

Committee Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
P.O Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

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

Thank you for the opportunity to provide a submission in relation to the above Bill.

As Ethical Investors, managing approximately \$2.5 Billion AUD on behalf of large superannuation funds, charities, schools and high net wealth investors, we call on the Senate to ensure the passage of the above-mentioned Bill.

We believe that this Bill holds a real potential to reduce the importation of products into Australia that have been produced using the forced labour of the Uyghur people in an abhorrent and clearly human rights violating way.

Furthermore, we specifically believe that the first proposed key provision, s.50A (a), which covers all goods produced and manufactured within the distinct geographical area of Xinjiang Uyghur Autonomous Region of the Peoples Republic of China, without requiring specific proof of forced labour is justified due to continued and credible evidence of forced labour in this particular area

Increasing evidence has shown that more than a million Uyghurs and Turkic Muslim minorities are in 're-education camps', as well as being forced into 'vocational training' work in factories and on farms in Xinjiang Province and being moved to other Chinese provinces. Their labour takes place in the context of extensive and intrusive surveillance and at times in the context of internment or imprisonment. They are not free to leave. Failure to comply with the programs results in penalties, including loss of personal freedom and other sanctions, including against family members.

Importantly, Australian investors and corporates are markedly exposed to these human rights and forced labour risks through the import of products and their supply chains. Australia imports in excess of 78 million dollars' worth of products from China a year. Australian consumers and investors need an immediate way to know they are not supporting this forced labour through their purchases, particularly while capacity building of the appropriate due diligence and assessment tools and awareness of how to identify this risk in supply chains is developed.

Whilst assessment of a company's human rights and modern slavery risk forms an integral part of our and other similarly minded asset managers investment processes, we concur with the NGO Be Slavery Free that *"When an issue is a gross violation of human rights and a practice is systemic, embedded and sanctioned in the policies and plans of a government, the actions of business and civil society become at best limited and at worst futile without Government engagement"*.

We note that similar prohibitions have already been enacted by the U.S Department of labour, with at least 17 different categories of goods identified, including

- Textiles
- Garments, Gloves and Footwear
- Fish and tomato products
- Bricks and Coal
- Hair product, nail products
- Cotton, Thread/Yarn
- Electronics, Toys
- Christmas decorations, artificial glowers and fireworks

However, it is also known that the full identification of tainted products requires further investigation, which also contributes to the extreme difficulty faced by corporates and investors alike who do not wish to be exposed to these forced labour risks, particularly further down the supply chain

As mentioned above, while corporate due diligence, and investor scrutiny of supply chains undoubtedly have a crucial role to deal with the risks associated with Modern Slavery and Forced Labour, we firmly believe there is also a role for a multi-faceted approach which also involves legislative approaches and express import prohibitions.

Whilst we have personally engaged with our portfolio companies on their exposure to supply chains in this area, with at least one corporate agreeing to cease sourcing from this region, it is widely accepted that due diligence in the Xinjiang region is extremely difficult, with access tightly controlled and conditions increasingly difficult to detect and monitor.

We believe that this proposed legislation is well grounded within Division 270 of the Australian Criminal Code, which defines and criminalises slavery, servitude, forced labour, deceptive recruiting and forced marriage. Division 270.6 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:*

We furthermore believe this legislation is well grounded within the Universal Declaration of Human Rights, which enshrines the rights and freedoms of all human beings. The Investor Alliance for Human Rights has provided a detailed list of human

rights set out in the UDHR that are currently being violated by Chinese government authorities, at times with the involvement of business enterprises, in relation to Uyghurs, including Articles 2, 3, 5, 7, 9, 12, 13, 16, 18, 19, 20, 23 and 27. To explore the validation of each of the above articles in relation to human rights abuses involving Uyghurs, please see the full report by the Investor Alliance for Human Rights at Investors for Human Rights Investor Guide on Human Rights Risks in Xinjiang <https://investorsforhumanrights.org/sites/default/files/attachments/2020-08/InvestorGuidanceonHRRisksXinjiang08.03.20.pdf>

We furthermore believe the proposed suspension of imported goods made with forced labour from Xinjiang parallels the spirit of the Australian Modern Slavery Act (2018), which whilst an invaluable and critical legislation, we would argue is insufficient to address this issue. For example, of the 700+ entities who have so far uploaded their modern slavery statements, 25 list their industry sector as including 'fashion, textiles, apparel and luxury goods.' An analysis of those 25 statements shows the following:-

- Nine companies do not mention China at all in their report. At least three of these are on lists of companies named as sourcing from Xinjiang.
- Seven companies identify risks in sourcing from China but do not mention Xinjiang as a specific risk
- Six companies identify that they source from China but don't identify China specifically as a risk country
- Only two companies – Woolworths and Kathmandu - specifically name the Xinjiang province and identified the actions they are seeking to take.

Clearly, the Modern Slavery Statement due diligence approach is not sufficient for addressing this state-sanctioned forced labour in Xinjiang Province. As mentioned above, we do not believe that the Modern Slavery Act (2018) is able to fully accommodate the risk of Uyghur Forced Labour, as severely restricted access to the Xinjiang region by business and third-party social auditors makes the conventional due diligence and risk assessment approach required by the Australian Modern Slavery Act almost, if not totally, impossible. We therefore argue that this proposed legislation is an appropriate and necessary addition to the Modern Slavery Act (2018).

Concurrently, with the passage of this above proposed legislation, we would also respectfully recommend that:

- The Australian Government ratify Protocol of 2014 to the Forced Labour Convention, 1930 as soon as possible.
- The Australian Government identify opportunities to persuade the Chinese government into ratifying the Convention on Forced Labour, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105) and the Protocol of 2014 to the Forced Labour Convention.

- The Australian Government uses all means possible to persuade the Chinese government allow immediate, meaningful and unfettered access to Xinjiang for independent external observers including the UN High Commissioner for Human Rights.

We would also respectfully call on the Australian Government to institute at similar long-term strategy to deal with Modern Slavery and Forced Labour Human Rights violations such as the Uyghur situation by:

- Instituting a mechanism similar to the Trafficking Victims Protection Reauthorization Act (TVPRA) and Executive Order 13126, under which the US Department of Labour produces *a list of products and their source countries for which there is a reasonable basis to believe they are produced by forced or child labour*. This mechanism also includes a clear process including how countries can protest being listed and how they can be removed from the list. Civil society and other stakeholders can make submissions to the process.
- *Assessing the implementation of Withhold and Release Orders (WRO) which allows the exclusion and/or seizure of goods made by Child Labour and may lead to criminal investigation of the importer*. This mechanism enables the government to take some action whilst investigation still continues.
- Considering a mechanism such as the *EU Yellow Card*, which constitutes an official warning system issued to trading partners to tackle issues (including human trafficking and forced labour) in the illegal, unreported and unregulated fishing, before trader sanctions are imposed.
- Investigating a similar mechanism to the *EU Mandatory Due Diligence Legislation which will hold companies legally responsible for avoiding and limiting risks in their entire value chain*. They will give victims a legal right to support and to seek reparations, and will ensure fairness, a level playing field and legal clarity for all businesses, workers and consumers.

We believe mechanisms such as this both support businesses which are seeking to identify their risk and are more expedient and sensible than individual parliamentary legislation for each egregious case of human rights violations and modern slavery going forward.

We would also encourage the Government to create Lists of High-Risk Products and Service, which was a *Recommendation from Hidden in Plain Sight Report* that was accepted in full. We believe it must be undertaken as a matter of urgency. We would further encourage the Government to require it be mandatory for entities to report specifically on products or services from high-risk areas identified in the list this list in their Modern Slavery reporting.

We also note that it will be important for the Senate to provide complimentary capacity building activities, widespread industry awareness raising, and guidance along with the passage of the legislation, in order to ensure that the practical implementation of the legislation is properly and fairly enforced, and to assist corporate Australia in the practical outworking of the desired outcomes of the above-mentioned legislation. We note that of particular importance is guidance for both Australian corporates and investors on the optimal steps to assess their supply chains for Uyghur Forced Labour.

Finally, as Ethical Investors, we have clearly seen how the recently Modern Slavery Legislation has led to a great increase in the knowledge, understanding and action on Modern Slavery by all Australian corporates, and we believe that passing the above-mentioned legislation would result in similar increased awareness, imperative and action to address the risk of Uyghur Forced Labour.

Without an enforced prohibition of goods associated with forced Uyghur labour, consumers and investors will continue to knowingly, and unknowingly be exposed to, and therefore complicit in this violation of human rights.

In conclusion, we believe that the proposed amendment Bill is a proportionate response to the situation of human rights abuses against Uyghurs and We urge the Inquiry to recommend amendments to the Customs Bill, so the legislation is strengthened to suspend the import of goods made with the forced labour of Uyghur and other minorities in the Xinjiang region and from forced labour in China.

Thank you for the opportunity to make a submission on this very important issue.

Respectfully,

Robyn Parkin, Head of Sustainability

Ethical Partners Funds Management

Suite 3, Level 4, 130 Pitt Street
Sydney, NSW, 2000

Direct: 02 8999 1231 / Mobile: 0438169566
Robyn.parkin@ethicalpartners.com.au