The Illegality of the United States' *Uyghur Forced Labor Prevention Act*

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ABOUT THE AUTHOR

Jaq James received a Bachelor of Laws with Honours from James Cook University (where she was awarded the Marylyn Mayo Medal), a Master of Public Policy from the Australian National University, and a Master of Education (TESOL) from the University of Southern Queensland. She is currently enrolled in a Master of Laws (specialising in international law) at the Australian National University. She was admitted as a lawyer of the Supreme Court of the Australian Capital Territory in 2012. She teaches Western Rhetoric in the university sector in Guangxi, China.

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“Those who make you believe absurdities
can make you commit atrocities”

~ Voltaire

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1. EXECUTIVE SUMMARY

The United States' *Uyghur Forced Labor Prevention Act* (UFLPA)[1] set a new precedent in international trade law and practice: the discriminatory legislative targeting of one country — China — and the introduction of a rare evidentiary standard: an automatic reversal of the presumption of innocence. The United States is the only country in the world with such a forced labour law. It has not only changed the United States' domestic import practices, but also global production, as so many dispersed supply chains have at least one link to China. The stakes are not just limited to economics; the UFLPA potentially undermines international law too.

The purpose of this paper is to determine whether the UFLPA is in line with the rules of the World Trade Organization (WTO), as well as other international law norms. The first part outlines the main aspects of the UFLPA, along with whether it contravenes the rule of law, anti-racial discrimination law, human rights law, economic development law and even the United States Constitution. The second part canvasses the UFLPA's financial impacts on international businesses so far and the evidentiary requirements businesses need to meet. The third part, which is the crux of this paper, analyses the relevant WTO Rules and whether the UFLPA complies with those rules.

This paper ultimately concludes that the UFLPA likely violates a gamut of international laws, revealing that the United States is no friend of the free market, no ally of the world's poor, and no believer in a 'rules-based international order'. China is not free from blame either: by failing to mount a compelling, law-grounded counter-narrative, it allowed the harms of the UFLPA to go unmitigated.

[1] Public Law No 117- 78, *An Act to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, and for other purposes*, 117th Cong, *Public Law 117- 78* (enacted 23 December 2021).

2. WHAT IS THE UFLPA?

The UFLPA is a United States federal law enacted by the Biden administration on 23 December 2021, which came into effect on 21 June 2022.[2] The UFLPA sits alongside section 307 of the United States *Tariff Act of 1930*, which addresses forced labour generally. Specifically, it states the following:

> *All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by* ***convict labor*** *or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision* (emphasis added).

From the outset, what is extraordinary to note about section 307 of the *Tariff Act* is the United States' position of 'do as I say, not as I do', since the Thirteenth Amendment of the United States' Constitution permits prison labour domestically. Thus, the United States enters the rhetorical space of labour law without clean hands. Moreover, the provision was not introduced out of concern for extraterritorial human rights, but rather competition concerns. This is evidenced by the 'consumptive demand loophole', which permitted importation of alleged slave-labour-goods where the United States did not have adequate supply of a product.[3] This should be kept in mind when assessing the United States' public justifications for the UFLPA compared to conceivable 'behind-closed-door' interests, such as economic containment of China in the context of a geopolitical rivalry between two superpowers.

Returning to the UFLPA, its stated purpose is to "ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market". Section 3 of the UFLPA targets any goods,

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[2] U.S. Department of State, *Uyghur Forced Labor Prevention Act (UFLPA) Fact Sheet* (Fact Sheet, 20 January 2025) <online>.

[3] Matthew M Higgins, 'Note: Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor' (2023) 75(3) *Stanford Law Review* 917, 938. The loophole was not removed until 2016: *Trade Facilitation and Trade Enforcement Act of 2015,* section 910.

wares, articles, and merchandise that are: (1) "mined, produced, or manufactured wholly or in part" in Xinjiang; or (2) "produced by an entity" on the UFLPA's 'Entity List' via the United States' Federal Register.[4]

There are four categories of entities on the list:

(1) companies in Xinjiang that "mine, produce or manufacture" items with forced labour;

(2) entities that help "recruit, transport, harbor or receive" forced labour or even just members of Xinjiang's ethnic minority groups (which effectively presumes all ethnic minorities of Xinjiang are forced labour);

(3) entities in these first two categories that act as exporters (although no entities are listed under this third category as of August 2025); and

(4) entities that source goods from Xinjiang for the purposes of its 'poverty alleviation' or 'pairing assistance' government programs.

Immediately what can be seen from the 'Entity List' are three legal matters: (1) potential violation of the 'rule of law'; (2) potential violation of anti-discrimination law (and the human right to work); and (3) potential violation of the right to economic development. These matters are discussed below.

2.1. Violation of the United Nations *Resolution A/Res67/1* on the Rule of Law

The UFLPA regime may breach the United Nations' *Resolution A/Res67/1* (which is authoritative soft law), requiring all states to uphold the legal principle of the 'rule of law'.[5]

[4] Department of Homeland Security, *UFLPA Entity List* (Web Page) <online>.

[5] The United Nations' resolution did not define 'rule of law', but there is ample literature that discusses its components. For guidance, the author of this paper looked to Tom Bingham, *The Rule of Law* (Penguin, 2011) and Venice Commission of the Council of Europe, *Rule of Law Checklist* (Council of Europe, 2016).

Entities can submit a removal request from the list to the United States Forced Labor Enforcement Taskforce (FLETF) with supporting information, but if the government taskforce declines the request, the decision is unappealable.[6] Moreover, on closer inspection, the second, third and fourth categories of the 'Entity List' do not appear to have a legislative right to request removal from the list. This interpretation is based on the wording of the rebuttable presumption provision of the UFLPA applying to goods "**produced** by an entity" (emphasis added) on the 'Entity List', but it is noted that the entities in the second, third and fourth categories are not producers.

The unappealable aspect for all categories, and the appearance that three of the four entity categories cannot even request removal from the list, seem to contravene rule-of-law norms, in terms of natural justice, and may also have legal implications under the Due Process Clause of the Fifth Amendment of the United States Constitution.[7]

Another reading of section 3 of the UFLPA is that there is no legislative basis for a rebuttable presumption applying to the second, third and fourth categories of the 'Entity List' because they are not 'producers'. On this reading, the UFLPA would also violate the UN resolution, and also possibly the Due Process Clause and Takings Clause of the Fifth Amendment of the United States Constitution.[8]

2.2. Violation of Anti-Racial Discrimination Law (and the Right to Work)

As mentioned earlier, the second group of goods banned on the 'Entity List' are also those connected to entities that provide Xinjiang's ethnic minority groups with recruitment services, worker mobility services, or "receive" them (which, if broadly interpreted, could mean "employ" them), or export their goods (based on the second

[6] Department of Homeland Security, *Notice Regarding the Uyghur Forced Labor Prevention Act Entity List* (Notice, 17 May 2024) 89 FR 43417 <online>.
[7] Due to the author of this paper only being qualified as a lawyer in the Australian jurisdiction, not the United States jurisdiction, this legal issue is left to American lawyers to assess.
[8] Ibid.

category being linked to the third category). This listing effectively makes the extraordinary and sweeping presumption that all minorities of Xinjiang are forced labour. The minority groups of Xinjiang include Uyghur, Kazak, Hui and Kyrgiz, making up around 15 million people in Xinjiang.[9] This means the United States is declaring millions of workers as illegal workers and the products of their labour unlawful on the basis of racial profiling. This is plainly racial discrimination that has a flow-on effect curtailing the Xinjiang ethnic minorities' human right to work, as discussed below.

Articles 2(1)(a) and 2(1)(c) of the *International Convention on the Elimination of All Forms of Racial Discrimination* ('ICERD') state, respectively, that state parties must not engage in any "act or practice of racial discrimination against … groups of persons… and to ensure that all public authorities and public institutions … shall act in conformity with this obligation" and must "amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination **wherever it exists**" (emphasis added). The reference to "wherever it exists" suggests ICERD has extraterritorial application. Thus, the United States Government, on the face of it, is violating article 2 of ICERD by creating and enforcing the second category of the 'Entity List' because it codifies a racial presumption of victimhood with discriminatory effects extraterritorially. This argument could also possibly go further to declaring the whole UFLPA unlawful under article 2 of ICERD if the evidentiary foundation is unsound.

The United States may also be in breach of article 5(e)(1) of ICERD, which states that state parties must guarantee the enjoyment of the following rights without distinction as to race or ethnic origin: "[t]he right to work, to free choice of employment, … [and] to protection against unemployment". The right to work, and the obligation of state parties to safeguard this human right, is also declared under article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'). By the United States effectively declaring all of Xinjiang's ethnic minority workers to be forced labour, it ensures they will be carved out of global supply chains, thereby depriving them of employment opportunities solely on the basis of their ethnicity. As such, the second category of the 'Entity List', and perhaps even the

[9] CGTN, *Graphics: Facts about Xinjiang's Population and Ethnic Groups* (Web Article, 2 September 2022) <online>.

whole of the UFLPA, can be viewed as an indirect attack by the United States on the Xinjiang minorities' right to work, free choice of employment, and protection against unemployment under ICERD and the ICESCR.

Having said this, it is questionable whether article 5 of ICERD has extraterritorial applicability, as there is no equivalent reference to "wherever it exists" as in article 2 of ICERD. As for whether article 6 of the ICESCR has extraterritorial applicability, it is a moot point, as the United States has not ratified it.[10] Nevertheless, the potential violations by the United States still carry substantial rhetorical weight, as international law is the strongest manifestation of global consensus.

Even if the United States were found not to violate these treaties on a technicality issue of jurisdiction, it could still be argued it is jointly violating articles 55 and 56 of the UN Charter, which explicitly require all member states to respect and observe human rights without distinction to race. This carries even greater rhetorical weight given the UN Charter is universally regarded as the foundational legal instrument of international law, as well as a moral constitution for global conduct.

2.3. Violation of the Right to Economic Development

The right to economic development is protected under article 1 of the ICESCR and article 1 of the *International Covenant on Civil and Political Rights* (the latter of which the United States has ratified, making it legally binding),[11] under articles 3 and 4 of the *Declaration on the Right to Development* (not a binding legal document, but authoritative soft law), and also jointly under articles 55 and 56 of the UN Charter. By targeting Xinjiang's poverty alleviation and funding programs in the fourth category of the 'Entity List,' the United States appears, on its face, to be violating the Xinjiang people's right to economic development.

[10] United Nations, *International Covenant on Economic, Social and Cultural Rights* (UN Treaty Collection, deposited with the Secretary-General, 16 December 1966) United Nations Treaty Series, vol 993, p 3 <online>.
[11] United Nations, *International Covenant on Civil and Political Rights*, (UN Treaty Collection, deposited with the Secretary-General, 16 December 1966) United Nations Treaty Series, vol 999, p 171 <online>.

The United States claims that a forced labour scheme in Xinjiang is entangled with the Chinese government's poverty alleviation and funding programs.[12] While these programs presumably have impacted millions of people, the United States has only alleged "tens of thousands" as victims of forced labour.[13] This discrepancy raises serious concerns. By invoking the fourth category of the UFLPA, the United States effectively casts a disproportionately wide net that may deprive vast numbers of individuals from the legitimate benefits of these aid programs, regardless of whether they are consensual workers.

There is room to argue that such a blanket presumption violates the United States' obligation to act on the principle of necessity under article 25 of the International Law Commission's *Draft Articles on Responsibility of State for Internationally Wrongful Acts* ('ARSIWA'), which is authoritative soft law. The United States also may be violating the legal principle of proportionality that is currently developing in domestic jurisdictions for interpreting international human rights law.[14]

[12] Uyghur Forced Labor Prevention Bill, Section 2 Findings.
[13] Ibid.
[14] See, for example, Thomas Cottier, Roberto Echandi, Rafael Leal-Arcas, Rachel Liechti, Tetyana Payosova and Charlotte Sieber- Gasser, 'The Principle of Proportionality in International Law', *NCCR Trade Working Paper No 2012/38* (December 2012) <online>.

3. WHAT HAS BEEN THE IMPACT OF THE UFLPA ON INTERNATIONAL BUSINESSES?

There would be many types of direct and indirect costs on international businesses brought about by the UFLPA. The obvious costs result from delayed and denied shipments, as well as costs associated with rebutting the presumption of forced-labour-use, as outlined below.

3.1. Detained and Denied Shipments

In terms of enforcement of the UFLPA, the data from **June 2022 to July 2025** is as follows:[15]

- **16,700 shipments** have been **detained** by US Customs and Border Protection (CBP), pending importers rebutting the presumption of forced labour. The **total value of shipments** detained was **US$3.69 billion**.
- Around **10,000 shipments** have been **denied** entry due to failure by importers to provide sufficient documentation to rebut the presumption. This means around **60%** of shipments have been prevented from entering the United States, with a rough estimate of **financial losses** on imports being around **US$2.17 billion**.[16]
- For context, **between 2023 and July 2025**, the CBP has recorded only **9 active 'findings'** for 'Withhold Release Orders' under section 307 of the *Tariff Act*.[17] ('Withhold Release Orders' also effectively introduce a rebuttable presumption, but only once the CBP has reasonable belief that a class of goods is made with forced labour.[18]) It is noted that this small number of 'findings' is extraordinary given that forced labour is a global problem and many countries are recorded as having more modern slavery than what is alleged to be occurring

[15] U.S. Customs and Border Protection, *Uyghur Forced Labor Prevention Act Statistics* (Live Web Page) <online>.
[16] This is based on a calculation of (denied shipments ÷ detained shipments) × total value detained, which is (10,000 ÷ 16,700) × US$3.69B ≈ US$2.17 billion, assuming equal average shipment value across outcomes.
[17] U.S. Customs and Border Protection, *Withhold Release Orders & Findings Dashboard* (Live Web Page) <online>.
[18] Title 19, section 12.42 and 12.43 of the US *Code of Federal Regulations.*

in China, with **the top ten alleged offending countries being North Korea, Eritrea, Mauritania, Saudi Arabia, Turkey, Tajikistan, United Arab Emirates, Russia, Afghanistan and Kuwait,** according to the 2023 Global Slavery Index.[19] This shows a disproportionate and unjustifiable targeting of Xinjiang. Moreover, of those 9 findings, five were against China, two against Mexico, one against the Dominican Republic, and one against a fishing vessel (none of which are in the alleged top ten offending countries).[20] Statistically, this means that denied shipments linked to Xinjiang account for more than 99% of total denied shipments, while denied shipments linked to all other parts of the world have accounted for less than 1%, on a rebuttable presumption basis.

- ✧ The industries most targeted have been **automotive, aerospace** and **electronics**, accounting for close to **67% of total detainments**.
- ✧ Whilst the United States may have been targeting China, the fallout has been more so for importers of other countries. **Malaysia has had a total shipment value of US$1.54 billion** detained or denied, followed by Vietnam, at **US$1.02 billion**. China is the fourth most targeted country, with just US$0.44 billion shipment value. Unexpectedly, this shows the UFLPA's impact is being felt most by importers beyond China due to the inter-regional dispersion of production chains.

3.2. Cost of the Rebuttable Presumption of Innocence

The existence of a rebuttable presumption under section 3 of the UFLPA burdens importers with the very difficult task of 'proving a negative', that is, proving their supply chain is absent of forced labour. US Customs and Border Protection (CBP) provides two paths for rebutting the presumption:[21]

[19] Walk Free, *Global Slavery Index: Regional Findings Overview* (Web Page, 2023) <online>.
[20] U.S. Customs and Border Protection, *Withhold Release Orders & Findings Dashboard* (Live Web Page) <online>.
[21] U.S. Customs and Border Protection, *Guidance for Importers: Uyghur Forced Labor Prevention Act* (13 June 2022) <online>.

(1) the importer can prove the shipment has no connection at all to Xinjiang and therefore the UFLPA is inapplicable (an **'outside the scope'** claim); or

(2) if the shipment has a Xinjiang connection, the importer must prove the absence of forced labour (an **'exception'** claim).

For an **'outside the scope'** claim, importers should provide supporting documentation that includes: the names, addresses and contact details of each producer and exporter in the supply chain; affidavits from each entity in the supply chain; purchase orders and invoices of all suppliers, packing lists, bills of materials, certificates of origin, payment records, buyers' and sellers' inventory records, shipping records; and for raw materials, production orders, factory production capacity reports, factory inspection reports, and evidence that volume of inputs of component materials matches volume of output for the merchandise produced.[22]

For an '**exception'** claim, importers need to demonstrate they have:

(1) **"fully complied with"** the importers' guide in the U.S. Department of Homeland Security's *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China*, which lists requirements for due diligence, effective supply chain tracing, and supply chain management measures;

(2) **"completely and substantively responded to all inquiries"** by the CBP; and

(3) provided **"clear and convincing evidence"** that the shipments have no connection to forced labour.[23]

As for what amounts to "clear and convincing evidence", on top of the documentation required for an 'outside of the scope' claim, importers should provide supporting documentation that includes: evidence of due diligence systems, such as supplier codes of conduct and compliance audits, training on forced labour risks, and public reporting; evidence of remediation of any forced labour risks; audited financial statements for supply chain management; supply chain maps; all

[22] Ibid, Part IV(B) and (D).
[23] Ibid, Part II.

workers' details, such as wages, residency status and production output; and information on worker recruitment processes.[24]

It is noted that the **"clear and convincing"** evidentiary threshold under the UFLPA is higher than the evidentiary threshold for 'Withhold Release Orders' under section 307 of the *Tariff Act,* which is simply **"satisfactory"** evidence once the equivalent rebuttable presumption is introduced.[25] Also notable is that importers only have **30 days** to provide the requisite information under the UFLPA, whereas importers have **90 days** for 'Withhold Release Orders' under section 307 cases.[26] Furthermore, the satisfactory evidence for a section 307 order is **merely a signed certificate of origin by the last seller**; and the results of the investigation by the "ultimate consignee of the merchandise" detailing "every reasonable effort" made to "ascertain the character of labor" in every component of production, with **the consignee's subjective belief** about the character of labour involved.[27] All of this is clearly far less burdensome than the UFLPA's requirements, thereby demonstrating a discriminatory disparity between shipments linked to Xinjiang compared to other regions with greater forced-labour-risks.[28]

The costs for compliance and evidence collection for importers can run high. Anecdotally, supply chain mapping by experts can cost anywhere between US$30,000 and US$200,000, independent audits between US$15,000 and US$80,000 per site, legal advisers between US$20,000 and US$300,000 per case, and technology tracing investments, such as blockchain, between US$50,000 and US$600,000. Such steep costs would clearly disincentivise companies from having any type of nexus with Xinjiang in its supply chains. As for suppliers and manufacturers, the costs, even if just reputational, may have resulted in significant divestment from Xinjiang. For example, Volkswagen has sold off its factory in Xinjiang and BASF has ceased product-sourcing from Xinjiang.[29]

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[24] Ibid, Part IV(A), (C) and (E); U.S. Department of Homeland Security, *Uyghur Forced Labor Prevention Act Enforcement Strategy* (June 2022) <online>.
[25] Title 19, section 12.42(g) of the US *Code of Federal Regulations.*
[26] Title 19, section 12.43(a) of the *US Code of Federal Regulations.*
[27] Title 19, section 12.43(a) and (b) of the *US Code of Federal Regulations.*
[28] Walk Free, *Global Slavery Index: Regional Findings Overview* (Web Page, 2023) <online>.
[29] 'VW Confirms Plans to Exit Xinjiang Operations after Years of Pressure', *Reuters* (27 November 2024) <online>; Andrew Hawkins, 'German Firm BASF to Pull Out of Xinjiang after Uyghur Abuse Claims' *The Guardian* (9 February 2024) <online>.

4. DOES THE UFLPA COMPLY WITH THE WTO RULES?

There have been four legal commentators who have made substantial contributions to the scholarly understanding of whether the UFLPA complies with the WTO Rules: Yicheng Ru,[30] Sungjin Kang,[31] Mandy Meng Fang[32] and Connor Stanford Moldo.[33] Their legal analyses are brought together in this part.

The WTO was established in 1995 to regulate and facilitate global trade between countries. As of 2025, there are 164 member states. The United States was an original member in 1995, and China joined six years later, in 2001. A number of WTO treaties are binding on all members, the most significant being the *General Agreement on Tariffs and Trade 1994* ('GATT'). The purpose of GATT is the "substantial reduction of tariffs and other barriers to trade" and the "elimination of discriminatory treatment in international commerce." This treaty is central to determining the legality of the UFLPA.

There are two sections of GATT that are relevant to assessing the UFLPA: Article I (which encompasses the 'most favoured nation treatment' principle); and Article XI (which encompasses the 'elimination of quantitative restrictions' principle). Each principle will be addressed, in turn, below.

4.1. Most Favoured Nation (MFN) Principle – Article I

The MFN principle under Article I is a non-discrimination principle requiring any trade advantages granted by one WTO member to another member also be granted to all

[30] Yicheng Ru, 'The US Uyghur Forced Labor Prevention Act: The GATT 1994 Perspective' (2024) 58(5) *Journal of World Trade* 761.
[31] Sungjin Kang, 'WTO-Consistency of the Uyghur Forced Labor Prevention Act (UFLPA): The Re-Emergence of the Process-Production Methods (PPM) Regulations' (2024) 19(2) *Asian Journal of WTO & International Health Law and Policy* 281.
[32] Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023).
[33] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209.

other WTO members. WTO case law has described the MFN treatment principle as a "cornerstone of the GATT" and "one of the pillars of the WTO trading system".[34] In essence, compliance with the principle helps businesses compete on a level playing field, with predictable rules by which to play.

To determine if the UFLPA violates the MFN principle, the following elements must be ascertained:[35]

(1) whether the UFLPA falls within the scope of Article I;

(2) whether the imported products under the UFLPA relate to 'like products';

(3) whether the UFLPA confers an 'advantage, favour, privilege or immunity' on imported products from any other WTO member country (herein referred to as 'more favourable treatment'); and

(4) whether the more favourable treatment is not applied 'immediately and unconditionally' to 'like products' from **all** WTO member countries.

These elements are discussed below.

4.1.1. Does the UFLPA fall within the scope of Article I?

Article I covers "all rules and formalities in connection with importation and exportation". The UFLPA relates to importation of goods, therefore the UFLPA falls within the scope of Article I of GATT.

[34] World Trade Organization, Appellate Body Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, WTO Doc WT/DS246/AB/R, 7 April 2004, [101].
[35] World Trade Organization, Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Docs WT/DS400/AB/R and WT/DS401/AB/R, 22 May 2014, [5.86].

4.1.2. Do the products regulated by the UFLPA relate to 'like products'?

WTO case law illuminates that determining 'like products' should be done on a case-by-case basis, factoring in four general criteria: (1) whether the products have 'like' physical characteristics; (2) whether the products have 'like' end-use; (3) whether the products are perceived and treated by consumers as 'like'; and (4) whether trade classification of the products counts as 'like'.[36] However, WTO case law holds that, where products are treated differently based exclusively on country-of-origin, a comprehensive analysis of this question is not necessary because it is assumed there will be 'like' products imported and exported.[37] On the basis of this WTO case law, Ru and Fang both presume the UFLPA satisfies this element, while Moldo remains silent on the matter.

Kang, however, argues that the four criteria are still relevant to the UFLPA because of the third criterion — whether the products are perceived and treated by consumers as 'like'.[38] Kang references the decision of the WTO in the case of *EC—Asbestos*,[39] where it was found health risks associated with chrysotile asbestos fibres would likely affect how consumers perceive and treat different fibres for sale on the market, thereby demonstrating competing products would not be 'like'. Kang then analogises this case to American consumers perceiving and treating Xinjiang-made products differently to competing products not made with forced labour. As such, according to Kang, it would follow that this element would not be satisfied and the MFN principle would be inapplicable to the UFLPA.

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[36] See, for example, World Trade Organization, Panel Report, *United States — Standards for Reformulated and Conventional Gasoline*, WTO Doc WT/DS2/R (20 May 1996); World Trade Organization, Panel Report, *Japan — Taxes on Alcoholic Beverages I*, WTO Doc WT/DS11/15/Add.1 (12 January 1998); World Trade Organization, Panel Report, *United States — Certain Measures Affecting Imports of Poultry from China*, WTO Doc WT/DS392/R (25 October 2010).

[37] World Trade Organization, Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WTO Doc WT/DS363/R (19 January 2010); World Trade Organization, Appellate Body Report, *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, WTO Doc WT/DS499/AB/R (5 March 2020).

[38] Sungjin Kang, 'WTO-Consistency of the Uyghur Forced Labor Prevention Act (UFLPA): The Re-Emergence of the Process-Production Methods (PPM) Regulations' (2024) 19(2) *Asian Journal of WTO & International Health Law and Policy* 281, 296-7.

[39] World Trade Organization, Appellate Body Report, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*, WTO Doc WT/DS135/AB/R (5 April 2001).

Yet, Kang's analogy is a false equivalency, rendering the *EC—Asbestos* case distinguishable from the UFLPA. Asbestos has a scientifically measurable effect knitted into the end-uses, that is, shortened life expectancy. By contrast, with forced labour-goods, there is no end-use effect on consumers, only value-judgments about the production process. Failing to maintain this distinction would open the floodgates for WTO member countries to devise bad-faith justifications for circumventing the MFN treatment principle. For example, if a WTO member country chose to ban imports of garments from a trading partner on the grounds that the exporting country lacked sufficient gender pay equity in its factories, it would be weaponising a domestic issue to justify trade discrimination despite no demonstrable harm to the imported product itself.

Added to this, there is empirical evidence suggesting the production process does not greatly influence perceptions and treatment of goods in the marketplace, as the 'virtuous consumer' is largely a myth, and consumption behaviour is driven more by price, quality and convenience.[40] Thus, it should be concluded that the UFLPA applies to 'like products' based on end-use. To argue otherwise would be a novel argument, not one based on case precedent. For these reasons, Kang's commentary on 'like products' can be set aside, and Ru and Fang's conclusions can be preferred.

4.1.3. Does the UFLPA confer more favourable treatment on other WTO member countries compared to China?

Since the UFLPA only targets China, this means, by default, all WTO member countries, except China, receive more favourable treatment because their imports are less regulated.

[40] See, for example, T M Devinney, P Auger and G M Eckhardt, *The Myth of the Ethical Consumer* (Cambridge University Press, 2010); M J Carrington, B A Neville and G J Whitwell, 'Lost in Translation: Exploring the Ethical Consumer Intention–Behaviour Gap' (2014) 67(1) *Journal of Business Research* 2759.

4.1.4. Was the more favourable treatment applied 'immediately and unconditionally' to 'like products' of other WTO member countries?

Due to the discriminatory intent of the UFLPA, it follows that the more favourable treatment other WTO members enjoy was never immediately and unconditionally enjoyed by China.

Summary of Article I of GATT

The UFLPA likely violates Article I of GATT because it confers more favourable treatment on 'like products' of all WTO members (based on end-use), except China.

4.2. Elimination of Quantitative Restrictions Principle — Article XI

Like the MFN treatment principle, the elimination of quantitative restrictions principle under Article XI is also considered by the WTO as "one of the cornerstones of the GATT system".[41] The Article prohibits WTO member countries from imposing import and export quotas, import and export licences, or any 'other measures' that prohibit or restrict imports and exports (subject to some very limited exceptions, such as temporary food shortages).

Whilst the UFLPA does not impose import quotas or licences, it does impose other non-tariff measures. The WTO has interpreted 'other measures' as a "broad residual category" encompassing "any form of limitation imposed *on*, or *in relation to* importation",[42] including restrictions of a *de facto* nature.[43] By the UFLPA imposing

[41] World Trade Organization, Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WTO Doc WT/DS34/R (adopted 19 November 1999) [9.63].
[42] World Trade Organization, Panel Report, *Colombia — Indicative Prices and Restrictions on Ports of Entry*, WTO Doc WT/DS366/R (27 April 2009) [7.227].

additional financial and bureaucratic burdens through the rebuttable presumption, these would amount to 'other measures' that are a *de facto* restriction on import volumes.

Summary of Article XI of GATT

The UFLPA likely violates Article XI of GATT on a broad interpretation because non-tariff measures, such as increased evidentiary burdens and associated costs, can be seen as *de facto* quantitative restrictions.

4.3. General Exceptions to Article I and Article XI of GATT — Article XX

Violations of Articles I and XI are not the end of the story. The United States would have access to the general exceptions clause under Article XX, which could make the violations justifiable. There are two steps to justifying a violation of GATT:[44]

(1) when the violation was necessary under one or more of the ten exemption categories listed under Article XX; and

(2) the requirements under the 'Chapeau' clause of Article XX have been satisfied (the 'Chapeau' — a French word — being the opening clause to the ten exemptions).

As mentioned earlier, there are four scholars on which this part of this paper relies. All scholars indicated Article XX(a) to be the most likely primary defence available to

[43] World Trade Organization, Panel Report, *Argentina — Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*, WTO Doc WT/DS155/R (16 February 2001) [11.17].
[44] World Trade Organization, Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DS58/AB/R (adopted 6 November 1998) [118].

the United States, that is, protection of 'public morals'. For this reason, this part of this paper will only examine the likelihood of whether the United States can rely on the 'public morals' defence.

Moldo provides an excellent summary of the main elements of Article XX(a), based on his synthesis of WTO case law.[45]

The **first group** of elements are:

(1) the measure must address a public moral; and

(2) the measure must be 'necessary', factoring in:

(a) the importance of the measure's objective,

(b) the measure's contribution to that objective, and

(c) whether there are less trade-restrictive alternatives.

The **second group** of elements, where the Chapeau must be overcome, requires that the measure is not:

(1) arbitrary or unjustifiable discrimination; or

(2) a disguised restriction on trade.

Each of these elements are examined below.

4.3.1. Group 1, Element 1: Does the UFLPA address a public moral?

'Public morals' is not defined under GATT. However, WTO case law describes 'public morals' as "standards of right and wrong conduct maintained by or on behalf of a

[45] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 221.

community or nation".[46] There are indicators that public morals do not just need to be domestically focused, they can have an extraterritoriality concern too.[47]

All four scholars assessed that the objectives of the UFLPA pass this element. The two objectives laid out at the start of the UFLPA are: (1) to "ensure that goods made with forced labor in [Xinjiang] do not enter the United States market"; and (2) "for other purposes". The scholars assume the first objective is to protect American consumers, and the second catch-all objective is to improve working conditions for Uyghurs.

4.3.2. Group 1, Element 2: Is the UFLPA necessary?

The four scholars come down on different sides of the necessity test. Ru and Moldo submit the UFLPA is a necessary measure,[48] whereas Kang and Fang submit the UFLPA fails the necessity test because there are less-trade restrictive alternatives.[49] For reasons presented in this sub-section, Kang and Fang's position is more persuasive, but still does not go far enough.

[46] World Trade Organization, Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc WT/DS285/R (10 November 2004) [6.465].
[47] World Trade Organization, Appellate Body Report, *United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WTO Doc WT/DS381/AB/R (13 June 2012); World Trade Organization, Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Docs WT/DS400/AB/R, WT/DS401/AB/R (22 May 2014).
[48] Yicheng Ru, 'The US Uyghur Forced Labor Prevention Act: The GATT 1994 Perspective' (2024) 58(5) *Journal of World Trade* 761, 777; Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 240.
[49] Sungjin Kang, 'WTO-Consistency of the Uyghur Forced Labor Prevention Act (UFLPA): The Re-Emergence of the Process-Production Methods (PPM) Regulations' (2024) 19(2) *Asian Journal of WTO & International Health Law and Policy* 281, 304; Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023) 16.

4.3.2.1. Sub-Element 1: Is the UFLPA's objective important?

The four scholars submit this sub-element is satisfied, based on slightly different reasons. Yet, it is submitted that the strongest evidence demonstrating the importance of addressing forced labour lies in the fact that there are multiple international treaties that address the crime, including the *ILO Forced Labour Convention 1930 (No 29)*, the *ILO Abolition of Forced Labour Convention 1957 (No 105)*, and article 8 of the *International Covenant on Civil and Political Rights 1966* ('ICCPR').

4.3.2.2. Sub-Element 2: Does the UFLPA contribute to the objective?

The four scholars seem to submit that this sub-element is satisfied, but do not make substantial arguments. Fang merely said it "remains feasible" that trade bans can achieve its policy objectives.[50] Kang merely stated that "one may point out that supply chains already move[d] away from [Xinjiang] in response to the UFLPA",[51] but did not provide evidence of which companies have left, whether those companies cited the UFLPA for their exit, and whether there was actual forced labour uncovered in those companies (Ru made a similar claim, but only in contemplation).[52] Ru and Moldo both submit that the UFLPA contributes to its objective by protecting American citizens from purchasing forced-labour-products.[53] Moldo submits the UFLPA achieves its objective by motivating China to improve its working conditions by undercutting the Chinese economy (based on his assumption that this is the other UFLPA objective).[54] However, Moldo

[50] Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023) 15-16.
[51] Sungjin Kang, 'WTO-Consistency of the Uyghur Forced Labor Prevention Act (UFLPA): The Re-Emergence of the Process-Production Methods (PPM) Regulations' (2024) 19(2) *Asian Journal of WTO & International Health Law and Policy* 281, 303.
[52] Yicheng Ru, 'The US Uyghur Forced Labor Prevention Act: The GATT 1994 Perspective' (2024) 58(5) *Journal of World Trade* 761, 774.
[53] Ibid, 775; Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 237.
[54] Ibid, 237-8.

provides no evidence for this nexus and neglects to point out that there is evidence that China is simply looking at diverting its supply chains to other countries, such as through the Shanghai Cooperation Organisation (SCO) (a trade bloc made up of ten countries).[55] This indicates substitution effects, not structural change, are undermining any causal link between trade bans and labour reform.

What none of the legal commentators have acknowledged is that, in respect of any extraterritorial objective to improve working conditions, there is no report by the United States government providing rigorous statistical analysis —such as before-and-after labour condition metrics — that support a causal link between the blanket country-of-origin import ban and freed forced labour. Three years have passed since the UFLPA has come into force, and the only metrics the United States government has consistently published is detained and denied shipments, and associated costs, as canvassed earlier in this paper.

4.3.2.3. Sub-Element 3: Are there less trade-restrictive alternatives?

For this element, the burden would be on China to propose a less trade-restrictive alternative to the UFLPA that contributes equally, if not greater, to the UFLPA's objectives.[56] This is the element where the four scholars notably diverge. Fang and Kang submit there are less trade-restrictive alternatives, with Kang stating the European approach to forced labour — which places the onus on authorities to identify violations and grants importers procedural fairness — demonstrates there is a less trade-restrictive alternative.[57]

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[55] Yao Yuxin, 'Proposal urges expansion of market for Xinjiang cotton', *China Daily* (Web News, 8 March 2024) <online>. The ten countries of the SCO are China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, India, Pakistan, Iran and Belarus.

[56] World Trade Organization, Appellate Body Reports, *Brazil — Certain Measures Concerning Taxation and Charges*, WTO Docs WT/DS472/AB/R, WT/DS497/AB/R (13 December 2018) [7.532].

[57] Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023) 16; Sungjin Kang, 'WTO-Consistency of the Uyghur Forced Labor Prevention Act (UFLPA): The Re-Emergence of the Process-Production Methods (PPM) Regulations' (2024) 19(2) *Asian Journal of WTO & International Health Law and Policy* 281, 304.

Ru and Moldo submit there are no alternatives, but do not provide persuasive arguments. Ru simply says "identifying an alternative with comparable effectiveness that is less trade-restrictive proves challenging".[58] Moldo says "the UFLPA is the strongest strategy" for the UFLPA's objective,[59] but does not point to any WTO case law that says a measure should be the **strongest** trade-restriction choice.

It is submitted that if the objective is to prevent forced-labour-goods from entering the American market, then the UFLPA overshoots the objective. By presuming all goods connected to Xinjiang are forced-labour-goods, combined with the fact that rebutting the presumption requires proving a negative (a notoriously difficult task) within a short timeframe of 30 days (shorter than the 90 days for 'Withhold and Release Orders' for section 307 cases under the *Tariff Act*), it is inevitable that goods which are forced-labour-free will be detained, if not denied. There is evidence of this already: around 40% of shipments are ultimately released after detention, illustrating the crude and imprecise operation of the UFLPA. It could also be that a large portion of goods in the 60% of shipments that have been denied release are forced-labour-free because importers were unable to meet the onerous evidentiary burdens. After all, the United States has produced no evidence that shipment denials correlate with actual forced-labour detection. On top of this, as Fang points out, there would be a chilling effect on trade, which goes against the very purpose of GATT to minimise trade restrictions.[60]

Then there are also other overshooting side-effects, such as job losses of consensual Uyghur workers who become reputational burdens for companies simply due to their ethnicity (a potential violation of their right to work under article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), as mentioned earlier in this paper). To put it metaphorically, the UFLPA attempts to crack an egg with a sledgehammer.

[58] Yicheng Ru, 'The US Uyghur Forced Labor Prevention Act: The GATT 1994 Perspective' (2024) 58(5) *Journal of World Trade* 761, 777.
[59] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 239.
[60] Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023) 16.

There is clearly a less trade-restrictive alternative already in place, which went unacknowledged by all four scholars, that is, the 'Withhold Release Orders' under section 307 of the *Tariff Act*. The United States government did not adequately demonstrate why section 307 is insufficient to address any forced labour problem with Xinjiang goods, especially in light of the fact that there are other countries with greater forced-labour-risks that do not have specially targeted legislation like the UFLPA. Thus, this element, on the face of it, is not satisfied.

Summary of Group 1 Elements

The UFLPA would probably address a 'public moral', but likely fail the necessity test because, at the very least, there are less trade-restrictive measures open to the United States.

4.3.3. Group 2: The Chapeau

The Chapeau clause is the hardest clause to overcome in WTO litigation. Of all the 'public moral' cases that have gone before the WTO, only two have passed the Chapeau test: *US—Shrimp II* and *EC—Seal Products*.[61] Each element of the Chapeau clause, as outlined earlier in the paper, is discussed below. Other than Moldo, all of the legal commentators accepted the UFLPA would not survive the Chapeau clause.

[61] World Trade Organization, Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DS58/AB/R (adopted 6 November 1998); World Trade Organization, Appellate Body Reports, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Docs WT/DS400/AB/R, WT/DS401/AB/R (22 May 2014).

4.3.3.1. Group 2, Element 1: Arbitrary or unjustifiable discrimination

Moldo claims the UFLPA has no arbitrary discrimination because the UFLPA reinforces section 307 of the *Tariff Act*.[62] Then Moldo contradicts himself by saying the UFLPA creates a presumption of guilt and can therefore run afoul of the non-arbitrary requirement.[63] To reconcile this, Moldo suggests the discrimination is justifiable because "the WTO [in *Brazil—Retreaded Tyres*][64] is willing to uphold a discriminatory measure when it aligns with international agreements", and Moldo then implicitly states the UFLPA aligns with international human rights treaties.[65] Other than Moldo's inconsistencies, the problem is that the WTO did not make the ruling Moldo asserts. Rather, the WTO held that any pursuance of international or transnational agreement obligations must remain rationally connected with the objective invoked in the trade restriction and be applied even-handedly where the same conditions prevail.[66] In other words, human rights obligations should not be invoked arbitrarily and discriminatorily.

This is where Fang gets it right, noting that the United States takes a softer approach to dealing with other countries that have a forced labour problem. She notes:[67]

> *Particularly in the absence of sound and clear evidence pointing at [Xinjiang] as the place with the world's worst or most despicable labor rights conditions, the [UFLPA] imposing the harshest treatment of products that are connected to [Xinjiang] appears to be overly discriminatory with no justification. By focusing exclusively on one specific geographical area, the UFLPA constitutes arbitrary and*

[62] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 241.
[63] Ibid.
[64] World Trade Organization, Appellate Body Report, *Brazil — Measures Affecting Imports of Retreaded Tyres*, WTO Doc WT/DS332/AB/R (3 December 2007).
[65] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 242.
[66] World Trade Organization, Appellate Body Report, *Brazil — Measures Affecting Imports of Retreaded Tyres*, WTO Doc WT/DS332/AB/R (3 December 2007) [219] and [227].
[67] Mandy Meng Fang, *A Never-Ending US–China Solar Trade War? The Uyghur Forced Labor Prevention Act and International Trade Law*, City University of Hong Kong School of Law, Legal Studies Research Paper No 2023(2)-007 (2023) 20.

unjustifiable discrimination between countries where the same conditions prevail and, thus, fails to meet the Chapeau requirement.

Building upon Fang's position, it is noted that, when critically examined, the existing evidence of widespread and systematic forced labour in Xinjiang is extraordinarily weak, as evidenced by the previous legal analysis work carried out by the author of this paper. For example, Amnesty International claimed there is a forced Uyghur labour program that potentially encompasses one million people, and yet their interview sample size was a mere 11 people, and only four people's testimonies were excerpted, which is merely 0.0004% of the claimed victim pool.[68] Human Rights Watch had no primary sources, and the reliability of their secondary and tertiary sources were highly questionable.[69] The most credible accuser — the United Nations Office of the High Commissioner for Human Rights (OHCHR) — had an interview sample size of only 24 people for its "coercive" labour conditions allegation, and the OHCHR did not even go as far as declaring there to be a forced labour program in Xinjiang.[70] The most aggressive accuser — the Australian Strategic Policy Institute (ASPI) — made a total of 18 allegations, but none of those allegations survived merit and evidence-based scrutiny. Moreover, ASPI erroneously misled readers into perceiving the International Labour Organization's practice manual for identifying forced-labour-**risks** as a substitute for the narrow international law definition of forced labour, thereby confusing substandard or innocuous work conditions for forced labour.[71]

Accordingly, in light of the limited evidentiary basis for targeting Xinjiang, and considering that other countries have demonstrably worse forced labour records (as discussed earlier), it is likely the UFLPA amounts to arbitrary and unjustifiable discrimination.

[68] See Jaq James, 'Amnesty International & Human Rights Watch's Forced Xinjiang Labour Claims: Junk Research or Noble Cause Corruption?', *Geo-Law Narratives* (2022) <online>.
[69] Ibid.
[70] Jaq James, 'The Assessment on Human Rights in Xinjiang by the United Nations Office of the High Commissioner for Human Rights: A Critical Analysis', *Geo-Law Narratives* (2023) <online>.
[71] Jaq James, 'The Australian Strategic Policy Institute's *Uyghurs For Sale* Report: Scholarly Analysis or Strategic Disinformation?', *Geo-Law Narratives* (2022) <online>.

4.3.3.2. Group 2, Element 2: A disguised restriction on international trade

Moldo references WTO case law indicating that, unless good faith bilateral negotiations occur before a measure is put in place, then that measure may be a disguised restriction on international trade. Moldo cites the WTO case of *US—Gambling*,[72] stating that opportunities for negotiations is assessed on a 'reasonability' scale, and uses this scale to justify the United States not negotiating with China because it would be "futile" based on China's public denials of a forced labour problem.[73] However, as indicated above, since there appears to be a lack of sound evidence behind the claims, China may be within its rights to make such public pronouncements. Even still, China's public position should not discount that the United States should have made negotiation attempts behind closed doors, as states have on-the-record and off-the-record pronouncements.

Recalling the 'consumptive demand loophole' of the *Tariff Act*, if China wished to argue that the UFLPA is a disguised restriction on international trade, it should examine the context in which the UFLPA was introduced — 'the trade war' — and see if there are official or leaked government documents that demonstrate the United States deliberately politicised Xinjiang as a means of curtailing China's economic growth because it is an economic competitor of the United States (which is an extensive research project outside the ambit of this paper). This is on top of interrogating why the United States did not enact legislation targeting other countries ranked higher on the Global Slavery Index,[74] which undermines the even-handed application of justifiable trade restrictions required under GATT.

[72] World Trade Organization, Appellate Body Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc WT/DS285/AB/R (7 April 2005).
[73] Connor Stanford Moldo, 'Combatting the Uyghur Genocide via the WTO's Public Morals Exception' (2023) 46(2) *Hastings International and Comparative Law Review* 209, 242.
[74] See Walk Free, *Global Slavery Index: Regional Findings Overview* (Web Page, 2023) <online>.

Summary of Group 2 Elements (The Chapeau)

At minimum, the UFLPA likely fails the Chapeau clause for being discriminatory, and it may fail further if its purported purpose was a deceptive cover for strategic trade restriction.

5. CONCLUSION

This paper has demonstrated a likelihood that the UFLPA violates WTO Rules. First, it likely violates Article I of GATT because it confers more favourable treatment on 'like products' of all WTO members except China. Second, it likely violates Article XI of GATT for imposing *de facto* quantitative restrictions on imports. Third, the UFLPA would likely not satisfy the Article XX(a) exemption clause of GATT because of a failure to meet the necessity test (there are at least less trade-restrictive measures open to the United States) and because of a failure to satisfy the Chapeau clause (for at least being arbitrarily or unjustifiably discriminatory against China, with it being a possible disguised trade restriction, if there is evidence demonstrating this).

Beyond the WTO Rules, the UFLPA likely breaches ICERD, the ICESCR and the UN Charter for racial targeting of Xinjiang's ethnic minorities and indirect attacks on their human right to work by choking off their employment opportunities. It also likely violates the Xinjiang people's right to economic development under the ICCPR, ICESCR, the *Declaration on the Right to Development* and the UN Charter because of blanket attacks on the Chinese government's poverty alleviation programs in the region. It may also violate rule-of-law norms and the United States' Constitution for limited appeal mechanisms (especially in light of the reversal of the presumption of innocence), as well as for possible legislative gaps.

On top of all this, the United States has blocked the appointment of judges to the WTO's Appellate Body, reducing its numbers below the quorum needed to hear appeals and function properly as an institution.[75] At the same time, it has unleashed its latest onslaught of tariffs around the world — carried out with impunity after rigging the WTO into impotence. The result is a picture of a nation that does not truly believe its own rhetoric of protecting a 'rules-based international order'. Rather, it seems to believe in 'anything goes', 'catch me if you can' and 'might makes right'.

[75] Ben Horton and Kristen Hopewell, 'Lessons from Trump's Assault on the World Trade Organization' (Chatham House, 2021) <online>.

It is striking that the Chinese government has not yet made rhetorical mileage out of the UFLPA's apparent violations of so many international laws — both to expose the United States' double standards on the 'rules-based international order' and to defend the Xinjiang people's right to development and economic dignity. It is a missed opportunity not to rhetorically frame the UFLPA as a racist and lawless Act that punishes ordinary workers under the guise of protecting them.

The United States routinely weaponises international law against China, and yet China has still not mastered how to use international law as both a sword and a shield in its counter-responses. This may be because China lacks robust international law and Western rhetoric expertise. China's regular failure to rise to such rhetorical occasions leave noticeable gaps in the international marketplace of ideas, ripe for skillful exploitation by the United States and its allies. In the end, it is international businesses and the ordinary people of Xinjiang that have paid the price for this asymmetry.