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Committee Secretary

Senate Foreign Affairs, Defence and Trade Legislation Committee

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Canberra ACT 2600

Submission by Human Rights Watch to the Australian Senate Foreign Affairs, Defence and Trade Legislation Committee on the Inquiry into the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020.

Since April 2017, the Chinese government has arbitrarily detained more than one million Uyghurs and other Turkic Muslims in a mass system of political education camps and formal detention centres.¹ Throughout the Xinjiang Uyghur Autonomous Region of the People's Republic of China, the Turkic Muslim population of 13 million is subjected to forced political indoctrination, collective punishment, restrictions on movement and communications, heightened religious restrictions, and mass surveillance in violation of international human rights law.² There are credible allegations of forced labor across Xinjiang. Accounts of former detainees, satellite imagery, and official leaked documents from the Chinese government all point to a targeted campaign of repression of Muslim ethnic minorities under what the authorities describe as “poverty alleviation” and “counter-terrorism” efforts, and the “Strike Hard Against Violent Extremism” campaign, launched in 2014.

Human Rights Watch, a member of the Coalition to End Forced Labor in the Uyghur Region,³ welcomes the opportunity to provide input to the Senate Foreign Affairs, Defence and Trade Legislation Committee on Senator Rex Patrick's Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020.

¹ Human Rights Watch, ‘*Eradicating Ideological Viruses*’: China's Campaign of Repression Against Xinjiang's Muslims, September 2018, <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs>.

² “China: Massive Crackdown in Muslim Region,” Human Rights Watch news release, September 9, 2018, <https://www.hrw.org/news/2018/09/09/china-massive-crackdown-muslim-region>.

³ End Uyghur Forced Labour, “About our Coalition,” <https://enduyghurforcedlabour.org/about/>.

We agree that it is in the interest of Australia to strengthen the prohibition against the importation of goods made with forced labor and to lead the international community in ending forced labor practices globally, wherever such practices occur through all means available to the Australian government, including by stopping the importation of goods that are produced in Xinjiang using forced labor, produced with inputs from Xinjiang using force labor, or goods that are produced using Uyghur forced labor elsewhere.

The United Kingdom and Canada made coordinated announcements in January 2021 to help prevent British and Canadian businesses from being complicit in, or profiting from, human rights violations in China's Xinjiang region. These measures while useful fall far short of those taken by the US government, which has strengthened its import control measures, banning all cotton and tomato products from Xinjiang, which have a high risk of using forced labor. Pending US legislation would introduce a rebuttable presumption requiring that importers prove any goods from that region come from supply chains free of forced labor.⁴

The Australian government should take a strong stance to address serious complaints about forced labor, by introducing import bans and sanctions against businesses that fail to prevent and remedy human rights abuses, including forced labor, in their global supply chains.

Human Rights Watch supports the bill with a slight language change because it is our position that it should be a criminal offence to import goods made with forced labor from anywhere in the world, and not be limited to Xinjiang or China. Human Rights Watch research has documented forced labor in various countries, including agricultural workers in Uzbekistan's cotton fields, migrant workers in Thailand's fishing industry, and North Korean workers in forced labor camps. Products produced anywhere by forced labor should not find their way to Australian consumer's global supply chains.

The current amendment reads:

Prohibition of the importation of goods—goods produced by Uyghur forced labour

The importation of the following goods is prohibited absolutely:

⁴ The US 1930 Tariff Act prohibits imports produced with prison or slave labor. Enforcement of this legislation has increased since the law was strengthened in 2016 under President Barack Obama. The US Customs and Border Protection (CBP) issued a Withhold Release Order (WRO) against cotton products and tomato products produced in Xinjiang based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor. The agency identified the following forced labor indicators through the course of its investigation: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions. See US Customs and Border Protection, "Forced Labor," last modified January 29, 2021, <https://www.cbp.gov/trade/programs-administration/forced-labor>.

- (a) goods produced or manufactured in the Xinjiang Uyghur Autonomous Region of the People's Republic of China;
- (b) goods produced or manufactured in the People's Republic of China through the use of forced labour (within the meaning of the *Criminal Code*).

The amendment Human Rights Watch proposes is as follows:

Prohibition of the importation of goods—goods produced by forced labour

The importation of the following goods is prohibited absolutely:

- (a) goods produced or manufactured through the use of forced labour (within the meaning of the *Criminal Code*).

To implement the import ban and global efforts to eradicate forced labor in global supply chains, Human Rights Watch also recommends that the Australian government take the steps outlined below. These are important to help tackle complaints of forced labor, especially in the Xinjiang region. The Australian government should:

1. Designate Xinjiang as a region where forced labor risks are high and introduce a presumption of forced labor in cases of imports of finished goods from Xinjiang or imports of goods made with inputs from Xinjiang. Such a presumption should shift the onus on to Australian businesses importing such goods to demonstrate that they are not made in conditions of forced labor.

As stated in the “End Uyghur Forced Labour Call to Action,” which Human Rights Watch is a part of, “there are no valid means for companies to verify that any workplace in the Uyghur Region is free of forced labour or to prevent the use of forced labour in these workplaces in line with human rights due diligence.”⁵

While the forced labor complaints from Xinjiang are most pressing, the Australian government should form a high-level committee to examine whether the presumption

⁵ “End Uyghur Forced Labour: Call to Action,” last modified October 2020, <https://enduyghurforcedlabour.org/call-to-action/>. See paragraph six, which states: “There are no valid means for companies to verify that any workplace in the Uyghur Region is free of forced labour or to prevent the use of forced labour in these workplaces in line with human rights due diligence. Worker interviews, which are essential to the methodology of any labour or human rights investigations, cannot generate reliable information in these circumstances. No worker can speak candidly to factory auditors about forced labour or other human rights issues without placing themselves and their families at risk of brutal retaliation; there are widespread restrictions and repression of fundamental freedoms and human rights defenders, and civic space has been shut down. Given the pervasive scope of the abuses, buyers therefore need to operate on the assumption that all products produced in part or in whole in the Uyghur Region are at high risk of being tainted by forced labour.”

of forced labor should extend to other regions and countries from time to time. This should be done through a process that includes consultations with relevant stakeholders such as labor rights groups and unions.

2. Issue an annual list of countries and products that the Australian government considers to be produced at risk of forced labor, modelled on the US Department of Labor List of Goods Produced by Child and Forced Labor to caution businesses operating in Australia.
3. Provide enhanced advice on human rights due diligence relating to supply chains and forced labor to businesses operating in Australia.⁶
4. Engage the Department of Foreign Affairs and Trade to convene discussions with Australian businesses and nongovernmental organisations to raise awareness about the risks of doing any business in Xinjiang in any part of the supply chain, and encourage companies to join the “End Uyghur Forced Labour Call to Action Call to Action.”

Human Rights Watch also calls for overhauling Australia’s Modern Slavery Act 2018 and supplementing or significantly amending it to introduce a broad sweep of measures, similar to the legislative proposals being pursued in the European Union.⁷

Australia currently does not have a comprehensive legal regime that makes it mandatory for businesses operating in Australia to undertake human rights and environmental due diligence in their own operations and their global value chains. The Australian Modern Slavery Act falls short. While it is important that it addresses modern slavery, it leaves out a range of human rights and environmental abuses. It is also limited to entities based or operating in Australia that have an annual consolidated revenue of more than A\$100 million. The legislation does not meet some key elements essential to enforcing corporate accountability for rights abuses in global value chains.⁸

⁷ “EU Parliament Vote Critical to Hold Companies to Account,” Human Rights Watch news release, January 21, 2021, <https://www.hrw.org/news/2021/01/21/eu-parliament-vote-critical-hold-companies-account>.

⁸ See, for example, “Recommendations for EU Legislation governing Business Enterprises’ Human Rights and Environmental Due Diligence, including on Climate Change,” Human Rights Watch, June 2020, https://www.hrw.org/sites/default/files/media_2020/06/Annex%20-%20Recommendations%20for%20New%20EU%20Legislation%20Regarding%20Mandatory%20Human%20Rights%20and%20Environmental%20Due%20Diligence_o.pdf.