



Australian Government

Whole-of-Government submission to the Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020

Senate Foreign Affairs, Defence and
Trade Legislation Committee

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1. EXECUTIVE SUMMARY

1. The Department of Home Affairs/Australian Border Force and the Department of Foreign Affairs and Trade (the Departments) welcome the opportunity to provide a whole-of-government submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the *Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020* (the Bill).
2. The Australian Government notes the intention of the Bill, as expressed in its Explanatory Memorandum, is to "take a strong stand against the well documented human rights abuse of hundreds of thousands of Uyghur people in Xinjiang Province in China."
3. The Government acknowledges the intent and importance of this issue, including the need for transparency and appropriate action in response to instances of modern slavery and human rights abuses. However, the Government does not support all aspects of the proposed Bill and instead recommends that the Departments continue working with domestic stakeholders and international counterparts to bring to light modern slavery wherever it is identified and collectively respond to reduce and eliminate its practice.
4. As the Minister for Foreign Affairs and Minister for Women, Senator the Hon Marise Payne, has said, Australia is deeply concerned by reports of human rights violations and abuses in Xinjiang. We hold grave concerns about reports of widespread use of mass detentions, restrictions on freedom of religion or belief, forced sterilisation, forced labour and pervasive surveillance, and of sexual violence against women. We have seen no credible evidence of the human rights situation improving in Xinjiang.
5. The Government consistently raises concerns about the treatment of Uyghurs and other minorities in China, including at ministerial level, both directly with China and in international forums. Reports of forced labour are a key element of Australia's international advocacy. The Government, jointly with other countries, continues to urge China to allow immediate, meaningful and unfettered access to Xinjiang for independent international observers.
6. The Government is committed to tackling modern slavery, including forced labour, wherever it occurs. The landmark *Modern Slavery Act 2018* (Modern Slavery Act) established a robust transparency framework to drive business action to identify and address modern slavery risks in supply chains.
7. The Government recently committed \$10.6 million to implement Australia's *National Action Plan to Combat Modern Slavery 2020-25* (National Action Plan). The National Action Plan provides the strategic framework to combat modern slavery in Australia and in global supply chains through a program of initiatives that seek to prevent, disrupt, investigate and prosecute these crimes.
8. In its efforts to combat modern slavery, the Government takes a country-agnostic, victim-centred approach that focuses on supporting the best outcomes for victims, and addressing modern slavery in supply chains. This reflects the reality that modern slavery can take many forms and exist in any sector, supply chain, or country.
9. The Government notes the Modern Slavery Act must be reviewed in 2022. The review, which will involve public consultations, will consider whether any additional measures are required to improve its operation and effectiveness, including whether civil penalties, additional oversight mechanisms and product and import restrictions would strengthen the Modern Slavery Act.
10. The upcoming review of the Modern Slavery Act will provide Parliament with an additional avenue to examine these issues.
11. The Government notes the recent report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into the use of sanctions to address human rights abuses and is currently considering its response to the report and its recommendations.
12. The Government is committed to monitoring, evaluating and reviewing its actions to combat modern slavery to ensure it is delivering a targeted, effective response. In particular, the Government will continue to monitor reports of forced labour globally, including in Xinjiang, and assess Australia's policy settings; and engage with stakeholders and partners with a view to supporting international efforts to reduce the risk of modern slavery, including forced labour, in Australia's supply chains.

2. AUSTRALIA'S APPROACH TO ADDRESSING FORCED LABOUR

2.1. *Modern Slavery Act 2018*

14. The Modern Slavery Act (the Act) entered into force on 1 January 2019. The Act aims to combat modern slavery in the global supply chains of Australian goods and services by increasing supply chain transparency and holding large businesses publicly accountable for their actions to combat modern slavery. It does this by providing public visibility to businesses, civil society, and consumers of the modern slavery risks identified and actions taken to address those risks by reporting entities.

15. The Act requires large entities operating in the Australian market with over AU\$100 million annual consolidated revenue to prepare annual modern slavery statements (Statements) setting out their actions to identify and address modern slavery risks in their global operations and supply chains. The Government estimates that approximately 3,000 entities will be required to report under the Act, including globally recognised brands and the Commonwealth. Many of these entities are likely to have supply chain links with China, including in the textiles, electronics and vehicle manufacturing sectors. Additional detail on the requirements of the Act can be found at Annexure A.

16. Under the Act, the Government has established an Online Register of Modern Slavery Statements (Register). The Register is a government-run central repository of all Statements submitted under the Act. The Government published the first tranche of Statements on 27 November 2020 and continues to regularly publish tranches of Statements as they are received. To date approximately 400 Statements have been published on the Register.

17. In implementing the Act, the Government has engaged proactively with business and civil society to provide detailed, comprehensive and practical guidance to support entities to understand modern slavery risks in supply chains, take actions to identify and address these risks, and report on these actions in compliance with the Act.

18. To support understanding of modern slavery risks and compliance with the Act, the Government actively undertakes outreach to Australian entities on risks related to modern slavery and supply chains. Agencies, including the Australian Border Force and Department of Foreign Affairs and Trade, engage closely with peak bodies and individual businesses, both in Australia and overseas, as well as officials from state and territory governments to raise awareness of relevant supply chain risks. The Government encourages Australian companies and institutions to conduct appropriate due diligence, specific to their industries, to satisfy themselves that their commercial and other arrangements are consistent with Australian legislation and international standards.

19. Australia's approach to combating modern slavery is grounded in the *United Nations Guiding Principles for Business and Human Rights* (UNGPs). In line with the UNGPs, the Government encourages entities to work collaboratively with suppliers to address modern slavery risks and to ensure responses prioritise the best interests of victims. The Government takes a country-agnostic approach in its efforts to address modern slavery. In this way, the Government recognises that all instances of modern slavery, whether of forced labour, servitude or forced marriage, in any country or region, are all egregious and necessary to address.

20. The Government is committed to ensuring the Act provides a strong and effective mechanism for addressing modern slavery risks. Under the Act, the Government reports annually to Parliament on the implementation of, and compliance with, the Act. The Government is required to review the Act in 2022, including whether it is necessary to amend the Act to improve its operation. This will include consideration of compliance, penalties and other complementary measures. The Government will consider bringing the review forward if required.

2.2. National Action Plan to Combat Modern Slavery 2020-25

21. The Government's response to modern slavery is guided by the National Action Plan, which provides the strategic direction for the Government's work. The Australian Border Force is responsible for coordinating whole-of-government implementation of the National Action Plan.

22. The National Action Plan is guided by five national strategic priorities that promote a holistic response to the full cycle of these crimes: prevention; disruption, investigation and prosecution; support and protection; partnering; and research. Under these strategic priorities, the Government is progressing a range of initiatives that raise awareness of modern slavery amongst consumers, businesses, frontline responders and vulnerable individuals; enhance investigations and prosecutions; promote coordinated international responses to modern slavery; provide support to those affected by modern slavery crimes; and combat the drivers of modern slavery.

23. In the 2020-21 Budget, the Government committed \$10.6 million to implement the National Action Plan. This is the largest single financial commitment the Government has made domestically since its response to modern slavery was first established and will enable the Government to implement a strategic program of initiatives to prevent, disrupt, investigate and prosecute modern slavery crimes. When implementing its response to modern slavery, the Government upholds its strong domestic criminal justice framework, and observes its binding legal obligations under international law, as well as best practice international frameworks.

2.3. International engagement

24. Australia is committed to advancing human rights globally, including the right to freedom from slavery or servitude and forced labour. Through our bilateral relationships, development assistance and engagement with civil society, as well as our engagement in regional and multilateral fora, including the United Nations Human Rights Council, Australia is working to advance and promote respect for human rights.

25. Australia implements a range of international initiatives to advance global cooperation to address modern slavery and build capability in the region to respond. These include dedicated regional anti-trafficking programs; the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process), co-chaired by the Foreign Ministers of Australia and Indonesia, its Senior Officials Meeting, co-chaired by Australia's Ambassador for People Smuggling and Human Trafficking; and the Bali Process Government and Business Forum (GABF). These initiatives increase international awareness of issues and improve capability. The GABF was established by the Foreign Ministers of Australia and Indonesia in 2017 to promote and implement humane, non-abusive labour practices throughout supply chains in the region by bringing together business leaders and relevant government officials to share expertise and drive innovation in supply chain transparency, ethical recruitment practices and worker redress. The GABF takes a sectoral, rather than country-specific, approach.

26. The Government believes that business and respect for human rights go hand-in-hand. Businesses must comply with all Australian laws, including those in place to implement our international human rights obligations. In addition, businesses should undertake the necessary due diligence to ensure increased awareness of the intent, objectives and practices of the foreign entities with which they propose to engage.

27. Australia has supported the UNGPs since their inception in 2011 and encourages businesses to apply the principles in their operations in Australia and abroad. In this regard, the Australian Government supports the Global Compact Network Australia which assists business to embed the UNGP into their operations, and enables members to work together to respond to modern slavery risks, implement legislative requirements and identify best practice through a Modern Slavery Community of Practice. The Australian Government also supports the Global Reporting Initiative which has established globally recognised reporting standards and toolkits that enable business to be more transparent and better report on modern slavery (and other sustainability risks) in their operations.

28. Australia also promotes and contributes to the resolution of issues relating to the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines). The OECD Guidelines are a key international instrument that contains non-binding recommendations. They acknowledge and encourage the positive contributions

that business can make to economic, environmental and social progress, and recognise that business activities can result in adverse impacts. Australia's National Contact Point (www.AusNCP.gov.au) promotes responsible business conduct under the OECD Guidelines and provides non-judicial conciliation services to resolve disputes between parties.

29. The Government is aware that some Australian commercial entities have publicly announced changes to practices in relation to Xinjiang. DFAT and Austrade continue to engage regularly with businesses, peak industry bodies and senior state and territory trade officials on human rights and supply chain issues. The Departments will continue to provide advice to Australian businesses where appropriate.

30. Australia has consistently raised concerns in relation to human rights in China in multilateral forums, including at the last seven sessions of the Human Rights Council. Foreign Minister Payne raised the treatment of Uyghurs in China during her address at HRC45 in September 2020. At the UN General Assembly in October 2020 Australia joined a statement with 38 other countries regarding the situation in Xinjiang and Hong Kong.

31. Australia implements United Nations Security Council (UNSC) sanctions and Australian autonomous sanctions regimes, including on the Democratic People's Republic of Korea, Iran, Libya, Syria and Zimbabwe.

32. On 3 December 2019, the Minister for Foreign Affairs referred the use of targeted sanctions to address human rights abuses for an inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade. On 7 December 2020, the Committee tabled its report, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?*, the headline recommendation of which calls on the Government to introduce a new global human rights sanctions regime. Such a regime—if agreed by government and depending on the policy parameters and thresholds for conduct established under it—would allow for the sanctioning of individuals and entities (including commercial enterprises) for human rights violations and abuses. The Government is carefully considering the report's recommendations and will respond in due course.

3. THE BILL

33. The Bill's proposed import prohibition applies to all goods and component parts produced or manufactured in the Xinjiang Uyghur Autonomous Region of the People's Republic of China; and all goods and component parts produced or manufactured in the People's Republic of China through the use of forced labour.

34. In developing Australia's victim-centred response to modern slavery in supply chains, the Government has taken the view that the most effective way to drive change in supply chains is to focus Australian legislation on transparency, public accountability and business-driven change through a risk-based reporting framework under the Modern Slavery Act. This is because regulatory action involving trade and importation restrictions, such as the import prohibition proposed by the Bill, inherently raises challenges in operation and implementation that can limit their effectiveness.

3.1. Application to one country

35. The Bill's proposed import prohibition only applies to goods produced or manufactured in China. Modern slavery risks are not limited to any single region or country, and business action to assess and address these risks should not be limited by geographic region. The Government's current efforts to address modern slavery focus on combating these practices globally, recognising that modern slavery is not limited to any one country or region.

36. The Modern Slavery Act, and related guidance material, require businesses to engage with modern slavery risks wherever they exist. The Act requires businesses to assess their risks in relation to forced labour and report on actions taken to address these across their global operations and supply chains, including in China.

3.2. Application to forced labour

37. The Bill's proposed import prohibition applies to all goods produced or manufactured through the use of "forced labour", defining the term by reference to the *Criminal Code Act 1995*. This definition would capture circumstances where because of the use of coercion, threat or deception a person is not free to cease providing the labour or services; or to leave the place or area. It does not capture a range of other slavery-like practices that are also egregious human rights abuses.

38. The Government's position is that modern slavery is broader than forced labour and includes slavery, extreme child labour, and slavery-like practices such as servitude. The Modern Slavery Act uses the term "modern slavery" to capture slavery, forced labour and other slavery-like offences, including the worst forms of child labour.

3.3. Application to imported goods

39. The Bill's proposed import prohibition applies to goods being imported into Australia only and targets importers, rather than overseas entities engaging in forced labour practices. The Bill does not apply to forced labour practices within domestic supply chains or the use of forced labour to produce and retail goods outside Australia, including in situations where these goods are produced or sold by Australian companies.

40. The Modern Slavery Act's broad scope applies to entities engaging in business in Australia and captures the entirety of their global supply chains as well as the activities of their overseas subsidiaries. This approach also reflects the Government's position that modern slavery risks are not limited to one region or one country.

3.4. Enforcement

41. For an import prohibition of the kind proposed by the Bill to be enforceable, the goods must be identifiable at the border. The Bill prohibits all products made in Xinjiang, and all products from China where the manufacture involves forced labour, whether entirely or in part, and irrespective of whether the goods have entered Australia from a third market. The Bill does not propose a means by which goods, including individual components of the goods, can be identified as being from Xinjiang, or the product of forced labour.

42. The vast majority of consumer goods and other refined products (such as textiles, electronics, and vehicles) involve long and complex supply chains. Manufacturing can take place in various stages and in various places. Manufacturing often involves combining components from different origins, different manufacturers, and different manufacturing methods to create a single finished product. Unlike basic raw materials, the importation of a manufactured product does not involve one clearly identifiable origin, source or method of manufacture.

43. This complexity means there is rarely one single origin or method of manufacture applicable to a product. The components of complex manufactured goods, or their origins and methods of manufacture, are also not easily or reliably identifiable at the border, or otherwise. These evidentiary difficulties mean that the prohibition proposed by the Bill could not be applied to complex consumer goods and other refined products that carry high risks of modern slavery (such as textiles, electronics, and vehicle manufacturing).

44. The approach taken under the Modern Slavery Act requires businesses to consider and address modern slavery risks throughout their supply chains, whether they involve basic raw materials or complex refined goods.

3.5. Exemptions or permission mechanisms

45. The Bill's proposed import prohibition is not subject to any exceptions or permission mechanisms. Generally, frameworks providing for import and export prohibitions have mechanisms facilitating a degree of flexibility in their application.

46. Without these flexibilities, the Bill will prohibit all trade with Xinjiang, even where forced labour is not known to be present in the supply chain.

3.6. International obligations

47. Any amendments to the *Customs Act 1901* would need to take into account Australia's international trade and investment law obligations, which constrain our ability to impose import restrictions, particularly where applied in a discriminatory fashion.

4. COMPLEMENTARY ACTIVITIES

48. It is the Government's view that the review of the Modern Slavery Act will provide Parliament with an additional avenue to examine the Government's efforts to address modern slavery, including forced labour. The Government also notes current consideration being given to the Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade's report on human rights sanctions.

4.1. Review of the *Modern Slavery Act 2018*

49. Section 24 of the Modern Slavery Act requires a review to be undertaken once the Act has been in force for three years. The effectiveness of Australia's current approach to addressing modern slavery in supply chains through transparency, public accountability and business-driven change will be considered as part of the three year review.

50. In accordance with the Act, the review will consider the operation of the Act; compliance with the Act; whether any additional measures are required to improve compliance (such as civil penalties and additional oversight mechanisms); and whether there are any other actions that should be taken to improve the operation of the Act (such as product and import restrictions). The review will be undertaken in 2022 and will involve public consultation. The Government will consider bringing the review forward if required.

ANNEXURE A – OVERVIEW OF REPORTING REQUIREMENTS UNDER THE *MODERN SLAVERY ACT 2018*

The Commonwealth *Modern Slavery Act 2018* (the Act) entered into force on 1 January 2019. The Act established a national transparency framework that requires an estimated 3,000 large businesses and other entities in the Australian market to publish annual statements detailing their actions to assess and address modern slavery in their operations and supply chains (Modern Slavery Statements).¹

The Government undertook a comprehensive national consultation process to develop the Act, which included 16 consultation roundtables with over 170 participants, consideration of 99 written submissions and over 100 direct meetings with key stakeholders.

Key features of the Act include the following.

- Mandatory reporting criteria to ensure high-quality Modern Slavery Statements and provide certainty for business. These criteria require reporting entities to provide information about their structure, operations and supply chains; potential modern slavery risks; actions taken to assess and address these risks; and how they assess the effectiveness of their actions.
- Reporting requirements that capture all modern slavery practices criminalised under Commonwealth law, including slavery, trafficking in persons, servitude, forced labour and forced marriage. Entities are also required to report on the worst forms of child labour.
- Application to a broad range of entities to ensure a level playing field. This includes foreign entities carrying on a business in Australia, with the Act's reporting deadlines accounting for different reporting periods in foreign jurisdictions.
- A reporting threshold of \$100 million annual consolidated revenue. This threshold covers approximately 3,000 entities and ensures the Act applies to large entities with the influence to drive change in their supply chains.
- Application to the Government to ensure it leads by example in publishing an annual consolidated Modern Slavery Statement covering all non-corporate Commonwealth entities' operations and supply chains. Corporate Commonwealth entities and companies are required to publish separate Modern Slavery Statements if they meet the revenue threshold.
- A public, Government-run online register of Modern Slavery Statements submitted under the Act, to ensure information are easily accessible to the public.
- Ministerial discretion to publicly identify any entities who have failed to comply with the Act.
- A requirement to review the Act and its effectiveness following three years of operation, to ensure the Act remains appropriate for the Australian context.

1.1 Reporting deadlines

The Act requires entities to submit modern slavery statements to the ABF within six months of the end of their reporting periods, being the financial year, or other annual accounting period applicable to the entity.

To support reporting entities impacted by the COVID-19 pandemic to meet their obligations under the Act, the Government extended this legislated deadline for reporting by an additional three months for all entities whose reporting periods end on or before 30 June 2020.

¹ Modern slavery is an umbrella term used to describe human trafficking, slavery and slavery-like practices, such as forced labour, debt bondage and forced marriage.

This extension only changes the deadline for submission of modern slavery statements and does not alter the reporting periods for entities. The table below sets out the new reporting deadlines:

Reporting period	Original deadline for submission of modern slavery statement	New, extended deadline for submission of modern slavery statement
1 April 2019 – 31 March 2020 (Foreign Financial Year)	30 September 2020	31 December 2020
1 July 2019 – 30 June 2020 (Australian Financial Year)	31 December 2020	31 March 2021
Reporting periods ending after 30 June 2020.	The six month deadline for reporting periods ending after 30 June 2020 remains unchanged.	

1.2 Implementation

To support reporting entities understand and meet their reporting obligations, the Australian Border Force established a dedicated Modern Slavery Business Engagement Unit (the Unit). The Unit:

- monitors and reports on compliance with the Act
- promotes best-practice and undertakes awareness-raising and training on modern slavery risks, identification, remediate and reporting; and
- develops and disseminates clear and comprehensive guidance for business about the reporting requirements under the Act.