

**‘The Liberty of Democracy Is a  
Complicated Undertaking’: How the  
Uyghur Forced Labor Prevention Act  
Became Law**

By Haley Byrd Wilt

*For those who are in the camps, factories, and fields.*



*(Illustration by Holly Stapleton)*

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# Introduction

Gulzira Auelkhan sat in a room in Midland, Texas, with the people who helped her escape a genocide. Across from her were American federal law enforcement agents. They had traveled to her new Texas hometown to ask about the roughly 15 [months](#) she spent in 2017 and 2018 in concentration camps in Xinjiang, a northwest region of China. They also wanted to know more about her experience being [forced](#) to work in a textile factory by Chinese authorities. With Kazakh activist [Serikzhan Bilash](#) translating, Auelkhan, an ethnic Kazakh, told the Americans about the horrors she faced in the camps. She told them about the [gloves](#) she and hundreds of other women had to sew for long hours each day, under harsh working conditions. She told them about being driven to the factory early each morning, when it was still dark outside. They were [expected](#) to sew 20 pairs of gloves each day, she told them, with the threat of punishment looming if they could not meet quotas.

She spoke about how the women at the factory had only 40 minutes in the day to eat meals and were otherwise under close scrutiny, without the freedom to get water or leave their work. She told the Americans about how she wasn't paid what she was promised for her labor. She recognized the name of the textile factory—a short bus ride from the camp—and gave other details to the agents from the FBI and the Department of Homeland Security.

“They were very deliberate, very intentional,” says Bob Fu, the Chinese American founder of China Aid who contributed to the rescue effort that culminated in Auelkhan and her family [coming](#) to the United States in early 2021. Just a couple months after

arriving in America, she was assisting investigators who wanted to eradicate forced-labor products flooding U.S. markets. Fu was present for the interview, which he says happened at China Aid's office in April 2021. It lasted hours.

Auelkhan is far from alone in her experience of forced labor in Xinjiang. Her testimony, research from experts around the globe, and reporting from news outlets in recent years have laid bare the facts. China's genocide in Xinjiang has another purpose, beyond cultural extermination: profit.

Since 2014, the Chinese government has forcibly detained more than 1 million Uyghurs, Kazakhs, Kyrgyz, and other Turkic Muslim minorities in concentration camps in Xinjiang. These camps—and the larger region, which is now a [suffocating police state](#) built around advanced surveillance technology—are home to unspeakable horrors, according to survivors. The Chinese government has subjected Uyghurs to forced abortions and mass forced sterilizations, [slashing](#) birth rates. Chinese officials methodically stamp out religion and tradition, aiming to instill reverence for President Xi Jinping in their stead.

Prisoners face inhumane conditions, crowded together without adequate food or medical care. Men and women who escaped from the genocide have testified before Congress and in news interviews about being tortured and raped by guards in the camps. Chinese officials cut detainees off from family members without the means to communicate and with no idea of when or if they might be granted freedom. Many of those who are released aren't able to go back to their homes: Instead, the Chinese government forces them to work in other parts of China. The camp survivors who do go

home return to families and neighborhoods completely changed. Day and night, police continue to watch them.

The threat of being thrown into the camps hangs over every action. Innocuous behavior like installing a messaging app on a phone, abstaining from alcohol, growing a beard, buying more groceries than usual, briefly studying abroad, or having a family member who lives in another country all raise suspicion.

Chinese [agents live](#) in Uyghur homes, forcing families to speak in Mandarin rather than Uyghur. Some women say they have been sexually assaulted by these agents, with no possibility of recourse. Authorities expect neighbors to report on each others' activities. They make children inform on their parents' religious observances and reading habits.

Amid all this, the Chinese government has bulldozed thousands of religious sites, mosques, and cemeteries, aiming to wipe out a culture's historic connection to the land.

It's a humanitarian nightmare, inconceivable in cruelty and scale. And it is being perpetrated by a country with tremendous economic power.

You probably own something made with Uyghur forced labor.

Xinjiang has a massive role in the global economy, particularly in textiles. Xinjiang produces [85 percent](#) of Chinese cotton and one fifth of the world's cotton supply. The region's energy industry is also large. Estimates indicate nearly half of the globe's polysilicon, a material required for manufacturing solar cells, came from Xinjiang in 2020.

Given the complexity of global supply chains, products with components sourced from the region are difficult to avoid, even when consumers are being careful about their

purchases. A mass-produced electronic device might have one small component from Xinjiang, or a company might buy cotton from the region before workers sew articles of clothing in a different country.

In 2018 and 2019, reporting from journalists and researchers began to reveal the sprawling scope of the Chinese government's use of forced labor in Xinjiang, touching some of the largest brands in the world. Not only is the Chinese government forcing masses of unjustly detained people to work in factories connected to its concentration camps, it is also sending Uyghurs to work in agricultural fields and factories in other parts of China. Research and news reporting have implicated companies such as Nike, Kraft Heinz, Adidas, Calvin Klein, Coca-Cola, Costco, Patagonia, and Tommy Hilfiger. Recent [reporting](#) indicates these transfers are only ramping up, even as Chinese authorities are trying to keep the scope of the programs more secret.

As the evidence mounted, American lawmakers itched to respond. By late 2019, members of Congress felt it was time to shore up the United States' longtime ban on importing products made with forced labor and prevent American dollars from contributing to the Chinese government's genocide. But it would be an uphill battle. Congress would have to overcome a persistent lobbying campaign by large corporations and resistance from factions in the White House. Lawmakers would also have to make sure such a bill was powerful, so businesses could not easily evade it. And they would need to make difficult concessions to reach a version that could ultimately pass both chambers.

After nearly two years of work, the Uyghur Forced Labor Prevention Act passed in December 2021. Its most important provision—a ban on imports touched by Xinjiang,

with the potential for exemptions if companies can clearly prove their products are free of forced labor—goes into effect this week.

The law won't solve the problem of forced labor in China, and it hasn't ended the genocide. But it presents a meaningful tool for the United States to respond and to pressure the Chinese government to end its brutal human rights abuses. It also means companies will have to more closely examine their supply chains. American consumers may soon have more peace of mind that they aren't buying items made by people like Auelkhan, in circumstances of extreme suffering and oppression. Advocates hope the rest of the world will learn from the process of passing the American law and quickly follow suit.



# Beginnings

It was years in the making, but it started in earnest with a question.

“Do you believe that the U.S. should ban all imports from Xinjiang?” Rep. Jim McGovern asked. It was October 2019, and McGovern was chair of the Congressional-Executive Commission on China (CECC). The panel had convened for a hearing on forced labor in the region, home to Turkic ethnic minorities. In asking that question, McGovern offered the first public glimpse of what would become the most significant China legislation in more than two decades.

McGovern was frustrated with the business community’s inability—and, all too often, unwillingness—to rid their supply chains of forced labor. He and the other lawmakers on the commission were looking for how Congress could make a tangible difference.

“That’s a hard question,” said Amy Lehr, an expert in human rights at the Center for Strategic and International Studies. She had co-authored a [report](#) on forced labor in Xinjiang published the day before the hearing, and she was well aware of how deeply it permeated global supply chains.

“It will obviously have significant immediate economic repercussions,” she told the panel.

McGovern said he’d had conversations with American companies, and they weren’t trying hard enough to determine if forced labor contributed to their products.

The normal methods businesses use to identify and rid supply chains of forced labor had long been difficult and unreliable in China, but Xinjiang is its own beast. It is impossible for companies to do due diligence in the region. Third-party auditors have no guarantee of access to worksites, nor can they be certain that workers aren't being intimidated to discourage them from raising alarms about labor conditions. The situation only grew more dire as China expanded its network of concentration camps and factories in Xinjiang. By the time the lawmakers on the CECC met for the hearing in 2019, it was clear that all goods touched by the region were suspect.

Testifying before the commission, Nury Turkel, current vice-chair of the U.S. Commission on International Religious Freedom and a high-profile Uyghur advocate, answered McGovern's question about banning all imports from Xinjiang unequivocally.

"Yes. In one word, yes. That's necessary."

He added that the United States should encourage its trade partners to likewise ban Xinjiang imports to place coordinated pressure on China.

"This has to be a global effort," Turkel said.

Adrian Zenz, a German researcher who has played a critical role in uncovering the scope of China's atrocities in Xinjiang, also threw his support behind new restrictions.

"At a minimum, the burden of proof should be shifted to the companies," he told the lawmakers on the panel. Zenz added that a ban on low-skilled, labor-intensive manufacturing items from Xinjiang was also feasible.

"This would send a much stronger message to Beijing than anything else," he said.

The Chinese government is systematically and brutally trying to erase a people group. But what happens when a genocide is carried out by a country with colossal might on the global stage? We've witnessed the answer: Apathy from the business community and lethargy from policy makers. Despite designating the atrocities in Xinjiang a genocide in early 2021, the United States has not done enough to respond. And where America has taken significant action, it has come only after years of pitched lobbying between major corporations and human rights advocates.

This is the story of how the Uyghur Forced Labor Prevention Act became law, marking the United States' most consequential response to the genocide in Xinjiang to date. To see it advance, the bill's sponsors had to battle business interests, overcome partisan tensions, grapple with the Biden administration's climate priorities, and maintain public pressure on officials who were reluctant to get it done.

This account follows the 21 months from the forced labor bill's introduction in March 2020 to final passage in December 2021. It is based on more than 21 hours of interviews with over two dozen people involved, including staff who shaped the legislation, lawmakers who sponsored it, and outside advocates who helped get it over the finish line.

The path to passing the Uyghur Forced Labor Prevention Act was an arduous one, even as the legislation ultimately won broad support across the political spectrum. It wasn't clear at the beginning, or even close to the end, that it would actually become law. Jonathan Stivers, who served as CECC staff director when the bill was introduced, was skeptical of its chances to begin with.

“I had no idea how far it was going to go,” he says. “I thought there was no way Congress was going to pass this. All the entrenched interests are going to come out in opposition to this.”

Stivers would know. He has spent decades working in Congress and on China policy issues. He remembers the October 2019 hearing vividly, having sat behind McGovern throughout. When McGovern asked the witnesses about barring imports from Xinjiang, Stivers listened carefully to see if any of the witnesses would give a credible reason not to go ahead with the bill the commission staff had been quietly contemplating. They didn't.

Turkel, who testified at the hearing, says he wasn't exactly surprised by McGovern's question. In the months leading up to that exchange, Turkel had been on the other end of brainstorming conversations with the man who came up with the idea of a region-wide import ban in the first place: Scott Flipse, a longtime human rights policy hand who works on the CECC. Flipse has played a leading role in crafting America's legislative response to China's genocide in Xinjiang, so much so that Turkel has given him a nickname—“Thomas Jefferson of the Uyghurs.” Flipse's idea for an import ban was a departure from the approach human rights bills often take—commissioning reports, statements of policy, and sanctioning officials responsible for abuses, for example. Instead, it leaned more into the uncomfortable world of trade policy.

“This bill may be the most significant legislative mandate, arguably, put in place by Congress to address some of the lingering issues in U.S.-China trade,” Turkel says.

After the 2019 hearing, the top lawmakers on the CECC were ready to take the idea to the next level. McGovern soon gave approval for the CECC team to finalize legislation he could introduce. Over the next five months, staff on the commission compiled a comprehensive [report](#) on forced labor in Xinjiang, including links to large companies. And they hammered out a bill to block items made with forced labor in Xinjiang from entering the United States.

“We were brainstorming a lot about this,” Stivers says. The CECC staff were concerned about how broad the implications might be.

“Whole supply chains will be totally changed. It’s like, oh my gosh. That’s a big thing. But the arguments are so clear. It’s so compelling and so clear that you have to do it. And then the question is: Could you do it? I mean, we’re not going to ban all trade from China.”

The centerpiece of the bill was a presumption that all products from the region are tainted by forced labor. Under the measure, all items made in part or in whole in Xinjiang would be blocked from coming into the United States. To obtain an exemption from the ban from Customs and Border Protection, companies with implicated supply chains would have to prove with “clear and convincing” evidence that their products are free of forced labor. Those exemptions were expected to be few and far between, given the realities of the situation, and the government would have to make any such decisions public.

Another key component of the proposal: language aimed at protecting American investors from unwittingly contributing to the atrocities in Xinjiang. Under new reporting rules, businesses would have to regularly disclose known connections with specific bad actors—producers of surveillance technology used in Xinjiang, those

involved in constructing detention or manufacturing facilities, and other actors tied to human rights abuses in the region—to the Securities and Exchange Commission (SEC).

Stivers recalls some anxiety when McGovern, alongside then-CECC Co-Chair Sen. Marco Rubio, a Florida Republican, introduced the plan in early March 2020.

“Here's something, and something significant,” Stivers says. “This isn’t just a new office in the State Department or a report. This is an import ban, more or less. This is a big deal.”

“We were nervous because we didn’t know what the response would be.”

On March 11, 2020, leading lawmakers on the CECC, congressional staff, and human rights advocates crammed together in a room in the labyrinthine Rayburn House Office Building. They had gathered to announce the introduction of the Uyghur Forced Labor Prevention Act, but the mood was surreal. That week, Americans were starting to see how the coronavirus pandemic—which had already upended much of the world—would do the same in America. It was enough to inspire some angst among attendees, but the situation hadn’t yet escalated enough in the nation’s capital for staff to cancel the event.

“We’re all just learning how to do the fistbump, elbow-bump greeting,” Rubio quipped during his opening remarks. One senior Senate Democratic aide remembers the number of attendees as absurd in hindsight; it was one of the most packed rooms he’d been in on Capitol Hill in years.

“The fact that it was as COVID was spreading was crazy,” he says. “But, we didn’t know. We didn’t know.”

The pandemic would make this unlike prior legislative pushes, but it only amplified a technology-fueled shift in legislating and lobbying that had already been

apparent in recent years. Gone were the days of hearing room hallways packed with Gucci-clad lobbyists vying for their clients' priorities. This bill would emerge over email and video calls, aided by reporting from news publications and online messaging by advocacy organizations. And those organizations were essential. The plight of minorities in Xinjiang brought together liberal labor rights groups, religious freedom advocates, and conservative China hawks. Lawmakers and staff behind the bill all point to this broad overlapping of political constituencies as the primary reason the bill passed in the end.

“The coalition that mobilized around this was so important,” says the senior Senate Democratic aide. “It made it complicated that you had to get labor on the same side as Republican committee chairs. But the fact that we were able to bring so many people into the process and work toward an outcome was really key. And I don't know if it would've been possible if we had an issue other than a forced labor issue in China, because the political climate in D.C. right now is very amenable to tough-on-China stances.”

McGovern recognized that early on. At the event, he emphasized the diverse array of lawmakers and interest groups backing the effort.

“I'm hoping that the U.S. business community is listening carefully. We are together on this,” he said. “And I want to assure people that this is not merely a press release. We intend to push this bill through the various committees, move it to the House floor, move it to the Senate floor for a vote, pass it, and send it to the president for his signature.”

Even as the lawmakers and staff on the commission braced for corporate pushback, they knew they had a couple of important institutional advantages on their

side. House Speaker Nancy Pelosi has a strong record on human rights in China, stretching back decades, and if anyone was going to allow it to the floor, it would be her. It didn't hurt, either, that McGovern chairs the powerful House Rules Committee. But important bills often get stalled in Congress or watered down into something meaningless before passing into law. Rep. Chris Smith, the New Jersey Republican who cosponsored the House version of the forced labor bill alongside McGovern, said as much the day the measure was introduced.

"I'm for scrapping the filibuster at the earliest possible time because it so inhibits good legislation that often passes the House," Smith told attendees. Those words would ring true months later, when the legislation got held up in the Senate. But the winding road to the bill's passage was more unpredictable than its sponsors might have imagined at the outset. McGovern remembers he was optimistic about the bill's odds, though, even if he wasn't sure about the final outcome.

"I hoped it would pass," he says.

"I wasn't doing this for therapy. I was doing this because I wanted to make a difference. I thought what was going on was unconscionable."



## Pushback

A week after lawmakers introduced the bill, staff on the CECC had a call with government affairs representatives for Coca-Cola. The conversation was, in the words of one participant, a bloodbath.

Under scrutiny was Coca-Cola's relationship with a Chinese state-run company that sells sugar, COFCO Tunhe. It has a Xinjiang location with [alleged ties](#) to forced labor. Coca-Cola's representatives claimed a clean third-party audit proved there was no forced labor involved—yet they couldn't answer the CECC staff's questions about how the audit had been carried out, like if they had spoken with workers without supervision by company managers or Chinese officials. The Coca-Cola representatives said they might be able to share the audit with the commission after the meeting, but they never did.

Kathleen Black, Coca-Cola's director of federal and diplomatic government relations at the time, was the lead lobbyist on Coke's end of the call. A second participant on the call remembers her observing during the conversation that Rubio doesn't serve on the Senate Finance Committee, and McGovern isn't on the House Ways and Means Committee. The message, as this participant interpreted it, was derisive about the bill's chances. A third participant describes Black's remarks as trying to understand the process by which the legislation was going to advance in Congress—whether it would go through those committees of jurisdiction. Both of those

committees went on to receive much of the corporate lobbying against the forced labor bill in later months.

The sources all agree on this: The conversation was rough.

Coca-Cola did not respond to requests for comment.

The call stands out to participants more than two years later. It was one of the least productive conversations the CECC staff had with businesses throughout 2020, people involved say, and it was only the beginning of the corporate pushback to the forced labor bill. That broader resistance nearly succeeded in killing the legislation.

Early on, aides say the bill wasn't exactly on the corporate community's radar as something that would ultimately pass. Lobbyists who reached out to staff soon after the bill's introduction were primarily focused on public image concerns. The first [version](#) contained findings that called out major brands for being implicated in using forced labor. A handful of those companies, including Coca-Cola, made a push to have their names removed from the legislative text. Lobbyists also raised broader concerns about supply chain complexities and the bill's SEC disclosure requirements.

They were usually careful to strike a balance in their remarks to CECC staff instead of outright opposing the bill, even if that was what they intended.

“Their statements were always like, ‘Well, we believe in the point of the bill, we just, you know ...’” one aide remembers. “It was always a little short of they were opposing it. But they were opposing it.”

Some lawmakers in the House sympathized with the corporate concerns—just not strongly enough to vote against a response to what many people at that time were beginning to view as genocide. Evidence that products related to human rights abuses

were coming into the United States was unavoidable. In June 2020, Customs and Border Protection officials [seized](#) a 13-ton shipment of products utilizing human hair from Xinjiang at a port in New York. Its echoes of the Holocaust didn't go unnoticed on Capitol Hill.

The House considered the forced labor bill a couple of months later. It passed for the first time overwhelmingly in September 2020, with a vote of 406-3. Two of those opposing votes, from former Rep. Justin Amash and Rep. Warren Davidson, were on account of the bill's SEC reporting requirements. The third came from Rep. Thomas Massie, who votes against most sanctions bills.

The vote made clear how many in Congress supported tackling forced labor in Xinjiang. It was important to have lawmakers on the record, but even that was a fight the bill's supporters had to win. According to McGovern, some members asked before the vote that the bill be advanced under expedited procedures, without a recorded tally.

"It's not difficult to get people to talk the talk," he says. "But to be truthful, there are some members of Congress who, when it comes to trying to sanction China, they have lots of business interests and others that are in their districts that would prefer not to walk the walk: 'I'm okay with your statements, don't go any further.' Here's where I give Nancy Pelosi a lot of credit, whether it's Tibet or Uyghurs. Even when we brought some of this legislation forward, they would say, 'Can we just do it by voice vote? We don't want a recorded vote.' Absolutely not. We're all going to be on record."

After the House vote and as focus moved to the Senate, companies diverted more time and resources to opposing the legislation, although many still didn't seem to take the need to examine their supply chains seriously. Corporate resistance grew into a larger, secretive push against the bill. Major corporations, including Apple and Nike, got

[involved](#). The Senate was the battleground: Businesses wanted to stop it there, or at least turn it into something unrecognizable.

Rubio describes fighting against the lobbying campaign as “boxing a ghost.”

Other than a U.S. Chamber of Commerce [letter](#) opposing the bill when the House considered it the first time, he says, groups that took issue with the legislation mostly kept it private. After all, openly rejecting a response to genocide isn’t good optics. Still, lawmakers felt the opposition.

“They clearly were making their argument both to the White House and to others about how this would impact the bottom line and how this would be bad for American businesses,” Rubio remembers. “But it wasn’t frontal. So it was difficult to take it on. They weren’t putting out press releases or giving out handouts ... We couldn’t see it. You knew it was happening, but you couldn’t put your arms around it because it was covert.”

Rubio’s task in this timeframe was a challenging one. He had to strike a balance that gave enough breathing room to the business community for Republican senators who were skeptical of the legislation to get on board with it, while also retaining the integrity of the bill.

“We know what our intent is,” Rubio says. “If there’s something in that bill that has an unintended consequence or something that’s going to make it difficult to enforce and/or apply, we’re always open to suggestions on how to improve it.

“What you always have to be cautious about is that there’s a one-word change or a one-line change, or some change to the bill that ends up gutting it,” he adds. “Our goal was, look: We’re willing, we want to pass a bill. We’re willing to make changes that make it work better. We’re willing to make changes that help us pass it, but not if those

changes would somehow undermine its effectiveness or turn it into something that's symbolic but ineffective.”

Those attempts at making the bill symbolic and ineffective were frequent, and varied. A person familiar with the conversations at the time remembers the American Apparel and Footwear Association, among other retailer groups, making the case that the bill didn't need language blocking goods from Xinjiang. It would be enough, they contended, to merely require executive agencies to make a strategy to address imports tainted by forced labor from the region. Rubio's office and the other bill sponsors, of course, disagreed. (When *The Dispatch* asked the American Apparel and Footwear Association about its position, President and CEO Steve Lamar shared a statement praising the bill's rebuttable presumption of forced labor in Xinjiang paired with “the requirement for the U.S. government to develop and implement a comprehensive enforcement strategy and clear evidentiary standards” but didn't deny earlier pushing for no presumption.)

Lobbyists for many groups also argued that businesses at least needed a lot more time to comply with the legislation. Staff on the CECC steadily pushed back on that line of thinking. Congress had first made it illegal to import items made with forced labor in 1930. In 2016, lawmakers closed a loophole in the ban that had allowed those imports the United States could not meet domestic demand for on its own. If 90 years wasn't enough time, how much more did they need?

Congressional staff members and outside human rights advocates point to Peter Mattis, who was deputy staff director of the CECC under Rubio when the bill was introduced, as playing a pivotal role in this period. Mattis is a China expert and former

Central Intelligence Agency analyst. After the forced labor bill was introduced, aides say, he held call after call with businesses and industry associations, emphasizing the need to examine their supply chains. Also integral was Rubio's foreign policy adviser at the time, Bethany Poulos.

Mattis and Poulos led talks within the Senate GOP in the autumn and winter of 2020, after the House passed the bill. Those negotiations largely rehashed the concerns businesses had aired. Because Rubio's team had spent months honing clear answers to the corporate arguments against the bill, they were prepared. The new version of the bill would reflect the corporate community's priorities in some ways, but the core goal—to block imports made with forced labor in Xinjiang—remained mostly unscathed.

Rubio's office and the CECC staff redrafted the legislation as a result of the negotiations and conversations with businesses, and they included changes to the implementation process. The measure would now provide a comment period for companies and require a public hearing held by the agencies responsible for enforcing the bill. The timeline for imposing the presumption of forced labor in the region would also stretch from the original bill's 120 days after enactment to 300 days after enactment. This would buy businesses more time to comply. And amid opposition from Republicans on the banking committee, staff stripped from the bill the SEC reporting requirements, which would have given American investors a clearer picture of whether their money was contributing to genocide. This would become one of the most important differences between subsequent versions of the bill. The House version reintroduced in 2021 retained the SEC disclosures where the Senate bill didn't. McGovern's office continued to push for it until the end.

The new Senate bill also had a different threshold of evidence for businesses to prove their supply chains were free of forced labor. It required them to comply with guidelines and answer all questions from Customs and Border Protection instead of including the original bill's language that there must be "clear and convincing evidence" behind a determination that a product is untainted. This was alarming to some advocates, who worried it would give too much room for administration officials to weaken enforcement of the bill.

Other attempts to erode the legislation fell short, though. One change Senate GOP staff sought early on would have carved out a loophole for essential products that America does not produce enough of, such as personal protective equipment for health care workers. This would have effectively been a step backward from 2016, when Congress closed a similar loophole for America's original ban on products made with forced labor. It would have made it easier for businesses to avoid compliance with the legislation. Rubio's team argued against it, and it was dropped.

One key area of the Senate bill was clearer compared to the House bill, according to China policy experts: It more directly prohibited imports related to forced labor transfer schemes. The Chinese government transports Uyghurs and other minorities en masse to other parts of China to work. Because the practice is not contained to one region, companies have a hard time identifying where their supply chains are tainted by forced labor. A [groundbreaking report](#) in early 2020 by the Australian Strategic Policy Institute found that more than 80,000 Uyghurs were moved out of Xinjiang to work in other parts of China between 2017 and 2019, some of them sent directly from China's concentration camps. The Australian researchers discovered Uyghurs connected to these programs—likely the victims of forced labor—were working in factories that

touched the supply chains of at least 82 well-known corporations, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony, and Volkswagen.

While earlier versions of the forced labor bill aimed to address this, the revised Senate bill required the departments of Homeland Security, Labor, and State, alongside the U.S. trade representative and director of national intelligence, to draft a list of companies and organizations in China working with the Chinese government to move ethnic minorities out of Xinjiang to work. This created a more concrete process, although more bureaucratically burdensome, for blocking imports produced through forced labor transfers. For this and other aspects of the bill to work in practice, it would be essential to have an administration dedicated to fully enforcing the law.

After months of slogging through conversations with corporate lobbyists, tense negotiations with Republican Senate offices, and discussions with administration officials about how to make the bill more implementable, Rubio's team had won broad support within the Senate on its new version of the legislation. Those months were costly when it came to timing, though. The new bill wasn't ready for introduction, let alone passage, before the clock ran out on the 116th Congress. The bill's sponsors would have to begin the process anew to get it over the finish line in the new year. A new president was set to take the reins, Democrats would soon win control of the Senate, and the legislation's odds were uncertain.

On January 27, 2021, the day Rubio reintroduced the bill, it received an important last-minute tweak.

The Trump State Department had issued its official determination the week before that the Chinese government was committing genocide and crimes against



humanity in Xinjiang. Because of that, Rubio's team removed a section of the forced labor measure asking the State Department to issue a report within 90 days on whether China's abuses in Xinjiang amounted to genocide.

President Joe Biden's nominee to be ambassador to the United Nations, Linda Thomas-Greenfield, testified at her confirmation hearing that morning. During the hearing, she suggested the State Department was [reviewing](#) the Trump administration's genocide determination. Lawmakers and aides were shocked: Was the Biden administration going to roll back the Xinjiang genocide designation?

Defying partisan loyalties, it was a Democratic senator's office that privately pushed shortly afterward to reinsert the requirement for a State Department genocide determination in the forced labor bill. As Rubio's staff went back and forth about the implications of Thomas-Greenfield's remarks, they received an email from Matt Squeri, who was Oregon Sen. Jeff Merkley's foreign policy adviser at the time and now serves as staff director on the CECC. Squeri, having seen the hearing, asked whether the genocide determination section should be added back in. So it was.

It was a precursor of what would unfold in the coming months. Merkley, a progressive Democrat who cosponsored the forced labor legislation from the beginning, would soon become a leading Democratic voice in Congress pushing the Biden administration to take a hard line on China's human rights abuses.

In the 10 months after it was first introduced, the Uyghur Forced Labor Prevention Act had won resounding support in the House, survived negotiations with Republican senators mostly intact, and it now had better odds of passing the Senate. But the lobbying campaign against the forced labor bill had entered a new phase, and

businesses would soon grow more familiar with the risks of running afoul of the Chinese government.

### 3

## Corporate Calculus

The calls had become so predictable, Sophie Richardson jokingly made a telemarketer-style flow chart for answering them.

No, it isn't alright to operate in Xinjiang, she told corporations and investors. Yes, you should leave.

In early 2021, Richardson—the China director at Human Rights Watch—began to receive the first of more than 100 calls from banking institutions, manufacturers, companies, and other corporate entities about forced labor in Xinjiang. She was alarmed by how ignorant they were about the genocide—and by their continued unwillingness to leave the region, even after being told how dire the situation was.

“I found myself thinking, do you not read the *New York Times*?” she says. “Surely this cannot be new information to you.”

While the forced labor bill was working its way through Congress, the White House was increasingly imposing sanctions on Chinese officials. On the way out the door in January 2021, the Trump administration [banned](#) all cotton and tomatoes from the region.

The calls with companies and investors were “endless,” Richardson remembers. And they betrayed a sense of disbelief within the corporate community that the United States could take serious action against imports from Xinjiang. America's consumption of products from the region had skyrocketed in recent years. One [estimate](#) suggests \$64

billion in direct imports from Xinjiang could be affected by the forced labor bill, with far more from across China potentially impacted as well.

U.S.-China relations were turning upside down, and investors and businesses hadn't come to grips with it.

They were a year late to recognize the shift in Congress. Richardson says what stood out to her most when the forced labor bill was first introduced “was this palpable frustration, particularly with companies.”

“For so long, tougher human rights policies had foundered in the face of U.S. businesses saying, ‘No no no no, we have to be able to trade and engage, and it will all turn out okay in the end, really, we promise,’” Richardson says. Not only were members of Congress from across the ideological spectrum agreeing that premise was “dead and gone,” but they were also taking “active steps that were going to harm U.S. companies, or put U.S. companies on the hook for their complicity—or their inability to show their lack of complicity—with human rights violations.”

“This is one of the central ideas that has underpinned U.S.-China relations for the last several decades,” she adds. “To put the actors who had made this argument on the hook for proving that they weren't part of the problem is a pretty significant change.”

At least half of the calls Richardson had with corporate entities revealed the fear at top of mind for businesses: China retaliates. Standing up against human rights abuses there could be costly.

No company was learning this more painfully than the Swedish clothing retailer H&M.

In September 2020, H&M had [said](#) it was "deeply concerned" by reports of forced labor and discrimination against minorities in Xinjiang. The company announced its suppliers would no longer source cotton from Xinjiang because it had become "increasingly difficult to conduct credible due diligence in the region."

The public stand earned the brand praise from American lawmakers. Rubio [tweeted](#) that all companies doing business in Xinjiang "should follow H&M's example" and cut ties with their suppliers there.

At first, the move went mostly unnoticed in China. But in March 2021, all hell suddenly broke loose. A post by a Chinese Communist Party group called the Communist Youth League sparked public outrage.

"Spreading rumors to boycott Xinjiang cotton, while also wanting to make money in China? Wishful thinking!" the group [posted](#) on Chinese social media platform Weibo. State propaganda outlets slammed the company, with Chinese broadcaster CCTV [saying](#) H&M will "pay a heavy price for its wrong action."

Chinese celebrities severed ties with the brand amid the nationalistic uproar. H&M also faced very material consequences: It was literally wiped off the map. The brand's locations were [stripped](#) from digital maps, as if they didn't exist anymore. Chinese e-commerce sites also removed H&M products from their search results, instantly hurting sales.

Witnessing this, H&M tried to backtrack, issuing a mealy-mouthed [statement](#) filled with corporate jargon, trying to appeal to every side.

"We are working together with our colleagues in China to do everything we can to manage the current challenges and find a way forward," the brand wrote. "China is a

very important market to us and our long-term commitment to the country remains strong.”

“We want to be a responsible buyer, in China and elsewhere, and are now building forward-looking strategies and actively working on next steps with regards to material sourcing,” the brand added. “We are dedicated to regaining the trust and confidence of our customers, colleagues, and business partners in China. By working together with stakeholders and partners, we believe we can take steps in our joint efforts to develop the fashion industry, as well as serve our customers and act in a respectful way.”

Absent from the statement: any specific mention of Xinjiang or forced labor.

Watching the Chinese government tear H&M apart put the fear of Xi Jinping into corporations, even as they were feeling more pressure from western governments to elevate human rights.

H&M wasn't the only company trying to figure out how to strike a balance. Other firms, also facing pressure, [deleted](#) prior statements about forced labor in Xinjiang. Some took another route: They told different audiences what each wanted to hear. When the House passed the forced labor bill in September 2020, German fashion brand Hugo Boss [told](#) NBC News it was asking suppliers to make sure their products didn't come from Xinjiang. Yet amid China's frenzy over western brands leaving the region in March 2021, Hugo Boss [said](#) on Chinese social media that “Xinjiang's long-staple cotton is one of the best in the world” and pledged that “we will continue to purchase and support Xinjiang cotton.”

A day later, the brand deleted the post and said it hadn't been authorized, [sparking](#) yet another backlash in China. (Nearly a year after the United States officially

banned imports of Xinjiang cotton in January 2021, Hugo Boss [was bringing products](#) likely tainted with it into America, a *Buzzfeed News* investigation found.)

One thing has become clear in the time since the H&M uproar: Nationalistic backlash in China, and ensuing sales slumps, can be lasting. H&M's sales in China are still lagging. According to [Bloomberg](#), about 60 of H&M's stores in China have closed, amounting to 12 percent of its China locations. In the last quarter of 2021, sales were [down](#) 41 percent.

The lesson H&M's review took away from the ordeal, per *Bloomberg's* reporting? H&M didn't sponsor enough government-backed events to build relations with the Chinese Communist Party.

H&M declined *The Dispatch's* interview request for this story and declined a request for comment regarding the *Bloomberg* article.

"China is a very important market to us and our long-term commitment to the country remains strong," H&M Chief Executive Officer Helena Helmersson reportedly [said](#) during an earnings call in early 2022. "We are dedicated to regaining the trust and confidence of our customers, colleagues, and business partners in China."

During her conversations with businesses and investors, Richardson says she emphasized that regardless of whether companies choose to speak out in a way that could provoke reprisals in China, they still have an obligation to make sure they aren't complicit in forced labor and genocide.

"On the one hand, one sort of sympathizes with the idea that potential state retaliation simply for complying with those expectations is beyond the company's

control,” she says. “On the other hand, that’s long been a reality of doing business in that country.”

The challenge isn’t going away. China has implemented a sweeping [anti-sanctions law](#) businesses fear could be used to punish brands for complying with Western human rights sanctions.

Even now that the forced labor bill has become law, many corporations still haven’t taken firm steps to purge their supply chains of forced labor. The ones that have made public pledges to investigate supply chains are facing difficulties rooting it out. Researchers this May [found](#) several brands that still had cotton likely from Xinjiang in their products after they said they would extricate from the region.

Human rights advocates rightly doubt the corporate community’s willingness to address their role in the crisis. Apathy from high-profile entrepreneurs and investors hasn’t done much to alleviate those concerns. Elon Musk opened a [Tesla](#) showroom in Xinjiang in early 2022, long after information about the genocide was widely available. He also recently [praised](#) Chinese factory workers for “burning the 3 a.m. oil.” And venture capitalist Chamath Palihapitiya infamously [said](#) this year that “nobody cares” about the Uyghurs.

Still, as the genocide continues and as China’s disruptive pandemic lockdowns have clarified the risks of doing business in a totalitarian state, some companies are seriously investigating how to go about moving their supply chains. It’s a delicate process. Manufacturers have to find reliable and experienced suppliers in other countries. Companies also fear ending up on bad terms with Chinese officials. Without the Chinese government’s help, it can be even more difficult to avoid having intellectual property, product molds, and company tools stolen by suppliers. And with a slumping



economy, the Chinese government is increasingly sensitive about companies pulling out of the country, making those conversations even more stressful.

International law firm Harris Bricken has held expert webinars in recent months for companies to learn more about moving supply chains out of China. The conversations are filled with questions about how to navigate tense relations with Chinese officials and reduce the costs of moving. During the calls, experts have also grappled with the fact that no other country is going to present the same landscape China did as it opened up in the 1990s and the years since.

“China was a very unique historic situation, where you had a number of events converging to really drive this global productivity over the past 30 years, plus or minus,” Warren Wisnewski, the Eastman Kodak Company’s former vice president of operations for the Asian Pacific Region, told participants during a call in late May. “You had this huge emerging market that attracted investors for the market. You had, for at least for a period of time, a seemingly bottomless pit of very cost-effective labor, and with all that, all the secondary and tertiary supply capabilities developing over time. I don’t believe, personally, that that is ever going to happen again. There will not be another new China.”

During the same conversation, Dan Harris, an attorney who assists companies dealing with suppliers in China and other markets abroad, said that there has been a “decoupling between China and much of the rest of the world.”

“That is going to continue,” Harris said. He pointed to a new [trove](#) of evidence about the genocide in Xinjiang, released by researcher Adrian Zenz the same morning as the webinar.

Youming Ye, former managing director of the Jordan Company China, was blunt about the situation: “China is fighting with the whole world,” he said. “We just witnessed a big country rise and fall, to some degree.”

Without a strong international coalition banning Xinjiang imports, though, Uyghur groups don’t trust major companies to proactively leave Xinjiang. They worry the American forced labor prevention law will only encourage firms to keep products touched by Xinjiang out of the U.S. market, while they continue working with suppliers in Xinjiang and selling products tainted with forced labor to other countries. European nations have [debated](#) how to block imports made with forced labor, but the European Union hasn’t settled on a path forward. Nury Turkel, the Uyghur advocate and member of the U.S. Commission on International Religious Freedom who testified at the CECC’s hearing about forced labor in 2019, reiterates the need for other countries to pass similar laws scrutinizing imports from Xinjiang.

“I still do hope that this bill provides and becomes a kind of guiding principle to other countries that also import slave labor products,” Turkel says of the American law.

He has received his own calls from corporate lawyers about compromised supply chains. In his recent book about the genocide, *No Escape*, he writes that some calls stem from a genuine desire to avoid complicity in Uyghur forced labor. Others are rehashing tired excuses.

Turkel writes that he has found his temper growing short. He gives the lawyers increasingly direct advice.

“You guys are fucked,” he told two D.C. lawyers representing American businesses in China. “China is kicking your ass on the one side and on the other, U.S.

consumers all over the place are waking up to what is happening, and this is the one issue that unites Congress.”

“Cut the crap. Either pull the plug, or use your influence to change the Chinese behavior and say, ‘No, not in my name.’ Tell China, ‘You need my business and what you are forcing me to do is illegal, and I am under pressure at home.’”

## 4

# The Outside Game

Rushan Abbas' sister is imprisoned by the Chinese government. Her disappearance came less than a week after Rushan, an American citizen who grew up in Xinjiang, spoke at a 2018 think tank panel in Washington, D.C. about the genocide. For more than two years, her family did not receive any answers about where she had gone. Only in 2020 did the Chinese government confirm Gulshan Abbas, a 60-year-old retired medical doctor, had been arrested on ludicrous charges of terrorism. Gulshan isn't the only one. On Rushan's husband's side of the family, two dozen family members have disappeared since 2017, with no word from them since.

Instead of being silenced by the Chinese government's intimidation, Abbas has become even more vocal about the atrocities in Xinjiang. If she does not spend each day working to build public awareness of the genocide or urging policymakers to help, she says, she cannot sleep at night. It's difficult to sleep even when she does.

"I lay down in the bed and I think about her, where she is," Abbas says. "What is she eating? What is she doing? If she's still alive. What kinds of torture she's facing. Whose T-shirt she's making."

Abbas, who established the nonprofit Campaign for Uyghurs in 2017, has worked alongside other leading Uyghur advocates and human rights organizations to share the facts of forced labor in Xinjiang and to pressure businesses to prioritize human rights and leave the region. Abbas was among the activists, including labor rights

organizations and human rights groups, who were indispensable in building public support for the Uyghur Forced Labor Prevention Act and in helping get it passed into law.

Abbas spoke at the March 2020 event for the introduction of the forced labor bill. Despite facing powerful opponents, she had faith the measure could become law.

“I did hope and believe the bill was going to pass, because I believe humanity is not dead yet,” she says. “There are so many people still fighting.”

The Campaign for Uyghurs is one of about 60 human rights groups and other organizations that have formed the Coalition to End Uyghur Forced Labor. After forming in the summer of 2020, the coalition advocated for the forced labor bill every step of the way. The groups called on companies to move their supply chains out of Xinjiang, lobbied congressional offices to back the legislation, and provided counterarguments to the business community’s attempts to weaken the bill.

It’s a critical point in understanding the law: It came about only after immense pressure from witnesses of the atrocities in Xinjiang and their allies. People harmed directly by China’s genocide—who have family members still in the camps, who were tortured in the camps, who were raped in the camps, who have been stalked and intimidated by Chinese agents abroad, who have watched their religious and cultural sites razed—are on the front lines calling for the western world to end its complicity.

“When we speak, we try to put the human face to this genocide and forced labor and China’s crimes,” Abbas says of Uyghur advocates. “But what the coalition was doing was working very hard with the evidence. So many different organizations coming together, working together, made us feel that we are not alone. We have all these people backing us up and trying hard to do the right thing.”

One of the coalition's top goals was to win over more cosponsors for the bill. While it had bipartisan support, many offices simply weren't aware of the issue or hadn't spent time looking into it. Different organizations divided up offices to contact. They emailed with congressional staffers to answer questions about the legislation, and they set up calls to talk about it.

Uyghur groups, including the Uyghur Human Rights Project (UHRP) and the Uyghur American Association, organized dozens of online meetings between congressional staff and Uyghurs living in the United States. Louisa Greve, director of global advocacy at UHRP, helped prepare people for the calls and participated in many of them. She was struck by how offices with widely different views on most political matters were unified about backing this bill.

"I remember thinking, wow. There's really no difference between Republicans and Democrats," she says.

But what stands out to her most in hindsight were staff members' reactions to the Uyghurs' stories of suffering. She says Hill staffers were overwhelmingly interested in helping. Advocates were able to track the support they were winning as they watched the bills' cosponsors grow.

"It was a huge source of hope every time there was a new cosponsor, because it was one step closer to having the American market not be complicit in these atrocity crimes," Greve says.

Scott Nova, executive director of the Worker Rights Consortium, says he remembers feeling the bill was "probably a long shot" when it was first introduced, because "the

legislation imposes very substantial obligations on large corporations that have a lot of political clout.”

“It is vanishingly rare,” he says, “for the U.S. Congress to pass legislation related to global trade that imposes substantial obligations on corporations selling goods in the U.S.”

Nova, who is also involved in the Coalition to End Uyghur Forced Labor, says proponents of the bill had far less power to influence lawmakers than corporate opponents did. That’s why the coalition worked to heighten public awareness of the scope of forced labor in western markets.

“What was happening was a strong effort to create greater and greater awareness in Congress and among the broader public—and awareness on the part of Congress of the growing awareness of the broader public—so as to create strong momentum in favor of action,” he says.

With its awareness campaign, the coalition created an environment in which it would be difficult for lawmakers not to respond to the prevalence of Uyghur forced labor products.

Advocates also pushed back on business groups that opposed the bill. In one striking [letter](#) from the Southern Baptist Convention’s Ethics and Religious Liberty Commission, former commission president Russell Moore directly challenged Tom Donohue, who was president of the U.S. Chamber of Commerce at the time. Moore urged him to contemplate the eternal consequences of standing in the way of efforts to root out forced labor.

“I know you do not want to be a part of any complicity in the bloodthirsty human rights violations of the Chinese Communist Party,” Moore wrote. “But, sadly, for far too long, many corporations have done just that. Human beings are made in the image of God and are more significant than temporal gains or losses on a spreadsheet.”

“I would urge you to consider the sort of ultimate moral accountability that will come before a God who counts human life as precious and as infinitely more than units of economic output,” he added. “I strongly urge you to reconsider your opposition to these bills.”

Chelsea Patterson Sobolik, director of policy at the ERLC, says that in follow-up conversations, the ERLC made the case that businesses and governments do have the tools they need to find and address forced labor.

“That doesn’t mean it’s easy, but they do have the levers and tools available to them,” she says.

“Passing this bill, unfortunately, isn’t a no-brainer to every policy maker,” she says. “At the end of the day, I would just say advocacy really does matter.”

Even as lawmakers from both parties embraced the plan, the bill faced an uphill climb. One advocate remembers worrying the legislation was stuck at many points along the way, as congressional aides received pushback from corporations and offices negotiated new versions. The coalition collaborated to try to figure out why it was stuck and how to clear the path. Once one muddy spot was cleared up, another would soon come along.

Abbas has a similar description: She likens it to when her son was born 100 days premature, weighing only 1 pound, 13 ounces. He struggled to put on weight when he was in an incubator in the newborn intensive unit.



“He would gain a little bit of weight, and then he would drop the water weight,” she says. “It was just extremely frustrating.”

She says the process of passing the bill in the United States underscored the need to connect the genocide to people’s daily lives.

“This is about you,” she says. “Your conscience as a human being. Because the conscience of humanity is being tested here. Are we going to fail it? Or are we going to pass it?”

Greve says the lesson for human rights advocates, as they attempt to win support for similar action in other countries, is persistence.

Persistence became even more essential for the American bill after a new president took office in January 2021. When Senators Rubio and Merkley reintroduced their revised version of the bill that month, advocates hoped it could move quickly. It didn’t.

“It was terribly disappointing to see no action on a bill that was clearly the will of Congress,” Greve says.

But with a new administration came new concerns about the bill.

Senior Biden officials worried banning products from Xinjiang would hurt the United States’ climate goals. Nearly half of the world’s polysilicon came from Xinjiang in 2020; the solar industry was overly reliant on the region for key components. Cutting off Xinjiang imports could undermine the availability of solar panels and hike costs in a year that had already seen skyrocketing polysilicon prices.

Biden officials weren’t particularly transparent about their internal debate about the bill. When repeatedly [pressed](#) on the issue by *RealClearPolitics* White House

correspondent Philip Wegmann—who reported extensively on the forced labor bill and the Biden team’s deliberations over climate priorities throughout 2021—former White House Press Secretary Jen Psaki avoided answering questions about the administration’s stance on the legislation. She later denied that officials had been pushing against it. Yet [news reports](#) and conversations behind the scenes increasingly made it clear that an influential sect in the White House was objecting to the legislation. Over the summer of 2021, human rights leaders noticed a disturbing trend in rhetoric from the president and senior officials: The administration showed no urgency to act on forced labor in Xinjiang.

The bill’s supporters started to raise alarms. They were especially worried about climate envoy John Kerry. Chinese officials were refusing to meaningfully negotiate on climate goals as long as the United States was taking unrelated human rights actions against the Chinese government. It came to a head in September, when Kerry returned from a trip to China and made a series of lukewarm comments about the genocide and forced labor in Xinjiang.

During Kerry’s trip to China that month, he was at pains to emphasize cooperation was still possible in areas of agreement.

“My response to them was, ‘Hey, look, climate is not ideological, it’s not partisan, it’s not a geostrategic weapon or tool, and it’s certainly not, you know, day-to-day politics,’” Kerry [told](#) reporters afterward. He said he told the Chinese he would share their complaints with President Biden and Secretary of State Antony Blinken.

In another interview after the trip, when asked about trade-offs between climate and human rights, Kerry [told](#) Bloomberg News’s David Westin that “life is always full of tough choices and the relationship between nations.”

Those remarks quickly drew condemnation from Republican lawmakers. It wasn't the first time Kerry had given a halfhearted response when pressed on the genocide. During a May 2021 House Foreign Affairs Committee hearing, Kerry acknowledged that Uyghur forced labor in solar supply chains was a problem, but he also told GOP Rep. Chris Smith that combating slave labor in China is “not my lane.”

In late September, Rubio and Smith wrote a [letter](#) to Biden raising concerns about Kerry's position and urging the administration to support the forced labor bill. The letter, without any Democratic signatures, was among the first indications that a previously nonpartisan effort was going to turn into something more caustic. Between July and September, as the bill languished, Republican lawmakers and aides concluded it was time to go on the offense: The White House and Democratic leaders would have to be pressured (and, at times, shamed) into advancing the legislation.

“We are concerned that Mr. Kerry is downplaying the genocide precisely because he intends to import solar panels that are produced using forced labor in the PRC to the United States in order to meet your administration's climate goals,” Rubio and Smith wrote. “This appears to be the reason Mr. Kerry seeks to desensitize others to this immoral and unnecessary tradeoff by mischaracterizing it as simply a ‘tough choice.’”

The State Department declined requests to speak with Kerry for this story.

In the aftermath of Kerry's comments, Uyghur groups also renewed their calls for the White House to take a firm approach to the atrocities in Xinjiang. Julie Millsap, then working with the Campaign for Uyghurs, [told](#) the Associated Press in September that Uyghur advocates were “horrified at what we observe” in the Biden administration's weighing of climate and human rights.

The interview came as Millsap was in London preparing to testify during the second meeting of the independent Uyghur Tribunal, which had gathered to examine evidence of the Chinese government's genocide in Xinjiang.

“This was what was happening in the rest of the world, and then to see that was what the United States was saying publicly while something like that was happening abroad, that sticks out in my mind,” she says.

At the start of the Biden administration, Millsap says, Uyghur advocates had a lot of optimism about Biden. He had publicly called the treatment of Uyghurs genocide during the 2020 presidential campaign, months before the Trump State Department officially adopted that language. But after Biden took office, advocates received tepid responses about the forced labor bill and realized the administration's China policy wasn't coherent. By the time Kerry was ramping up his conversations with Chinese officials ahead of the November 2021 climate summit in Glasgow, Uyghur advocates were “very alarmed,” Millsap remembers.

“What John Kerry had to say about everything was kind of confirmation of our worst fears, just in terms of hearing a lot of lack of clarity, lack of clear policy, and then to see that the only thing that they had sort of nailed down was this approach on climate change was incredibly jarring.”

## 5

# Climate Clash

When people ask Nury Turkel what the biggest obstacle in Washington, D.C., to his human rights efforts is today, he has a simple answer: environmental activists.

“They try to save the planet and care less about the real human being,” Turkel says. “We can fight genocide and ecocide at the same time.”

The Biden administration has struggled to strike that balance with China. Instead, officials have slowed down substantive responses to the genocide in Xinjiang as they weighed climate priorities. The debate gets to the heart of the future of U.S.-China relations: It’s no longer a question of whether China is an adversary or if America can change China’s behavior with economic investment. Instead, it’s a matter of whether the United States should compartmentalize issues and cooperate with a country actively committing genocide. And is cooperation even possible, when the country engaged in genocide often takes an all-or-nothing approach?

China’s uncompromising [stance](#) with climate talks cemented that dynamic, and it made human rights actions in the United States even more of a political minefield. The Biden team’s internal argument over how to balance climate goals and human rights played out in the summer of 2021. In June, Customs and Border Protection banned imports from Hoshine Silicon, a Chinese solar manufacturer tied to forced labor.

*Washington Post* columnist Josh Rogin [reported](#) shortly after the ban was announced

that there had been a “fierce debate” inside the administration over the Hoshine sanctions, with some worrying it would disrupt the solar industry too much.

That debate only intensified in the following months as lawmakers sought a broader Xinjiang import ban. The timing was particularly sensitive with the November Glasgow climate summit approaching: Officials didn’t want to undercut the United States’ negotiating position or reduce the odds of new climate commitments from China.

Sen. Jeff Merkley, the Oregon Democrat who cosponsored the Uyghur Forced Labor Prevention Act, played a leading role in making the case for a strong response to the genocide but faced resistance from senior Biden officials about the legislation. As the possibility of the forced labor bill passing became more real, he remembers, “I heard more concerns from the administration.”

When asked if he ever spoke directly to Biden or Kerry about the legislation, Merkley declines to answer. He says he actively petitioned high-ranking officials in favor of the bill in the summer and fall of 2021, rejecting the idea that climate priorities and human rights concerns should be in conflict. With a long track record on both human rights and climate policy, he was seen as one of the few lawmakers with the credibility to make that case. He urged the White House to help businesses diversify climate supply chains and boost American production of solar panels, so the industry would not be complicit in slave labor.

“I did not see this as an irresolvable conflict,” he says. “It’s fair to say any administration has people who have a range of ideas and thoughts, and some folks within the administration really felt like this bill would be damaging for our efforts on climate. So I was trying to push back and say, ‘No, no. You all can address this

successfully, and it's essential for American leadership in the world, for who we are and our values, that we not import products tainted by slave labor.”

Merkley summarizes his argument: “You can't say it's wrong to source cotton from Xinjiang and then turn around and say it's okay to source solar panels.”

“The administration, again, has diverse voices that were wrestling with this dynamic, but I saw my role as to say, ‘If one has to come before the other, it's human rights.’ And second of all, you can take proactive action to develop solar panels from elsewhere.”

China makes up [nearly](#) a third of the world's greenhouse gas emissions. That, paired with its role in producing critical components for solar panels, underpins American officials' hopes to get China on board with more ambitious climate commitments. Secretary of State Antony Blinken said in his speech outlining the administration's China policy last month that there is “simply no way to solve climate change without China's leadership.”

Even with that reasoning—and setting aside the fact that Chinese solar panel materials are largely produced [using](#) dirty coal—Blinken's language about working with China was at times bizarre to hear in a speech where he also noted the Chinese government is actively engaged in genocide. It frustrated human rights advocates, especially after they were pitted against climate priorities in getting the forced labor bill passed.

Merkley points to proposals to fund American solar manufacturing as an important way to disentangle the issues.

“One has to recognize that the fossil fuel side of the world also saw this as an opportunity to try to slow down the transition to renewables,” Merkley says of the forced labor bill.

Still, he wishes it had passed sooner.

“It wasn’t as if we suddenly realized near the end of last year that China was engaged in genocide,” he says.

When he gets the chance in meetings with foreign officials, Merkley brings up the problem of forced labor and market demand for solar components. During a conversation with Taiwanese diplomat Bi-khim Hsiao last November, Merkley says he pointed out an “opportunity for Taiwan to meet a big need in America, which is slave labor-free, inexpensive solar panels.”

John Smirnow, general counsel at the Solar Energy Industries Association, says some major solar brands have taken steps to trace their supply chains and move out of Xinjiang.

“We’re starting to see now the manufacturers develop new supply agreements, polysilicon, with German polysilicon manufacturers,” Smirnow says.

Some foreign companies are also ramping up operations in the United States. South Korean firm Hanwha Qcells [announced](#) in May it will spend \$320 million to boost production at its Dalton, Georgia, factory beginning in 2023.

Moving supply chains can be complicated, though. That’s why the Biden team fiercely debated sanctions in Xinjiang, and it’s why Kerry’s deputy at the time, Jonathan Pershing, reportedly told lawmakers the American government would need more time, something like five to 10 years, to move solar supply chains away from Xinjiang.



According to the *Washington Post*, Pershing [said](#) in meetings with members of Congress in 2021 that the administration wanted flexibility in the forced labor legislation for that transition. A State Department official speaking on the condition of anonymity claims Pershing wasn't actively lobbying against the bill and the discussions reported by the *Post* came as part of broader briefings. Similar arguments—that officials were not actively lobbying on the forced labor bill but were only answering questions about it from lawmakers, or that they were providing technical assistance on the details—were prominent from the White House in the latter half of 2021. Overt and sustained opposition from an administration isn't always necessary to kill a bill, though. It can be difficult to gain traction on controversial measures if an administration isn't actively supporting it. And members of the Biden team were privately pushing against the measure in conversations with lawmakers, mainly Merkley, during this time.

The State Department declined to provide more details about whom Pershing met with in Congress. Speaker Nancy Pelosi's office says he did not meet with her or her staff on the matter, although he may have participated in climate calls between Pelosi and Kerry during that time. McGovern's office says the congressman did not meet with Pershing. Merkley's office says they had meetings with Pershing on climate, but not on the forced labor bill.

Reluctance among some Biden administration officials didn't stop the bill from winning resounding support in the Senate. In July 2021, it passed that chamber for the first time without any opposition. Because it was different from the version House members passed the year before, and because it was a new Congress, members in that chamber would have to vote again on the matter to send it to the president's desk. After Senate

passage, the senators who sponsored it hoped action would follow quickly in the House. It didn't.

Congressional aides from both parties point to the Biden administration's hesitancy and the timing of the climate summit as primary reasons the bill didn't move any further for months after the Senate passed its version. Pelosi denies having been urged by the administration to delay the bill. When [asked](#) last year if Kerry had lobbied her to slow-walk the measure, she told reporters that was "completely not true."

Pelosi's office declined requests to interview her for this story.

House Democrats say there were other issues at play, including policy disagreements and a busy legislative calendar. Corporate resistance hadn't subsided, either.

Jim McGovern, the Democrat who introduced the bill in the House, maintains the timing was not influenced by the White House, and in the later months of 2021 he felt sure it would ultimately pass. House lawmakers weren't going to simply take up the Senate-passed version, he says; they wanted to approve their own bill again with overwhelming margins to have a stronger negotiating hand on items like the SEC disclosures, which had been stripped from the Senate version. House Democratic leaders were also considering the bill as part of a larger China competition package, which was slowly working its way through Congress. McGovern says he was never told to hold up the legislation and that he never spoke to Kerry about it.

"If John Kerry was unnerved by this, I've known him for a hundred years," McGovern says. They are both from Massachusetts.

“He’s my friend. I worked my ass off for president, for his Senate campaigns. We have a good, productive relationship. I would’ve thought that he would’ve called and said, ‘Hey, you know, slow down or do this.’ He didn’t.”

Kerry’s public comments about his trip to China in September 2021 sparked concern among advocates and the bill’s supporters, though, and there were no signs the House would be taking it up any time soon. At first, the House’s delay after the Senate approved its version was explainable: The two versions of the bill still contained differences. Democrats were also making a push on President Biden’s Build Back Better agenda at the time, and the disastrous military withdrawal from Afghanistan was soon weighing heavily on members’ minds. But the weeks stretched into months with no movement on the legislation. Sponsors from the two chambers had no serious conversations at this point on how to rectify the bills’ discrepancies.

“We were optimistic, I guess, in July and August,” a Republican Senate aide involved in the effort says. “By late September, when we still really weren’t getting any real substantive responses, is when we started to think, okay, something here is wrong.”

Aggravation wasn’t limited to Republicans—Democrats who worked on the Senate version were also itching for progress.

“Frustration built over time,” one senior Democratic Senate aide says. “The point when it got really, really frustrating was when a version of this bill had passed both chambers in consecutive Congresses. It was like, alright. We know that this is something that has almost unanimous support. Let’s get it done.”

In November, more Republican lawmakers went public with their fears about the bill being stalled. A [letter](#) from GOP lawmakers on the House Foreign Affairs

Committee, led by ranking member Rep. Mike McCaul, urged Pelosi to “stop delaying floor consideration” of the forced labor bill.

“It is extremely concerning that no legislation imposing real world consequences in response to this genocide has received floor consideration this Congress,” they wrote.

“This lengthy delay stands in contrast with the Democratic majority’s record on Uyghur issues under the prior administration.”

The members pointed out that the year before, House Democratic leaders brought the forced labor bill forward for a vote without waiting for it to go through committees.

“Both the House and Senate measures would pass the House resoundingly, if put up for a vote,” the GOP members said.

Each day the forced labor bill remained on ice in Congress was another day products made with forced labor were flowing into the United States. Members of Congress felt a sense of urgency. The ongoing genocide, the Foreign Affairs Committee Republicans wrote in their letter to Pelosi, is “nothing less than the moral test of our time.”

## 6

# Showdown

Three weeks before the Uyghur Forced Labor Prevention Act was signed into law, human rights advocates were convinced the bill was almost dead.

Nothing indicated it was going to move in the House. The White House made no assurances that the president would support it, and officials signaled publicly and privately in the opposite direction. Plus, corporate resistance remained strong.

“It’s pretty clear that the White House didn’t want this thing moving at the time, until it became unavoidable,” Senator Rubio says.

In early December and until the bill became law later that month, Rubio worked to make the issue too toxic to ignore. He used one of the only leverage points available: the National Defense Authorization Act (NDAA), one of the most important bills Congress considers each year. Rubio’s move to delay passage of the defense bill set off intense public scrutiny and removed ambiguity about the White House’s position, sparking quick talks to reconcile the two chambers’ versions of the bill before year’s end.

Rubio describes the decision to hold up the NDAA as uncomfortable—“It’s something I’ve long supported and voted for.”

But it gave him a key procedural advantage. Even if it didn’t result in the forced labor bill being added to the defense package as he wanted, he reasoned it would lead to more questions being asked about why the legislation hadn’t passed the House that year.

“If we hadn’t done it, this bill wouldn’t have passed,” he says.

Rubio [attempted](#) in mid-November to get the forced labor bill added to the defense package as part of the slate of amendments the Senate would adopt. The new version of the bill, proposed during the NDAA talks alongside Democratic Sen. Jeff Merkley, had a shortened period for implementation—down to 180 days from the Senate’s earlier 300 days—because, after all, Congress’ inaction that year had given businesses most of 2021 to prepare for it. But Democratic leaders in the Senate rejected Rubio’s request. The House Ways and Means Committee, they told him, was saying the forced labor bill generated too much revenue, which would cause procedural problems when the defense package went to the House for final passage.

The Constitution requires that all bills for raising revenue originate in the House, not the Senate. House lawmakers guard this prerogative jealously. (Senators from both parties think the House guards it *too* jealously.) This perennial standoff between the two chambers is known as a [blue slip](#) issue.

The Senate sponsors of the forced labor bill, aware of reluctance to proceed among top administration officials, suspected the blue slip complaint wasn’t the real reason behind Democratic leadership’s pushback.

“This bill doesn’t have a blue slip problem,” Rubio said on the Senate floor in November. “It has a ‘bunch of corporations who are making stuff in Xinjiang province’ problem.”

Merkley agreed. The Senate first passed the forced labor bill in July, without any opposition. Senate sponsors didn’t hear about a blue slip issue then, he says.

“There were other things in the NDAA that could be considered somewhat parallel,” he adds. The package of amendments Senate leaders planned to bring forward

included two other measures that dealt with sanctions—one to expand and permanently reauthorize global human rights sanctions authorities, and another to sanction the Nord Stream II pipeline project—but those weren't deemed a revenue problem like the forced labor one was. And a budget score from the nonpartisan Congressional Budget Office indicated the measure would have no significant financial impact.

“So you combine all that: Where'd this blue slip issue suddenly arise from?” Merkley asks. “It looked contrived.”

Rubio's request wasn't the only GOP amendment that held up the defense bill in late November. Several others sought changes, too, which required another week of negotiations to iron out. On December 1, Democratic leaders thought they had found a path forward to advance the defense bill. They would [allow](#) a Senate vote on Rubio's forced labor amendment, as one of 24 various amendment votes. But this wasn't a real victory. The process was structured so it would only be a show vote. Of the amendments that would get floor consideration, Democratic leaders singled out the forced labor bill. In an email to offices seeking consent to go ahead with the plan, they said Rubio's amendment would not actually be included in the final manager's package version of the defense bill, even if the amendment vote succeeded. It would be added to the existing text of the bill, which was going to be completely replaced at the end of the process. It wouldn't move to the House or have a chance to become law. It would only put senators on the record about a bill they had already passed by a voice vote months earlier.

Rubio wasn't satisfied. He wanted to see genuine progress on the legislation. That night, when Senate Armed Services Committee Chairman Jack Reed attempted to move

forward with the amendment votes via unanimous consent, Rubio objected. Under the Senate rules, any one senator can block such a request.

Rubio's decision frustrated many of his colleagues. He was slowing down an already beleaguered process as lawmakers were itching to finish work for the year. Others were more understanding. Rubio says he spoke with the top Republican on the Armed Services Committee, James Inhofe, about his decision to hold up the defense package. Rubio emphasized his respect for the work that goes into the annual defense bill, but "I explained to them, look, this is a key issue. This is the leverage that I have."

Inhofe wasn't pleased, but he wasn't angry, either, Rubio remembers.

"This wasn't a petty parochial issue," says Rubio. "This is a major issue." He had to weigh whether the stand would make a difference in the end: Objecting to unanimous consent requests and bogging down the Senate's work too often can earn a lawmaker a reputation as a contrarian that can hinder the work of getting bills passed.

"It's something you have to be judicious about," according to Rubio. "I don't do it every year. I don't do it on every issue. But I thought this one was important enough and the timing was critical enough that we had a chance to get it done."

Senate Majority Leader Chuck Schumer slammed Rubio for throwing a wrench into the process, [saying](#) the House's blue-slip complaint wasn't "a matter of opinion." The forced labor amendment, he argued, was a poison pill that would blow up the entire defense bill. Schumer said the standoff was absurd and sad; he [urged](#) Rubio "to sleep over this tonight."

Rubio didn't have a change of heart, though. Instead, his fears about the Biden administration's position on the forced labor bill only solidified. The night after Rubio



objected to the NDAA plan, on December 2, journalist Josh Rogin published his weekly *Washington Post* [column](#). Human rights activists and Uyghur advocates interviewed for this story overwhelmingly point to Rogin's article as a pivotal moment for the legislation. According to his reporting, Biden administration officials had been quietly telling lawmakers to slow down on the forced labor bill. News stories about the Biden team's reluctance had been floating around for months, but Rogin had new, well-sourced specifics, and it added to the pressure campaign Rubio was pursuing in the Senate. In an October call between Deputy Secretary of State Wendy Sherman and Merkley, Rogin reported, "Sherman made it clear that the administration prefers a more targeted and deliberative approach to determining which goods are the products of forced labor."

The concerns Sherman reportedly raised in that call weren't minor. The more targeted and deliberative approach she was suggesting went against the primary goal of the bill: encouraging companies to get out of Xinjiang. Anything other than a regional ban, with the option for exceptions in the case of clear and convincing evidence against forced labor, would have given corporations more room to shirk their responsibilities to rid supply chains of forced labor.

"While the administration supports the legislation in public, they are asking Democrats to essentially water it down in private," Rogin wrote.

Uyghur advocate and U.S. Commission on International Religious Freedom vice-chair Nury Turkel says the column was a turning point, essentially forcing "those who were lukewarm to come out publicly and say that they're okay with slave labor."

Rogin says he was "making my arguments as an independent opinion columnist."

"I have no idea if that had any influence at all, but I hope it did."

Biden officials continued to claim the administration hadn't been lobbying against the legislation, but human rights groups didn't have to look far for evidence bolstering Rogin's story. Merkley was indeed on the other end of administration pushback. The same night Rogin's piece came out, *Bloomberg's* Daniel Flatley [published](#) comments he got from Merkley during a Senate subway ride earlier that week about what he had been hearing from administration officials. There was some "hesitancy" on the Biden team's part, Merkley confirmed, and "I disagree with it."

Merkley also described administration fears that aligned with what Rogin reported.

"They haven't put forward a specific proposal that I've seen," Merkley said during the interview, according to Flatley, "but the general idea is they're wrestling with critical supply chains and the ability to clearly establish what material goods have been tainted by forced labor."

Now the campaign among some factions of the administration to water down the forced labor bill was fully in the open. Top House Democrats publicly promised a quick vote on their version of the measure, signaling an end in sight for the nearly two-year effort.

On a [podcast](#) in January, Rogin described the events this way: "By shaming first the Senate, then the House leadership, and then the White House, and then the State Department by pointing out that they were doing nothing, literally nothing, to stop forced labor products despite the genocide that was going on in Xinjiang, that's how it got unstuck. That's rare."

Until the bill was finalized, Rubio's team, human rights advocates, policy experts, and Rogin continued to dominate the online discussion about it, maintaining pressure on Democrats to get it done.

Michael Sobolik, a former GOP Senate staffer who has worked as a China expert at a think tank since 2019, played an interesting role in this campaign. Throughout early December and during inter-chamber negotiations on the bill, Sobolik was in frequent communication with three different Rubio staffers. On December 1, Sobolik received a message from one of those aides about Democrats' plans to reject adding the forced labor bill to the defense package. Rubio's office was sounding the alarm, asking allies to tweet and boost public awareness of what was happening. Sobolik was quick to respond, [posting](#) a tweet 10 minutes later with siren emojis about the standoff and describing it as a "really weird hill to die on."

"Why object to avoiding complicity in a genocide?" he wrote, tagging Schumer, Pelosi, and several other congressional accounts handled by Democrats.

The next two weeks were a whirlwind.

"It was this all-consuming referendum," he says.

From that point on, Sobolik kept up with his friends in Rubio's office, getting information about the senator's plans and what their office was hearing from Democrats. He posted details about the bill and pushed back on the blue slip argument. He also spoke with conservative news reporters about the situation.

"I felt like I was breaking news in some cases as a think-tanker," he says. "That felt weird."

Sobolik thinks the aides kept him in the loop because they knew he would understand the policy details well enough to spread the word online, and he wasn't a

member of the press, so they wouldn't be violating rules against talking to journalists without going through the communications team first.

“I think it was them being like, ‘Whatever it takes to get this thing over the finish line, we’re going to do it, and we’re going to leverage every single relationship we have,’” Sobolik says.

When House Democrats pledged during that first week of December to move on the bill, Rubio, Rogin, and Sobolik remained skeptical. After all the hurdles the legislation had met, taking assurances at face value was difficult.

Their rhetoric would spark frustration among Democrats with strong records on human rights who found themselves lumped into a soft-on-China narrative about the party. Those tensions near the end didn't kill the bill, though. In private, congressional aides would soon begin hashing out the version of the measure that would ultimately become law.

## Blitz

It's not often a lawmaker is confronted by protesters urging passage of a bill that lawmaker was instrumental in introducing. But it's exactly the situation Rep. Jim McGovern found himself in during those critical early days of December.

On December 3, two survivors of China's concentration camps—Gulzira Auelkhan, the Kazakh woman who was detained and later forced to work, and Tursunay Ziyawudun, a Uyghur woman who [has testified](#) about being horrifically tortured and raped—[stood](#) in the cold outside the Cannon House Office Building with signs advocating passage of the Uyghur Forced Labor Prevention Act. They called on McGovern and Speaker Pelosi by name to take action. McGovern, learning they were outside the building, went out to talk with them.

“We are on your side,” he said. He pledged the House would hold a vote on the chamber's version of the bill the following week. It might take a few weeks to negotiate with the Senate and finalize the legislation, he [said](#), “but it's going to happen.”

Yet Uyghur groups, journalists, think-tankers, and Republican lawmakers weren't totally convinced the bill had cleared the hurdles necessary to become law. For starters, the House and Senate bills still had several key differences. And it wasn't clear President Joe Biden would sign a bill, even if compromise between the two chambers emerged. Those facts, and news stories about months of secretive lobbying against the legislation by corporations and factions within the Biden administration, fostered

suspicion among the bill's supporters about whether it would actually pass and divided the sponsors of the legislation in the final days of 2021.

Arslan Hidayat, program manager at the Campaign for Uyghurs, participated in the protest outside the House office buildings when McGovern promised action on the bill. He says the group scheduled their protests around lunchtime, hoping to catch the attention of lawmakers and staff as they left the building. Hidayat remembers one distressing part of the conversation: The advocates and McGovern went back and forth about which bill was better, and whether the House should move quickly on the Senate version or if the two chambers should enter negotiations that could take some time.

“From that exchange, I didn’t think it was going to pass,” Hidayat says. “I thought they were going to argue over whose bill they were going to pass.”

Hidayat translated much of the conversation between the camp survivors and McGovern but didn’t convey his fears about how the two chambers might fail to forge a path forward.

“When I heard that, I didn’t feel very hopeful,” he recalls. “And I didn’t really explain it to the camp survivors like that. I just told them the good news.”

On December 8, the House held a vote for the first time in the 117th Congress on its version of the forced labor bill. Members passed it with an overwhelming tally of 428-1, even stronger than the vote the year prior. Its passage should have been a moment of victory for the bill’s supporters, but the situation remained fraught.

Shortly after the vote, Rubio, other Republican lawmakers, Rogin, Sobolik, and other China policy voices claimed Democrats had approved it in the House just to keep up appearances.

“They only passed it to say they did something,” Rogin [tweeted](#). “This is the McGovern bill. The House already passed it last year. There is no plan to reconcile it with the Senate bill by Rubio and Merkley. It’s just an alibi, unfortunately. Biden admin told dems not to send it to his desk. Sad.”

McGovern [responded](#) the next morning, pointing out that Senate Republicans had held up the bill in 2020.

“We’re already working w/ Rubio’s office to reconcile bills, just ask them,” he said. “House bill has some stronger parts. We will get it to Biden’s desk.”

During this period, from December 8 until December 14, the legislative process was at its most ridiculous and inscrutable for those observing from the outside. Partisan tensions escalated in the open, lawmakers who hadn’t played the slightest role in the bill sought to score political points, and members on different ends of the Capitol were describing two very different versions of events. Those days are also when congressional aides and the legislation’s sponsors privately finalized the text of the bill that would later become law.

After the House version passed, Speaker Pelosi didn’t send it to the Senate. Out of dozens of bills passed the same day, the forced labor measure was the only one Democratic leaders withheld. Republicans sounded alarms, anxious that Democrats were stalling the measure and sending it into legislative purgatory. Democrats said they were trying to reach a final compromise version with the Senate that they would advance.

On December 9, Rubio [tweeted](#) about Pelosi holding up the bill.

The White House and corporate interests who opposed it “aren’t going to give up that easy,” he said.

And on the morning of December 10, Rubio [claimed](#) Democrats were pretending to support the forced labor bill while using congressional procedure to make sure it “never becomes law.”

Given everything that had unfolded since the legislation’s introduction, healthy paranoia about whether the bill would actually pass was valid. But Rubio’s tweets came after serious negotiations for a compromise bill were already underway, according to people from both parties who were involved in the talks. His rhetoric wasn’t constructive as aides worked through the legislative text.

Others joined the messaging: House GOP Leader Kevin McCarthy, for one, [tweeted](#), “Why is Speaker Pelosi dragging her feet? What does the Chinese Communist Party have on her?”

Democrats still have a bitter taste in their mouths from this time.

“It just disregards her lifetime of advocacy on behalf of human rights,” McGovern says of the attacks on Pelosi. “This would not have happened without her ... She made it clear to me, and we told her, that we were in negotiations with Rubio—while he was, you know, kicking the shit out of her—that we were in negotiations with Rubio to get to a deal that they can accept, so we don’t have to have a back-and-forth.”

McGovern [responded](#) to McCarthy’s tweet. Yet he avoided getting into a direct confrontation with Rubio, even though some of his aides wanted to fire back more forcefully.

“What I’ve learned being in this business for a very long time is if you start to make things super partisan, and I start going after you, and you go after me, and we go back and forth, then we don’t want to talk to one another and then we don’t want to



work together, and that would have been the worst of all possible outcomes here,” McGovern says.

“I appreciate Senator Rubio’s leadership on this,” he adds. “We’re very different people and have different political philosophies. You know, we look at the world differently. But you don’t have to agree on everything to agree on something, and we agreed on this.”

When asked about his pointed rhetoric even while his office was negotiating with McGovern’s, Rubio says “McGovern wanted it passed,” and he knew Pelosi couldn’t sit on it indefinitely.

Rubio’s deputy chief of staff, Dan Holler, adds that Rubio’s public comments were intended to apply maximum pressure; he wasn’t taking anything for granted.

Rubio and McGovern both now point to the House and Senate’s ceaseless wrangling over revenue authorities as one reason behind Pelosi’s delay in sending the bill over to the other chamber. Some House members feared that if they sent what they deemed a revenue-generating bill to the Senate without assurances from that chamber’s leaders about the process, it could present an opportunity for senators to “tag on whatever they want and send it back,” Rubio says.

“There was some of that going on.”

Behind the scenes, congressional aides were quietly negotiating a new version of the bill over phone calls and emails. This was the final sprint, and it was messy. Staffers for Rubio, McGovern, Merkley, and Rep. Chris Smith pulled together a bill on an accelerated timeline. Lawmakers were wrapping up their work for the year, and a holiday recess was quickly approaching. Swift action would be needed if they were going

to get it done. By the evening of Friday, December 10, House leadership's plans were clear: Congressional staff would work through the weekend with the aim of finishing the text and putting an agreement on the House floor for passage on Tuesday, December 14. One senior House aide says the legislative text came together so quickly, he was surprised Congress didn't have to pass technical corrections to it afterward.

The aides swapped versions of the bill back and forth, tracking changes, and they shared the details with other offices to get buy-in from committees of jurisdiction.

"It was probably a typical negotiation where you agree on 90 percent and then you hold out, you fight for what you can get in the last 10 percent," the House aide familiar with the talks says. "And then you have to compromise."

Early on in the talks, Rubio's team made it clear the Senate would not budge on the business disclosures the House wanted. If those provisions remained in the bill, some GOP senators would object to passage. The House aides agreed to remove them. The House also accepted the Senate's implementation process, with a public comment period for businesses, among other steps for agencies to follow in carrying out the law. But the entity tasked with overseeing the law's implementation would follow the House's model, a forced labor enforcement task force established by the U.S.-Mexico-Canada trade agreement. The compromise set a 180-day timeframe for businesses to comply with the presumption that all goods made in part or in whole in Xinjiang are tainted with forced labor. Importantly, the measure retained the Senate's clearer language targeting forced labor transfers throughout China.

The last detail negotiators nailed down concerned the standard of evidence businesses would have to meet to obtain an exemption to the presumption of forced labor. The House bill was uncompromising, calling for "clear and convincing evidence"

against forced labor. Experts feared the Senate bill gave too much room for presidential administrations to water down the implementation. The final version merged the two, preserving the stronger “clear and convincing” standard.

The aides met their deadline. On Tuesday, December 14, the House approved the compromise bill by voice vote. After more than two years of work crafting the bill, introducing it, building support for it, and moving it through both chambers at different times, the Uyghur Forced Labor Prevention Act was on the verge of becoming law at last. It was an emotional moment for the congressional staffers who helped write the legislation.

“You’re sitting there, you’re working your ass off to pass a bill you wish you never had to do,” the senior House aide says. “To be able to pass a major human rights law that had such a broad coalition had a good feeling in itself. Can we build on that? I really, really hope we can. Can we bring this to other countries, can we bring it to other issues in China? I hope we can.”

But the fact the bill had to be written in the first place “just sucks. It just sucks.”

The measure was close to final passage, although it wouldn’t be the U.S. Congress without a couple more hiccups in the legislative process. When the Senate sponsors of the forced labor bill tried to pass the agreement by unanimous consent the next day, two Democrats blocked it for unrelated reasons. Sen. Chris Murphy of Connecticut wanted votes on dozens of Biden’s ambassador nominees that Senate Republicans had stalled. And Senate Finance Committee Chairman Ron Wyden of Oregon was seeking a yearlong extension of Democrats’ expanded child tax credit.

Merkley, the Senate Democrat who cosponsored the forced labor bill, says he was surprised by his colleagues' objections—they hadn't told him their plans beforehand.

“At that moment, it's like, wait, now two of my colleagues on my side of the aisle are trying to block this,” Merkley says. “I'm like, how did this happen? Why haven't I heard from them? But we worked it out.”

He says he and Rubio had to spend time on the Senate floor negotiating with Murphy and Wyden to move the forced labor bill. Wyden agreed not to renew his objection the next day; it was evident the expanded child tax credit didn't have enough support to pass. Senate leaders reached an [agreement](#), meanwhile, to advance the ambassador nominations that Murphy raised.

When Rubio went to the floor again on December 16, the forced labor prevention bill passed without opposition. A week later, President Biden signed it into law.

“I would have liked to have seen this move a bit faster,” Merkley says. “But the liberty of democracy is a complicated undertaking.”

“It's easy to get lost in the details,” he adds. “The big picture is what matters. The big picture is America took a clear stand on human rights, and if we're going to have credibility in the world where we wrestle with different issues, we have to be able to take clear stands.”

Rubio says in the coming months, as the Biden administration implements the presumption of forced labor, lawmakers will keep close watch over how the law is enforced. It will require constant auditing and oversight to make sure administration officials apply it as aggressively as Congress intended.

Even after lawmakers finalized the bill, business groups worked to tear it apart. Some companies and associations [asked](#) the agencies responsible for carrying out the

law to delay it or create loopholes to reduce the compliance burden for the corporate community. Their influence isn't going away, and it's why lawmakers feel such an urgent need to make sure enforcement is powerful. The authors of the bill built in strong oversight mechanisms, though: Any exemptions Customs and Border Protection grants to the rebuttable presumption will have to be made public.

“Given the special interests that I know were opposed to this, I look back and I'm surprised that we were able to get this done,” McGovern says.

“This is a big deal. This is a consequence that China was not expecting.”

## 8

# What Next?

The passage of the Uyghur Forced Labor Prevention Act tells several stories. It tells the story of lawmakers seeking real responses to China's genocide, and how difficult it can be to win support for meaningful action in the face of corporate resistance and dueling policy priorities. It tells the story of determined Uyghur advocates and a coalition that fought for the bill every step of the way. It also tells the story of two countries, deeply linked through trade, beginning to decouple. And despite the bill's passage, it highlights the shortcomings of the U.S. Congress: The institution's anarchy and lack of planning was on full display, with members never quite sure of how the bill would move—whether as part of an omnibus spending package, the defense act, a broader China competition bill, or a standalone measure—until the final weeks of 2021. Still, in a Congress with more animus between members than most sessions in recent history, lawmakers overwhelmingly rallied around the bill in the end.

Congress is broken in numerous ways. Many offices don't have the resources to dedicate to legislation as ambitious as the forced labor bill. It's not that they don't want to—it's that a lot of work goes into these kinds of bills. High rates of staff turnover have hobbled congressional offices, stripping them of valuable policy experience and connections to advance their priorities. It's also a question of time. Aides behind the forced labor bill organized dozens of calls with businesses, talked with executive agencies, and negotiated with other lawmakers to move it closer to passage. That's why

most of the major bills coming out of Congress emerge from leadership offices these days. They have the power and resources to pull it off. Committee chairs are also in a better position relative to most members.

Without the Congressional-Executive Commission on China, it's not clear the forced labor bill would have been written or passed into law. It originated from that commission, led by staff who knew the issue inside and out. Their hard work, and the expertise the lawmakers on the commission have gained from serving on it, was essential in seeing the bill to fruition.

"How many members can spend enough time to really delve into that deep of an issue?" asks Jonathan Stivers, the former CECC staff director. "And between Rubio and McGovern and the rest of them, they did. The ability for a member to sit that long on one specific aspect of an issue is hard."

Because those members did have that capacity, they were able to decide: "Let's do something. Let's do something big."

There's an irony to this. Congress established the CECC to monitor human rights in China in 2000, in the same bill that paved the way for permanent normal trade relations with China. The CECC was seen almost as a bone thrown to the losers of the trade relations fight, those lawmakers who wanted China to make more significant human rights advances before America closely embraced it as a hub of economic investment. With the Uyghur Forced Labor Prevention Act, people involved say, the CECC created the most potent tool in decades for the government to pursue economic disentanglement with China.

For much of its existence, the CECC has acted as a research organization, issuing regular reports and maintaining a database of political prisoners in China. In recent

years, the lawmakers on the panel have empowered it as a force for producing major legislation. Since 2017, the commission has spearheaded bills responding to China's crackdown on freedom in Hong Kong, repression in Tibet, and the genocide in Xinjiang.

"It was worth being a part of," one person who worked on the forced labor bill says.

The CECC isn't done searching for ways to fight China's human rights abuses. Staff continue to work diligently. When the Overton window cracks open even further, they'll have legislation ready to go through it.

Lawmakers are also looking at other ways to place pressure on China and end American complicity in human rights abuses there. Potential versions of the Securities and Exchange Commission disclosure requirements that didn't make the cut in the forced labor bill are still on the minds of members who believe American investors should be confident their money isn't propping up genocide. Rubio [introduced](#) legislation alongside Florida GOP Sen. Rick Scott earlier this year that aims to tackle the issue. The Transaction and Sourcing Knowledge Act would direct the SEC to require businesses to report supply chain sourcing and due diligence activities related to Xinjiang, along with connections to Chinese military-industrial complex companies or companies the Department of Commerce has added to its trade restriction entity list.

Members are also [working](#) to fully fund the Customs and Border Protection (CBP) unit that currently oversees forced labor investigations and will implement the Uyghur Forced Labor Prevention Act. CBP has requested more than \$70 million to hire 300 additional personnel, boost its technological abilities, and to carry out training necessary to enforce the law. According to a May letter from the top lawmakers on the



CECC, officials estimate the law will hike the number of transactions subject to CBP review each year from less than 1 million to more than 11.5 million.

In practice, CBP enforcement will look similar to the process it has used for forced labor investigations in the past. Items suspected of violating the law will be detained at ports of entry, a CBP official told businesses on a guidance call in early June, and importers will have 90 days to provide clear and convincing evidence that forced labor was not involved in their supply chains. Businesses will be able to request extensions of that period. If a company cannot provide the evidence prescribed by the law, the shipment can be sent back to its point of origin—but it will not enter American markets.

In guidance calls, CBP officials warned businesses there will be a high threshold of evidence as the law requires, and they rebuffed the corporate community's attempts to create a loophole for products with inputs from Xinjiang that make up only a small percentage of a product's components. All items with any connection to Xinjiang are subject to the presumption of forced labor, as well as items connected to forced labor transfer schemes in broader China. It will take some months to evaluate how the law plays out and if the administration is committed to enforcing it completely.

Uyghur advocates, meanwhile, continue to call on businesses to move out of Xinjiang. They are also pushing other countries to block products connected to the genocide from entering their markets.

Despite the headwinds the forced labor bill faced in the United States, its success underscores a major shift in the tone of China policy debates in just the past five years. A genocide can do that. Lawmakers with long records on human rights in China are

hoping bills that would have been out of the question several years ago could win new support now, as bipartisan consensus about China's malign behavior solidifies.

Rep. Chris Smith, the Republican from New Jersey who sits on the CECC, introduced legislation this year to end America's permanent normal trade status with China. It would effectively hike tariffs on many Chinese imports and require China to meet certain human rights standards for future favorable trade treatment.

The United States ended permanent normal trade relations with Russia earlier this year after Vladimir Putin launched his brutal and unprovoked war in Ukraine. If Chinese President Xi Jinping targets Taiwan, that response could likewise be on the table. Smith argues the ongoing genocide and China's other human rights abuses should already warrant the same response. He was on the front lines of the debate in the 1990s over China's trade status, arguing then as he is now that the Chinese government needed to change its behavior before receiving permanent normal trade benefits. That debate looms large in his mind, more than two decades later.

"What a lesson in foolishness on the part of U.S. policymakers," he says.

When then-President Bill Clinton [de-linked](#) human rights concerns from trade with China in 1994, Smith argues, "That's when we lost China on human rights."

Smith says presidents since then have paid lip service to human rights, but China hasn't faced real penalties for its behavior. He doesn't have much optimism about the remainder of the Biden administration, pointing to Biden's recent [move](#) to pause tariffs on the solar industry for two years. Smith and China policy experts say that decision will enable Chinese solar manufacturers to circumvent punishment for trade violations.

"I am sick and disheartened," he says. "There will be more people put into those concentration camps to meet the rising demand that will follow from this."

Still, Smith is hopeful that his bill to subject trade with China to more stringent human rights safeguards “is an idea whose time has come.”

“Many people have awakened to the threat China poses on myriad levels,” he says. “A number of members have told me to my face: ‘You were right, you and the others who felt we needed conditionality on trade. And had we done that, we’d have a different China today.’”

If there’s anything the effort to pass the forced labor bill emphasized, it’s how much momentum and work is required to pass a law this ambitious. For now, Smith’s measure to end permanent normal trade relations with China is a long shot. Not only would the business community fiercely fight it, but current high inflation and supply chain challenges also weaken American policymakers’ resolve to pass anything like it.

Looking back, the sponsors of the Uyghur Forced Labor Prevention Act agree it is essential to have broad ideological support on these kinds of efforts from the outset.

“You have to have strong champions in both parties and in both chambers,” Rubio says. He adds that it was critical to lay the groundwork by explaining the issue to the public, through hearings, advocacy, and news reports.

By the time Congress passed the bill in December 2021, “It wasn’t like something people had never heard about before. It wasn’t obscure at that point. There was a human face behind it too.”

Finally, he says it is important for the people handling it to know how to navigate the legislative process.

“It’s not exciting, and it’s not the kind of thing that gets a lot of coverage on a daily basis, but there is a way of getting bills to become law that requires internal

legislative maneuvering in terms of timing and format, and even using leverage, unfortunately.”

With the Uyghur Forced Labor Prevention Act, Congress has gone a long way toward addressing America’s complicity in the horrors in Xinjiang. But the U.S. government has still not taken one of the most substantial steps it can to help Uyghurs and others harmed by China’s genocide: prioritizing refugees who have made it out of Xinjiang but who still face China’s international influence.

## 9

# Escaping Xinjiang

Gulzira Auelkhan and her family have been in the United States for more than a year. In that time, she has testified to federal investigators about her experience in China's concentration camps and being forced to work in a textile factory. She has protested outside Congress for action on the forced labor prevention bill, telling her story to top lawmakers. And she has made a home in Texas, where she and her family are safe from China's oppression.

"I am endlessly grateful to the United States and people of America for their support and help," Auelkhan tells *The Dispatch* through a translator.

Auelkhan was able to come to the United States from Turkey, after she escaped Xinjiang to Kazakhstan, through special humanitarian [parole](#). The status is temporary, and it requires a sponsor—in this case, Bob Fu's China Aid—to pledge to cover a recipient's expenses. Auelkhan and her family members quickly applied for asylum after arriving in America, which would give them stability and longer term protection from persecution. She still hasn't been granted asylum, even though she directly suffered in what the U.S. government has officially designated genocide. Auelkhan hasn't even been able to have her first asylum interview with immigration officials yet, Fu says.

She is among many others, primarily Uyghurs, who are in the United States seeking safety from China's oppression. They face massive backlogs, contending with a bureaucracy that isn't prioritizing them or providing much clarity on how long they will

have to wait for approval. In January, Caroline Simon at *Roll Call* [reported](#) there are roughly 800 Uyghurs stuck in America's asylum backlog consisting of hundreds of thousands of people from around the world.

The Uyghur American Association sent a letter to the Department of Homeland Security in 2020 asking for expedited consideration of those Uyghurs seeking asylum.

“They wish to send their children to school, serve in the United States military, and regain a sense of normalcy after fleeing persecution in China,” the letter reads.

Fu, who came to America as a political refugee in the late 1990's, has helped hundreds of people escape China since establishing China Aid. It's grueling work.

“The American asylum system is totally broken,” he says.

So is the refugee program, which is for people applying from outside the United States.

Fu has attempted to bring people who escaped Xinjiang to America from various third countries through the refugee admissions program, but he has been rebuffed by State Department officials who point to a lack of capacity and other geographic priorities. That's why he and other human rights activists have relied on special humanitarian parole to rescue victims of China's genocide.

“Despite the fact that the U.S. government made a legal recognition of genocide that has occurred in Xinjiang by the Communist Party, the bureaucracy has been really, really slow-walking—in some ways stalling—the kind of freedom that we could have helped so many,” Fu says.

Most recently, Fu [helped](#) bring Ovalbek Turdakun, an ethnic Kyrgyz and a Christian who was detained in a concentration camp in Xinjiang for nearly a year, to

America. The rescue effort was complex: Turdakun relied on help from people in the West, who [found](#) an American Christian family to fly with him out of Kyrgyzstan to Turkey. They believed flying with Americans and posing as tourists would dissuade customs officials there from blocking Turdakun and his family from leaving. Once they flew out, they then had to wait in Turkey for months while American agencies mulled Turdakun's case and as American lawmakers advocated on his behalf. Finally, Turdakun and his family were able to fly to the United States, special parole granted because he had new testimony about China's atrocities, including the surveillance cameras China is using in its concentration camps.

Other attempts haven't been successful. Fu is still traumatized by his efforts to rescue a Kazakh man from Xinjiang who said he was a camp survivor and had [escaped](#) to Uzbekistan. In February 2019, that man—Halemubieke Xiaheman—was facing extradition to China. He publicly pleaded for help, and the State Department got involved, urging Uzbek authorities to let him leave. Eventually, Xiaheman was able to fly to Bangkok in Thailand, according to Fu. Fu booked hotels and flights for him to leave Thailand. But once Xiaheman reached Bangkok, Fu says he lost contact with him. He believes the Chinese government kidnapped him.

“He was vanished,” Fu says.

That week is “the most horrible memory. Still is.”

A bipartisan group of American lawmakers introduced [legislation](#) more than a year ago to prioritize Uyghur refugees and others fleeing Xinjiang. It would make it easier for those affected by the genocide to apply for refugee status in the United States. Having direct access to the American refugee program is an important step, advocates say,

because it would offer greater protection from China’s long arm in other countries. Without priority status in America, refugees generally go through the United Nations process or processes in the countries they are living in, facing more exposure to extradition requests or pressure by Chinese officials. Countries heavily influenced by China in the Middle East and North Africa are not safe for those who have escaped Xinjiang. Since 1997, the Chinese government has targeted more than 5,500 Uyghurs outside of China with cyberattacks, threats to family members in China, and intimidation, according to a 2022 [Wilson Center report](#). And in the same timeframe, more than 1,500 Uyghurs have been detained abroad or forced to go back to China.

[Reporting](#) by the Uyghur Human Rights Project also tells a grim story.

“At least six Arab states—Egypt, Morocco, Qatar, Saudi Arabia, Syria, and the United Arab Emirates (UAE)—have participated in a campaign of transnational repression spearheaded by China that has reached 28 countries worldwide,” the report reads.

The bill to prioritize Uyghur refugees hasn’t passed Congress. It advanced through the House earlier this year as part of a broader China competition package, although the odds of it becoming law appear slim. House Democrats said it was one of their top priorities in negotiations with the Senate for the competitiveness bill, but it is facing resistance from Republican senators rejecting all immigration provisions. Rubio, who cosponsored the Senate version of the measure, predicted last October that it would get bogged down in broader immigration politics.

“Anything that has to do with immigration obviously becomes a target for other immigration-related topics, so it’s always hard to move on this,” he said. “But hopefully



it's something that we can include in some other piece of legislation without becoming a forum for a fight on everything else.”

This legislation doesn't actually need to pass Congress, though. It doesn't need to go through the same fraught, winding process the Uyghur Forced Labor Prevention Act went through to become law. If he wanted to, President Biden could unilaterally make the change prioritizing Uyghur refugees, matching America's official view of the genocide in Xinjiang with tangible action. He hasn't yet.

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