



February 1, 2021

To the Senate Foreign Affairs, Defence and Trade Legislation Committee

Submission in relation to the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020

Dear Committee members,

I am a historian of modern China at the University of Sydney and I specialise in the history of Xinjiang. I have studied in the region for some two decades and follow the current discussion of events there closely. I write to offer partial support of one section of the proposed bill, as well as to offer an alternative suggestion.

The situation facing the Uyghurs, and other non-Han ethnic “minorities” (a term most Uyghurs prefer us to avoid) is truly dire. There are various dimensions to the hard-line policies currently being implemented in Xinjiang. As part of a security crackdown, justified primarily in terms of counterterrorism and anti-extremism, detention and imprisonment are being carried out on a mass scale. Much of this is motivated by ideological imperatives, but there is also a socio-economic dimension to the campaign. This aims at removing Uyghurs from predominantly non-Chinese environments such as the rural regions of southern Xinjiang and integrating them into factory work. This facilitates surveillance but is also intended to eventually turn them into more loyal, Chinese-speaking citizens. Effectively, what is going on is the coercive “proletarianization” of large sections of the Xinjiang population.

The ILO Forced Labour Convention of 1930 defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Division 270.6 of Australia’s Criminal Code defines “forced labour” in these terms:

the condition of a person (the *victim*) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:

- (a) to cease providing the labour or services; or
- (b) to leave the place or area where the victim provides the labour or services.

To the best of my knowledge, the issue of forced labour arises in two main areas in present-day Xinjiang. First, there are certain detention centres which, alongside political indoctrination and Chinese language training, include an element of “vocational” training. These are production facilities in and of themselves and may be linked to international supply chains.

Secondly, internees who have “graduated” from these centres may find themselves assigned to work in factories either in Xinjiang itself or elsewhere in China. Available reporting has shown that the government is sponsoring companies elsewhere in the country to take quotas of



“surplus labour” from Xinjiang, as well as to relocate to Xinjiang and set up production there, so detainees can transition directly to the workplace. Ex-detainees, or Uyghurs recruited directly to these labour transfer programs, appear to have little ability to turn down such assignments. To do so would of course risk landing you back in a worse facility.

The Customs Amendment Bill

There are two parts to Section 2 of the proposed legislation. The first part (a) is a ban on all imports from Xinjiang. While I appreciate that this is motivated by a desire to take strong action against China abusive policies, I am personally not in favour of such a proposal, and don't believe it will be effective as a response. In effect, such a ban would constitute sanctions on the entire Xinjiang economy. While forced labour is certainly widespread, it is not present in every sphere of the local economy.

The second part of the bill (b) is to prohibit the import of goods produced or manufactured in China through the use of forced labour. This is an objective that I think anyone in Australia would endorse. The advantage of restricting a response explicitly to identifiable cases of forced labour is that it clearly outlines the principle involved and the abuse that is being responded to; it offers both China and any companies implicated an obvious pathway to remedying the issue; and it provides the government or civil society organisations an opportunity to request information from the Chinese government and ask for the ability to carry out inspections.

This part of the bill proposes adding a PRC-specific clause to the Customs Act 1901. Here I have to query why this particular approach is being taken, and not the alternative, which would be to apply an all-encompassing ban on the importation of goods produced by forced labour anywhere. It's hard for me to understand why the government would take such action against China alone, while refraining from applying the same principle to the rest of the world. China, obviously, is not the sole global offender on this question.

I say this because I believe that action that singles China out is unlikely to be the most effective way to actually influence China's policies on this score. The response from the Chinese government to any legislation focusing on it alone will be predictable: this is simply part of a Western campaign to delegitimise it and harm its economy, that Australia is only adopting this legislation to keep pace with American sanctions, etc. etc.

It's essential, I believe that Australia is able to respond convincingly to such accusations, and demonstrate that its actions reflect a genuine desire to eliminate forced labour from global supply chains. It's very hard to do that if the legislation only names one country.

I appreciate that some will argue that partial measures are still better than none at all, but it strikes me that the most credible and effective approach to this issue would be to strengthen existing legislation prohibiting the import of the products of forced labour, i.e. the recent Modern Slavery Act, and then to engage China on that basis.

Currently, Australia's Modern Slavery Act only requires companies with an annual turnover of \$100 million or more to report on the risks of forced labour in their operations and supply



chains. In response to media coverage of Xinjiang, the Australian Council of Trade Unions and Human Rights Watch have recently pointed out certain obvious deficiencies in this legislation: the reporting threshold is too high, there are no penalties for non-compliance, and there is no independent watchdog. (See Daniel Hurst, “Australia urged to tighten anti-slavery laws as UK cracks down on Chinese forced labour,” *The Guardian*, 14 January 2021.)

I share all these criticisms. My recommendations to the Committee would therefore be that the government enhance the Modern Slavery Act in the following ways:

- introducing a prohibition on the importation of all products of forced labour;
- enacting penalties sufficiently strong to deter such importation;
- creating an independent commissioner capable of responding to complaints and carrying out investigations into allegations of forced labour (as well as related issues covered by the Act such as human trafficking etc.).

These steps account for everything intended by part (b) of the Customs Amendment Bill and add additional measures to ensure that any ban is observed and enforced.

I must emphasise—this is not a radical proposal. Legislating in this way would do little more than to bring Australian law into line with that of the US. Since 1930, America has prohibited all imports for which there is evidence of forced labour in their production. (In 2016 Barack Obama closed a significant loophole in this law which exempted goods for which there was domestic demand but no domestic supply).

I would also encourage the Committee to examine Australia’s failure so far to ratify the International Labour Organisation’s 2014 Forced Labour Protocol (P29). This protocol, which has already been signed by 45 countries, will commit Australia to “develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour.” Adding Australia’s signature will signal its adherence to the international standards that it wishes to hold China accountable to, and thereby put it in the best possible position to provide a meaningful and effective response to the glaring abuses taking place in Xinjiang.

I would be happy to appear before the Committee to discuss my submission.

David Brophy