



# AFL-CIO

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**BEFORE THE HOUSE SUBCOMMITTEE ON TRADE OF  
THE COMMITTEE ON WAYS AND MEANS**

**HEARING ON**

**“ENFORCING THE BAN ON IMPORTS PRODUCED BY  
FORCED LABOR IN XINJIANG”**

**TESTIMONY OF**

**CATHY FEINGOLD  
INTERNATIONAL DIRECTOR  
AMERICAN FEDERATION OF LABOR & CONGRESS OF  
INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**SEPTEMBER 17, 2020**

### ***Global Supply Chains Embedded in Systematic Forced Labor***

On behalf of its 55 affiliates representing more than 12 and a half million working families, the AFL-CIO appreciates the opportunity to testify on “Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang”. Over the past few decades, the AFL-CIO has expressed strong concerns regarding China’s long record of documented worker and human rights violations and the impact this exploitation has on workers throughout the global economy. Since 2017, the widespread and systematic repression of the Uyghur population and other Turkic and Muslim-majority peoples, including extensive forced labor, stands out.

Aside from the Chinese government and its state-owned enterprises, multinational corporations (MNCs) from around the world profit from forced and prison labor at levels not seen since World War II. There is no debate about the gravity and scale of the abuse in the Uyghur Region<sup>1</sup> of China. The time has come to act to end it. This will require a new and far more effective approach to regulating global supply chains and enforcing our trade policies.

The extreme case of forced labor in the Uyghur Region must be understood in the current context of neoliberal globalization. For the past four decades, the neoliberal model of globalization gave rise to MNCs and increased concentration of wealth and power through a complicated set of global supply chains. MNCs benefit from engaging in global labor arbitrage, controlling the global labor market and developing sourcing strategies that profit off of low labor costs guaranteed by China and developing countries. Throughout the supply chains, a system of outsourcing of work allows MNCs to distance themselves from taking responsibility for the rights and protections of the workers in their supply chains. The fragmentation that occurs in global supply chains creates a legal distance between MNCs and their suppliers attempting to shield them from liability. This model facilitates the use of forced labor and other forms of egregious worker rights violations throughout global supply chains.

### ***Building Effective Global Governance***

The profiting by global corporations from the documented forced labor in the Uyghur Region of China represents an extreme example of the failures of the neoliberal model of globalization. For years, corporations shifted production to China to take advantage of low labor costs, the lack of independent unions, harassment and imprisonment of worker rights activists and an overall repressive

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<sup>1</sup> The Xinjiang Uyghur Autonomous Region is known to local people as East Turkistan and representative groups of the directly affected communities have expressed the consensus view that in international fora they prefer to use the term Uyghur Region.

human rights environment. Now, the sourcing decisions of brands and their suppliers continue to take advantage from this exploitation. The lack of effective global governance creates a downward pressure on wages and working conditions for all workers in the global economy.

In the first decade of the global supply chain model described above, wage, safety and human rights violations became widespread and were not effectively addressed through national laws in many producing countries. As a response, MNCs began developing codes of conduct, social audits, risk management and due diligence schemes to mitigate their exposure and, putatively, to improve conditions and respect for human rights. Such schemes, always voluntary and legally unenforceable, were sometimes developed and overseen in partnership with importing country governments and multilateral organizations like the International Labor Organization's Better Work Program and the United Nations' Global Compact. Over the last thirty or so years, these corporate driven schemes and multi-stakeholder initiatives (MSIs) to monitor labor conditions in global supply chains have proliferated and consistently failed to ensure protection and respect for human and labor rights in industries and in countries around the world. Such corporate-led and legally unenforceable schemes are particularly unsuited to China and especially the Uyghur Region where local authorities not only fail to cooperate with due diligence procedures but often perpetuate and administer the forced labor system in the first links of numerous global supply chains.

Corporate due diligence measures do not operate at all in these supply chains and cannot substitute for robust monitoring and enforcement by the United States Customs and Border Protections (CBP). Most MNC's due diligence programs have co-existed with the last three years of widespread and documented forced labor in the Uyghur Region without most MNCs announcing a responsible exit plan. As a minimum first step toward enforceable mechanisms, transparency and full human rights due diligence must be demanded by law. Corporations must "know and show," mapping their business relationships and impacts. At present in the United States, even such modest commitments to transparency that stop short of ending business relationships and providing remedy are purely voluntary. To stop corporate complicity in and profit derived from this systemic use of forced labor, new laws and enforcement rules are needed.

### ***Enforcement of prohibition on importation of goods produced with forced labor***

The abuses in the Uyghur Region and emanating from there are the result of a set of linked policies of the Chinese government that have been sustained over time. Given the breadth of the violations, the response by the United States Government and many others that reject these abuses must also be commensurate to those abuses and grounded in systematic and sustained policies.

Given the clear inadequacy of corporate-driven and legally unenforceable corporate accountability programs, it may seem reasonable to turn to US laws that prohibit the importation of goods produced wholly or in part with forced labor. Here too, compliance is far from certain as enforcement is rare. The 1930 Tariff Act clearly prohibits forced labor but the rules of its enforcement predate the vast global supply chains of today and approach systematic problems with piecemeal approaches. The current Tariff Act must be updated to reflect the current structure of the global economy and the need for effective enforcement of the law.

The AFL-CIO and allies recently [petitioned](#)<sup>2</sup> CBP for a regional WRO similar to that applied to Turkmenistan for all cotton-derived goods. In an initial response to the petition, CBP officials announced that they had sufficient evidence and intended to block imports that would include the entire supply chains for cotton, including yarn, textiles and apparel. Reuters reported on September 8th that “U.S. Customs and Border Protection officials have prepared orders to block imports of cotton and tomato products from China’s western region of Xinjiang over accusations of forced labor.”<sup>3</sup> On September 14, 2020, CBP announced five new WROs but they remain *far short* of what is necessary to change the behavior not only of Beijing but of the companies that benefit from forced labor.<sup>4</sup> In spite of CBP issuing twelve previous withhold release orders on goods from the Uyghur Region, imports to the US from the region have increased.<sup>5</sup>

CBP needs to enforce all the WROs it has issued and commit to increased transparency of its enforcement actions. All WROs require robust enforcement so that corporations are held accountable and do not profit from forced labor via imports from the region and third countries that export finished products to the

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<sup>2</sup> <https://www.hrw.org/news/2020/09/09/global-coalition-urges-un-address-chinas-human-rights-abuses>

<sup>3</sup> <https://www.reuters.com/article/us-usa-trade-china-xinjiang/u-s-to-block-cotton-tomato-product-imports-from-chinas-xinjiang-over-forced-labor-cbp-idUSKBN25Z29N>

<sup>4</sup> <https://enduyghurforcedlabour.org/news/statement-human-rights-labour-and-investor-organisations-restate-call-for-a-regional-wro-and-press-for-transparency-and-robust-enforcement/>

<sup>5</sup> Lehr, Amy. Addressing Forced Labor in the Xinjiang Uyghur Autonomous Region: Towards a Shared Agenda. July, 30, 2020 <https://www.csis.org/analysis/addressing-forced-labor-xinjiang-uyghur-autonomous-region-toward-shared-agenda>

United States. The WRO issued on all cotton and cotton made goods originating in Turkmenistan over two years ago illustrates why this is needed. Since its issuance, there has been no report of cotton-made goods from Turkmenistan being blocked. In order to be effective, these measures must be accompanied by a comprehensive enforcement plan, civil fines for importers violating the prohibition and sufficient funding and capacity building for CBP. Congress should provide oversight for such measures to be meaningful.

Executive action is also required, but it alone is insufficient to address systematic violations. Such mechanisms always depend upon the political will of the executive in power. The AFL-CIO has repeatedly petitioned the United States Government to enforce laws and treaties related to worker rights violations, usually with little effect. Ending corporate complicity in and profits from this systemic use of forced labor in traded goods will require broader concrete actions: the rules of Tariff Act enforcement (1307) must be reformed and the Uyghur Forced Labor Prevention Act (H.R. 6210 and S. 3471) must be passed. Additionally, large textile and apparel brands and retailers should sign on to the call to action<sup>6</sup> launched in July by well over 200 civil society groups to cease corporate participation in the systematic repression and forced labor through these business relationships. The call to action provides an important platform for developing responsible exit strategies from the region. While the textile and apparel industry has been the clearest concern—globally one in five cotton garments contain materials from the region—other industries are also clearly implicated.

Even if executive action results in a more systematic response to the egregious abuses, without requiring CBP to improve transparency and ensure enforcement capacity it could simply be another flash in the news cycle of turbulent bilateral US-China relations and have no impact on what many consider the greatest human rights violation of our time.

### ***Building a Global Coalition to End Forced Labor***

In addition to the work of the CBP and Congress on this issue, there are many points of international leverage that should be taken. The US government, civil society and the business community must all engage allies in multilateral settings. Given the size of the US market for imported goods, the US can be an important first mover but the US cannot expect to lead while ignoring or even undermining the role of the multilateral system that it led in building over decades. If the US government fails to engage these allies seriously to reach shared

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<sup>66</sup> <https://enduyghurforcedlabour.org/call-to-action/>

positions, any measures are likely to be perceived as self-interested or simply reflective of bilateral tensions between the US and China.

To date, the response from multilateral institutions, including the United Nations, regarding the systemic use of forced labor has not been strong. UN Secretary General Guterres stated in April with regard to the situation in the Uyghur Region, “that it is very important to act in a way that each community feels that their identity is respected and that they belong, at the same time, to the society as a whole”.<sup>77</sup> Importantly, numerous UN special rapporteurs have been far more direct in their condemnation of the human rights situation in the region but it has not led to concrete actions. The US government should play a leading role at the United Nations by calling for an independent international mechanism to investigate the situation in the Uyghur Region and call for a special session of the Human Rights Council.<sup>88</sup>

As part of the global labor movement, the AFL-CIO works with the International Trade Union Confederation (ITUC) and Global Union Federations in specific industrial sectors to build awareness of the issue and coordinate advocacy efforts. The International Labor Organization (ILO) provides a forum to raise the issue and present a position against forced labor that brings together workers, employers and governments over international standards. Through both the regular reporting cycle on ratified conventions and constitutional commitments of all member nations, there are mechanisms to hold governments accountable. Here too, the US should be working with governments, employers and unions to raise the visibility of this issue in the ILO, including to support a Governing Body resolution condemning the widespread, state-sponsored forced labor scheme.

The US should also be working with counterparts in the European Union to build support for similar trade action by the 28-country bloc. The EU, consistent with its obligations under the WTO, should also prohibit the entry of forced and prison made goods. The EU’s proposed legislation on corporate accountability could hold EU firms accountable for benefiting from forced labor in their supply chains.

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<sup>77</sup> <https://www.reuters.com/article/us-china-un-xinjiang/u-n-chief-raises-issue-of-xinjiangs-uyghurs-during-china-visit-idUSKCN1S51UI>

<sup>88</sup> See *Global Coalition urges UN to Address China’s Human Rights Abuses*  
<https://www.hrw.org/news/2020/09/09/global-coalition-urges-un-address-chinas-human-rights-abuses>

## ***Policy Recommendations***

### **Tariff Act**

1. CBP should issue a regional WRO with regard to all cotton, yarn, fabric and finished apparel which are linked to the forced labor of Uyghur workers.
2. CBP should vigorously enforce the WROs it has already issued with regard to the Uyghur Region and elsewhere. WROs without enforcement are of limited practical value as importers will not be incentivized to map their supply chains and will thus continue to import prohibited goods (knowingly or otherwise). The lack of any action following the issuance of the Turkmenistan WRO has no doubt meant that a substantial amount of goods imported from third countries containing Turkmen cotton have entered the U.S. CBP should draw up enforcement plans for any WRO, in collaboration with petitioners where relevant.
3. Congress must exercise its oversight authority of CBP to ensure that it acts expeditiously and transparently upon information submitted to it concerning goods made in whole or in part with forced labor. To the extent that CBP's inability to issue and enforce WROs is a capacity issue, Congress should appropriate sufficient funds for that purpose.
4. Congress should pass as a matter of urgency the Uyghur Forced labor Prevention Act.
5. Congress should amend Section 1307, in consultation with stakeholders, to ensure it is effective in prohibiting the entry of forced labor-made goods, to improve transparency, and to provide the basis for remedies to the victims of forced labor when WROs are issued. Civil fines on importers should be used as a means to compensate such victims.

### ***Enhance US tools for corporate accountability***

1. Congress should hold hearings to review the legal tools currently available to hold corporations accountable for the human rights violations committed by them, their subsidiaries and their contractual suppliers, and adopt legislation that would overcome existing barriers to corporate accountability. Congress should learn from recent corporate accountability laws that have been adopted in other jurisdictions.
2. The Administration, with congressional oversight, should vigorously enforce the Trafficking Victims Protection Act, especially with regard to forced

labor violations which are found in the overseas supply chains of corporations in the United States.

3. The Administration, with congressional oversight, should use the full range of its trade and economic policy tools to ensure respect for fundamental workers' rights.
4. Increase use of the Global Magnitsky Human Rights Accountability Act to hold individuals and entities involved in the system of forced labor and repression in the Uyghur Region.
5. Consider adoption of additional sanction that would prohibit financial dealings not only with entities in the Uyghur Region but with third parties that are found by the U.S. government to have engaged in "significant financial transactions" with the primarily sanctioned entity.
6. Require bids on federal procurement contracts to affirm that the vendor does not source materials or finished goods from the Uyghur Region or any company that participates in Chinese government subsidy programs to transfer production to the Region or recruit labor from the Region.
7. Direct the US National Contact Point (NCP) to the OECD Guidelines for Multinational Enterprises to follow the OECD Due Diligence Guidance for Responsible Business Conduct and consider disengagement from a business or supplier relationship when all other leverage has been exhausted and failed to remediate or the impacts are irreparable, and wherever there is no "reasonable prospect of change" since the relevant authorities in the Uyghur Region regularly hinder human rights due diligence procedures. The US NCP should encourage other nations' NCPs to consider these orientations for their MNEs.

### ***International Cooperation***

1. The Administration, with congressional oversight, should work with its counterparts in other governments to coordinate diplomatic and economic action with regard to China's human rights violations against the Uyghur people.
2. The Administration, with congressional oversight, should engage with counterparts in the UN generally and the ILO specifically, to end the violations of the human rights of the Uyghur people, including forced and prison labor, as a matter of urgency and using all available mechanisms.
3. Through the OECD, develop a common response to business conduct as it relates to the Uyghur Region, including coordination among National Contact Points with regard to specific instances related to human rights violations in the Uyghur Region.



Collectively these recommendations represent an important framework for the United States Government to address the need to hold corporations accountable for the use of forced labor in their supply chains. The United States must lead globally to end forced labor and the systematic repression of the Uyghur and Turkic and Muslim-majority peoples of China.