

## Written submission by Anti-Slavery International and the CORE Coalition (XIN0063)

**Anti-Slavery International.** Founded in 1839, we are the oldest international human rights organisation in the world. We draw on our experience to work to eliminate all forms of slavery and slavery like practices throughout the world. We work in partnership with our supporters, governments, businesses, like-minded organisations and global movements to bring about long-term, sustainable change.

The **CORE Coalition** is the UK's long-standing civil society network with a membership spanning NGOs, trade unions and law firms. We work to ensure greater corporate accountability in the UK, and access to justice for people and communities around the world who suffer from corporate abuses of human rights and the environment.

This submission intends to provide information to the Foreign Affairs Committee on the below key issues:

- *What mechanisms can the Government use to discourage private sector companies from contributing to human rights abuses?*
- *How can UK-linked businesses with operations in Xinjiang be made accountable for any involvement in human rights abuses?*

### **Links between UK apparel supply chains and Uyghur forced labour**

1. Evidence has shown that the breadth of the forced labour policy in the Xinjiang Uyghur Autonomous Region (Uyghur Region) creates significant risk of the presence of forced labour at virtually any workplace, industrial or agricultural, in the Uyghur Region.<sup>1</sup> In the garment industry, evidence has shown that forced labour is present in all stages of the production process. This risk has been recognised by industry bodies such as the Fair Labor Association.<sup>2</sup>
2. The fact that 84% percent of Chinese cotton comes from the Uyghur Region<sup>3</sup> means that the yarn, textiles and garments made with Chinese cotton are at extraordinarily high risk of being tainted with forced and prison labour, whether manufactured in China or anywhere else in the world. In the world, China is one of the two largest cotton producers, the largest producer and exporter of yarn, and the largest producer and exporter of textiles and apparel.<sup>4</sup> The Chinese government plans on doubling manufacturing capacity in the Uyghur Region by 2025, with apparel and textiles forming a key element of that plan.<sup>5</sup>
3. In addition, the Government of China is transporting Uyghurs and other Turkic and Muslim-majority peoples to other parts of China, where they are working in factories under conditions that strongly indicate forced labour.<sup>6</sup>
4. With the scale of the risk, virtually the entire UK textile and apparel industry faces the risk of being linked to the abuses of Uyghurs and other Turkic and Muslim-majority peoples in one or more ways as described below:
  - Direct relationships with suppliers and sub-suppliers in the Uyghur Region.
  - The sourcing of inputs, including cotton, yarn and fabric, as well as other materials, from the Uyghur Region.

- Relationships with Chinese companies, which have subsidiaries or operations located in the Uyghur Region, which have accepted Chinese government subsidies and/or employed workers provided by the government. A number of companies alleged to be within this category are key suppliers to the UK apparel industry. For example, in July 2020 the US Department of Commerce placed a subsidiary of the company Esquel Group in the Uyghur Region – Changji Esquel Textile Co. Ltd. – under sanctions through the Entity List, for “*engaging in activities contrary to the foreign policy interests of the United States through the practice of forced labor involving members of Muslim minority groups in the XUAR*”.<sup>7</sup> Esquel Group has a subsidiary in the UK,<sup>8</sup> and is a supplier to a number of other companies operating in the UK.<sup>9</sup> It has denied all accusations of the use of forced labour.<sup>10</sup>
  - Relationships with suppliers and sub-suppliers, which have employed, at a workplace outside the Uyghur Region, workers from the Uyghur Region who were sent by the government.
5. The scale of the repression and the level of state control in the Uyghur Region means that it is impossible for any company to operate in the Uyghur Region in accordance with the UN Guiding Principles on Business and Human Rights.<sup>11</sup> It is impossible for companies to conduct third-party audits or due diligence to verify the absence of forced labour, prevent or mitigate forced labour, or remediate forced labour. This is a matter of consensus across many in the industry and auditing firms, as well as Uyghur representative groups, and human rights researchers.
  6. Brands and retailers must take urgent action to identify and end *all* links to the Uyghur Region in their supply chain, as detailed above. Current steps by the majority of the industry have been piecemeal. Comprehensive action addressing the entire supply chain is required.

### **The failure of existing law and policy to hold companies to account for human rights abuses in the Uyghur Region**

7. **Current law and policy have proved wholly inadequate to prevent human rights abuses in the Uyghur region.** Currently, UK companies and companies operating in the UK have no legal responsibility to take action to prevent human rights abuses in their supply chains. They are not legally obliged to undertake due diligence to ensure goods in their supply chain, including those they import into the UK, are not the products of forced labour.
8. **The Transparency in Supply Chains Provision (TISC) of the UK’s Modern Slavery Act is insufficient on its own to ensure decent work and prevent forced labour.** The TISC provision requires companies only to disclose the steps they are taking to prevent slavery in their supply chains but does not oblige them to take any steps to mitigate it. While some companies have used transparency measures as an opportunity to advance efforts to address modern slavery, many have not.
9. **This disparity in business approaches to tackling human rights abuse has been exposed in corporate responses to the Uyghur issue.** Some companies have taken prompt action to address the risks in their supply chains by ceasing relationships as appropriate and conducting other due diligence measures, however the majority of the apparel and textile industry has thus far failed to recognise the severity of the issue, and continues to maintain

financial relationships with Chinese companies which have been identified by credible research to be directly or indirectly supporting the Chinese government's system of forced labour.

### **Accountability for involvement in human rights abuses**

10. In reference specifically to the Uyghur Region, and the need to hold UK-linked businesses with operations in Xinjiang accountable for benefitting from forced labour and other abuses of Uyghurs, we welcome that the Global Human Rights Sanctions Regulations 2020 include an individual's 'right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour'. However, we note that the UK Government has yet to utilise this to impose sanctions on individuals or corporations directly implicated in the persecution of Uyghurs and other Turkic and Muslim-majority peoples in the Uyghur Region. Such punitive tools should be employed in parallel to measures addressing the responsibility of UK brands and retailers to take action to prevent harm in their supply chains as described below.
11. There is an urgent need for legislation that goes beyond reporting to ensure that companies identify and prevent forced labour in their supply chains. **We urge the introduction of a corporate duty to prevent negative human rights and environmental abuses**, building on a 2017 recommendation for such a law from the UK's Joint Committee on Human Rights, **with effective liability established** (see para. 14). In contrast to reporting legislation such as the TISC provision, a corporate duty to prevent abuses would *mandate* business to address risks and impacts in their supply chains, in line with the **UN Guiding Principles on Business and Human Rights (UNGPs)**<sup>12</sup>, which the UK has committed to implement.

### **Our recommendation for a corporate duty to prevent negative human rights and environmental abuses**

12. In line with the UNGPs, a corporate duty to prevent abuses would *mandate* business to undertake due diligence "in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts," including "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed".
13. Tangibly, for Uyghur forced labour, mandatory human rights due diligence would entail companies identifying the risks of being linked to Uyghur forced labour through supply chain mapping and traceability, employing all reasonable measures to do so, and **ceasing relationships where such links are found and other prevention, mitigation and remediation measures are not possible** - in line with the UNGPs.
14. The proposed law would **include corporate liability** for harms directly linked to products, services or operations through a business relationship - unless companies can prove they took all reasonable measures to prevent the harm - and ensure effective access to remedy for victims, including adequate support mechanisms.
15. The law should **extend to the financial sector and public sector**. We note the high risk that UK PPE used during the Covid-19 pandemic was manufactured through the forced labour of

Uyghurs. The New York Times<sup>13</sup> found evidence of several factories across China which reportedly use Uyghur labour, manufacturing medical grade protective equipment for global export – some of which ended up in the United States and other countries. Such a shipment was traced to a medical supply company in the U.S. state of Georgia.

16. The law that we are proposing should be modelled on the civil and criminal duties to prevent tax evasion and bribery found in the Criminal Finances Act 2017 and the **Bribery Act 2010**. A 2020 study by the British Institute of International and Comparative Law confirms that this is legally feasible.<sup>14</sup>

### **Support for due diligence legislation**

14. There is a growing consensus on the need for new laws to address supply chain injustices across business, the public and policymakers.
15. Due diligence legislation is already in place or under development in several European states, including the Netherlands, France, Switzerland, Germany and Finland. **The EU has committed to introducing mandatory human rights and environmental due diligence legislation**, including legal liability, consolidating these advances. The EU's legislative proposal is expected to apply to all companies operating in the single market - which would include UK businesses. A consultation on the law is currently open. Failure on the part of the UK to keep step with the EU on this issue would put UK business at a competitive disadvantage.
16. A survey by the British Institute of International and Comparative Law indicates that **most UK businesses support new legislation** due to anticipated benefits such as providing legal certainty and levelling the playing field - holding competitors and suppliers to the same standards. This support mirrors business sentiment expressed across Europe.<sup>15</sup> Large businesses, such as Primark<sup>16</sup>, H&M<sup>17</sup>, Mondelez<sup>18</sup> have publicly expressed their support for mandatory human rights and environmental legislation. A group of 105 international investors representing US\$5 trillion in assets under management has also called on governments to introduce due diligence legislation.<sup>19</sup>
17. **Public opinion supports new rules to hold companies accountable.** Polling by Think Tank 'Onward' in 2019 found that two thirds of people across all ages support punishing companies<sup>20</sup> that do not act responsibly (p.72, table 9). Other polling has found that most younger Leave voters<sup>21</sup> want big business regulation to increase (45%) or stay the same (7%) vs a minority (7%) who want less, and that two-thirds<sup>22</sup> of people want the government to intervene to create a fairer economy after Covid-19.
18. The **UK's Global Resource Initiative Taskforce**, a taskforce of leaders from business and environmental organisations - sponsored by DEFRA, BEIS and FCDO - has urged the UK government to introduce a mandatory due diligence obligation covering both human rights and environmental risks and impacts. The GRI recommends to initially focus on forests and land conversion, before extending to wider impacts. A 2017 report from the **Joint Committee on Human Rights** also recommended that "the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses...[which] would require all companies to put in place effective human rights due diligence processes [...] both for their subsidiaries and across their whole supply chain.

## Complementary measures

19. In addition to the introduction of mandatory due diligence legislation, the UK Government must adopt a **smart mix of legislative and policy measures**<sup>23</sup> to discourage private sector companies from contributing to human rights abuses.
20. Specifically, to address the linkages between UK apparel supply chains and Uyghur forced labour, the UK Government should:
  - a. **Request full disclosure from UK companies on any business relationships they hold with suppliers or sub-suppliers operating in or sourcing from the Uyghur Region**, including information on whether brands/retailers hold any business relationships, at any level and in any location – i.e. with the parent company or a facility within the company structure – with companies which have subsidiaries or operations located in the Uyghur Region that have allegedly accepted Chinese government subsidies and/or employed workers provided by the government, and **full disclosure on the steps taken by companies to identify and address the risk of being directly or indirectly linked to the forced labour of Uyghurs and other Turkic and Muslim-majority peoples in their supply chain**, including through mapping of supply chains.
  - b. **Issue guidance to the UK apparel industry on the ways by which the industry is exposed to the risk of being linked to the use of Uyghur forced labour**, based on the evidence provided in this submission which outlines the four ways by which the apparel and textile industry faces risk exposure.
  - c. **Provide support to the apparel and textile industry to urgently identify and use alternate sources of supply of cotton/yarn/fabrics.**
  - d. **Suspend the import of products produced in part or in whole in the Uyghur Region and consider seizing products already in the UK through the *Foreign Prison-Made Goods Act 1897*, by responding in full to the submission<sup>24</sup> filed by the Global Legal Action Network and World Uyghur Congress in April 2020 to HMRC.** The introduction of a regional ban is considered a priority in the case of the Uyghur Region, due to the scale of forced labour in the Region, and the impossibility to meaningfully prevent or mitigate forced labour risks on the ground through supplier engagement. In other contexts, such measures may not be appropriate.
  - e. Approaches to ensure that UK companies undertake appropriate due diligence and supply chain mapping to end all links with forced labour of Uyghurs and other Turkic and Muslim-majority peoples must be matched by **strong diplomatic measures and the use of foreign policy tools to put pressure on the Chinese government and Chinese companies to end abuses of Uyghurs and other Turkic and Muslim-majority peoples**, including sanctions on Chinese companies and individuals complicit in the persecution, supporting demands to the GOC to allow immediate, unfettered and meaningful access to the Uyghur Region for independent observers, and supporting calls for a human rights mechanism on China at the UN.
  - f. Take all relevant steps, as above, to ensure the UK public sector undertakes appropriate due diligence to ensure the exclusion of goods tainted with forced labour of Uyghurs and other Turkic and Muslim-majority peoples from public procurement.

21. These immediate measures must be taken as a precursor to longer term, broader measures to address forced labour in the supply chains of companies operating in the UK. **In addition to the introduction of mandatory due diligence legislation, as discussed above, the UK Government should:**

- a. Explore complementary options to require the UK companies to increase transparency and traceability of their supply chains. This should include work with other relevant UK Government departments to **initiate amendments to UK customs-related regulations to ensure that all companies that import goods into the UK disclose to UK customs authorities important information**, including the name and address of manufacturers of goods and products, and that **this information is publicly accessible.**
- b. Work with other relevant UK Government departments to **ensure UK trade and tariff measures complement the impact of mandatory human rights due diligence and ensure that international human rights and labour rights standards are upheld in UK trade agreements and trade.**
- c. This could include **steps to examine legislative options to introduce punitive tools to exclude products produced in whole or in part with forced labour from the UK market, learning the lessons from comparable legislation in the United States.**<sup>25</sup> If pursued, such measures should be developed to establish maximum positive impact for affected workers, ensuring that the measures are effective in promoting supplier engagement, providing prompt remediation, and preventing adverse consequences to workers. The rationale to levy such sanctions on any product must be transparent and disclosed, and the UK government must ensure that such measures are employed solely in the interests of upholding human rights. Further, **the introduction of such punitive measures should not replace, or distract from, the responsibility over the buyers of products to conduct due diligence to identify, prevent, mitigate and remediate risks as determined by the UN Guiding Principles on Business and Human Rights - as would be imposed by the introduction of mandatory human rights due diligence legislation** - working closely with suppliers to do so in contexts where this is credible and feasible, including to examine the impact of buyers' own purchasing practices on labour violations.

**30<sup>th</sup> October 2020**

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<sup>1</sup> Research organisations, including the Center for Strategic and International Studies, the Worker Rights Consortium, and the Australian Strategic Policy Institute, and investigative journalists from The Wall Street Journal, Associated Press, The New York Times, The Globe and Mail, ABC Australia, and other outlets have documented specific cases of forced labour in

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the apparel and textile industry in Aksu, Hotan, Korla, Yarkant, Artux, Huocheng, Kashgar, Ili, and other locations. Further, we note the recent business advisory from the U.S. Department of State, the U.S. Department of the Treasury, the U.S. Department of Commerce, and the U.S. Department of Homeland Security (DHS), which on July 1, 2020 alerted US companies of the high risk of forced labour, among other human rights violations, in their Xinjiang-linked supply chains. Retrieved from: <https://www.bis.doc.gov/index.php/documents/pdfs/2569-xinjiang-supply-chain-business-advisory-final-for-508/file>.

<sup>2</sup> Fair Labor Association. Forced Labor Risks in Xinjiang, China. 2020. Retrieved from: <https://www.fairlabor.org/report/forced-labor-risk-xinjiang-china-0>

<sup>3</sup> "Xinjiang continues to top China's cotton production," *China Daily*, January 2, 2020. <https://www.chinadaily.com.cn/a/202001/02/WS5e0da914a310cf3e355821d6.html>

<sup>4</sup> Amy Lehr, *Addressing Forced Labor in the Xinjiang Uyghur Autonomous Region: Toward a Shared Agenda*, July 2020, p3. Available online at <https://www.csis.org/analysis/addressing-forced-labor-xinjiang-uyghur-autonomous-region-toward-shared-agenda>

<sup>5</sup> Id.

<sup>6</sup> Australian Strategic Policy Institute. Uyghurs for sale. 2020. Retrieved from: <https://www.aspi.org.au/report/uyghurs-sale>

<sup>7</sup> Federal Register. Addition of Certain Entities to the Entity List; Revision of Existing Entries on the Entity List. 2020. Retrieved from: <https://www.federalregister.gov/documents/2020/07/22/2020-15827/addition-of-certain-entities-to-the-entity-list-revision-of-existing-entries-on-the-entity-list>

<sup>8</sup> Companies House. Esquel Apparel Limited. Retrieved from: <https://find-and-update.company-information.service.gov.uk/company/02205716>

<sup>9</sup> Financial Times. Western Clothing Brands Buy from Groups Facing US Xinjiang Sanctions. 2020. Retrieved from: <https://www.ft.com/content/8af6e15b-acf1-46de-9098-440f9ef3f137>

<sup>10</sup> Esquel Groyo. Correcting the Record About Esquel's Presence and Operations in Xinjiang. 2020. Retrieved from: <https://www.esquel.com/news/correcting-record-about-esquel%E2%80%99s-presence-and-operations-xinjiang>

<sup>11</sup> Nury Turkel, testimony presented at the Congressional-Executive Commission on China hearing, "Forced Labor, Mass Internment, and Social Control in Xinjiang," *Congressional-Executive Commission on China*, 17 October 2019, [https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Turkel%20CECC%20Oct%2017%20Testimony\\_%2010152019%20version.pdf](https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Turkel%20CECC%20Oct%2017%20Testimony_%2010152019%20version.pdf).

<sup>12</sup> United Nations Human Rights Office of the High Commissioner. Guiding Principles on Business and Human Rights. 2011. Retrieved from: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>13</sup> The New York Times. China Is Using Uighur Labor to Produce Face Masks. 2020. Retrieved from: <https://www.nytimes.com/2020/07/19/world/asia/china-mask-forced-labor.html>

<sup>14</sup> British Institute of International and Comparative Law. A UK Failure to prevent Mechanisms for Corporate Human Rights Harms. 2020. Retrieved from: <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

<sup>15</sup> Business and Human Rights Resource Centre. List of large businesses, associations & investors with public statements & endorsements in support of mandatory due diligence regulation. Retrieved from: <https://www.business-humanrights.org/en/latest-news/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation/>

<sup>16</sup> Business and Human Rights Resource Centre. Unsere Verantwortung in einer globalisierten Welt. Retrieved from: <https://www.business-humanrights.org/de/schwerpunkt-themen/mandatory-due-diligence/gesetz/>

<sup>17</sup> Business and Human Rights Resource Centre. List of large businesses, associations & investors with public statements & endorsements in support of mandatory due diligence regulation. Retrieved from: <https://www.business-humanrights.org/en/latest-news/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation/>

<sup>18</sup> VOICE Network. Cocoa companies call for human rights and environmental due diligence requirements. 2019. Retrieved from: <https://www.voicenetwork.eu/2019/12/cocoa-companies-call-for-human-rights-and-environmental-due-diligence-requirements/>

<sup>19</sup> Investor Alliance for Human Rights. Investors with US\$5 trillion call on governments to institute mandatory human rights due diligence measures for companies. 2020. Retrieved from: <https://investorsforhumanrights.org/news/investor-case-for-mhrdd>

<sup>20</sup> ONWARD. Onward research: Generation Why? 2019. Retrieved from: <https://www.ukonward.com/generationwhy/>

<sup>21</sup> Unchecked.uk. NEW POLL: Attitudes of Younger Leave Voters to Regulation and Deregulation. 2020. Retrieved from: <https://www.unchecked.uk/wp-content/uploads/2020/05/Attitudes-of-Younger-Leave-Voters-to-Regulation-and-Deregulation.pdf>

<sup>22</sup> The Guardian. People want a fairer, greener Britain after Covid, inquiry reveals. 2020. Retrieved from: <https://www.theguardian.com/society/2020/sep/16/people-want-a-fairer-greener-britain-after-covid-inquiry-reveals>

<sup>23</sup> See statement by John Ruggie, former UN Secretary-General's Special Representative for Business and Human Rights, that mandatory and voluntary measures are needed to ensure corporate respect of human rights <https://www.business-humanrights.org/en/latest-news/john-ruggie-affirms-smart-mix-includes-mandatory-measures-at-finnish-eu-presidency-conference/>

<sup>24</sup> Global Legal Action Network. UK & US: Halt Forced Prison Labour Goods from China. 2020. Retrieved from:

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<https://www.glanlaw.org/uyghur-forced-labour>

<sup>25</sup> Corporate Accountability Lab. Using the Master's Tools to Dismantle the Master's House: 307 Petitions as a Human Rights Tool. 2020. Retrieved from: <https://corpaccountabilitylab.org/calblog/2020/8/28/using-the-masters-tools-to-dismantle-the-masters-house-307-petitions-as-a-human-rights-tool>.