

# Making Xinjiang Sanctions Work

## Policy Brief No. 5 – Chinese counter-measures

### Based on *Making Xinjiang Sanctions Work*, July 2022<sup>i</sup>

*Can economic sanctions address Xinjiang forced labour? The Xinjiang Sanctions research project seeks to answer this question. Drawing on 3 original datasets containing over 12,000 datapoints, confidential interviews and a year of research, this Policy Brief series summarises key findings from the research. For further analysis, and the references and authorities supporting the statements in these Policy Briefs, see the project's main research study at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info).*

The Xinjiang Sanctions Policy Brief series:

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## Key research findings

- The CCP leadership perceives Xinjiang sanctions as a dangerous and potentially destabilising Western interference with China's internal affairs, fitting a pattern stretching back at least two centuries.
- China has consequently responded to Western sanctions with a range of formal and informal counter-measures of its own. These aim not only to blunt and block the effect of Xinjiang sanctions, but to counter the spread of the Xinjiang genocide and forced labour narrative. They appear to have been successful in chilling participation in and visible support for Xinjiang sanctions, by entities within China – including foreign corporations.
- Despite Beijing's history of opposition to unilateral sanctions, since 2019 China has developed a formal sanctions infrastructure of its own – the Unreliable Entity List, MOFCOM Order No. 1 of 2021, and the Anti Sanctions Law.
- The Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset, available at [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info), identifies 55 such counter-measures, including 42 targeted sanctions against officials and thought-leaders in 14 Western jurisdictions.
- Taken together, MOFCOM Order No. 1 and the Anti Sanctions Law give the CCP almost unfettered scope to order Chinese citizens and firms – apparently including Chinese subsidiaries of foreign firms – not to comply with foreign laws that restrict normal business operations with targeted Chinese entities or otherwise interfere in China's internal affairs. Chinese state media describe this sanctions infrastructure as creating “a deterrent effect in the face of Western-led hegemony”.

- China's formal counter-measures have also been supplemented by a series of informal measures involving fomenting boycotts, strategic regulation and informal blacklisting. Targets have included social and labour audit firms, apparel brands and, more recently, high-visibility Western brands such as Intel and Walmart.
- These efforts have succeeded in deterring many inside and outside China from participating in the implementation of Xinjiang sanctions. Social and labour audits across China reportedly now largely avoid discussion of the treatment of Uyghur and other Xinjiang minority workers, making such audits ineffective in assessing that treatment.
- Online measures have emerged as a particularly important aspect of these informal counter-measures. The Chinese government treats online influencers as cut-outs in delivering plausibly deniable measures imposing costs on a range of targets, from H&M to individual researchers. CCP proxies and intermediaries have stoked online boycotts and harassment, whereas online retail platforms and apps have blacklisted targeted firms, notably H&M.
- Beijing's selection of Intel as a target may have been intended to send a signal to Washington about the risks of expanding Xinjiang sanctions to the semiconductor supply-chain, which is adjacent to the solar panel supply-chain, given the supply-chains' mutual use of silica.
- In several of these episodes, both local and foreign competitors have sought to opportunistically capitalise on the targeting of Western brands, by associating their brand with pro-Xinjiang sentiments.

## Why is this important?

- Western sanctions need to factor in the CCP's willingness to take blunting, blocking and counter-measures, of both the formal and informal kind.
- Chinese counter-measures may be proving effective in both discouraging corporate support for the Xinjiang forced labour narrative, and encouraging opportunistic firms to adopt *pro-Xinjiang* branding.
- Due diligence arrangements that rely on third party audits of the treatment of Uyghur and other Xinjiang minority workers across China are likely to be unreliable, given the Chinese government's success in suppressing discussion of these issues in audit processes.
- There is a growing prospect that Xinjiang sanctions and Chinese counter-measures may trigger a decoupling dynamic, forcing multinationals to choose between access to Chinese or Western markets and supply-chains. At present, firms with strong retail or brand exposure in China appear to be choosing China.
- Western sanctions strategy must therefore factor in Chinese counter-measures and the costs they can impose, or there is a risk of Western Xinjiang sanctions backfiring by making it less costly for entities to comply with Chinese requirements than with Western ones.
- Western actors may also need to develop strategies for preventing and mitigating CCP-coordinated harassment and intimidation online, to lower the costs that China can impose online for those actors that implement Xinjiang sanctions or otherwise support the Xinjiang forced labour narrative.

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## Research overview

For China, the West's Xinjiang sanctions cross a red line, and cannot go without response. The CCP leadership perceives Xinjiang sanctions as a dangerous and potentially destabilising interference with China's internal affairs, fitting a pattern stretching back at least two centuries. They see Xinjiang sanctions as an effort by the US and its partners to sustain Western hegemony at China's expense.

China has consequently responded to Western sanctions with a range of formal and informal counter-measures of its own. These aim not only to block and blunt the effects of the Xinjiang sanctions measures themselves, but also to counter the spread of the Xinjiang genocide and forced labour narrative, which the CCP calls "the lie of the century".

## Formal measures

Beijing has long been opposed to unilateral sanctions, having been under US embargo from the 1950s to 1972, and again following the Tiananmen Square Massacre in 1989. But the West's adoption of various sanctions on China in the last four years has spurred Beijing to develop its own formal sanctions infrastructure.

In September 2020 China's Ministry of Commerce (MOFCOM) published its *Provisions on the Unreliable Entity List*. This creates a list-based mechanism for sanctioning foreign entities engaging in activities endangering China's national sovereignty, security or development, or activities suspending normal transactions outside of normal market trading principles in a way that causes serious damage to Chinese persons. Once listed, peoples and entities are subject to import and export controls, investment controls, travel and work bans, monetary penalties and other measures. Chinese entities must obtain permission to do business with any listed entity.

In 2021 China adopted 42 targeted sanctions on foreign individuals and entities in 14 Western jurisdictions. These are captured in the Xinjiang Sanctions Chinese Counter-Measures (XJS-CCM) dataset, available on [www.xinjiangsanctions.info](http://www.xinjiangsanctions.info). Those targeted include US, EU and UK officials, Canadian and European parliamentary bodies, academics, research bodies and lawyers. Target selection is best explained in terms of these actors' perceived role in generating and promoting the Xinjiang genocide and forced labour narrative.

In recent years, China has also developed a range of 'blocking statutes' to blunt the impact of foreign policies and legislative regimes on Chinese entities. These include measures blocking foreign civil and criminal investigations, foreign export controls and, most recently, two anti-sanctions instruments: MOFCOM Order No. 1 of 2021 providing Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures, and the June 2021 Anti Sanctions Law. Together these instruments allow Chinese government officials to issue orders prohibiting local companies from complying with foreign laws, rules and judgements.

The Anti Sanctions Law is explicitly billed as a means to "oppose hegemonism". It permits Chinese authorities to take action against people and organisations interfering in China's internal affairs, as well as those implementing or assisting discriminatory restrictive measures taken by foreign countries against Chinese citizens and organisations. The

law also permits action against such people's spouses, immediate family members, managers and controllers. Moreover, the Rules and the Law allow for Chinese people to sue for harms caused by such foreign measures. As enforcement includes recovery of damages through asset seizures, foreign firms operating in China could be expropriated for complying with US or other third-party laws, including Xinjiang sanctions.

Together, these instruments give Chinese authorities almost unfettered scope to order Chinese citizens and firms – apparently including Chinese subsidiaries of foreign firms – not to comply with foreign laws that restrict normal business operations with targeted Chinese entities. This sets up the prospect of multinational companies in China being forced to choose between compliance with US or other foreign rules (and market access), and compliance with Chinese rules (and market access) – the prospect of decoupling. Foreign banks, in particular, have expressed concern. Although the Law is not yet being applied in Hong Kong, its shadow lingers.

## Informal measures

China has supplemented these formal counter-measures with a series of informal measures – what Darren Lim and Victor Ferguson define as deliberate, government-directed disruption of market transactions to further a political or strategic objective, through means not enshrined in official sanctions frameworks or publicly acknowledged as coercive sanctions.

Beijing has used informal measures numerous times in the last decade. It did so in pursuit of strategic objectives, restricting rare earth exports to Japan and Norwegian salmon imports in 20210, punishing states engaging with the Dalai Lama, and most recently in a series of disputes with Australia. In response to Xinjiang sanctions, Beijing has so far used informal measures on three occasions to date: fomenting boycotts and blacklisting of apparel brands in March-April 2021; through strategic regulation and harassment of audit firms in mid-2021; and in threats to Intel and Walmart in December 2021. (Figure 1, below)

Following the largest round of Xinjiang sanctions imposed by Western governments in late March 2021, CCP officials, media outlets, online intermediaries and social media influencers fomented an online boycott of Western apparel firms that had expressed concern about forced labour in the production of Xinjiang cotton. H&M became a particular target, with its logo parodied in a series of online memes. CCP-backed celebrity influencers – who have significant market-moving power in China, where more than 50 per cent of retail sales take place online – withdrew endorsements from H&M, Nike, Adidas, Burberry and Uniqlo. H&M was dropped from Chinese mapping apps, Nike and Adidas apps and ads were removed from Huawei and Xiaomi smartphones, and Zara and Adidas were both targeted for small regulatory fines. Other Western brands reacted by taking down online statements supporting the Xinjiang forced labour narrative. Acting opportunistically, Chinese firms produced new, patriotic content, and even some foreign (largely Japanese) apparel firms jumped on the bandwagon, promoting their own use of Xinjiang cotton to Chinese consumers. In the year that followed, Adidas and Nike reported 24 and 20 per cent drops in sales within China, while the market share of Chinese brands climbed.

Following a steady 'escalation of secrecy' around working conditions in Xinjiang from around mid-2019, from mid-2021 Chinese authorities engaged in an aggressive campaign of

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'strategic regulation' of the foreign audit and due diligence firms on which many Western brands rely to certify respect for labour standards in Chinese production processes. In April 2021, at least seven people in China who work with or for Verité, a leading labour audit and due diligence provider based in the US, were interrogated by Chinese authorities over several days. Its local affiliate, Shenzhen Verité, was shut down. Several raids of other providers and related firms appear to have occurred in the same period, involving interrogation of personnel, damage to property, confiscation of files and equipment, and even, in one case, reported death threats. Chinese broadcaster CCTV has reportedly run footage of interviews with audit workers 'recanting' their views on Xinjiang. This intimidation campaign has succeeded in shutting down discussion of the treatment of Uyghur and other Xinjiang minority workers in labour and social audits across China.

Intel and Walmart. Chinese authorities criticised Intel's annual supplier letter for calling attention to Xinjiang labour concerns, and Chinese celebrities began to peel away from supporting Intel. When Intel removed the Xinjiang reference from the letter, Beijing publicly welcomed the move and called for Walmart to follow suit. Walmart had been targeted for reportedly removing Xinjiang produce from the shelves of its Sam's Club stores in China. The Central Commission for Discipline Inspection (CCDI) warned Walmart of "bad consequences". Local competitors such as Alibaba, and foreign ones such as Carrefour, both sought to exploit the opportunity, with the latter going so far as staging a "Carrefour Xinjiang Fine Goods Festival".

In late December 2021, responding to the adoption of the *Uyghur Forced Labor Prevention Act*, Beijing took aim at

Figure 1: Features of Chinese informal measures in response to Xinjiang sanctions

## Features of Chinese informal measures in response to Xinjiang sanctions

	Strategic regulation	Informal blacklisting	Fomenting consumer boycotts	Regulatory availability	Opportunism
<b>Apparel brand boycotts</b> (March-April 2021)	Admin fines; threatened graft investigation	Celebrity influencers and online platforms blacklist firms	State media, Chinese Communist Youth League instigation	Yes – through online and offline means	By domestic brands, Japanese brands
<b>Intimidation of audit firms</b> (April 2021 and beyond)	Yes – legal basis unclear		Not retail facing, but may have chilled foreign clients' willingness to hire these firms	Yes – possibly through the Anti-Sanctions Law	Support for development of domestic audit industry
<b>Threats to Intel and Walmart</b> (December 2021)	Threatened graft investigation	Celebrity disendorsement	Walmart boycott – but not Intel	Yes – through online means and the CCDI	Intel: push for domestic capacity; Walmart: foreign opportunism (e.g. Carrefour)

<sup>i</sup> James Cockayne, *Making Xinjiang Sanctions Work: Addressing forced labour through coercive trade and finance measures* (Nottingham: University of Nottingham, 2022).