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4 February 2021

**Senate Foreign Affairs, Defence and Trade Legislation Committee
Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020
Submission: Walk Free**

**Senator the Hon Eric Abetz
Chair of the Foreign Affairs, Defence and Trade Legislation Committee**

Dear Senator,

Walk Free, an initiative of The Minderoo Foundation, welcomes the opportunity to provide a submission to into the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020.

Based on nearly a decade of experience in research, advocacy, and engagement focussed on ending modern slavery, we believe that an amendment to the Customs Act presents a strong opportunity for Australia to prevent the import of goods produced with forced labour outside its borders.

As a member of the Coalition to End Forced Labour in the Uyghur Region, Walk Free acknowledges and condemns forced labour and human rights abuses against the Uyghur population and other ethnic minorities in the Xinjiang Uyghur Autonomous Region.¹ Action to prevent the importation of goods made with forced labour in China would support Australia in meeting its international obligations to prevent modern slavery.

Unfortunately, the use of forced labour in the production of goods and services is not limited to only one country. As the research detailed in our submission notes, there is an urgent need for legislative action to prevent entry of all products tainted by modern slavery into Australia, and thereby deny market access to those who are seeking to profit from the vulnerability of others.

As an example, we refer you to Section 307 of the United States' 1930 Tariff Act, which can be used to prevent goods suspected of being made with forced labour from entering into the US. The law gives US customs and border officials powers to seize goods at the border, based on "reasonable but not conclusive" evidence of forced labour. At this point, the owner of the goods is given the opportunity to enter into a process to challenge the allegation, with the onus on the importer to prove the clean provenance of the goods. This mechanism has been used in relation to goods as diverse as rubber gloves, seafood and cotton, imported from 13 countries.

Accordingly, we argue that the proposed amendment to the Customs Act should prohibit the import of any goods produced or manufactured through the use of forced labour (within the meaning of the Criminal Code) from **any** country. This action should take place alongside international collaboration and information sharing between countries to ensure strong enforcement of the legislation. This



WALK FREE

recommendation echoes existing calls for broader restrictions on goods made with forced labour by other international NGOs.²

While the Modern Slavery Act is a monumental step towards eradicating modern slavery, there is much more to be done. Prohibiting imports made with forced labour overseas would complement and build upon the existing legislation, as well as ensure Australia is not complicit in human rights abuses.

Preventing the supply of goods made with forced labour would not only reduce the risk of modern slavery within Australian supply chains, but also signal Australia's intolerance of human exploitation and continued leadership in ending modern slavery.

We look forward to the Committee's report and Government response to this Inquiry.

Best regards,

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Co-Founder
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Walk Free



WALK FREE

About Walk Free

Walk Free, an initiative of The Minderoo Foundation, a modern philanthropic organisation working to arrest unfairness, create opportunities to better the world and end modern slavery globally within our generation. Walk Free is the producer of the world's leading dataset on measuring and understanding slavery and works on systems change through engagement with government, business, and faith, to ensure slavery is tackled through both a cultural and legal framework.

Our key projects include undertaking research to build the Global Slavery Index, which provides measurement on the scale of modern slavery and assesses country-level vulnerability and government responses to the problem. Walk Free is also the Secretariat for the Bali Process Government and Business Forum, an initiative bringing together business and government leaders to combat modern slavery in the Indo-Pacific region. Our Global Freedom Network is committed to delivering systemic change by engaging and uniting faith leaders around the world to take spiritual and practical action to end modern slavery. Walk Free was a leading advocate for an Australian Modern Slavery Act and continues to engage with governments around the world on modern slavery issues.

What is modern slavery?

Modern slavery covers a set of specific legal concepts including human trafficking, forced labour, debt bondage, forced or servile marriage, slavery and slavery-like practices, and the sale and exploitation of children. Although modern slavery is not defined in law, it is used as an umbrella term that focusses attention on the commonalities across these legal concepts. Essentially, it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power.

Modern slavery in supply chains

The Global Estimates of Modern Slavery, produced by Walk Free and the International Labour Organization in partnership with the International Organization for Migration, in 2017, found that 24.9 million of the estimated 40.3 million people living in conditions of modern slavery globally were in forced labour.³ These crimes exist within the supply chains of products we consume every day. Businesses and governments are importing goods produced with modern slavery with little regard to the labour conditions involved in their production.

In 2018, Walk Free's Global Slavery Index reported that Australia imported at least US \$12 billion worth of goods at-risk of forced labour. Of this value, US \$10.8 billion was from imports of electronics, garments, and seafood from China. However, Australia also imports a high value of at-risk goods from other countries in the region. For instance, Australia imports over US \$223 million worth of at-risk seafood from Thailand,⁴ an industry plagued by forced labour of seafarers.⁵

Australia also imports US \$4.1 billion worth of at-risk garments from China (US \$4.1 billion), and US \$167 million of at-risk garments each from India and Vietnam.⁶ The garments sector is known to be at-risk of exploitation, debt bondage, and forced labour throughout the supply chain.⁷

If goods produced using forced labour are prevented from being imported *only* from one country such as China, importers may merely switch to other low-cost and high-risk countries to source products potentially made with forced labour. For example, where working conditions improved and minimum wages were established or raised in major garment-producing countries in Asia, businesses shifted to



WALK FREE

emerging markets, such as Ethiopia, to source even cheaper labour.⁸ Policies must be in place that signal that forced labour is an unacceptable crime globally.

The US Tariff Act of 1930

*“CBP will not tolerate modern slavery in U.S. Commerce... We expect every U.S. importer to ensure that its supply chains are free of forced labor.”*⁹ – Brenda Smith, Executive Assistant Commissioner, U.S. Customs and Border Protection

The United States has legislation in place to prevent the import of goods and services made with forced labour. Section 307 of the Tariff Act of 1930 prohibits the import of goods produced or manufactured, wholly or in part, by forced or child labour. These goods can be prevented from entering the US and can be seized by the federal government. The importing entities can also face criminal investigation.¹⁰

The United States Customs and Border Protection (CBP) is responsible for enacting the legislation by detaining such imported goods by issuing Withhold Release Orders (WROs), which essentially blocks goods from entering the country under suspicion that they were made wholly or in part with forced labour.¹¹ Importers have the option to either export the detained goods or challenge a WRO by submitting evidence proving that the goods were not a product of forced labour.¹²

The Tariff Act previously had what was known informally as the ‘consumptive demand loophole.’ In order to meet US market demand for certain goods, this loophole permitted imports to continue even if there was evidence of forced labour in the supply chain for that product. However, this loophole was closed when former President Obama signed into law H.R. 644 – Trade Facilitation and Trade Enforcement Act of 2015, strengthening the ability of the CBP to enforce Section 307.¹³

Since 2016, CBP has increased enforcement and issued WROs beyond specific producers to prevent goods made by certain industries or in certain countries from being imported into the US.¹⁴ The CBP has issued a number of WROs against goods made in Xinjiang, China, including the recent WROs on tomato and cotton goods produced in Xinjiang.¹⁵ Other imports banned in recent years relate to palm oil from Malaysia, gold from artisanal small mines in the Democratic Republic of Congo, cotton from Turkmenistan, and diamonds from Zimbabwe, amongst others.¹⁶

By amending the Customs Act to prohibit the import of items made through forced labour from any country, as the US Tariff Act allows, Australia would be in a strong position to respond to forced labour overseas, including that which occurs in the Xinjiang region.

A full list of the WROs issued by the CBP is available at: <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>.

Recommendation

Walk Free recommends that the Australian Government amend the Customs Act to prohibit the import of any goods produced or manufactured through the use of forced labour (as defined in the Criminal Code) mirroring Section 307 of the US Tariff Act of 1930. Such a measure would not only begin to address the issue of forced labour in the Xinjiang region of China, but work towards eradicating modern slavery globally. This action would be strengthened through international collaboration, as sharing of information on forced labour in supply chains with global partners will allow the Australian government to act swiftly on credible evidence.



WALK FREE

Endnotes

¹ 'End Uyghur Forced Labour in China Now'. Available from: <https://enduyghurforcedlabour.org/>. [22 January 2021].

² Hurst, D 2021, *Australia urged to tighten anti-slavery laws as UK cracks down on Chinese forced labour*, The Guardian. Available from: <https://www.theguardian.com/australia-news/2021/jan/14/australia-urged-to-tighten-anti-slavery-laws-as-uk-cracks-down-on-chinese-forced-labour>. [19 January 2021].

³ International Labour Organization & Walk Free 2017, *Global Estimates of Modern Slavery*. Available from: https://cdn.walkfree.org/content/uploads/2020/10/06153805/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf. [18 January 2021].

⁴ Walk Free 2018, *Global Slavery Index*, The Minderoo Foundation, p. 121. Available from: <https://www.globallslaveryindex.org/resources/downloads/>. [18 January 2021].

⁵ Tickler, D, Meeuwig, JJ, Bryant, K, David, F, Forrest, JAH, Gordon, E, Joudo Larsen, J, Oh, B, Pauly, D, Sumaila, UR & Zeller, D 2018, 'Modern slavery and the race to fish', *Nature Communications*, vol. 9. Available from: <https://www.nature.com/articles/s41467-018-07118-9> [19 January 2021]; International Labour Organization & European Union 2020, *Endline research findings on fishers and seafood workers in Thailand*, ILO. Available from: https://shiptoshorerights.org/wp-content/uploads/Endline-Research-Findings-on-Fishers-and-Seafood-Workers-in-Thailand_EN.pdf [19 January 2021]; Human Rights Watch 2018, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry*, Human Rights Watch. Available from: <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry> [19 January 2021].

⁶ Walk Free 2018, *Global Slavery Index*, The Minderoo Foundation, p. 121. Available from: <https://www.globallslaveryindex.org/resources/downloads/>. [18 January 2021].

⁷ See for example: Clean Clothes Campaign 2020, *Out of the shadows: A spotlight on exploitation in the fashion industry*. Clean Clothes Campaign. Available from: https://cleanclothes.org/file-repository/ccc_dci_report_outoftheshadows_sept2020_highres.pdf/view [30 September 2020].; Oxfam Australia 2017, *What She Makes: Power and Poverty in the Fashion Industry*, p. 3. Available from: https://whatshemakes.oxfam.org.au/wp-content/uploads/2017/10/Living-Wage-Media-Report_WEB.pdf. [18 August 2020].; International Labour Organization 2020, *Third party monitoring of child labour and forced labour during the 2019 cotton harvest in Uzbekistan*. Available from: https://www.ilo.org/wcmsp5/groups/public/-/-ed_norm/-/-ipec/documents/publication/wcms_735873.pdf [6 August 2020].; Uzbek Forum for Human Rights 2020, *"Tashkent's reforms have not yet reached us" Unfinished work in the fight against forced labour in Uzbekistan's 2019 cotton harvest*. Available from: <https://www.uzbekforum.org/wp-content/uploads/2020/06/UzbekForum-2019-Harvest-Report-Seiten-Mail.pdf> [6 August 2020].; Office to Monitor and Combat Trafficking in Persons 2020, *Trafficking in Persons Report*. United States Department of State. Available from: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> [25 August 2020].; Siddharth, K 2019, *Tainted Garments: The exploitation of women and girls in India's home-based garment sector*, Blum Center for Developing Economies. Available from: <https://blumcenter.berkeley.edu/publications/tainted-garments/#:~:text=Tainted%20Garments%3A%20The%20Exploitation%20of,India's%20home%2Dbased%20garment%20sector> [11 June 2020].

⁸ van Elven, M 2019, *Ethiopian garment workers paid the lowest wages in the apparel industry*, Fashion United. Available from: <https://fashionunited.uk/news/business/ethiopian-garment-workers-paid-the-lowest-wages-in-the-apparel-industry/2019050743039>. [22 January 2021]; Passariello, C & Kapner, S 2015, *Search for Ever Cheaper Garment Factories Leads to Africa*, The Wall Street Journal. Available from: <https://www.wsj.com/articles/search-for-ever-cheaper-garment-factories-leads-to-africa-1436347982>. [22 January 2021].

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WALK FREE

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¹⁰ U.S. Customs and Border Protection 2016, *Forced Labor*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/trade/trade-community/programsoutreach/convict-importations> [19 January 2018].

¹¹ U.S. Customs and Border Protection 2021, *Forced Labor*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/trade/programs-administration/forced-labor> [19 January 2021].

¹² Maberry, JS 2021, 'CBP Stops More Imports Under Forced Labor Rules (Cotton a Jam, Part II)', *The National Law Review*, vol. XI, no. 29. Available from: <https://www.natlawreview.com/article/cbp-stops-more-imports-under-forced-labor-rules-cotton-jam-part-ii>. [29 January 2021].

¹³ U.S. Customs and Border Protection 2021, *Forced Labor*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/trade/programs-administration/forced-labor>. [19 January 2021]; U.S. Customs and Border Protection 2016, *Forced Labor*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/trade/trade-community/programsoutreach/convict-importations> [19 January 2018].

¹⁴ Congressional Research Service 2020, *Section 307 and U.S. Imports of Products of Forced Labor: Overview and Issues for Congress*. Available from: <https://crsreports.congress.gov/product/pdf/R/R46631/2>. [19 January 2021].

¹⁵ U.S. Customers and Border Protection 2021, *CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor In Xinjiang*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave#:~:text=COVID%2D19-,CBP%20Issues%20Region%2DWide%20Withhold%20Release%20Order%20on%20Products,by%20Slave%20Labor%20in%20Xinjiang&text=WASHINGTON%20%E2%80%94%20Effective%20January%2013%20at,China's%20Xinjiang%20Uyghur%20Autonomous%20Region> [19 January 2021].

¹⁶ U.S. Customs and Border Protection n.d., *Withhold Release Orders and Findings*, United States Department of Homeland Security. Available from: <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>. [19 January 2021].