

Testimony before the Congressional Executive Commission on China

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Chairman Smith, Co-chairman Merkley, Members of the Commission, thank you for convening this hearing and for the ongoing efforts of the Commission and its staff to hold corporations accountable for what happens to the workers in their supply chains in China.

In assessing the validity of auditing and certification schemes in the People's Republic of China, it is necessary to bear in mind the checkered history of such schemes, not just in China but across global production chains. So-called social auditing has been a prominent component of global manufacturing and sourcing for more than thirty years, beginning in the apparel and footwear industries and expanding over time to a vast array of sectors and products. These schemes, which have proven public relations value to corporations keen on convincing customers, journalists, and policymakers that they are operating their supply chains responsibly, have often been of little or no value to the workers whose rights they purportedly exist to protect.¹

The examples of social auditing's failures are voluminous; I will cite one that is particularly illustrative. The worst industrial disaster in a factory setting in world history, the collapse of the Rana Plaza factory building in Bangladesh in 2013, which killed 1,134 workers, was the culmination of two decades of scandalous recklessness by US and European apparel brands and their local partners, resulting in dozens of mass fatality fires and structural failures in factories across that country's sprawling garment sector.² In almost every such case, including Rana Plaza, the factories in which workers died en masse had been repeatedly inspected by social auditors who failed to identify or correct lethal hazards that were readily detectible. After Rana Plaza, when legitimate building safety inspections finally began in Bangladesh under the auspices of the Accord on Fire and Building Safety, the inspectors did not identify a single factory in a multi-story building, out of more than 1,600 factories inspected, that had proper fire exits.³ All these factories had been the subject of numerous social audits conducted for Western brands and

¹ Sarosh Kuruvilla, *Private Regulation of Labor Standards in Global Supply Chains: Problems, Progress, and Prospects*, Ithaca, NY: ILR Press, 2021; and MSI Integrity, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability*, Human Rights and Global Governance, July 2020, https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf.

² Scott Nova and Chris Wegemer, "Outsourcing Horror: Why Apparel Workers Are Still Dying, One Hundred Years after Triangle Shirtwaist," Ed. Richard P. Appelbaum and Nelson Lichtenstein, *Achieving Workers' Rights in the Global Economy*, p.17-31, Ithaca, NY: Cornell University Press, 2016, <https://www.jstor.org/stable/10.7591/j.ctt1h4mhcm.5>.

³ Review and analysis of initial inspection reports and corrective action plans available on the website of the International Accord for Health and Safety in the Textile and Garment Industry, "Status of factories in Accord programs," <https://internationalaccord.org/factories/#factory-search>.

retailers. The factories were death traps before these social audits, and they were death traps afterward, a perfect track record of failure over more than a decade and a half of social auditing and across tens of thousands of individual audits.

Prominent examples of the failure of social auditing to protect workers can be found in every sector—from apparel,⁴ to electronics,⁵ to toy manufacturing,⁶ to seafood⁷—and in any country that intersects with global supply chains. Among the most notable is the long history of labor rights auditing failures at Apple’s primary supplier in China, Foxconn. Our organization, in conjunction with the Economic Policy Institute, documented aspects of this history in a series of publications between 2012 and 2015. Among the grim consequences of inadequate social auditing by Apple at Foxconn were worker fatalities resulting from easily preventable explosions, tens of millions of dollars in stolen wages that were never repaid, and inhumane work hours and production pressure that contributed to the rash of workers suicides at Foxconn in 2010 and 2011.⁸

These failures are the product of flaws inherent in the approach to labor inspection that defines most social auditing systems.⁹ For global corporations to credibly claim that their social auditing schemes provide a meaningful umbrella of protection for workers, these schemes must be comprehensive in scope, which requires regular inspections of hundreds, thousands, or tens of thousands of production facilities and worksites across a corporation’s supply chain. The only way to conduct thousands of inspections annually, at a level of expenditure considered affordable by corporations whose zeal for minimizing labor costs explains why they are producing in Bangladesh, China, Vietnam, and other low-wage countries in the first place, is to use auditing methods that allow dozens or hundreds of labor compliance standards and benchmarks to be

⁴ Brian Finnegan, *Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Worker Rights*, AFL-CIO, April 23, 2023, <https://afcio.org/sites/default/files/2017-03/CSReport.pdf>.

⁵ International Labor Rights Forum and Business, Human Rights and Environment Research Group School of Law, University of Greenwich, *Time for a Reboot: Monitoring in China’s Electronics Industry*, September 2018, p.7-9, https://gala.gre.ac.uk/id/eprint/22685/1/22685%20MARTIN-ORTEGA_Time_for_a_Reboot_2018.pdf.

⁶ Li Qiang, “Fair Toys for Our Kids,” Hearing before the Congressional-Executive Commission on China: “Working Conditions and Factory Auditing in the Chinese Toy Industry,” December 11, 2014, <https://www.govinfo.gov/content/pkg/CHRG-113jhrq92632/html/CHRG-113jhrq92632.htm>.

⁷ The Outlaw Ocean Project, “China: The Superpower of Seafood,” Accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/#failure-of-private-sector-safeguards>.

⁸ Scott Nova and Isaac Shapiro, “Polishing Apple: Fair Labor Association gives Foxconn and Apple undue credit for labor rights progress,” Economic Policy Institute, Issue Brief #352, November 8, 2012, <https://www.epi.org/publication/bp352-polishing-apple-fla-foxconn-labor-rights/>; and Scott Nova and Isaac Shapiro, “Assessing the Reforms Portrayed by Apple’s Supplier Responsibility Report,” Economic Policy Institute, Issue Brief #377, March 25, 2014, <https://www.epi.org/publication/assessing-reforms-portrayed-apples-supplier/>. Additional related commentaries and blog posts are available at <https://www.epi.org/people/scott-nova/>.

⁹ Abigail Higgins, “Corporations are paying for worker abuse audits that are ‘designed to fail’, say insiders,” *The Guardian*, October 10, 2023, <https://www.theguardian.com/global-development/2023/oct/10/corporate-auditing-foreign-workers-abuse-claims>.

assessed, at even the most massive production facilities, in the space of one to two days.¹⁰ Such inspections are superficial by necessity.

So are the skills of the auditors. The only way for one or two people to carry out labor inspections that purport to cover the panoply of legal and regulatory standards relevant to a typical workplace is for those individuals to have a little knowledge about a lot of subjects. In the US, we have numerous different regulatory agencies at the federal, state, and local level responsible for the enforcement of labor-related laws and standards at American workplaces, including the Wage and Hour Division of the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, the Social Security Administration, and local building inspectorates, among other bodies. Within each, there are different categories of employees with training in specific regulatory disciplines. These divisions of labor are typical of well-developed regulatory systems because of the extensive expertise required to handle each category of labor rights. Social auditing systems, by contrast, almost invariably expect each individual auditor to handle every applicable labor and worker protection standard. Each auditor is thus a jack of all trades and a master of none, called upon to carry out a series of specialized tasks without specialized training. How did audits conducted in thousands of apparel factories in Bangladesh invariably miss the fire and structural hazards that threatened workers' lives? Because the people who conducted those audits had no meaningful training in the *identification* of fire and structural hazards. This did not, however, stop the firms they worked for from issuing an endless stream of audit reports claiming to have assessed workplace safety, in Bangladesh and elsewhere.¹¹

Even more problematic are the conflicts of interest inherent in social auditing and certification mechanisms. US corporations don't produce in China, or Guatemala, or Cambodia because they want to uphold labor rights; they produce in countries with terrible labor rights environments because it is much cheaper than producing in the US. While identifying and correcting labor rights violations and improving suppliers' labor practices is essential to achieve genuine respect for worker rights in a corporation's supply chain, it also costs more to produce under good conditions than under bad conditions, so the labor rights promises corporations make are in direct conflict with their financial imperatives.

Corporations do not utilize auditing schemes because they are considering changing the way they operate their supply chains—for example, leaving a region or country where the labor rights environment precludes adequate worker rights protection or paying higher prices to suppliers to support better labor practices. They utilize these schemes because they want to preserve lucrative sourcing strategies and need to convince customers and policymakers that those strategies are

¹⁰ For testimony from auditors on what they can accomplish during audits spanning one or two days, see: Human Rights Watch, "Obsessed with Audit Tools, Missing the Goal": Why Social Audits Can't Fix Labor Rights Abuses in Global Supply Chains," November 15, 2022, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>.

¹¹ Declan Walsh and Steven Greenhouse, "Certified Safe, a Factory in Karachi Still Quickly Burned," *The New York Times*, December 8, 2012, <https://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html>; and European Center for Constitutional and Human Rights, "RINA certifies safety before factory fire in Pakistan," November 2016, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_Rina_Pakistan.pdf.

compatible with the humane treatment of workers. That goal is not served if audits consistently reveal embarrassing realities and show a need for major reform.

Corporate imperatives shape auditing schemes, not vice versa. The corporations either employ their auditors directly or select and pay contract auditing firms. While industry parlance uses terms like “independent” to refer to auditing schemes, what corporations mean by that term is only that they do not *directly own* the auditing firms to which they outsource work: they do, however, choose the firms, pay them for their services, and decide whether to use them again in the future. And, unlike the world of financial auditing,¹² where there are industry-wide rules, standards, and regulatory mechanisms designed to preserve the ability of auditors paid by a client to be in a position to render independent judgment of that client’s performance, and where there are legal penalties for malfeasance or fraud, social auditing is an industry notorious for the lack of any binding professional standards and the total absence of regulatory oversight.¹³ Some certification bodies purport to utilize rigorous standards that they use to “accredit” auditing firms, but any such standards are purely self-generated and operate apart from any independent oversight.¹⁴ And since audit reports are almost always secret—including from the workers whose rights they are officially protecting—auditors face no accountability via public scrutiny of their work.¹⁵ This is a system in which auditors have strong incentive to avoid inconvenient conclusions and rarely face any consequences for underreporting labor rights violations.

Social auditing, in practice, involves giving unqualified people inadequate time to pursue an unrealistic objective they have no incentive to achieve.

Social auditing is poorly suited to uncovering labor rights abuses even in environments conducive to labor rights investigation; an unconducive environment, like the one that has long prevailed in China, makes this mismatch extreme. Competent labor inspections depend on the ability of workers to speak freely about their circumstances and conditions of work. They require a functioning civil society in which knowledgeable labor rights organizations can provide

¹² Organisation for Economic Co-operation and Development, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*, OECD Working Papers on International Investment, No. 2001/03, Paris: OECD Publishing, p.10, <https://doi.org/10.1787/525708844763>.

¹³ Business & Human Rights Resource Centre, “Social audit liability: Hard law strategies to redress weak social assurances,” September 2021 https://media.business-humanrights.org/media/documents/2021_CLA_Annual_Briefing_v5.pdf; Anna Beckers, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law*, Portland, OR: Hart Publishing, 2015, p.49, <https://dokumen.pub/enforcing-corporate-social-responsibility-codes-on-global-self-regulation-and-national-private-law-9781849469029-9781849468992-9781849469012.html>; and Re:Structure Lab, *Forced Labour Evidence Brief: Social Auditing and Ethical Certification*, Vancouver: Stanford, Simon Fraser, and Yale Universities, 2022, p.21-22, https://www.restructurelab.org/s/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf.

¹⁴ Re:Structure Lab, *Forced Labour Evidence Brief: Social Auditing and Ethical Certification*, Vancouver: Stanford, Simon Fraser, and Yale Universities, 2022, p.20, https://www.restructurelab.org/s/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf.

¹⁵ Carolijn Terwindt and Miriam Saage-Maass, “Liability of Social Auditors in the Textile Industry,” Friedrich Ebert Stiftung, December 2016, p.8, https://www.ecchr.eu/fileadmin/Publikationen/Policy_Paper_Liability_of_Social_Auditors_in_the_Textile_Industry_FES_ECCHR_2016.pdf, (“Contrary to auditing scheme claims of »transparency« (e.g. BSCI 2015), audit reports are regarded as confidential and the property of the auditor’s client and therefore generally not made public. Therefore, workers or unions have no means of verifying the veracity of such reports.”).

guidance to investigators. The challenges of auditing in China, in this regard, were extensive a decade ago.¹⁶ The closure of civic space, acceleration of censorship, and intensification of political repression in recent years has made the situation far worse.

This gives rise to a critical question: how can corporations sourcing from China carry out the labor rights due diligence, specifically with respect to forced labor, that they have a legal obligation to perform if they import products into the United States?

The answer with respect to auditing *within* the Xinjiang Uyghur Autonomous Region (“XUAR” or “Uyghur Region”) is simple: they can’t. In March 2020, I testified to this Commission that “No Uyghur worker in the XUAR can possibly feel safe speaking candidly. (...) The only answer a worker can safely give to the question of whether her labor is voluntary is ‘yes’...At this point, no firm should be conducting audits in the XUAR. The only purpose audits can serve is to create the false appearance of due diligence and thereby facilitate continued commerce in products made with forced labor.”¹⁷ This Commission’s 2022 Annual Report¹⁸ states: “Firms cannot rely on factory audits to ensure that their supply chains are free of forced labor in the XUAR.” This reality persists and meaningful labor rights auditing, on the issue of forced labor and on any other labor rights question, remains a practical impossibility in the region.

Many auditors have stopped auditing in the XUAR. Some did so in response to public calls from human and labor rights organizations,¹⁹ others because enactment and implementation of the Uyghur Forced Labor Prevention Act (UFLPA),²⁰ the issuance of the Withhold Release Order covering cotton and tomatoes from the Uyghur Region that preceded it,²¹ and the public exposure of widespread state-sponsored forced labor in the region,²² has shrunk the market for social auditing. Brands that have ceased sourcing from the region for legal or reputational

¹⁶ Mark Anner, “CSR Participation Committees, Wildcat Strikes and the Sourcing Squeeze in Global Supply Chains,” *British Journal of Industrial Relations*, March 2018, p.75-98, <https://wsr-network.org/resource/csr-participation-committees-wildcat-strikes-and-the-sourcing-squeeze-in-global-supply-chains/>.

¹⁷ Testimony of Scott Nova before the Congressional Executive Commission on China, “Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region” Roundtable, March 11, 2020.

¹⁸ Congressional-Executive Commission on China (CECC), *Annual Report 2022*, November 2022, p.260, https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report_0.pdf.

¹⁹ Eva Xiao, “China’s Xinjiang Despite Forced-Labor Concerns Restricted access has made examinations difficult in a region where China’s repressive tactics against Muslim minorities have been criticized,” *Wall Street Journal*, September 21, 2020, <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>; and Business & Human Rights Resource Centre, “China: Auditors, certification firms & organisations answer questions on their approach in Xinjiang as forced labour concerns grow,” Updated May 17, 2021, <https://www.business-humanrights.org/en/latest-news/auditors-answer-questions-on-their-approach-in-xinjiang-among-growing-forced-labour-concerns/>.

²⁰ Public Law No. 117-78. See: U.S. Customs and Border Protection (CBP), “The Uyghur Forced Labor Prevention Act,” Accessed April 26, 2024, <https://www.cbp.gov/trade/forced-labor/UFLPA>, and U.S. Department of Homeland Security (DHS), “Uyghur Forced Labor Prevention Act,” <https://www.dhs.gov/uflpa>.

²¹ CBP, “Xinjiang Uyghur Autonomous Region WRO Frequently Asked Questions,” Accessed April 26, 2024, <https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions>.

²² A collection of investigative reports and research studies is available at Coalition to End Forced Labour in the Uyghur Region, “Reports,” <https://enduyghurforcedlabour.org/home/reports/>.

reasons, or are attempting to conceal their sourcing, have no reason to hire auditors to conduct labor inspections.

Some auditing firms, however, continue to operate in the region, though it is unclear if they are claiming to verify the absence of forced labor at specific production facilities or worksites. Companies and organizations that indicated publicly, as recently as 2021, they were auditing in the Uyghur Region, or would conduct an audit there upon request, were: ELEVATE, ERM, Sedex, and TCO Certified.²³ The Worker Rights Consortium (WRC) has been told by a confidential source that ELEVATE continues to audit in the Uyghur Region. There is also, of course, the now notorious audit recently commissioned by Volkswagen of its joint venture facility in the XUAR, which predictably concluded that all is well.²⁴ That audit was so lacking in credibility that most of the staff of the German consulting firm that performed it for Volkswagen issued a public statement disavowing any involvement in the project.²⁵

As the enforcement of the UFLPA accelerates, and the pressure mounts on industries, like solar and auto, that have been heavily dependent on inputs from the XUAR²⁶ and have little experience with intensive scrutiny of labor practices in their supply chains, the risk remains that we will see a resurgence of efforts to use social auditing within the XUAR as legal and political cover for continuing to source from the region. As has for decades been the case in the apparel industry, the sector in which my organization specializes, if there is a corporation in need of a favorable labor rights report it can brandish to shore up a reputation sullied by disreputable labor practices, that brand will always be able to find a social auditor willing to issue that report, even in circumstances where the obstacles to effective investigation are obviously insurmountable. In December of 2018, the Associated Press (AP) published a story conclusively documenting the production of clothing for US brands at an internment camp in the city of Hotan;²⁷ the

²³ Business & Human Rights Resource Centre, "China: Auditors, certification firms & organisations answer questions on their approach in Xinjiang as forced labour concerns grow," Updated May 17, 2021, <https://www.business-humanrights.org/en/latest-news/auditors-answer-questions-on-their-approach-in-xinjiang-among-growing-forced-labour-concerns/>. On April 23, 2024, the WRC checked the websites of the auditors and certifiers contacted by BHRRC during spring 2021 and there were no new statements related to the Uyghur Region on their websites.

²⁴ Associated Press, "Volkswagen-commissioned audit finds no signs of forced labor at plant in China's Xinjiang region," December 6, 2023, <https://apnews.com/article/china-volkswagen-xinjiang-uyghur-forced-labor-c505dac48bebe92b6f792bafdaae61f9>; and Volkswagen, "ESG Controversies," March 19, 2024, <https://www.volkswagen-group.com/de/esg-controversies-15846>.

²⁵ Victoria Waldersee, "Senior staff at auditing firm distance themselves from audit of VW's China plant," Reuters, December 13, 2023 <https://www.reuters.com/business/autos-transportation/auditing-firm-distances-itself-duos-work-vws-china-plant-2023-12-13/>, and Patricia Nilsson, "Staff rebel at consultancy behind VW review of Xinjiang rights abuse," *Financial Times*, December 13, 2023, <https://www.ft.com/content/46b37a15-054e-4d40-b42b-f31a0e3a07c3>.

²⁶ Laura Murphy and Nyrola Elimä, "In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains," Sheffield Hallam University Helena Kennedy Centre for International Justice, May 2021, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>; and Laura Murphy, Kendyl Salcito, Yalkun Uluyol, Mia Rabkin, et al., "Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region," Sheffield Hallam University Helena Kennedy Centre for International Justice, December 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>.

²⁷ Dake Kang, Martha Mendoza, and Yanan Wang, "US sportswear traced to factory in China's internment camps," Associated Press, December 17, 2018, <https://apnews.com/e7c9af9654fa43ad958b2dc54895d42e>.

manufacturer, Hetian Taida, was soon to become the first company in the XUAR to be the subject of a US Withhold Release Order.²⁸ The company was operating two facilities, one inside the camp and also one adjacent to it, which included, among its employees, what XUAR authorities call camp “graduates”: recently released detainees who are forced to work at a particular workplace as a means of continued government scrutiny and control. At the time of AP’s report, the latter facility had just received labor rights certification from Worldwide Responsible Accredited Production (WRAP),²⁹ a US-based, industry-funded auditing and certification body that is utilized by numerous apparel brands and retailers. Despite the negative publicity arising from the AP story, and despite the fact that the facility inside the internment camp had recently been featured on Chinese national television in a program touting the internment camps as centers of vocational training and Uyghur social uplift, WRAP and the factory’s customers had no trouble immediately finding multiple social auditors willing to conduct audits and issue favorable reports declaring the company to be free of forced labor. One, the prominent Swiss auditing firm SGS, went so far as to affirmatively conclude that the workers at the facility adjacent to the camp enjoyed full respect for their right to organize and bargain collectively.³⁰ The WRC asked WRAP what methods its auditors had used to enable workers at that facility to speak freely about their circumstances, given the severely repressive environment in the XUAR. WRAP’s CEO replied that since the facility was not located immediately within the detention camp, our concerns about a repressive environment were “misplaced.”³¹

While the impossibility of conducting credible labor rights inspections within the XUAR is well established, a separate set of questions about social auditing arises with respect to the provision of the UFLPA that bans imports from factories outside the XUAR that utilize Uyghur workers transferred *from* the XUAR under the auspices of government authority. Compliance with this provision of the law requires that corporations prohibit their suppliers from involvement in labor transfers *and* requires that they have the capacity to verify that suppliers are obeying this requirement. Since labor transferred from the XUAR has been utilized by factories in many different parts of China—use of transferred Uyghur workers has been exposed in the supply chains of Apple and Nike, among other leading corporations³²—it must be assumed that the risk of complicity in this forced labor scheme exists at virtually any production facility in the country. This gives rise to two questions: 1) are corporations importing goods into the US, made in part or in whole in any part of China, inspecting the relevant suppliers to ensure that no transferred labor is being utilized, and, if so, 2) what methods are their auditors using to overcome the obstacles to credible and effective inspections, given the prevailing climate of repression of rights of speech and assembly across China and the extremely sensitive nature of any discussion of Uyghur forced labor?

²⁸ CBP, “CBP Issues Detention Orders against Companies Suspected of Using Forced Labor,” October 1, 2019, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

²⁹ WRC, “Heitan Taida Apparel Co., LTD.,” 2019, <https://www.workersrights.org/factory-investigation/heitan-taida-apparel-co-ltd/>.

³⁰ Amfori, “Hetian Taida Apparel Co. Ltd.,” March 21, 2019, <https://www.workersrights.org/wp-content/uploads/2020/02/BSCI-Hetian-Taida-20190313.pdf>.

³¹ Email on March 1, 2019, from Avedis Seferian, Chief Executive Officer at WRAP, to Scott Nova, Executive Director of the WRC.

³² Vicky Xiuzhong Xu et al., “Uyghurs for sale: ‘Re-education’, forced labour and surveillance beyond Xinjiang,” Australian Strategic Policy Institute, 2020, <https://www.aspi.org.au/report/uyghurs-sale>.

There is a notable dearth of public information that speaks to these urgent questions. Most corporations sourcing from China are publicly silent on how they are complying in this area. And we are unaware of any auditing firm that has provided any transparency as to the methods it utilizes to verify compliance. We know from private discussions with corporations in several industries that some auditing firms are claiming they can verify the presence or absence of transferred labor and that such services are being utilized by a substantial number of corporations. It is unclear what percentage of corporations in various sectors are utilizing such services and it is unclear what methods the auditors are utilizing.

In our opinion, especially given the powerful incentive any supplier using transferred labor has to hide the practice, reliably detecting the presence of transferred Uyghur labor requires the use of methods beyond those normally employed by social auditors. This includes gathering information from a facility's employees offsite, without the knowledge of factory management, and gathering information from people not employed by a facility but living or working in its vicinity, who may have observed the presence of transferred workers. Interviewing workers onsite, a dubious method of gathering information under the best of circumstances, is useless in this context. It is inconceivable that any Han Chinese worker is going to tell an auditor, in a conversation arranged by factory managers, and occurring inside the workplace, that Uyghur workers are present at the facility and that management is hiding them. While rigorous review of factory records may be sufficient in some cases to expose the presence of transferred labor, there is a long history in China of the use of false records to fool social auditors,³³ a problem our organization has encountered in our own factory investigations in China in the past.³⁴ If the number of transferred Uyghur workers at a facility is small relative to the size of the overall workforce, it would not be difficult in most cases for managers to provide altered records that obscure their presence. It is therefore unlikely that auditing methods that rely solely on records review, traditional worker interview methods, and interviews with management can serve as a reliable mechanism for detecting transferred labor across a corporation's Chinese supply chain, even if the review of records and questions for managers are specifically designed to enable auditors to do so. However, based on the limited information available, it is our understanding that few, if any, auditors are using offsite interviews and other alternate methods of investigation.

There is another obstacle to effective audits: the Chinese government, in policy and practice, is actively seeking to undermine the ability of auditors to expose labor rights abuses at facilities in China producing for export. In 2021, the government enacted statutes designed to counteract the efforts of China's trading partners to hold Chinese suppliers accountable for the use of forced

³³ Lauren Foster and Alexandra Harney, "Doctored records on working hours and pay are causing problems for consumer multinationals as they source more of their goods in Asia," *Financial Times*, April 22, 2005; Kathy Chu, "Some Chinese factories lie to pass Western audits," *USA Today*, April 30, 2012; Alexandra Harney, *The China Price: The True Cost of Chinese Competitive Advantage*, New York: Penguin Press, 2008, p.200; and Dexter Roberts and Pete Engardio, "Secrets, lies, and sweatshops," *Business Week*, November 17, 2006, http://www.nbcnews.com/id/15768032/ns/business-us_business/t/secrets-lies-sweatshops.

³⁴ WRC, "Worker Rights Consortium Assessment re Lianglong Socks Co. Ltd (China): Findings, Recommendations and Status Report," April 3, 2008, https://www.workersrights.org/wp-content/uploads/2016/02/Lianglong_Socks_Report_4-3-08.pdf.

labor and other labor rights abuses.³⁵ The effect of this law is to subject companies doing business in China to sanctions for taking actions that advance the implementation and enforcement of the UFLPA and any other law or policy designed to hold importers accountable for the use of forced labor by their Chinese suppliers. The government has also targeted major brands that are known to be working to comply with the US government’s requirements concerning the XUAR and Uyghur forced labor. Most prominently, the government launched a de facto consumer boycott of H&M, a massive buyer of apparel from Chinese suppliers and a company with major ambitions as a retailer in the country—with devastating impact on H&M’s Chinese sales.³⁶ The Chinese government is also specifically targeting auditing firms and their Chinese personnel involved in efforts by buyers to verify forced labor-related compliance by Chinese suppliers³⁷—actions presumably designed to show auditors that successful efforts to identify forced labor place them at severe personal risk. This legal and practical crackdown on labor rights inspectors working for foreign buyers is also likely to impede another form of auditing highly relevant to UFLPA compliance: audits designed to assess whether suppliers have adequate administrative mechanisms in place to verify the source of the inputs they utilize and to spot check whether the sub-suppliers a supplier reports are actually the source of the inputs in question (this includes so-called “supply chain due diligence audits” and “traceability audits”). Given that precise control of the supply chain, including the exclusion of suppliers implicated in forced labor, is essential to a corporation’s ability to comply with the UFLPA, impediments to this form of auditing carry enormous compliance risks.

An important window into the effectiveness of social auditing, in the present context, at detecting forced labor in China is provided by the work of The Outlaw Ocean Project, a journalistic enterprise that conducts extensive investigations of forced labor and other rights abuses in fishing and seafood processing. In investigations reported in the fall of 2023, The Outlaw Ocean Project uncovered multiple instances of social audits failing to identify state-imposed forced labor in seafood processing facilities in China supplying US firms.³⁸ All ten seafood processors that The Outlaw Ocean Project linked to Uyghur forced labor were certified by the Marine Stewardship Council (MSC) and four were certified by the Aquaculture Stewardship Council (ASC), certification bodies that rely on social audits to verify labor rights compliance. In response to the investigation’s findings, MSC acknowledged that its reliance on social audits has “significant limitations.” In March 2024, after the publication of the investigation, ASC said it intended to “phase out program operations and cease investment in China”; at the time it had 289 certified companies in China.³⁹

³⁵ Tatman R. Savio, Mahmoud (Mac) Fadlallah, Shiva Aminian, Jingli Jiang, Bodi Jia, and Daniel L. Cohen, “The New PRC Anti-Foreign Sanctions Law,” Akin Gump Strauss Hauer & Feld LLP, July 2, 2021, <https://www.akingump.com/en/insights/alerts/the-new-prc-anti-foreign-sanctions-law>.

³⁶ Bloomberg News, “China Canceled H&M. Every Other Brand Needs to Understand Why,” March 14, 2022, <https://www.bloomberg.com/graphics/2022-china-canceled-hm/>.

³⁷ CECC, *Annual Report 2022*, November 2022, p.256-271, https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report_0.pdf.

³⁸ Outlaw Ocean Project, “China: The Superpower of Seafood,” October 9, 2023, Accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/>.

³⁹ Neil Ramsden, “Aquaculture Stewardship Council to cease operations in China,” Undercurrent News, March 27, 2024, <https://cdn.theoutlawocean.com/investigations/china/pdf/coverage/undercurrent-news-aquaculture-stewardship-council-to-cease-operations-in-china.pdf>.

The Outlaw Ocean Project reported that social audits are normally announced, which allows workplaces to hide Uyghur workers in advance of the audits, and “[e]ven if they get to interview these workers, auditors aren’t trained to identify state-imposed forced labor, and workers are reluctant to be candid for fear of retribution.”⁴⁰ Most seafood buyers nonetheless relied on audits to defend themselves in their responses to the investigation, “many asserting that audit reports proved there was no forced labor at the implicated factories.” In one case, the investigation found evidence of Uyghurs working at a plant the same day an audit was conducted by SGS that gave the site a passing grade.⁴¹

Sedex, a widely utilized auditing platform, continues to allow its “SMETA” assessment tool to be used in audits across China, even while refraining from providing assurances that SMETA is sufficient to detect forced labor. In response to a question from The Outlaw Ocean Project, Sedex stated:

“Forced labour is notoriously difficult to identify and evidence given it is a criminal activity. Instances of forced labour—and sometimes particular practices/behaviours associated with higher risks of forced labour, such as those outlined in the ILO indicators—are often driven underground. The SMETA audit methodology includes assessment points relating to these indicators, and there is a “sensitive issues” process that allows auditors to raise particularly sensitive concerns immediately and confidentially with the site’s customers, allowing quick mitigation and remediation action. However, behaviours may still be covered up and therefore extremely difficult for auditors to find. Auditors cannot make serious allegations of criminal activity without clear evidence (...) There are many regional-specific considerations in how to conduct effective supply chain human rights and environmental due diligence. We are aware of reported challenges in conducting supply chain due diligence and on-site audits within some high-risk regions, including constraints on access by independent auditors, that make obtaining reliable information by any safe and ethical means difficult. These challenges don’t detract from SMETA’s effectiveness in other contexts.”⁴²

A month later Sedex acknowledged: “we recognise it may be difficult and risky for auditors themselves to explicitly recognise state-imposed forced labour in practice.”⁴³

⁴⁰ Outlaw Ocean Project, “China: The Superpower of Seafood,” October 9, 2023, Accessed April 23, 2024, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/findings/>.

⁴¹ Magali Dauwalder, Global Head of Corporate Affairs at SGS, told The Outlaw Ocean Project: “The audit SGS carried out was a traceability audit. This audit is not a social audit. It doesn’t cover working conditions.” See: The Outlaw Ocean Project, “SGS S.A.: Correspondence,” June 26, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/sgs-sa/>; and Ian Urbina, “The Uyghurs Forced to Process the World’s Fish,” The Outlaw Ocean Project, October 9, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/the-uyghurs-forced-to-process-the-worlds-fish/>.

⁴² The Outlaw Ocean Project, “Supplier Ethical Data Exchange (Sedex),” June 28, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/supplier-ethical-data-exchange-sedex/>.

⁴³ The Outlaw Ocean Project, “Supplier Ethical Data Exchange (Sedex),” July 20, 2023, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/stakeholders/supplier-ethical-data-exchange-sedex/>.

For all of the reasons discussed above, corporations sourcing from China face a severe UFLPA compliance dilemma, even if they have undertaken a faithful effort to exclude inputs from the Uyghur Region from their supply chains. While compliance with the UFLPA does not require labor rights auditing to be feasible *within* the XUAR, the law’s ban on products made with transferred Uyghur labor elsewhere in China, its ban on products made by companies found to have been complicit in forced labor (those on the UFLPA-mandated “Entities Lists”),⁴⁴ and the need to verify suppliers’ claims that they are not using inputs from the XUAR, all require a capacity to conduct reliable workplace audits across the rest of China. Given the weaknesses of social auditing worldwide; given the gauntlet of obstacles—longstanding and new—specific to effective social auditing in China; and given the track record to date; the capacity of corporations sourcing from China to ensure that they are complying with the UFLPA and Section 307 of the Tariff Act is in grave doubt. Assuming that this capacity actually exists would be folly. The US government should be asking corporations importing goods into the US, made in whole or in part by suppliers in China, to affirmatively demonstrate that they have *viable* methods and systems in place to ensure that the products they are importing were not sourced from the XUAR, were not made by workers transferred from the XUAR, and were not touched by any company on the Entities Lists. The leaders of any corporation that cannot so demonstrate must then explain how they know, on any given day, with respect to any given import, that they are not breaking the law.

The WRC recommends that Congress:

- Hold hearings in which it asks the executives of leading social auditing firms and certification bodies active in China to disclose the methods they use to verify compliance with provisions of the UFLPA that require workplace-level labor rights inspections, explain why those methods should be viewed as reliable given the relevant circumstances, and provide examples of their effectiveness.
- Hold hearings in which it asks executives of leading brands in the auto, solar, primary metals, and apparel sectors these same questions.
- Request that CBP revise and upgrade the methodological standards it cites in its recommendations to importers concerning the use of audits; the current guidance⁴⁵ is silent, for example, on the value of onsite worker interviews in workplaces in China.

⁴⁴ DHS, “UFLPA Entity List,” Updated December 8, 2023, Accessed April 29, 2023, <https://www.dhs.gov/uflpa-entity-list>.

⁴⁵ CBP, “Uyghur Forced Labor Prevention Act: U.S. Customs and Border Protection Operational Guidance for Importers,” June 13, 2022, p.15, https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf.