

Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020

Submission by the Australian Council of Trade Unions

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Introduction

The ACTU welcomes the opportunity to make a submission to the Foreign Affairs, Defence and Trade Legislation Committee inquiry into the *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020* (hereafter, the Bill).

Eliminating forced labour and other forms of modern slavery is an issue of fundamental importance to the Australian union movement. While the Australian Government has expressed a strong stance against modern slavery, including forced labour, through its adoption of the *Modern Slavery Act 2018*, the recent adoption of the *National Action Plan to Combat Modern Slavery 2020-25*¹, and internationally through its membership of Alliance 8.7², the ACTU believes stronger action by the Australian Government is needed to contribute to achieving the global target to eradicate forced labour and modern slavery by 2030 (UN Sustainable Development Goal 8.7).³

Forced labour is prevalent in global supply chains, facilitated by trade policies that encourage a race-to-the-bottom on workers' rights. This competition to provide the lowest labour costs for exports often occurs in export processing zones where workers have little or no effective labour rights to join a union or engage in collective bargaining. The system of outsourcing work in global supply chains enables multinational corporations to distance themselves from the practices of their suppliers. The profiting by multinational corporations from Uyghur forced labour is an extreme example of the failures of neoliberal model of globalisation, where corporations have outsourced their production to China to take advantage of low labour costs, a lack of independent unions, and a repressive human rights environment.

Corporations must stop profiting from forced labour, including Uyghur forced labour, and take responsibility for protecting workers' rights within their supply chains. This responsibility is outlined in the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

¹ <https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>

² <https://www.alliance87.org/>

³ <https://indicators.report/targets/8-7/>

Governments also have a responsibility to effectively regulate global supply chains and hold corporations accountable for rights violations, and should use all diplomatic and economic leverage to stop human and labour rights violations.

The ACTU is extremely concerned about the gravity and scale of labour and human rights abuses perpetrated against the Uyghur people. We call on the Australian Government and businesses to take decisive action to end their complicity in the Chinese Government's human and labour rights abuses. Moreover, decisive action must be taken by the Australian Government and business to cease profiting from forced labour anywhere in the world.

As such, the ACTU supports this Bill as an important and urgent initiative the Australian Government must take towards eliminating modern slavery, however we recommend that the Bill be expanded to prohibit the importation of all goods produced or manufactured through the use of forced labour, regardless of country of origin.

Recommendation 1: The Bill should be expanded to ban all imports of goods produced or manufactured through the use of forced labour from any country.

Uyghur forced labour

As many as 1.8 million Uyghurs, ethnic Kazakhs, Kyrgyz, and other Muslim minorities are, or have been, arbitrarily detained in the Xinjiang Uyghur Autonomous Region (XUAR)⁴ - the largest internment of an ethnic and religious minority since World War II.⁵ A central element of the Chinese Government's strategy to dominate the Uyghur people is a vast system of forced labour, both inside and beyond the internment camps.⁶ The reports of human rights abuse in the internment camps are shocking, and include allegations of torture and sexual violence.⁷ There is evidence China is expanding its network of detention facilities, despite official claims that all detainees have been released.⁸ There is also evidence the Chinese Government is transporting Uyghurs and other Turkic and Muslim-minority peoples to other parts of China, where they are working in factories under conditions that strongly indicate forced labour.⁹

Goods likely to be produced or manufactured, at least in part, with Uyghur forced labour include:

- Textiles, such as yarn, clothing, gloves, bedding and carpet
- Cotton
- Electronics, including phone and computer hardware
- Food products, including noodles and cakes
- Shoes
- Tea
- Handicrafts¹⁰

The Australian Strategic Policy Institute (ASPI) report 'Uyghurs for sale: "re-education", forced labour and surveillance beyond Xinjiang', released in 2020, detailed allegations of Uyghur forced

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<https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf> p. 4.

⁵ <https://www.ituc-csi.org/apparel-brands-Uyghur-forced-labour>

⁶ <https://www.ituc-csi.org/apparel-brands-Uyghur-forced-labour>

⁷ <https://www.abc.net.au/news/2021-02-03/uyghur-renew-calls-for-action-report-rape-abuse-xinjiang-camp/13118190>

⁸ <https://www.abc.net.au/news/2020-09-24/china-building-bigger-uyghur-detention-camps-in-xinjiang/12693338>

⁹ <https://enduyghurforcedlabour.org/call-to-action/>

¹⁰

<https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf>, p. 6.

labour in 27 factories part of the supply chains of 82 global brands.¹¹ There is a high risk that brands and retailers in the garment and apparel sector in particular are benefiting from forced Uyghur labour – more than 80% of China’s cotton is grown in the XUAR, approaching almost 20% of global production. The Coalition to End Uyghur Forced Labour claims that almost every major apparel brand and retailer selling cotton products is potentially implicated.¹² The Coalition argues that it is practically impossible for companies to operate in the XUAR in accordance with the UN Guiding Principles on Business and Human Rights¹³, which requires companies to prevent or mitigate adverse human rights impacts. As their Call to Action to apparel brands and retailers, endorsed by the ACTU and our global body the International Trade Union Confederation (ITUC), along with 72 Uyghur rights groups and over 100 civil society organisations¹⁴, explains:

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.¹⁵

Given the lack of leverage and the inability to prevent or mitigate adverse human rights impacts, companies need to end their business relationships connected to the XUAR and Uyghur forced labour in order to fulfil their responsibility under the UN Guiding Principles on Business and Human Rights.

Governments around the world also have a responsibility to take strong action to stop rights violations against the Uyghur people. Along with banning the importation of products tainted with Uyghur forced labour, the Australian Government must use its leverage to coordinate diplomatic and economic action with regards to China’s human rights violations against the Uyghur people. This should include engaging with the United Nations and the International Labour Organisation (ILO), and working through the Australian National Contact Point (AusNCP)¹⁶ for the OECD

¹¹ <https://www.aspi.org.au/report/uyghurs-sale>

¹² <https://enduyghurforcedlabour.org/call-to-action/>

¹³ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁴ <https://www.ituc-csi.org/apparel-brands-Uyghur-forced-labour>

¹⁵ <https://enduyghurforcedlabour.org/call-to-action/>

¹⁶ <https://ausncp.gov.au/>

Guidelines for Multinational Enterprises to develop a common response to business conduct as it relates to the Uyghur region, including international coordination within the NCP system with regard to specific instances related to human rights violations in the XUAR.

Recommendation 2: The Australian Government must use its leverage to coordinate diplomatic and economic action with regards to China's human rights violations against the Uyghur people, including engaging with the United Nations, the International Labour Organisation (ILO), and National Contact Points for the OECD Guidelines for Multinational Enterprises.

Forced labour

The International Labour Organisation (ILO) estimates that 40.3 million people were victims of modern slavery in 2016.¹⁷ There is no globally recognised definition of 'modern slavery', however the term is used to describe a range of exploitative practices including, but not limited to, forced labour, slavery, servitude, child labour, forced marriage, bonded labour and other slavery-like practices.¹⁸ This covers a wide spectrum of crimes, but the common thread is any situation of exploitation where a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception.

Of the 40.3 million people subjected to modern slavery, 24.9 were in forced labour.¹⁹ According to the ILO Forced Labour Convention 1930 (No. 29), forced or compulsory labour is

...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.²⁰

Forced labour occurs all over the world.²¹ Indeed, COVID-19 has increased the risk of forced labour globally: the ILO notes that vulnerable people who have lost their jobs in the informal economy and who have limited or no access to social protection are likely to be at greater risk of being trapped in forced labour and debt bondage.²²

¹⁷ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf , p.9.

¹⁸ *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia*, Joint Standing Committee on Foreign Affairs, Defence and Trade (2017), p.1.

¹⁹ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf , p.9.

²⁰ Article 2, ILO C29

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C029:NO

²¹ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

²² https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_745287.pdf

This Bill is only focused on prohibiting the importation of goods produced or manufactured in the XUAR of the People's Republic of China; and goods produced or manufactured in the People's Republic of China through the use of forced labour. This narrow focus does not acknowledge that forced labour is a global problem – and indeed occurs in Australia²³ and other developed countries. As such, the ACTU recommends that the Bill is expanded to include all goods produced or manufactured through the use of forced labour, regardless of country of origin.

In the United States, section 307 of the Tariff Act of 1930 prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labour – including forced child labour. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).²⁴ In response to forced labour in the XUAR, the Canadian Government announced on 12 January 2021 that it would adopt measures to address the risk of goods produced from forced labour from any country from entering Canadian and global supply chains, including by prohibiting imports on goods produced wholly or in part by forced labour.²⁵ The European Union is in the process of developing mandatory human rights due diligence legislation that will hold corporations legally responsible for avoiding and limiting risks in their supply chain, and give victims a legal right to support and to seek reparations.²⁶

The Australian Government should likewise take strong measures to ban the imports of goods produced or manufactured through the use of forced labour, including goods from the XUAR or produced through the use of Uyghur forced labour. More broadly, the Australian Government should develop mandatory human rights due diligence legislation to address violations of workers' and human rights in global supply chains.

In June 2014, governments, employers and workers at the ILO International Labour Conference renewed their commitment to the global fight against forced labour and adopted a protocol to supplement the ILO Forced Labour Convention of 1930 – Protocol No. 29. The Protocol includes additional specific measures that States must take to prevent forced labour and ensure victims have access to justice, and it provides governments with a comprehensive framework to eliminate

²³<https://www.globallslaveryindex.org/2018/findings/country-studies/australia/#:~:text=Prevalence.thousand%20people%20in%20the%20country.>

²⁴ <https://www.cbp.gov/trade/programs-administration/forced-labor>

²⁵ <https://www.canada.ca/en/global-affairs/news/2021/01/canada-announces-new-measures-to-address-human-rights-abuses-in-xinjiang-china.html>

²⁶ <https://www.europarl.europa.eu/news/en/press-room/20210122IPR96215/meps-hold-companies-accountable-for-harm-caused-to-people-and-planet>

forced labour. Because the Protocol is connected to the Forced Labour Convention, which is classified as one of the eight Fundamental Conventions of the ILO, it too is considered one of the fundamental principles and rights at work. The Australian Government has not yet ratified the Forced Labour Protocol.

Recommendation 3: The Australian Government must ratify and implement ILO Forced Labour Protocol (No. 29) as a matter of priority to provide a comprehensive framework to eliminate forced labour.

Australia's Modern Slavery Act

This Bill highlights the deficiencies with Australia's current law to deal with modern slavery in global supply chains: the Commonwealth *Modern Slavery Act 2018*.

The Commonwealth *Modern Slavery Act 2018* (the Act) requires entities with a consolidated revenue of at least \$100 million over an annual accounting period to make annual modern slavery statements describing the risks of modern slavery in their operations and supply chains, and actions taken to address those risks. The modern slavery statements are focused on process, however, rather than disclosing information on specific products or services, and are not clearly connected to internationally recognised labour rights.

The Act signifies the Australian Government's commitment to eliminating modern slavery, but it has some serious weaknesses, including no independent oversight (such as a Commissioner) to ensure companies comply with the Act; no requirement for the Commonwealth to withhold government procurement contracts from companies who have failed to report or failed to show they are taking action on eliminating modern slavery from their supply chains; and no penalties for companies failing to disclose and act on modern slavery. In response to evidence of Uyghur forced labour, the UK Foreign Secretary Dominic Raab announced on 12 January 2021 that the UK Government would strengthen the UK Modern Slavery Act to introduce fines for businesses that do not comply with their transparency obligations, and would exclude suppliers with sufficient evidence of human rights violations in any of their supply chains from government procurement.²⁷

²⁷<https://www.gov.uk/government/speeches/foreign-secretary-on-the-situation-in-xinjiang-and-the-governments-response>

The Australian Government should follow the UK Government's lead and strengthen our Modern Slavery Act to ensure:

- An Anti-Slavery Commissioner to provide independent oversight and ensure companies comply with their obligations;
- A list of companies who are required to report under the Act must be maintained on a public register;
- Penalties for companies failing to disclose or providing false or incomplete reports, and penalties for failing to take action to eliminate modern slavery in their supply chains;
- The Commonwealth withhold government procurement contracts from companies who have failed to report or show they are taking action on modern slavery in their supply chains.

Recommendation 4: The Australian Government must strengthen the *Commonwealth Modern Slavery Act 2018* to ensure the effective regulation of global supply chains and protection of workers' rights.

Australia's trade commitments

This Bill may face the hurdle of not being consistent with commitments the Australian Government has made in bilateral and multilateral trade agreements, and at the World Trade Organisation (WTO). In order to be consistent with non-discrimination principles in the WTO and trade agreements, the Bill should be expanded to ban all imports produced or manufactured through the use of forced labour from any country.

The ability of the Australian Government to regulate in a wide variety of policy areas is increasingly constrained by free trade agreements, yet Australia's current trade agreement process is opaque and lacks democratic accountability:

- Cabinet makes the decision to initiate trade negotiations and receives reports on the progress of negotiations.
- The text remains secret until the deal is completed.
- Cabinet makes the decision to sign the completed agreement before the text becomes public and without independent evaluation.
- Only after the agreement is signed is the text is tabled publicly in Parliament and reviewed by the Joint Standing Committee on Treaties (JSCOT).
- There is no independent assessment of the economic costs and benefits of the agreement, or of social or regional impacts, before it is signed. The National Interest Assessment is

done by DFAT, the department that negotiated the agreement, and it always gives a favourable assessment.

- The JSCOT reviews the agreement but it cannot make any changes to the text. It can only make recommendations which are not binding on the government.
- Parliament does not vote on the text of the agreement, only on the enabling legislation, which is mostly confined to changes in tariffs.

There is no opportunity throughout this process for labour and human rights issues to be taken into account and balanced against economic interests, and no opportunity for unions to be effectively consulted about the contents and potential impacts of an agreement.

Recommendation 5: Australia's trade agreement making process should be overhauled to ensure agreements are open to public scrutiny, including consideration of whether it is in the interest of workers in Australia and overseas to offer preferential trade access to regimes abusing human and labour rights.

The China-Australia Free Trade Agreement (CHAFTA), which entered into force in 2015, contains State-to-State dispute processes, like all trade agreements, which means China could lodge a dispute against Australia alleging that our Government is violating the terms of the agreement by arbitrarily banning products. CHAFTA also includes the controversial Investor-State Dispute Settlement (ISDS) provisions which mean a single Chinese company could lodge a dispute to claim compensation from the Australian Government if a change in law or policy can be claimed to harm their investment.

CHAFTA gives preferential zero tariff access for Chinese imports to Australia but does not contain a chapter on labour rights, which means that neither the Chinese or Australian Government has made any commitments to abide by fundamental labour rights as defined by the ILO. The ILO fundamental principles and rights at work include freedom of association and effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.²⁸ There are no commitments in CHAFTA on any of these labour rights, including on the issue of forced labour, and therefore no means for the Australian Government to raise the issue of whether such

²⁸<https://www.ilo.org/declaration/lang-en/index.htm#:~:text=These%20categories%20are%3A%20freedom%20of,respect%20of%20employment%20and%20Occupation.>

products should have preferential access to Australia, and no obligation on the Chinese government to take action to end forced labour. The Department of Foreign Affairs and Trade (DFAT) is currently conducting a five year Post-Implementation Review of the CHAFTA²⁹; the Committee should recommend that DFAT review the CHAFTA to seek the inclusion of legally enforceable labour rights, including the elimination of all forms of forced or compulsory labour.

Similarly, the Regional Comprehensive Economic Partnership (RCEP) agreement, which Australia signed in November and China is a party to, does not contain any protections for labour rights or the ability for Australia to raise issues of labour rights abuses. This is particularly concerning given over half the 15 countries party to the RCEP agreement are ranked as among the worst countries in the world to work, where workers effectively have no access to fundamental labour rights, according to the International Trade Union Confederation's 2020 Global Rights Index.³⁰ While the RCEP agreement does not currently contain ISDS, there is a provision that enables its introduction after two years at the agreement of all Parties.

If the Australian Government is serious about taking action to end forced labour and other forms of modern slavery, it must immediately review its trade policy and renegotiate its trade agreements to remove ISDS from all agreements, ensure that all agreements contain enforceable labour protections, and preserve the ability of Government to regulate to protect workers' rights, human rights, and the environment.

Recommendation 6: The Australian Government must review the China-Australia Free Trade Agreement (CHAFTA) to seek the inclusion of legally enforceable labour rights, including the elimination of all forms of forced or compulsory labour.

Recommendation 7: The Australian Government must not sign up to trade agreements that do not contain enforceable labour protections, and must renegotiate current agreements to include enforceable labour protections.

Recommendation 8: The Australian Government must not sign up to trade agreements that contain Investor-State Dispute Settlement (ISDS) provisions, and must renegotiate current agreements to remove ISDS.

²⁹ <https://www.dfat.gov.au/trade/agreements/in-force/chafta/news/Pages/chafta-post-implementation-review-call-submissions>

³⁰ https://www.ituc-csi.org/IMG/pdf/ituc_globalrightsindex_2020_en.pdf

List of recommendations

Recommendation 1: The Bill should be expanded to ban all imports of goods produced or manufactured through the use of forced labour from any country.

Recommendation 2: The Australian Government must use its leverage to coordinate diplomatic and economic action with regards to China's human rights violations against the Uyghur people, including engaging with the United Nations, the International Labour Organisation (ILO), and National Contact Points for the OECD Guidelines for Multinational Enterprises.

Recommendation 3: The Australian Government must ratify and implement ILO Forced Labour Protocol (No. 29) as a matter of priority to provide a comprehensive framework to eliminate forced labour.

Recommendation 4: The Australian Government must strengthen the *Commonwealth Modern Slavery Act 2018* to ensure the effective regulation of global supply chains and protection of workers' rights.

Recommendation 5: Australia's trade agreement making process should be overhauled to ensure agreements are open to public scrutiny, including consideration of whether it is in the interest of workers in Australia and overseas to offer preferential trade access to regimes abusing human and labour rights.

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Recommendation 8: The Australian Government must not sign up to trade agreements that contain Investor-State Dispute Settlement (ISDS) provisions, and must renegotiate current agreements to remove ISDS.

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