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Committee Secretary

Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020
Foreign Affairs, Defence and Trade Committee Department of the Senate
Parliament House
Canberra

Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020

The Global Compact Network Australia (“**GCNA**”) welcomes the opportunity to respond to the inquiry into the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020 (“**the Bill**”). The GCNA supports the overarching intent of the Bill to strengthen Australia’s response to modern slavery in global supply chains. While we do not endorse the Bill in its current form we encourage the Government to use the Bill as an opportunity to start further dialogue about ways to strengthen Australia’s smart mix of policy and legislative tools regarding business respect for human rights in all sectors and regions.

We note that this submission is written with due consideration for the United Nations (“**UN**”) Global Compact’s Ten Principlesⁱ, the [UN Guiding Principles on Business and Human Rights](#)ⁱⁱ (“**UNGPs**”) and the [Sustainable Development Goals](#)ⁱⁱⁱ (“**SDGs**”). This submission does not necessarily reflect the views of all GCNA members.

Our Recommendations

- Hold consultations on whether to amend the Bill to prohibit the importation of any product produced or manufactured using modern slavery as defined in the Modern Slavery Act (Cth) (“**MSA**”), regardless of jurisdiction. Many businesses (both large and small to medium enterprises (“**SMEs**”)) will find it challenging to meet the requirements of an import ban due to the complexity of supply chains and limited visibility beyond tier one level and so would need comprehensive support from the Government to comply with the ban. Accordingly, in order for any import ban framework to be practicable, effective and enforceable, extensive consultation would be required with business and civil society. We recommend that this is achieved in a similar way to how consultations undertaken for the Modern Slavery Act (including a Government discussion paper outlining details of a proposed model).
- Produce clear and practical guidance for all businesses (both large and SMEs) to assist them with identifying, preventing and addressing their involvement in modern slavery through their activities and business relationships. This Guidance should align with the UNGPs, including the State’s duty

to protect human rights and business' responsibility to respect human rights and, should provide advice on how business can and should navigate their responsibility in situations where governments are not fulfilling their own duties, including where there are allegations of state-sponsored harm. This should complement the current guidance for reporting entities under the MSA.

- Through the review of the MSA scheduled for 2022 (or earlier), include consideration for the recommendations made by the Australian Law Reform Commission (“ALRC”) in their Corporate Criminal Responsibility Report (ARLC Report 136),^{iv} particularly those outlined in Recommendation 19, namely:
 - Consideration for the application of a failure to prevent offence in the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 to other Commonwealth offences that might arise in the context of transnational business including, slavery and slavery-like offences; and
 - Investigate the possibility of a mandatory human rights due diligence (“mHRDD”) regime which would apply broadly to all internationally-recognised human rights and which could involve civil penalties for non-compliance.^v
- Produce an annual list, similar to that produced by the US Labor Department^{vi}, of products and their associated jurisdictions that are considered to be of at high risk of association with modern slavery.
- Ratify the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (P029).

Background on the GCNA’s work on Modern Slavery with Australian business

The GCNA is the Australian, business-led network of the UN Global Compact. As a special envoy of the UN Secretary-General, the UN Global Compact is the world’s largest corporate sustainability initiative, with over 12,000 participating business and 3,000 non-business organisations based in over 160 countries and more than 69 Local Networks. Endorsed by chief executives globally, the UN Global Compact supports companies to align their strategies and operations with Ten Principles on human rights, labour, environment and anti-corruption, and advance societal goals, through the lens of the SDGs. The GCNA’s ambition is to accelerate and scale the global collective impact of businesses by upholding these Ten Principles and delivering the SDGs through accountable companies and ecosystems that enable change.

The GCNA is the Australian, business-led network of UN Global Compact. The GCNA brings together participants to the UN Global Compact, including more than 30 ASX 100 companies and other major corporates, non-profits and universities to advance the private sector’s contribution to sustainable development.

[Principle 4](#)^{vii} of the UN Global Compact requires that businesses uphold the elimination of all forms of forced and compulsory labour, and [Principle 5](#)^{viii} requires that businesses uphold the abolition of child labour. These are tied to the Principles concerning human rights and labour, including:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;
- Principle 2: Businesses should make sure that they are not complicit in human rights abuses;
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collect bargain; and
- Principle 6: Businesses should uphold the elimination of discrimination in respect to employment and occupation.

As such, a focus for the UN Global Compact's programming is to 'lead and shape' the business community's progress against [Sustainable Development Goal 8](#)^{ix} (Decent Work and Economic Growth) which specifically calls for governments to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Through our activities, delivered under our workstreams of Business & Human Rights, Anti-Bribery & Corruption, Environment & Climate Change and Sustainable Development, the GCNA builds the practical capacity of Australian businesses to understand and implement responsible business practices and contribute to sustainable development both within Australia and wherever they have footprints, including through their supply chains. Business and human rights, including human rights in supply chains, is a key area of the GCNA's work, and we established and have led Australia's national multi-stakeholder [dialogue](#)^x on business and human rights for a number of years. Through our Business & Human Rights workstream, we work alongside our global colleagues to assist business with progressing and achieving SDG 8.7 and 8.8 to put in place measures to prevent, identify and provide for remedy to modern slavery related harms, including forced labour, and support the protection of labour rights, including supporting safe working environments.

In 2018, the GCNA established a [Modern Slavery Community of Practice](#)^{xi} as a key peer learning and sharing forum for Australian businesses around the effective implementation of the MSA and management of their modern slavery and broader human rights risks. Our Community of Practice also provides a forum for Government consultation as well as opportunities for multi-stakeholder collaboration. Over 40 GCNA business members participate in the Community of Practice, including a cross-sectoral spread of some of Australia's largest listed and private companies.

In late March 2021, the GCNA will release two publications on grievance mechanisms for modern slavery to increase Australian businesses' awareness and understanding of effective grievance mechanisms that can address modern slavery in supply chains, and to equip businesses to establish and operate these mechanisms. This will support businesses to meet the requirements of the MSA which require reporting entities to describe their actions to address modern slavery risks, including remediation processes. The publications will be followed by three workshops to assist businesses with implementing grievance mechanisms. These publications are funded by the Australian Government through the *National Community Crime Prevention Program: Modern Slavery Grant Opportunity*.

Modern Slavery, including Forced Labour

Modern slavery practices, including forced labour, constitute serious crimes under Australian law,^{xii} and seriously violate a person's human rights and dignity.^{xiii} Globally, over 40 million people are estimated to live in conditions of modern slavery,^{xiv} including 16 million in private sector supply chains.^{xv} Of those in modern slavery, 24.9 million people are believed to be in situations of forced labour, including 16 million in the private sector in fields such as domestic work, construction and agriculture, 4.8 million persons in forced sexual exploitation, and four million in forced labour imposed by state authorities.^{xvi}

Despite there being no universally accepted definition of modern slavery, the term is commonly used to refer to exploitative practices including forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting for labour services, the worst forms of child labour, and forced marriage. The MSA is the first legislation in the world to define modern slavery.^{xvii} The GCNA recommends that further policy and legislative tools relating to exploitative practices continue to use this phrase rather than focusing on any one aspect of modern slavery unless it is necessary to do so to centre attention on one particular type of modern slavery.

Since the implementation of the MSA in 2019, business awareness in Australia has further strengthened, and been accompanied by growing expectations from external stakeholders such as civil society, workers' organisations, investors and financiers, and customers. Although there are significant challenges posed by complex global supply chains where visibility can be limited, many businesses now view modern slavery as a critical risk for the business in addition to the people it may impact.

Recommendation 1: Consultation around a broader import ban

The GCNA proposes that the Government holds consultations on whether to amend the Bill to prohibit the importation of any product produced or manufactured using modern slavery as defined in the MSA regardless of jurisdiction.

According to the US Department of Labor, there are 155 goods from 77 countries that have a high likelihood of being produced or manufactured using forced and/or child labour.^{xviii} This includes items like footwear, garments, tomato products, rubber gloves, electronics, fish, bricks, cotton and other products that are imported into Australia through both private sector and Government procurement activities.

Whilst the reported situation faced by the Uyghurs and other Muslim minorities in China, particularly in the Xinjiang Province, is of grave concern, our view is that any legislative instrument that bans goods produced or manufactured by modern slavery (as defined by the MSA) should account for similar issues across other jurisdictions globally. This approach would place Australia in alignment with Section 307 of the US *Tariff Act 1930* which "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."^{xix}

An Act that does not focus on one region will also assist the Government in more holistically upholding its duty to protect human rights as outlined in the UNGPs.^{xx} The UNGPs are the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and the best practice framework for governments and businesses to follow to implement business respect for human rights. The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011, with the Australian Government co-sponsoring the resolution. Pillar One of the UNGPs provides that States:

- *Must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication; and*
- *Should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

As part of this expectation, the UNGPs highlight that there "are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation." Clear and practical legislation on human rights for business can assist business with understanding what is expected of them and can help them to subsequently cascade these expectations through their business relationships, including by being able to explain to business partners that they are bound by legislation requiring them to take action to reduce their risks.

In addition, and as related to the amendments to the Bill, in meeting their duty to protect, States should:

- *Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
- *Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- *Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
- *Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

However, while a broader import ban may help the Government to meet its duty to protect human rights, we also recognise that many businesses (both large and SMEs) will find it challenging to meet the requirements of an import ban due to the complexity of supply chains and limited visibility beyond tier one level. As such, businesses would need comprehensive support from Government to comply with the ban. Accordingly, in order for any import ban framework to be practicable, effective and enforceable, extensive consultation would be required with business and civil society. We recommend that this is achieved in a similar way to how consultations undertaken for the Modern Slavery Act (including a Government discussion paper outlining details of a proposed model).

Recommendation 2: Guidance for Business

The GCNA remains strongly of the view that modern slavery risk management should be situated within a broader human rights framework in line with the UNGPs. To that end, it will be important that the Government continue to use terms such as *due diligence* and *remediation processes* (as is the case in the *Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities*^{xxi}) in guidance associated with modern slavery and human rights and define these terms in a manner that is consistent with the UNGPs. This will ensure consistency, avoid confusion and encourage a more holistic approach to modern slavery risk management.

The Government should consider producing complementary, yet separate, guidance to the *Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities*^{xxii} which provides clear and practical guidance for all businesses (both large and SMEs) to assist them with identifying and managing issues associated with modern slavery (as defined by the MSA). This new Guidance should align with the UNGPs, including the State's duty to protect human rights and business' responsibility to respect human rights. In addition, the Government might also consider expanding the *Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities*^{xxiii} to support this recommendation and/or developing further guidance in the future that assists business with understanding broader human rights risks.

Australian businesses active in this area are increasingly using the UNGPs as their operating framework to identify and manage their involvement in adverse human rights impacts including those relating to modern slavery. Consistency between the UNGPs and any amendments to the Bill will help to avoid confusion and to situate progress around prevention and remediation within the broader human rights framework, ultimately driving better performance around all internationally recognised human rights.

Any guidance that is developed should be prepared by the Government in consultation with and input from business, civil society and workers' organisations, and other stakeholders. Areas for guidance may include:

- What constitutes modern slavery (as outlined in the MSA), so that companies understand what they are looking for.
- Helping companies to identify red flags, including providing tools to assist them with understanding what products and services and jurisdictions are at most risk of modern slavery.
- Explaining how modern slavery fits into the broader human rights risk management framework with reference to core international standards including the UNGPs.
- Good practice examples around due diligence and remediation processes relating to conduct at home and abroad.
- Good practice examples of multi-stakeholder partnerships to manage modern slavery in the context of human rights risks and to reduce the preconditions for modern slavery.
- Direction that helps business navigate an approach where there are instances of state sponsored harm or weak governance that increases the risk of modern slavery.
- Explanations and good practice examples of what business can do to identify, prevent and address involvement in modern slavery throughout the whole value chain, including downstream and upstream (i.e. suppliers and customers).

Recommendation 3: Review of the Modern Slavery Act 2018 (Cth)

A review of the MSA is scheduled for 2022. The GCNA recommends that this review includes consideration for the recommendations made by the ALRC in their Corporate Criminal Responsibility Report (ALRC Report 136),^{xxiv} particularly those outlined in Recommendation 19.

Recommendation 19 includes the Government considering the application of a failure to prevent offence in the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019 to other Commonwealth offences that might arise in the context of transnational business including, slavery and slavery-like offences. The Australian Parliament is expected to debate the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019 this year.^{xxv} The proposed amendment includes an offence for failure to prevent bribery and will require that organisations have adequate procedures in place to avoid liability. This is similar to the UK which has already enacted a failure to prevent offence relating to foreign bribery and tax evasion and is in discussions about a duty to prevent human rights violations.

According to the ALRC, this would encourage businesses to take “genuine steps to prevent modern slavery in their supply chains in order to have access to a reasonable measures defence, should the offence be committed by an associate acting for the benefit of the corporation”.^{xxvi} This is aligned with the State duty to protect as outlined in the UNGPs.

The ALRC further considers that the Government should investigate the possibility of a mHRDD regime which would apply broadly to all internationally-recognised human rights.^{xxvii} The ALRC has suggested this regime could involve civil penalties for non-compliance. (The GCNA notes that a mandatory due diligence regime could also apply to internationally-recognised environmental rights.)

In April 2020, the European Commissioner for Justice, Didier Reynders, announced that the European Commission will be introducing rules for mandatory corporate environmental and human rights due diligence in 2021.^{xxviii} Subsequently, on 10 March 2021, the majority of Members of the European Parliament voted to go ahead with the proposed legislation that would require companies to conduct due

diligence throughout their supply chain.^{xxxix} This legislation is still being development, however it is anticipated that it will require companies to identify, address and remedy their impact on human rights and the environment throughout their value chain, and will apply to companies (including SMEs) operating in the European Union (“EU”) (including those from outside the EU).^{xxx} Proposed consequences for non-compliance include sanctions. The legislation is also likely to see a ban on the importation of products linked to severe human rights violations (including forced and child labour).

In the Netherlands four political parties have submitted a bill to the Dutch Parliament on responsible and sustainable business conduct that would impose a duty of care on all companies in the Netherlands to address human rights violations and environmental damage in their supply chain.^{xxxi} Under the Bill, businesses with more than 250 employees would be required to implement due diligence in line with the OECD Guidelines for Multinational Enterprises^{xxxii} (which mirror the UNGPs), with sanctions and civil and criminal charges associated with the Bill. If it comes into force, it will replace the Netherlands’s Child Labour Due Diligence Act 2019,^{xxxiii} which requires corporations to identify child labour risks in their supply chains, and develop and implement procedures to address those risks.

In March 2021, the German Parliament passed a draft Bill for the German Due Diligence Act which aims to require certain companies to undertake mandatory human rights due diligence based on the UNGPs across their supply chain.^{xxxiv} As with the Netherlands and the EU, the proposed German Bill includes enforcement action for non-compliance. This proposed Bill is applicable to businesses with more 3,000 employees and includes the requirement to take remedial action if legal violations are found, to establish a grievance mechanism and adopt a corporate human rights strategy.

France^{xxxv} has already introduced a mandatory human rights due diligence regime and, other countries including Switzerland, Finland, Norway, Denmark and Austria are also considering introducing similar mandatory human rights due diligence regimes.^{xxxvi} These examples highlight the importance of broader human rights risk management across the entire value of chain of a company.

The GCNA notes that given these global developments and the impacts that these will have on businesses globally, Australian businesses will expect the Commonwealth Government to provide more certainty on its position on these matters. A regime that is consistent with EU developments would assist with providing Australian businesses with more certainty regarding expectations and potentially also enable them to better compete on the world stage, particularly if other stakeholders begin to expect conduct consistent with the EU legislation. It would also help the Government implement its State duty to protect with due consideration for it being a proactive duty that should be filled by a range of approaches, including support for voluntary guidelines and commitments (like those outlined by the Ten Principles of the UN Global Compact), non-judicial compliant mechanisms (like the Australian National Contact Point^{xxxvii}), statutory disclosure (like the MSA) and action regimes and other mechanisms such as civil or criminal liability for misconduct and direct criminal liability as appropriate and developed in consultation with all relevant stakeholders.

Recommendation 4: List of Goods associated with Forced Labour

Australian business would benefit from being able to access an annual list of products and their associated jurisdictions that are considered to be of at high risk of association with modern slavery including forced labour by the Government. This list would be similar to that produced by the US Labor Department^{xxxviii} on forced labour which not only raises public awareness, but also promotes efforts to eliminate risks and serves as a mechanism to allow businesses to coordinate and collaborate in their efforts to eliminate forced labour and modern slavery more broadly. The GCNA recognises that there can be limitations to these lists

and that they are dependent on sufficient, accurate and consistent information from a range of sources being provided about wide range of goods.

For instance, the production of such a list is likely to require additional resources and engagement more broadly with academia, civil society (both in Australia and overseas), victims/survivors of forced labour, workers organisations and businesses. However, the list would provide a valuable tool for business (and Government Departments) to undertake risks assessments and due diligence in their supply chain.

Recommendation 5: Ratify the ILO Protocol of 2014 to the Forced Labour Convention

The ILO Protocol of 2014 to the Forced Labour Convention, 1930 (P029):^{xxxix}

...establishes the obligations to prevent forced labour, protect victims and provide them with access to remedy, and emphasises the link between forced labour and trafficking in persons. The Protocol also reaffirms the importance of prosecuting the perpetrators of forced labour and ending their impunity. The Recommendation provides orientations and guidelines to implement these obligations.

The Protocol and associated recommendations complement and strengthen existing international law, including the UN Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 and the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children.

To date, 45 countries have ratified and placed the Protocol into force, whilst there are another four countries that have adopted the Protocol and will be putting it into force over the coming twelve months.^{xi} Countries that have adopted the Protocol include the UK, New Zealand, the Netherlands, France, Germany, Canada and Thailand. As outlined in the Universal Periodic Review, National Report of Australia,^{xii} we recognise that the Australian Government is working towards ratifying the Protocol and has already introduced measures, such as the MSA and the National Action Plan to Combat Modern Slavery,^{xiii} to support the ratification process. We also understand that the Federal Government has encouraged all State governments to bring their domestic law into compliance with the Protocol so that Australia can ratify the instrument. The GCNA hopes that this process can proceed as quickly as possible. This will strengthen commitment to combatting forced labour, whilst also aligning to the MSA and international standards on human rights.

Closing

The GCNA recognises that the Government cannot combat issues of modern slavery alone. Businesses of all sizes and from all sectors can take specific actions that contribute to eliminating modern slavery both within their own operations and their value chains. This can include implementing due diligence procedures that cover the whole value chain; developing effective grievance mechanisms; complying with industry codes, local laws and international standards; and being involved in multi-stakeholder initiatives, such as the UN Global Compact's Decent Work in Global Supply Chains Action Platform,^{xliii} and/or the GCNA's Modern Slavery Community of Practice.

It is important that Australia has a smart mix of measures that includes voluntary guidelines and commitments (like those outlined by the Ten Principles of the UN Global Compact), non-judicial compliant

mechanisms (like the Australian National Contact Point^{xliiv}), statutory disclosure (like the MSA) and action regimes and other mechanisms such as civil or criminal liability for misconduct and direct criminal liability as appropriate and developed in consultation with all relevant stakeholders. This proposed Bill provides an opportunity for dialogue to discuss further legislative developments that support all parties to work collaboratively, and at complementary purposes, to ensure respect for human rights, including freedom from slavery, both within a business's operations and supply chain.

Thank you again for giving us the opportunity to provide a submission to the Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020.

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- ^{xliv} The Australian National Contact Point (AusNCP) is "responsible for promoting the *OECD Guidelines for Multinational Enterprises* (an international standard on responsible business conduct) and providing conciliation services to resolve complaints against multinational enterprises". Available at: <https://ausncp.gov.au/>