Making Xinjiang Sanctions Work

Policy Brief No. 6 – Corporate responses

Based on *Making Xinjiang Sanctions Work*, July 2022[i]

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.

The Xinjiang Sanctions Policy Brief series:

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Key research findings

- The Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset available at www.xinjiangsanctions.info includes over 8,000 datapoints relating to how 256 companies in 21 countries, including China, are responding to allegations of Xinjiang forced labour.
- Chinese and Hong Kong companies are far more frequently recorded denying the fact of Xinjiang forced labour or concerns around it, whereas companies headquartered in Western countries (as well as some in Japan and Hong Kong) are far more often recorded publicly acknowledging concerns around Xinjiang forced labour. But the most common corporate response strategy, across all three contexts (China, Western, Asian), is silence.
- The responses of Chinese companies show signs of coordination amongst companies, and with state bodies.
- Western companies provide responses detailing a variety of measures taken to strengthen due diligence arrangements. Some show signs of a minimalist approach, with many companies wanting to know "how much due diligence is enough".
- Despite the growing unreliability of audits in assessing Xinjiang forced labour (see Policy Brief No. 5), 56 per cent of companies that have made their position on Xinjiang forced labour known mention the use of audits. Korean and Japanese firms, in particular, seem to continue relying on audits. As some of these firms are part-owned by Western investors, this raises questions about investor awareness and responsibility for effective human rights due diligence (see Policy Brief No. 4).
- Firms are reluctant to develop new supply options unless strictly necessary because the competency and volume of production in the PRC is hard to reproduce elsewhere. Firms that *have* chosen to move supply-chains out of Xinjiang have had to bear real short-term costs, not only from developing new supplier arrangements, but also in some cases from having to phase out certain products altogether.
- The data suggests that many companies see little need to develop plans for transitioning supply away from Xinjiang, and that for many of them, it is "largely business as usual".

Why is this important?

- This study provides the first centralised collection of corporate responses to Xinjiang forced labour. These will be useful for government, corporate, civil society and academic users worldwide.
- Many responses point to the need for governments to play a more proactive role, providing clearer guidance to companies on what effective due diligence can look like – or how governments will work to mitigate the costs of supply-chain relocation.
- Some responses suggest that the variation in government responses to Xinjiang forced labour risks inducing regulatory arbitrage, as jurisdictions with the lowest production standards risk becoming dumping grounds for goods made with forced labour.
- The data suggests the need for coordinated awareness raising efforts regarding the risks around reliance on third party audits to assess Xinjiang forced labour.
- Governments may need to become more actively engaged in working with specific sectors to develop transition plans for shifting supply away from Xinjiang. Policy Briefs Nos 7, 8 and 9 explore this possibility in the cotton, tomato and solar sectors.

Research overview

The Xinjiang Sanctions Corporate Responses (XJS-CRS) dataset, which is available on www.xinjiangsanctions.info, includes over 8,000 datapoints relating to 256 companies. These companies are headquartered in 21 different countries: Canada (2), China (123) + Hong Kong SAR (11), Denmark (1), Finland (1), France (4), Germany (14), India (9), Indonesia (1), Ireland (1), Italy (3), Japan (15), Korea (4), Netherlands (2), Pakistan (2), Spain (3), Sweden (3), Taiwan (3), Turkey (1), UK (9), US (44).

XJS-CRS incorporates commercial data, indications of ties to entities targeted by Western sanctions, and detailed verbatim reproductions of company statements (or where relevant, actions) relating to Xinjiang forced labour and responses to it. The data is drawn from English and Chinese-language statements and reports relating to selected entities that have been connected at one time or another to alleged forced labour in XUAR, or that play an important role in a supply-chain that has been so connected. Version 1 of XJS-CRS focuses on companies in the agriculture, cotton, and polysilicon (solar, electronics and transport) supply-chains, as well as companies otherwise linked to Xinjiang forced labour, e.g. through mention or targeting by government measures included in the XJS-GMS dataset.

The sample does not aim to be statistically representative, as many companies taking steps in response to alleged forced labour may not publicise them out of concern for worker and stakeholder safety, risks to their own reputation or legal exposure, or for other legitimate reasons. Yet some suggestive patterns do emerge from the data.

Regional variations in corporate responses

There is a discernible regional variation in companies' general position on the Xinjiang forced labour narrative – that is, whether they acknowledge the fact of these concerns, or deny them. Chinese and Hong Kong companies are far more frequently recorded denying the fact of Xinjiang forced labour or concerns around it. At least 15 of the Chinese companies in our sample used the hashtag #我支持新疆棉花 (#IsupportXinjiangcotton) in their social media. Companies headquartered in Western countries (as well as Japan and Hong Kong), on the other hand, are far more often recorded publicly acknowledging concerns around Xinjiang forced labour. Nonetheless, the most common corporate response strategy, across all three contexts (China, Western, Asian), is silence.

Figure 1: Regional variations in corporate responses to Xinjiang forced labour concerns

Figure 1.a – Number of responses recorded in XJS-CRS

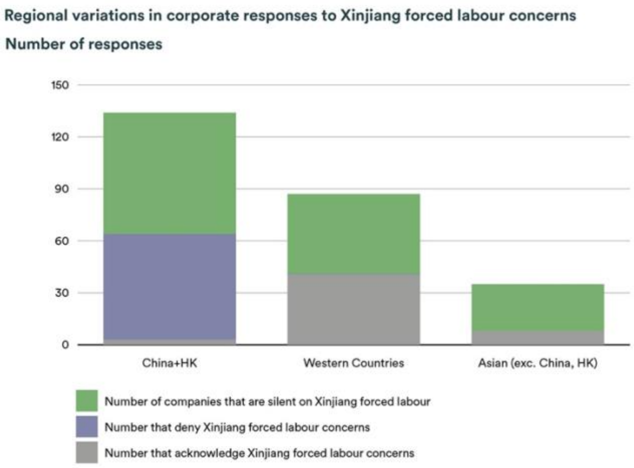
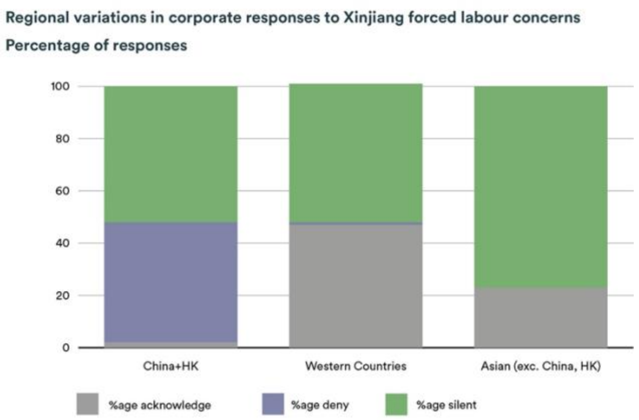


Figure 1.b – Percentage of responses recorded in XJS-CRS



Chinese corporate coordination

The responses of Chinese companies captured in XJS-CRS show signs of coordination amongst companies, and probably with Chinese authorities. There is a similarity in structure and content in the statements of Chinese companies affected by Western sanctions where those companies defend their labour management practices, pay arrangements, accommodation and working conditions. Several companies in the IT sector have also adopted very similar language and structure in statements about US sanctions, suggesting a level of coordination. The choice of language by Chinese companies further suggests a deliberate alignment with official CCP statements casting the Xinjiang forced labour narrative as a slanderous lie. Moreover, in 2021 some companies started providing ethnic minority workers to participate in events run by the Chinese authorities to dispute and counter the Western narrative on Xinjiang, offering personal narratives attesting to their good treatment by their employers.

Due diligence

XJS-CRS also provides detailed information about steps companies acknowledge having taken to identify, address and remediate Xinjiang forced labour in their operations and supply-chains. Most of these companies are Western. Recurring elements of their response include:

- raising awareness with own personnel and suppliers,
- cascading due diligence requirements to suppliers through contracts and codes of conduct,
- cooperation with external experts to strengthen risk analysis, and
- cooperation with peers to share information and develop good practices.

A small number of companies have committed to publish sourcing data, and many emphasise the need for improved traceability in supply-chains. Some have worked collaboratively to map value-chains. Some are moving to make use of technical fixes such as use of DNA and isotope tracing. Many Western companies refer to participation in collaborative and multistakeholder initiatives in their sectors, including the Better Cotton initiative (BCI), Fair Labor Association (FLA), Ethical Trading Initiative (ETI) and Solar Energy Industries Association (SEIA).

However, another recurring feature of these corporate responses is the minimalist approach many of them take. One person interviewed for the study describes firms wanting to know "how much due diligence is enough" to pass regulatory scrutiny in sanctioning states.

Audits

While there is growing evidence that third party audits cannot reliably assess the presence of forced labour in Xinjiang or amongst workers from Xinjiang operating in other provinces (see Policy Brief No. 5), many companies continue to rely on audits for this purpose. Of those companies recorded in XJS-CRS as speaking on the question of Xinjiang forced labour, some 56 per cent mention use of third-party audits. Korean and Japanese firms, in particular, seem to rely on such audits *within* Xinjiang, whereas a small number of companies seem to rely on supplier self-reporting to assess the presence of forced labour. Some of the firms that rely on auditing in Xinjiang or on self-reporting are owned in part by major Western investors, including Blackrock and the Norges Bank Investment Management (NBIM) (a Norwegian sovereign fund), which raises questions about the role of investors in shaping corporate conduct, especially in the area of human rights due diligence (see Policy Brief No. 4). Other companies have, however, made changes to their use of audits, usually in combination with a decision to exclude products from Xinjiang from their supply-chains.

Supply-chain relocation

There is only very limited evidence in the XJS-CRS itself of firms relocating supply-chains in response to Xinjiang forced labour concerns. This does not mean it is not happening; firms are understandably quiet about such decisions. (Policy Briefs Nos 7, 8 and 9 examine developments in the cotton, tomato and solar supply-chains in more detail.) Confidential interviews undertaken for this study nonetheless suggest that firms remain driven by a profit-maximisation logic in how they handle the question of Xinjiang forced labour. This translates into a reluctance to develop new supply options, unless strictly necessary, because the competency and volume of production in PRC is hard to reproduce elsewhere. Firms that *have* chosen to move supply-chains out of Xinjiang have had to bear real short-term costs, not only from developing new supplier arrangements, but also in some cases from having to phase out certain products altogether.

Companies are reluctant to discuss these challenges or their potential solutions openly. Instead, many of their responses point to the need for governments to play a more proactive role, providing clearer guidance to companies on what effective due diligence can look like – or how governments will work to mitigate the costs of supply-chain relocation. Other companies warn that the variation in regulatory approaches in the West, Asia and China is encouraging regulatory arbitrage: jurisdictions with the lowest production standards risk becoming dumping grounds for goods made with forced labour. There is no real evidence in the dataset of significant transition planning by individual businesses, let alone sectors, to reorganise supply-chains to avoid Xinjiang. For many businesses, while Xinjiang sanctions require caution and compliance adjustments, it is "largely business as usual".

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

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