



**Note No.: GENEV-7205**

**Reference:** Canada's response to JAL CAN 6/2020

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the joint letter JAL CAN 6/2020 dated 12 March 2021. The Permanent Mission of Canada further has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 14 May 2021.

## **Responses by the Government of Canada to the Joint Communication from Special Procedures AL CAN 6/2020 of 12 March 2021**

1. *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

The Government of Canada takes Special Procedure communications very seriously, and expresses strong concern regarding the allegations in the joint communication. Canada has been in contact with the company in question to convey the allegations from Special Procedures, as well as providing information on Canada's approach, expectations, and guidance regarding responsible business conduct.

Canada is gravely concerned with evidence and reports of human rights violations in the People's Republic of China involving members of the Uyghur ethnic minority and other Muslim ethnic minorities within the Xinjiang Uyghur Autonomous Region (Xinjiang), including repressive surveillance, mass arbitrary detention, torture and mistreatment, forced labour and mass transfers of forced labourers from Xinjiang to provinces across China. These activities strongly run counter to China's international human rights obligations.

The Government of Canada has taken measures to respond to the situation in Xinjiang. On March 22, 2021, in coordination with the U.K., the U.S., and in solidarity with the EU, Canada announced new sanctions against four Chinese officials and one entity under the *Special Economic Measures (People's Republic of China) Regulations*, based on their participation in gross and systematic human rights violations in Xinjiang. The Regulations prohibit all persons in Canada and Canadians outside Canada from dealing in any property of listed persons, or providing financial or related services to them. Listed individuals are also rendered inadmissible to Canada under the Immigration and Refugee Protection Act.

The sanctioned entity is the Xinjiang Production and Construction Corps Public Security Bureau, which has been linked to credible allegations of forced labour. These sanctions prohibit Canadian firms and individuals from doing business with this entity.

Earlier this year, on January 12, 2021, Canada adopted a comprehensive approach to defending the rights of Uyghurs and other ethnic minorities, including by advancing measures to address the risk of goods produced from forced labour from any country of entering Canadian and global supply chains, and to protect Canadian businesses from becoming unknowingly complicit.

This approach includes the following measures:

### **Prohibition of imports of goods produced wholly or in part by forced labour**

Effective July 1<sup>st</sup>, 2020, the *Customs Tariff Act* and the Schedule to the Customs Tariff were amended to include a prohibition on the importation from any country of goods that are produced wholly or in part by forced labour. This legislation provides a basis for enforcement action against goods produced by forced labour originating in or transferred from Xinjiang. This amendment enshrines in legislation the labour obligations that Canada signed on to as part of Canada-United States-Mexico Agreement (CUSMA), which apply to imports from all countries.

### **Xinjiang Integrity Declaration for clients of Canada's Trade Commissioner Service**

Canadian companies that are either 1) sourcing directly or indirectly from Xinjiang or from entities relying on Uyghur labour, 2) established in Xinjiang, or 3) seeking to engage in the

Xinjiang market, are required to sign a declaration prior to receiving services or support from Canada's Trade Commissioner Service<sup>1</sup>, in addition to receiving a briefing about the risks of doing business in this market. By signing the declaration (see Annex 1), the company acknowledges that it is aware of the human rights situation in Xinjiang, abides by all relevant Canadian and international laws, respects human rights, and seeks to meet or exceed OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights. Further, by signing the declaration, companies affirm that they are not knowingly sourcing products or services from a supplier implicated in forced labour or other human rights violations and are committing to conduct due diligence on their suppliers in China to ensure there are no such linkages.

### **Business Advisory on doing business with Xinjiang-related entities**

The Government of Canada issued a business advisory (see Annex 2) to caution Canadian businesses about the risks of supply chain exposure to entities that engage in human rights abuses, including forced labour in Xinjiang and involving Uyghur ethnic minorities, with a view to helping Canadian firms to understand the legal and reputational risks posed to companies whose supply chains rely on doing business with entities possibly implicated in forced labour. While these risks are not limited to Xinjiang or China, the Canadian Government considers that risks are higher in Xinjiang given conclusive evidence of human rights violations.

### **Enhanced advice to Canadian businesses**

Canada's Trade Commissioner Service is working with partners and private sector stakeholders to assist clients by providing enhanced advice on due diligence and risk mitigation related to supply chains and forced labour. Since July 2020 new guidelines have been shared across the Trade Commissioner Service network regarding the specific risks that Canadian firms operating in and doing business with China should carefully consider.

### **Export controls**

In accordance with the *Export and Import Permits Act*, Canada will deny export permits for any goods or technology subject to export controls if it is determined that there is a substantial risk that the export would result in a serious violation of human rights or international human rights law, including serious acts of gender-based violence. Particular scrutiny will apply to exports of advanced Canadian technology and services that could be misused or diverted towards government surveillance, repression, arbitrary detention or forced labour, in light of the evolving situation in the Xinjiang Uyghur Autonomous region.

### **Increase Responsible Business Conduct awareness linked to Xinjiang**

Global Affairs Canada is convening discussions with businesses and nongovernmental organizations to raise awareness about the risks of doing business in Xinjiang, with a specific focus on ensuring the integrity of their supply-chain so they operate in accordance with relevant laws and ethical standards.

### **Study on forced labour and supply chain risks**

Global Affairs Canada is seeking a comprehensive third-party analysis of areas of exposure to forced labour involving Uyghurs. This analysis is intended to contribute to the body of knowledge on these issues, with a view to providing Canadian companies with further advice on the risks of doing business in the region, supporting deliberations and decision-making and helping Canadian organizations to act against human rights violations.

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<sup>1</sup> Canada's Trade Commissioner Service is the Government of Canada's trade and investment promotion office.

- 2. In regard to the above allegations, please highlight the steps and/or legal policy measures that your Excellency's Government has taken, or is considering, to ensure that business enterprises domiciled in its territory and/or jurisdiction, respect human rights throughout their operations and supply chains. This may, for example, include requiring such businesses to conduct effective human rights due diligence, in line with UN Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for how they address their impacts on human rights, including prohibition of forced labour, throughout their operations.*

The Government of Canada expects all Canadian companies operating in Canada and abroad, regardless of sector, to respect human rights, all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to work in a socially and environmentally responsible manner, in accordance with internationally recognized guidance. This expectation applies to Canadian companies sourcing their goods and services abroad as well.

Canada has two voluntary non-judicial dispute resolution mechanisms. Canada's National Contact Point for Responsible Business Conduct (NCP) was established in 2000 as part of our commitment to the OECD Guidelines for Multinational Enterprises. The NCP applies to all sectors, and a range of issues including human rights, employment, environment, disclosure and bribery.

The Canadian Ombudsperson for Responsible Enterprise (CORE) was established in 2019 to strengthen Canada's longstanding and extensive engagement in Responsible Business Conduct. The CORE demonstrates our commitment to human rights and inclusive trade. The CORE complements the NCP and focuses on allegations of human rights abuse in the mining, oil and gas and garment sectors.

Moreover, through its network of more than 1,000 Trade Commissioners at offices in Canada and at diplomatic and consular missions around the world, Canada actively promotes RBC best practices and provides advice on Responsible Business Conduct (RBC) to Canadian companies active abroad. Trade Commissioners work with Canadian businesses to help them grow through connecting them with international opportunities, funding and support programs. Global Affairs Canada provides RBC training to its Trade Commissioners that covers how to support Canadian companies to do business in a socially and environmentally responsible manner consistent with internationally recognized standards and practices. A company's track record on RBC is taken into consideration by Trade Commissioners prior to providing trade advocacy support. Canada's Trade Commissioner Service requires Canadian companies to sign an Integrity Declaration (distinct from the Xinjiang Integrity Declaration described above) when seeking certain types of services abroad, such as trade advocacy support. This attests that the Canadian company understands the Government of Canada's ethical expectations, has not been charged, convicted or sanctioned for bribery or corruption, and will not engage in such illegal activities. In June 2020 approximately 1,500 Integrity Declarations signed by Canadian companies were in force.

Finally, as of July 1, 2020, goods that are mined, manufactured or produced wholly or in part by forced labour are prohibited from entering Canada pursuant to tariff item No. 9897.00.00 of the *Customs Tariff*.

Employment and Social Development Canada (ESDC) is the Government of Canada's lead department for labour-related programs. The Canada Border Services Agency (CBSA) works closely with ESDC to identify goods that have been produced by forced labour entering Canada.

ESDC is researching relevant facts related to problematic supply chains and preparing reports signalling to the CBSA the likelihood that the goods were produced by forced labour. The CBSA may use this information to identify and intercept shipments containing goods that have been identified as suspected to have been produced by forced labour.

The CBSA's role is to apply the tariff prohibition when it has sufficient evidence to do so. Tariff classification determinations are made on a case-by-case basis for each specific importation intercepted, based on available supporting evidence and analysis. Shipments containing goods suspected of being produced by forced labour are detained at the border for inspection by a border services officer. If in the judgement of the officer the goods were produced by forced labour, the officer will apply the tariff classification under item No. 9897.00.00 and prohibit the goods from entering Canada.

- 3. Please indicate the measures taken by Canada to ensure that its public procurement of goods and services is only from business enterprises which have not caused, contributed to, or are directly linked to human rights abuses such as those alleged in the present letter.*

The Government of Canada is leveraging procurement practices to eliminate the use of child labour and forced labour from federal procurement supply chains.

In September 2018, the Government of Canada launched the Ethical Procurement of Apparel policy to ensure all apparel procurement contracts with the Government of Canada include an ethical procurement certification. This initiative requires apparel suppliers to certify that they, and their direct Canadian and foreign suppliers, comply with fundamental human and labour rights, including freedom from child labour, forced labour, discrimination and abuse, and access to fair wages and safe working conditions.

In addition, the Government of Canada is taking action under the National Strategy to Combat Human Trafficking (2019- 2024) to ensure that procurement supply chains are free from labour exploitation. As part of this National Strategy, the Government of Canada is updating the Code of Conduct for federal procurement to outline expectations for suppliers regarding human and labour rights. Furthermore, the Government of Canada recently awarded a contract to conduct a risk assessment of human trafficking, forced labour, and child labour in federal procurement supply chains. The findings of this assessment will help to inform further actions, using an evidence-based approach, to addressing these issues.

- 4. Please indicate the steps that Canada has taken or is considering to take, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses, including for overseas victims of serious human abuses such as those alleged in the present letter.*

Canada has a balanced approach to RBC, which commits to identifying and preventing problems before they escalate, as well as to offering effective, low cost and accessible dispute resolution. Canada has two complementary and voluntary mechanisms: Canada's National Contact Point for RBC (NCP), established in the year 2000 as part of our commitment to the

OECD Guidelines for Multinational Enterprises; and the Canadian Ombudsperson for Responsible Enterprises (CORE), announced in April 2019. Although voluntary, companies that do not collaborate in good faith with either dispute resolution mechanism may be denied official trade advocacy support and future Export Development Canada<sup>2</sup> financial support. Canada's dispute resolution mechanisms do not preclude pursuing recourse in other fora such as courts in host countries or in Canada, where appropriate.

5. *Please indicate the steps that Canada has taken, or is considering to take, to ensure that business enterprises domiciled in its territory and/or jurisdiction establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts they have caused or contributed to.*

Canada has two complementary and voluntary mechanisms: Canada's National Contact Point for RBC (NCP), established in the year 2000 as part of our commitment to the OECD Guidelines; and the Canadian Ombudsperson for Responsible Enterprises (CORE), announced in April 2019. Although voluntary, companies that do not collaborate in good faith with either dispute resolution mechanism may be denied trade advocacy support and future Export Development Canada financial support. Canada's dispute resolution mechanisms do not preclude pursuing recourse in other fora such as courts in host countries or in Canada, where appropriate.

While the NCP has been operational since 2000, the CORE opened to receive complaints of possible human rights abuses arising from the operations abroad of Canadian companies in mining, oil and gas, and garment sectors in March 2021.

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<sup>2</sup> Export Development Canada is Canada's export credit agency.

## Annex 1

### Integrity Declaration on Doing Business with Xinjiang Entities

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Effective July 1st, 2020, Canada's *Customs Tariff Act* and the Schedule to the Customs Tariff were amended to include a prohibition on the importation of goods produced wholly or in part by forced labour. The Government of Canada expects companies to take every step possible to ensure that their supply chains conform to Canadian law with respect to the prohibition on the import of forced labour.

The Government of Canada also expects Canadian companies active abroad to respect human rights, operate lawfully, and conduct their activities in a responsible manner consistent with international standards such as the *UN Guiding Principles for Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*.

Given known risks with respect to forced labour, Canadian companies active not only in China but also around the world should be particularly vigilant to ensure that they operate in accordance with Canadian law, and conform with OECD and UN standards. The Government of Canada is deeply concerned by reports and documentary evidence of the repression of Uyghurs and other ethnic minorities by Chinese authorities in the Xinjiang Uyghur Autonomous Region (XUAR). Evidence suggests that forced labour of Uyghurs and other ethnic minorities is taking place across China and tainting global supply chains in a variety of industries. For more information about the human rights situation in Xinjiang and the risks of doing business with Xinjiang-related entities, please click [Global Affairs Canada advisory on doing business with Xinjiang-related entities](#).

Canadian companies that are 1) sourcing directly or indirectly from Xinjiang or from entities relying on Uyghur labour, 2) established in Xinjiang, or 3) seeking to engage in the Xinjiang market, will be required to sign this *Integrity Declaration on Doing Business with Xinjiang Entities* prior to receiving services and support from the Trade Commissioner Service (TCS), beyond receiving a briefing of the risks of doing business in this market.

This attests that you, on behalf of your company, are aware of Canadian law with respect to the prohibition of forced labour, that you recognize the Government of Canada's expectations with respect to the OECD Guidelines and UN guiding principles, and that you are aware of the human rights situation in Xinjiang. By signing the Declaration, you also affirm that, to your knowledge, your company: abides by all relevant laws, respects human rights, and seeks to meet or exceed OECD Guidelines for Multinational Enterprises and the UN Guiding Principles; is not directly or indirectly sourcing products from Chinese entities implicated in forced labour or other human rights violations related to the XUAR; and commits to conduct due diligence on suppliers in China to ensure there are no such linkages. For information about the Declaration, please [contact a trade commissioner](#).

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1. (the "Company"), as represented herein by its duly authorized representative, hereby makes the following declaration on behalf of the Company and its Affiliates\*.

2. I am aware of the human rights situation in Xinjiang Uyghur Autonomous Region (XUAR) and the elevated risk that this poses, and understand that the TCS expects Canadian companies and their affiliates active in China to operate in a manner that respects human rights, including with respect to forced labour, all applicable laws, as well as to operate transparently and in a manner that seeks to meet or exceed international standards such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for *Business and Human Rights*. I understand that the TCS will not provide trade support to any Canadian company that is found

to be knowingly engaged in business conduct inconsistent with these standards with respect to the XUAR.

3. I have not knowingly sourced, directly or indirectly, products or services from a supplier implicated in forced labour or other human rights violations connected to the repression of Uyghurs and other ethnic minorities in the XUAR. We understand that any evidence that we have knowingly done so will be taken into account when the TCS considers whether to provide services.

5. This Declaration remains in effect for 5 years from the date it is signed. The company acknowledges that, during this period of validity, it has an ongoing obligation to report to the TCS any material changes to statements in this Declaration concerning its business practices pertaining to the XUAR.

6. The Company acknowledges that this completed Declaration does not constitute a commitment by the TCS to provide services. All services are provided at the discretion of the TCS.

\*"Affiliate" as defined by the *Canada Business Corporations Act*:

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

## Annex 2

### Global Affairs Canada advisory on doing business with Xinjiang-related entities

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#### Introduction

Global Affairs Canada and the Canadian Trade Commissioner Service have issued the following advisory to bring attention to human rights violations in China affecting Uyghurs and other ethnic minorities from the Xinjiang Uyghur Autonomous Region (XUAR) to help Canadian firms and stakeholders understand the legal and reputational risks posed to companies whose supply chains engage with entities possibly implicated in forced labour.

The Government of Canada is deeply concerned by reports and documentary evidence of repression of Uyghurs and other ethnic minorities by Chinese authorities in the XUAR on the basis of their religion and ethnicity under the pretext of countering “terrorism” and “religious extremism.” There are credible reports of human rights violations affecting Uyghurs and other ethnic minorities in the region, including mass arbitrary detention, forced mass arbitrary separation of children from their parents, suppression of religious and cultural practices, repressive targeting and surveillance measures, forced labour, forced sterilization, torture and other forms of mistreatment.

Evidence suggests that forced labour of Uyghurs and other ethnic minorities is taking place not only in Xinjiang, but across China. Reports indicate mass transfers of Uyghur labourers to factories across China where they are enrolled in forced labour programs that taint global supply chains in a variety of industries.

#### Responsible business conduct

Human rights violations in Xinjiang pose a number of risks that Canadian firms operating in and doing business with China should carefully consider.

As part of the implementation of the Canada-United States-Mexico Agreement (CUSMA), the *Customs Tariff Act* was amended on July 1, 2020, to prohibit the importation from all countries of goods produced, in whole or in part, by forced or compulsory labour. This prohibition applies to all goods, irrespective of their country of origin, and will be enforced by the Canadian Border Services Agency. The Government of Canada expects companies to take every step possible to ensure that their supply chains conform to Canadian law with respect to the prohibition on the import of goods produced by forced labour. It should be noted that Canadian companies and individuals that operate within CUSMA may also be subject to legislation related to human rights. In addition to legal risks, companies face reputational damage related to their supply chains if it is discovered that they are sourcing from entities that employ forced labour.

The Government of Canada expects Canadian companies active abroad, in any market or country, to respect human rights, operate lawfully, conduct their activities in a responsible manner and adopt voluntary best practices and internationally respected guidelines such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, including provisions on the elimination of forced labour or other abuses from their supply chains. Furthermore, Canada operates two voluntary dispute mechanisms: the National Contact Point and the Canadian Ombudsperson for Responsible Enterprise. Although voluntary, these dispute-settlement mechanisms are robust: not collaborating in good faith could result in a number of consequences, including breaching Canada’s *Export and Import Permit Act* (EIPA), the withdrawal of trade advocacy support, and jeopardizing future Export Development Canada financial support.

Although these risks are not limited to Xinjiang or China, the Government of Canada considers that Xinjiang-related entities pose a particular risk, given the reports and documentary evidence of repression of Uyghurs and other ethnic minorities by Chinese authorities.

### **Export controls**

Canada has one of the strongest export-control systems in the world and respect for human rights is enshrined in our export-control legislation. All permit applications for controlled items are reviewed under Canada's extensive risk-assessment framework, including the United Nations Arms Trade Treaty criteria, which are included in the EIPA.

Under the EIPA, controlled goods and technologies cannot be exported from Canada where there is a substantial risk that they could be used to commit or to facilitate serious violations of international humanitarian law, international human rights law, or serious acts of gender-based violence.

The Government of Canada evaluates every export permit application on a case-by-case basis to determine what the goods, services or technologies will be used for, where they will be used, and who will use them, among other factors.

### **Due diligence**

In light of the risks inherent in doing business with Xinjiang-related entities, thorough due diligence is essential. The Government of Canada urges business and individuals with links to Xinjiang or labourers from Xinjiang to closely examine their supply chains to ensure that their activities do not support repression, including, for example, the Chinese government's surveillance apparatus in Xinjiang, detention or internment facilities, or the use of forced labour. Similarly, the Government of Canada encourages companies and individuals to closely examine end-users of their products and services to ensure that they are not being used to support these activities.

When reviewing supply chains related to Xinjiang, businesses should closely examine potential indicators of forced labour and other abuses, including a lack of transparency on the origins of goods, internment terminology (e.g. education training centres, vocational schools, or boarding schools/kindergartens for children), Xinjiang government incentives and factory locations (e.g. near detention or internment facilities).

Canadian businesses and individuals operating in certain high-technology fields such as cameras, sensors and biometric devices may face greater risks when doing business in China as these products are being used to arbitrarily track Uyghurs and others in Xinjiang. Businesses in these fields should exercise the highest level of due diligence and caution with respect to end-users of their products and services.

Third-party audits are an important part of due diligence, but may not be a sufficient source of information. Businesses are therefore encouraged to work with the relevant industry groups and non-governmental organizations to prevent human rights abuses in their supply chains. Possible sources of information include [KnowTheChain](#), the [Responsible Sourcing Tool](#), the [Responsible Business Alliance](#) and the United States Department of Labor's [Comply Chain](#).

### **Further assistance**

If you need assistance or advice, please contact the [Trade Commissioner Service](#) in Ottawa or in regional offices in Canada, or abroad in embassies, high commissions or consulates.