.⁹⁸

34. The CPI Report, citing official data, notes that in 2018 XUAR produced 83.9% of total Chinese cotton output.⁹⁹ The XPCC alone produced 33.5% of Chinese cotton.¹⁰⁰ Details of specific companies linked to forced/prison labour in XUAR are provided in both the CPI Report and the CSIS Report.¹⁰¹ The CPI Report concludes that “[b]ecause forced labor is used so ubiquitously throughout XUAR, it is very

⁹⁴ United States Treasury, *Xinjiang Supply Chain Business Advisory*, 13 July 2021.

⁹⁵ CPI Report, *supra* footnote 75, at pp. 23, 26. See also US Department of State, *Trafficking in Persons Report 2020*, *supra* footnote 56.

⁹⁶ Zenz, NewLines Institute for Strategy and Policy, *Coercive Labor in Xinjiang*, *supra* footnote 27.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ CPI Report, *supra* footnote 75 at p. 13.

¹⁰⁰ *Ibid.*, p. 14.

¹⁰¹ See pp. 31-45 of the CPI Report, *supra* footnote 75. Various Chinese companies associated with forced and prison labour are also referred to throughout the CSIS report, *supra* footnote 34.

difficult to separate XUAR's forced labour economy from its regular economy"¹⁰² and therefore that it should be "assume[d] that any cotton products sourced from China are a product of China's cotton gulag."¹⁰³ Similarly, Zenz has concluded that it is appropriate "to consider the entire region to be thoroughly tainted with different forms of coercive labor [with the result] that nothing made in whole or in part with products from XUAR should have any place in an ethically clean supply chain."¹⁰⁴ The UK Foreign Affairs Committee similarly concluded, following a parliamentary inquiry into the XUAR detention camps, that "[u]nless proven otherwise, the mass incarcerations and connected factories and farms mean it should be assumed that any product originating from Xinjiang is the product of forced labour".¹⁰⁵ In January 2021, the United States government implemented such a presumption, announcing an import ban on all cotton products from XUAR on the basis of the prevalence of forced labour in the region, and in December 2021 went further in passing the Uyghur Forced Labour Prevention Act which establishes a rebuttable presumption that all goods produced in whole or in part in XUAR were produced using forced labour and thus their importation is prohibited.¹⁰⁶

35. Finally, it is of note that forced labourers from XUAR do not just work in XUAR itself. The Australian Strategic Policy Institute recently estimated "that more than 80,000 Uyghurs were transferred out of XUAR to work in factories across China between 2017 and 2019"¹⁰⁷ in conditions which clearly constitute forced labour.¹⁰⁸ It has also "identified 27 factories in nine Chinese provinces that are

¹⁰² CPI Report, *supra* footnote 75, at p. 4.

¹⁰³ *Ibid.*, at p. 5.

¹⁰⁴ Zenz, *XUAR's New Slavery*, *supra* footnote 28.

¹⁰⁵ UK Foreign Affairs Committee, *Never Again: The UK's Responsibility to Act on Atrocities in Xinjiang and Beyond*, July 2021.

¹⁰⁶ US Customs and Border Protection, *CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang*, 13 January 2021. See also US Customs and Border Protection, *Uyghur Forced Labour Prevention Act*, 23 December 2021.

¹⁰⁷ ASPI, *Uyghurs for Sale*, *supra* footnote 22, at p. 3.

¹⁰⁸ *Ibid.*, at pp. 3-4.



using Uyghur labour transferred from XUAR since 2017 [which] claim to be part of the supply chain of 82 well-known global brands.”¹⁰⁹

¹⁰⁹ *Ibid.*, at p. 3.



ANNEX 2

Citizen Power Institute¹¹⁰, *Cotton: The Fabric Full of Lies – A report on forced and prison labor in XUAR, China, and the nexus to global supply chains*, August 2019 (“CPI report”) (attached).

¹¹⁰ The Citizen Power Institute is a Washington-based “grassroots movement dedicated to advancing a peaceful transition to democracy in China.” The report’s author, Dr. Han Lianchao, is a pro-democracy activist who left China to study in the United States. He worked in the U.S. Senate for 12 years, serving as legislative counsel and policy director for three U.S. Senators, responsible for legislative strategy in the areas of federal budget, taxation, social security and economic policy. Dr. Han is also an expert on China’s economic and political development, and currently serves as a Visiting Fellow at the Hudson Institute. He holds graduate degrees from China Foreign Affairs University, Yale University, George Mason University and Johns Hopkins University.