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ADDRESSING CHINA'S OPPRESSION OF UYGHURS



NSI on the Hill represents the views of a number of the National Security Institute's experts—many with longstanding experience working on national security-related matters—and it identifies key considerations and recommendations for Congress to consider regarding the toughest foreign policy challenges facing U.S. policymakers today.

OVERVIEW

- For decades, China has engaged in significant human rights abuses against the ethnic Uyghur population and other religious and ethnic minorities, including interning over 1 million Uyghurs in modern-day gulags since 2017.
- To that end, the National Security Institute brought together its collective expertise to come up with new policy solutions to address these ongoing human rights abuses. More background information on this topic can be found in the NSI Backgrounder: China's Oppression of the Uyghurs.
- Two successive administrations—Republican and Democratic alike—have recognized the oppression of Uyghurs by China as a modern-day genocide and have imposed key sanctions on China and the Chinese Communist Party (CCP).
- With successive Administrations reaching the same conclusions regarding China's human rights abuses, Congress can double down on its ongoing efforts to provide a unified policy approach to go after the Chinese government, promote human rights, and bring an end to the CCP's restrictive tactics of oppression in Xinjiang, which mirror Chinese behavior elsewhere.

KEY RECOMMENDATIONS FOR CONGRESS:

- **Sanctions:** Creating new options through more aggressive use of existing sanctions authorities, including making permanent and mandatory certain human rights sanctions, including those currently imposed by Executive Order (E.O.) 13818;
- **New Financial Tools:** Implementing additional capital raising restrictions on Chinese or foreign companies with ties to Xinjiang forced labor;
- **Domestic Policy Options:** Publishing Congressional reports that highlight American corporate involvement not just in Xinjiang but in China more broadly;
- **Trade Options:** Increased funding for export control compliance and create special China enforcement programs, as well as strengthen enforcement measures related to forced labor goods; and
- **Diplomatic Options:** Limiting or setting conditions for U.S. participation in the 2022 Winter Olympics in Beijing.



RECOMMENDATIONS FOR CONGRESS

SANCTIONS

■ **More Aggressive Use of Existing Sanctions Authorities**

- Congress could require the Treasury and State Departments to go further in identifying and imposing additional human rights sanctions under the Global Magnitsky Act, whose Executive Branch authorities were expanded by E.O. 13818, as well as under other existing authorities.
 - For example, existing federal law already requires sanctions under the Uyghur Human Rights Policy Act, which became law in June 2020 and required a first round of sanctions and an accompanying report to be issued within 180 days of the legislation becoming law.
 - It is unclear whether sanctions under UHRPA have yet been issued; additional Congressional pressure could usefully be applied here through hearings to ensure that appropriate action is taken on a regular basis against organizations subject to its provisions.
 - Congress could also codify and mandate the use of the expanded authorities provided in E.O. 13818.

■ **Enact Currently Proposed Sanctions and Potentially Expand Them**

- Congress could act on pending legislation, such as the Uyghur Forced Labor Prevention Act, which has secured broad bipartisan support in Congress, but faced headwinds last Congress as certain major American companies reportedly lobbied against its adoption.
 - The legislation would prohibit certain imports from Xinjiang unless CBP determines the goods were not produced by forced or indentured labor and makes such a determination in writing available to Congress and the public.
- This provision could be expanded in scope and tightened in language to simply bar imports of certain goods (e.g., Xinjiang cotton) until the camps are closed and all detained individuals released.
 - The legislation would impose visa- and property-blocking sanctions on officials who engage in promoting forced labor practices or conditions among Uyghurs and other minority groups in Xinjiang.
- The group of people subject to sanctions could be expanded as could the scope and quantity of available and required sanctions options.
 - The legislation would also impose Securities and Exchange Commission (SEC) reporting requirements for individuals and businesses knowingly engaging with certain entities in Xinjiang.
- These reporting requirements could go further and be expanded to impose restrictions on these individuals and businesses, including limiting their eligibility for U.S. government contracts or the like.

■ **Consider Net New Aggressive Sanctions Against China to Move the Needle**

- Congress might considering barring U.S. companies from engaging in any business in Xinjiang.
 - While such a limitation may seem like strong medicine, it would send a clear message to the Chinese government and allies alike about the depth of U.S. concerns on this front.
 - If a complete ban were viewed as too difficult to implement, at a minimum, Congress could restrict U.S. companies, directly or through a local joint venture, from engaging in business with Chinese SOEs operating in Xinjiang as well as with other Chinese entities that have ties to the Chinese security and intelligence apparatus.



- Congress might consider the more aggressive use of secondary sanctions—like those used to significant effect with respect to Iran prior to the nuclear agreement—in the context of large-scale human rights abuses, like those currently taking place in China.
- Congress might look to introduce and enact legislation similar to the Comprehensive Anti-Apartheid Act of 1986.
 - This legislation—enacted by Congress with bipartisan support over a presidential veto—imposed major import bans on iron, steel, coal, uranium, textiles, and agricultural goods coming from South Africa and imposed significant sanctions and investment restrictions, forcing that country to implement costly import-substitutions and to re-route trade through non-sanctioning countries.
 - While such an effort would require significant sacrifices on the part of the American and allied publics, particularly because we are dramatically (and collectively) more dependent on a range of goods—both finished product and precursors and components—from China as well as the cheaper pricing of such goods, it nonetheless could have a massive impact if we were willing to do it and could sustain it for some significant duration.
- And while it may be noted that in South Africa, economic sanctions combined with the withdrawal of foreign investment led to regime change, it should be noted here that these efforts would be focused on creating pressure on Chinese businesses, particularly those tied to the cotton trade, and creating the conditions for policy evolution in China.

■ Considerations Regarding Increased Use of Sanctions

- Some experts have raised the point that in considering new or expanded sanctions it is important that the United States be careful to weigh the impact on the U.S. dollar and banking system of their use as a tool for sanctions, particularly given the rise of alternative currencies and banking regimes through China.

NEW FINANCIAL TOOLS

- Implement listing and investment restrictions in U.S. markets, including capital raising restrictions, for Chinese or foreign companies with direct or affiliated company ties to Xinjiang forced labor practices and on Chinese state-owned enterprises or affiliated entities operating in Xinjiang.
- Restrict the ability of Chinese SOEs operating in Xinjiang to raise capital in the U.S. by introducing additional regulatory requirements that are difficult for such entities to comply with, such as the audit inspections requirement imposed by the Public Company Accounting Oversight Board.
- Require a CFIUS-like process for outbound investments by American companies or investors in Xinjiang-related operations or in Chinese companies with Xinjiang-related operations.
- Implement a requirement that U.S. companies or their affiliates, joint ventures, or subsidiaries that have CCP members on their board of directors or advisory boards, or in the C-Suite, must publicly disclose that fact.
- Introduce regulatory requirements for U.S. companies to verify no forced labor in supply chain.



DOMESTIC POLICY OPTIONS

■ Create Additional Public Pressure on U.S. Organizations through Congressional Fact Finding

- Congress could hold hearings and call witnesses, at the senior executive level, to discuss American corporate involvement not just in Xinjiang but in China more broadly.
 - Such hearings could include a discussion of the behavior of American companies when under pressure from China, as in the case of the National Basketball Association and its pushback on senior leaders who commented on democracy activism in Hong Kong.
 - If American corporate witnesses fail to show up for such hearings, Congress could consider imposing penalties as well as leave chairs vacant while still holding the hearings to create additional pressure.
- Congress could mandate that the U.S. government regularly publish a report listing American companies directly doing business in Xinjiang or with supply chains with a significant footprint in Xinjiang and specifically highlight business with supply chains that use forced or indentured labor.
 - Some raised the concern that such a report may constitute less fact-finding and more pure advocacy by Congress simply targeting such American companies for pressure through a name-and-shame campaign.

■ Increase Pressure on U.S. Companies through Funding Restrictions

- Congress could consider putting additional pressure on U.S. organizations, like sporting leagues, that operate in China and appear subject to major pressure by the Chinese government.
 - For example, many sports leagues receive public financing for sporting facilities from states and localities; the federal government could consider putting financial pressure on states to limit such public financing to leagues (and their teams) that enforce pro-CCP public pressure campaigns either through official league policy or pressure on teams and league employees to limit criticism of China or Chinese government policies.
 - Such pressure could come in the form of limiting federal funding for projects related to or associated with such publicly financing projects.
- Congress could require the Executive Branch to terminate government contracts, including military supply procurement, with American companies that enforce pro-CCP public pressure campaigns either through official policies or pressure on employees to limit criticism of China or Chinese government policies, do business with key Chinese government agencies, including the Chinese military or intelligence community, or whose supply chains have connections to Xinjiang.

■ Create New Legal Options to Pressure Foreign Companies or Joint Ventures

- Congress could consider permitting Chinese Uyghurs and other persecuted minorities to sue, in U.S. courts, foreign companies or joint ventures with direct or affiliated company ties to Xinjiang forced labor practices, including American joint ventures with CCP members on their boards.

■ Provide Legal Protections for Uyghur Dissidents

- Congress could create special protections for Uyghurs and other Xinjiang residents fleeing persecution.
 - Congress could create a Special Immigrant Visa (SIV) for Uyghurs and other religious and ethnic minorities from the Xinjiang Uyghur Autonomous Region.



- Congress could create special programs and funding mechanisms for Uyghurs and other Chinese dissidents (including Hong Kong democracy activists) to come to the U.S. on a temporary or permanent basis and talk about repression, democracy, and freedom, providing dedicated platforms for voicing legitimate political dissent and protecting these individuals from harassment and intimidation by Chinese agents while in the United States.

■ Increase the Free Flow of Information into China

- In order to empower dissident voices in China, Congress could increase funding for technology-based circumvention of China's Great Firewall, allowing applications like Clubhouse to operate in China and potentially serve as platform for Uyghur and other dissident voices as well as for efforts to combat Chinese misinformation and disinformation campaigns, including those related to the Uyghurs.
- Congress could also increase funding for American broadcasting and democracy programs in China and could create specific new programs for providing access to western social media platforms and news sources for Chinese citizens in China.
- Congress could also stand up and fund programs to call out and disrupt Chinese misinformation and disinformation campaigns around the globe.

TRADE-RELATED OPTIONS

- Congress could impose heavy restrictions (or a complete ban) on cotton sourced from Xinjiang and could require the Administration to work with allies to create a coalition aimed at starving the Xinjiang cotton production industry.
- Congress could create a program and provide export financing and domestic purchasing authorities for the cotton market in order to reduce the competitiveness of Chinese cotton.
- Congress could increase federal funding for export control compliance and create special enforcement programs, with dedicated money directly appropriated by Congress for the FBI, Justice Department, US Attorneys' offices, Treasury, Commerce, and other appropriate agencies to enforce compliance on Chinese entities operating in the United States.
- Congress can strengthen enforcement measures related to Section 307 of the Tariff Act of 1930 given that 17 categories of goods in China are subject to forced labor participation, including 9 categories produced in Xinjiang. For these goods, Congress could require (and fund):
 - The expansion by CBP of its use of WROs for Xinjiang goods;
 - The broadening of Commerce's use of the Entity List;
 - The targeting of Chinese companies with links to repression, mass surveillance, and detention in Xinjiang by various federal agencies for increased and more focused U.S. policy enforcement;
 - The third-party auditing of Chinese goods by Homeland Security to identify and publicly disclose inappropriate labor practices; and
 - The creation of incentives for U.S. companies by Commerce to import goods that comply with industry best practices on labor standards.



DIPLOMATIC OPTIONS

- Congress can act to restrict, eliminate, or create special conditions for U.S. participation in the 2022 Winter Olympics in Beijing, including through adoption of measures like:
 - The McCaul-Meeks legislation requiring the State Department to provide athletes attending the Olympics with certain information regarding human rights abuses and security risks in China.
 - The Waltz-Reschenthaler-Katko resolution discouraging U.S. participation in Olympic or Paralympic Games and encouraging the IOC to rebid the Games to a new host country.
 - The Romney/Kaine Amendment to bar U.S. diplomats from attending 2022 Olympics or, alternatively, intentionally sending low-level diplomats.
- Congress could encourage ASEAN and Quad nations to speak out and affirmatively push back against CCP's human rights abuses.
 - Can implement smaller-scale economic push-back modeled after U.S. options.
 - Encourage India to seek alternative investment locations than Xinjiang.
- Congress could work with the Biden Administration to build consensus within the G7 to push back against China within G20 forums.
 - Because the inner workings of G7 are usually kept confidential, the Europeans need worry less about being singled out.
 - The G20 is one of the few global forums that includes like-minded Western nations plus China and may be the ideal place to push back because the UN Security Council will likely continue to remain a roadblock to meaningful international consensus.
- Congress can work with the Administration to encourage EU review of December 2020 Comprehensive Agreement on Investment.
 - Can retract agreement, similar to Australia in April 2021.
- Congress could bar foreign officials from certain countries from entering the U.S. if their country is extraditing Uyghurs back to China.

MOVING FORWARD

The time is now for Congress to act so that the United States can firmly push back on China for its myriad violations of international norms. Two successive administrations – Republican and Democrat – have recognized the oppression of Uyghurs by China as a modern-day genocide and have imposed key sanctions on China. Given the bipartisan desire to punish China for its continued human rights abuses, Congress should act to develop and implement new policies aimed at deterring China from its continuing authoritarian behavior.