

## CECC Annual Report 2021

### KEY FINDINGS

#### BUSINESS AND HUMAN RIGHTS

- Chinese and international businesses continue to be at risk of complicity in—and of profiting from—the Chinese government and Communist Party’s increased use of forced labor to suppress ethnic minorities in the Xinjiang Uyghur Autonomous Region (XUAR). As part of their efforts to dilute the population of Uyghurs in the XUAR, authorities systematically forced predominantly Muslim ethnic minority individuals, including Uyghurs and others, to engage in forced labor, both in the XUAR and in other parts of China. Reports of forced labor in cotton harvesting, solar panel production, and personal protective equipment production, as well as manufacturing in general, mean that the supply chains of many major brands may now be tainted with forced labor. Firms cannot rely on factory audits to ensure that their supply chains are free of forced labor in the XUAR; several due diligence organizations, labor experts, and U.S. Government agencies pointed to numerous problems with audits conducted in the XUAR.
- Chinese government restrictions on freedom of expression increased this past year, and companies were both targets and enablers of Chinese government censorship. During this reporting year, the Chinese messaging app **WeChat** censored content related to the COVID-19 pandemic; local governments and Party organizations hired private companies to help monitor and censor online public commentary; **Apple** removed apps from its app store that covered sensitive topics such as the Dalai Lama, Tiananmen Square, and Taiwan; and the Party and government threatened corporations with the loss of revenue or other forms of punishment if they voiced their support for addressing forced labor and other human rights violations in the XUAR. Following the backlash against Western brands who expressed concern over cotton produced in the XUAR, Chinese and international companies, including **Anta Sports, Asics, FILA, Kelme, Li Ning, Muji, and Peak**, publicly affirmed their continued use of cotton produced in the XUAR.
- Chinese companies continued to assist in the surveillance efforts of the government and Party. Reporting from IPVM and international media implicated Chinese companies such as **Alibaba, Bresee, Dahua, DeepGlint, Hikvision, Huawei, Kingsoft, Maiyuesoft, Megvii, SenseTime, Uniview, and Vikor** in the production of technology that can be used for profiling Uyghurs and targeting other marginalized communities in China. The Intercept found that **Oracle** provided surveillance technologies to public security bureaus throughout China.
- The lack of protection of Chinese workers under Chinese law and a lack of enforcement of the rights of Chinese workers allowed for continued abusive practices toward workers in the supply chains of Chinese and international companies. The Commission observed reports of the existence of International

Labour Organization (ILO) indicators of forced labor in the supply chains of **Aldi, Apple, BYD** (which sold masks to the State of California), **Chicco, Costco, Fisher-Price, Lidl, Tomy,** and **Wuling Motors.** While corporations continue to rely on audits to vet factories in their supply chains, reporting by the South China Morning Post and Sourcing Journal found that fraudulent practices continued to make factory audits in China unreliable.

## BUSINESS AND HUMAN RIGHTS

### *Findings*

- Chinese and international businesses continue to be at risk of complicity in—and of profiting from—the Chinese government and Communist Party’s increased use of forced labor to suppress ethnic minorities in the Xinjiang Uyghur Autonomous Region (XUAR). As part of their efforts to dilute the population of Uyghurs in the XUAR, authorities systematically forced predominantly Muslim ethnic minority individuals, including Uyghurs and others, to engage in forced labor, both in the XUAR and in other parts of China. Reports of forced labor in cotton harvesting, solar panel production, and personal protective equipment production, as well as manufacturing in general, mean that the supply chains of many major brands may now be tainted with forced labor. Firms cannot rely on factory audits to ensure that their supply chains are free of forced labor in the XUAR; several due diligence organizations, labor experts, and U.S. Government agencies pointed to numerous problems with audits conducted in the XUAR.
- Chinese government restrictions on freedom of expression increased this past year, and companies were both targets and enablers of Chinese government censorship. During this reporting year, the Chinese messaging app **WeChat** censored content related to the COVID-19 pandemic; local governments and Party organizations hired private companies to help monitor and censor online public commentary; **Apple** removed apps from its app store that covered sensitive topics such as the Dalai Lama, Tiananmen Square, and Taiwan; and the Party and government threatened corporations with the loss of revenue or other forms of punishment if they voiced their support for addressing forced labor and other human rights violations in the XUAR. Following the backlash against Western brands who expressed concern over cotton produced in the XUAR, Chinese and international companies, including **Anta Sports, Asics, FILA, Kelme, Li Ning, Muji, and Peak**, publicly affirmed their continued use of cotton produced in the XUAR.
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- The lack of protection of Chinese workers under Chinese law and a lack of enforcement of the rights of Chinese workers allowed for continued abusive practices toward workers in the supply chains of Chinese and international companies. The Commission observed reports of the existence of International Labour Organization (ILO) indicators of forced labor in the supply chains of **Aldi, Apple, BYD** (which sold masks to the

State of California), **Chicco, Costco, Fisher-Price, Lidl, Tomy, and Wuling Motors**. While corporations continue to rely on audits to vet factories in their supply chains, reporting by the South China Morning Post and Sourcing Journal found that fraudulent practices continued to make factory audits in China unreliable.

#### *Recommendations*

Members of the U.S. Congress and Administration officials are encouraged to:

- Support the Uyghur Forced Labor Prevention Act (S. 65/ H.R. 1155) prohibiting the import of goods made in whole or in part in the XUAR, or in factories that recruit workers from the XUAR. This will contribute to the leveling of the playing field for all U.S. companies so that they do not face a competitive disadvantage when extricating their supply chains from the XUAR.
- Work with other governments and legislatures to encourage import bans on products made in whole or in part in the XUAR, or in factories that recruit workers from the XUAR. Potential U.S. import bans will be more effective if other countries enact their own similar bans.
- Consider legislation requiring greater supply chain transparency so that forced labor and other abuses are not hidden by layers of subcontractors and suppliers. A significant number of brands have limited or no visibility beyond their first tier of supply chains, making it difficult to ensure that their supply chains are not exploiting forced labor. U.S. Customs and Border Protection (CBP) should clarify guidelines so that companies importing to the United States can provide adequate evidence that their goods are not produced in whole or in part with forced labor from the XUAR.
- Impose Global Magnitsky sanctions on both Chinese government officials carrying out severe human rights abuses in the XUAR and on the companies directly complicit in those abuses.
- CBP should examine the import of all goods made in whole or in part in the XUAR—or by workers from the XUAR—and determine whether such imports violate section 1307 of the Tariff Act of 1930 (19 U.S.C. § 1307). Congress should consider increasing CBP’s funding to bolster CBP’s ability to monitor imported goods for forced labor.
- Consider tasking the Congressional Research Service to review whether U.S. State or Federal pension funds invest in any of the Chinese or international firms implicated in crimes against humanity in the XUAR.
- Take the necessary steps to ensure that U.S. companies are not complicit in the Chinese government’s abuses of police power. The Administration and Members of Congress should take the necessary steps to prohibit the export of U.S. surveillance technologies and equipment to Chinese police, including biometric identification technologies enabled with artificial intelligence (AI) (e.g., facial, voice, or gait recognition). Congress and the Administration should pay particular attention to legal

loopholes that allow U.S. businesses to invest in and do business with Chinese companies sanctioned by the U.S. Government for human rights abuses.

- Enact legislation that would create incentives to expand solar technology supply chains in the United States, to grow this industry and eliminate reliance on products or inputs made with forced labor.

- Develop appropriate legislation and work with like-minded governments to invest in industries critical to the well-being of the United States and its allies. Such industries include solar panel production and medical equipment. Investing in the development of these industries outside of China may lessen American and global dependence on China, whose domestic industries can use human rights abuses to lower costs and increase market share.

- Members should engage U.S. companies on human rights issues in China such as forced labor in the XUAR, government surveillance, government censorship, and worker rights. Such engagement may include:

- Encouraging companies in their districts to cease doing business with firms in the XUAR until the Chinese government ends the arbitrary detention of predominantly Muslim ethnic minorities in mass internment camps, the mass imprisonment of ethnic minorities, and government-sponsored forced labor programs;

- Encouraging companies in their districts to change their approach to conducting due diligence in China, moving beyond codes of conduct and third-party factory audits, which have proven to be ineffective and even harmful; and

- Holding public hearings and private meetings with companies from their districts to raise awareness of the risk of complicity in human rights abuses and privacy violations that U.S. companies working in China face. Topics of meetings could include complicity in the use of artificial intelligence technology and surveillance equipment to monitor human rights advocates, religious believers, and ethnic minority groups in China, as well as corporate complicity in Chinese government censorship.

## BUSINESS AND HUMAN RIGHTS

### *Introduction*

Domestic and international businesses are directly complicit in or at risk of being complicit in human rights abuses committed by the Chinese government. These abuses include the severe repression of ethnic minority groups in the Xinjiang Uyghur Autonomous Region (XUAR), government surveillance of citizens without adequate privacy protections, government censorship, and lack of legal protection for Chinese workers. In particular, the scale and reach of forced labor among ethnic minority individuals in and from the XUAR potentially implicated global supply chains in crimes against humanity and genocide. The Chinese government may require companies to comply with domestic laws and regulations that infringe on internationally recognized rights such as the right to privacy<sup>1</sup> and freedom of expression.<sup>2</sup> In addition, the lack of enforced legal protection of Chinese workers as well as the lack of independent trade unions increased the risk of international companies being complicit in abuse of Chinese workers.<sup>3</sup> Companies complicit in such abuse are in violation of the UN Guiding Principles on Business and Human Rights, which state that businesses have a responsibility to respect human rights and should seek to avoid “contributing to adverse human rights impacts . . .”<sup>4</sup>

### *Corporate Involvement in Mass Atrocities in the XUAR*

Companies that do business in, source from, or work with companies in the XUAR are at great risk of complicity in the human rights abuses being committed in the region. The actions of the Chinese Communist Party and government in the XUAR constitute crimes against humanity<sup>5</sup> and genocide.<sup>6</sup> Experts have documented the arbitrary detention of up to 1.8 million individuals from predominantly Muslim ethnic minority groups since 2017 in a network of mass internment camps in the XUAR.<sup>7</sup> Authorities have subjected individuals from ethnic minority groups in the XUAR to extreme levels of surveillance; deprivation of freedom of movement and residence; destruction of religious sites; invasive population control methods such as forced sterilization, forced IUD insertion, and forced abortions; forced placement of children in state-run orphanages and boarding schools; and forced labor.<sup>8</sup>

Companies are particularly at risk of complicity in crimes against humanity and genocide in the XUAR if they do business with the Xinjiang Production and Construction Corps (XPCC), its affiliate companies, or any other companies that have close ties to the XPCC.<sup>9</sup> In its 2020 Annual Report, the Commission highlighted the ways in which the XPCC contributed to human rights abuses in the XUAR, including:

- Building and administering extrajudicial mass internment camps;
- Participating in intrusive homestay programs;
- Imprisoning large numbers of ethnic minorities in XPCC-administered detention facilities;<sup>10</sup> and
- Participating in poverty alleviation and “Xinjiang Aid” programs, both of which are associated with forced labor.<sup>11</sup>

Sayari, a corporate data provider and commercial intelligence platform, found that based on publicly available records, “[T]he XPCC has over 862,600 direct and indirect holdings, including minority, majority, control, and non-control positions through its different divisions. These companies touch 147 countries, including the United States . . .”<sup>12</sup> [For more information on human rights violations in the XUAR, see Section IV—Xinjiang.]

#### STATE-SPONSORED FORCED LABOR IN THE XUAR

Authorities continued to systematically force predominantly Muslim ethnic minorities, including Uyghurs and others, to engage in forced labor—both in the XUAR and in other parts of China—as part of broader efforts to carry out ethnic and religious suppression.<sup>13</sup> In addition to using forced labor in mass internment camps,<sup>14</sup> the Chinese government has implemented several policies that are connected with forced labor. These policies include:

- **Poverty Alleviation Programs.** Chinese government poverty alleviation programs known as “labor transfers” have moved large numbers of ethnic minorities into forced labor in factories and cotton production;<sup>15</sup>
- **Subsidies.** The Chinese government provided subsidies to incentivize companies to open factories near mass internment camps as well as subsidies to companies for each individual ethnic minority worker forced to labor in factories in the XUAR;<sup>16</sup> and
- **Investment and Recruitment Through Xinjiang Aid.** The “Xinjiang Aid” program encourages regional governments and companies in other parts of China, through “financial subsidies and political inducements,” to invest in factories in the XUAR and to recruit ethnic minority workers from the XUAR to work in factories in the XUAR and in other parts of China.<sup>17</sup>

Observers found evidence of potential forced labor among ethnic minorities from the XUAR taking place both inside and outside the XUAR, thus directly or potentially implicating the supply chains of industries and products including:

- Construction;<sup>18</sup>
- Cotton and cotton products;<sup>19</sup>
- Electronics;<sup>20</sup>
- Food processing;<sup>21</sup>
- Gloves;<sup>22</sup>
- Masks (personal protective equipment);<sup>23</sup>
- Solar panels (production materials including metallurgical-grade silicon, polysilicon, ingots, wafers, cells, and modules);<sup>24</sup> and
- Tomato products.<sup>25</sup>

Reports continued to potentially link the supply chains of international corporations to forced labor in the XUAR,<sup>26</sup> and products made with forced labor from the XUAR continued to enter the United States in contravention of U.S. law.<sup>27</sup> Labor experts, rights groups, UN human rights experts, U.S. Government agencies, and social compliance audit firms continued to warn companies against sourcing from the XUAR due to the likelihood of complicity in

forced labor and other rights violations taking place in the XUAR.<sup>28</sup>

A June 2021 South China Morning Post report found that U.S. mutual fund provider **Vanguard** invested in companies based in the XUAR—including companies listed in a Vanguard environmental, social, and corporate governance (ESG) fund that considers ethical business practices as a criterion for investment.<sup>29</sup> One of the XUAR-based companies in the Vanguard ESG fund reportedly listed involvement in “ideological re-education of transferred workers” and “vocational training” as part of labor transfer programs.<sup>30</sup> [For more information on how government-sponsored forced labor violates international standards prohibiting human trafficking and forced labor, see Section II—Human Trafficking. For more information on government-sponsored forced labor in the XUAR, see Section IV—Xinjiang.]

#### FIRMS, AUDITS, AND COMPLICITY IN FORCED LABOR IN THE XUAR

Firms cannot rely on factory audits to ensure that their supply chains are free of forced labor in the XUAR.<sup>31</sup> When sourcing goods alleged to be made in whole or in part by forced labor, international brands often point to their use of audits to ensure compliance with corporate codes of conduct prohibiting forced labor.<sup>32</sup> Several due diligence organizations, labor experts, and U.S. Government agencies, however, pointed to numerous problems with audits conducted in the XUAR.<sup>33</sup> A September 2020 Wall Street Journal (WSJ) report said that auditors have been criticized for “serving corporate interests, rather than holding companies accountable.”<sup>34</sup> Furthermore, the WSJ report found that Chinese authorities have detained auditors while they conducted due diligence.<sup>35</sup> A State Department business advisory warned that in the course of conducting due diligence, auditors have been “detained, threatened, harassed, and subjected to constant surveillance.”<sup>36</sup> Scott Nova, executive director of Worker Rights Consortium, warned that auditing also puts an unfair burden on workers: “Telling the truth to an auditor would mean accusing the Chinese government of lying . . . [no] worker can be expected to take that risk.”<sup>37</sup>

According to the WSJ report, because of difficulties including challenges detecting forced labor in the XUAR, five auditing organizations said they would not “provide labor-audit or inspection services” in the XUAR.<sup>38</sup> In October 2020, the social compliance group Better Cotton Initiative (BCI) announced that it had ceased providing audits and certifications for cotton farms in the XUAR because of an “untenable operating environment.”<sup>39</sup> BCI made the decision in part because of restricted access to the XUAR as well as the “risk that poor, rural communities would be coerced into employment linked to [poverty alleviation programs].”<sup>40</sup> In a December 2020 statement, the Fair Labor Association (FLA), a non-profit due diligence organization based in Washington, D.C., announced that “[g]iven the high risk of forced labor, the overwhelming evidence of human rights abuses, and the multiple layers of government sanctions, the FLA is prohibiting sourcing and production (including direct and indirect sourcing of raw materials, inputs, or finished products) from Xinjiang.”<sup>41</sup>



*Commercial Firms' Role in Government Data Collection and Surveillance Across China*

Chinese law allows the government to collect individuals' personal data from companies without adequate protection for the internationally recognized right to privacy.<sup>42</sup> For example, the PRC Cybersecurity Law requires companies to provide technical support to authorities conducting criminal investigations or "protecting state security."<sup>43</sup> While the law does not specify what such technical support entails,<sup>44</sup> in the past Chinese companies have processed bulk data to assist China's intelligence services.<sup>45</sup> The PRC National Intelligence Law similarly requires entities operating in China—including companies—to provide support and assistance to authorities engaged in "intelligence work," without defining what the government considers "intelligence work."<sup>46</sup>

Reporting from technology research and analysis firm IPVM and international media found that Chinese companies created or helped create surveillance technology that can be used for profiling Uyghurs and targeting other marginalized communities in China. Camera manufacturers **Dahua**,<sup>47</sup> **Hikvision**, and **Uniview**, as well as cloud providers **Alibaba** and **Kingsoft**, offered surveillance technology to identify Uyghurs.<sup>48</sup> The Chinese technology company **Huawei** has reportedly worked with **Megvii** to create a system that successfully passed tests such as a "Uyghur Alarm" and the ability to distinguish ethnicity.<sup>49</sup> Huawei has also reportedly partnered with firms such as **DeepGlint**, **Bresee**, and **Maiyuesoft** on ethnicity identification technology, as well as with companies like **iFlytek** on voice recognition software; **SenseTime** on facial recognition technology used to target Chinese petitioners; and **Vikor** on crowd-detecting software that can alert authorities to possible protests.<sup>50</sup>

American firms continue to do business with Chinese companies involved in such surveillance. For example, **Qualcomm Ventures**, **IDG Capital**, **Silver Lake**, **Tiger Global**, and **Fidelity International** all continue to invest in **SenseTime**, despite the fact that the U.S. Department of State sanctioned SenseTime—along with seven other Chinese firms—in October 2019 for being "implicated in human rights violations and abuses" in the XUAR.<sup>51</sup> SenseTime sold artificial intelligence technology to police in China,<sup>52</sup> sold technology to Chinese authorities for use in other surveillance systems, and assisted authorities in tracking the movement of Uyghurs.<sup>53</sup> In addition, using **Oracle**'s corporate website, marketing materials, and interviews with former employees, the Intercept found that Oracle provided surveillance technology to Chinese public security bureaus (PSBs) throughout China.<sup>54</sup> Furthermore, the Intercept found that Oracle's corporate partners in China included **Great Wall Computer Software and Systems**, which had assisted in the Chinese government's "anti-terrorism" work; **Sinobest**, which provided data-driven policing services to PSBs; and **Huiwen**, which worked with the Xinjiang Production and Construction Corps.<sup>55</sup> [For more information on cases in which public security officials target individuals for expressing their internationally recognized rights, see Section II—Criminal Justice.]

### *Role of Commercial Firms in Government Censorship*

Chinese government restrictions on freedom of expression increased this past year,<sup>56</sup> and companies were both targets and enablers of Chinese government censorship. In January 2021, the Cyberspace Administration of China (CAC) passed provisions requiring holders of public social media accounts that “provide online news service to the public” to obtain an “Internet News Information Service Permit” before publishing content related to breaking news or current affairs.<sup>57</sup> According to the provisions, service providers are required to verify and regulate such accounts,<sup>58</sup> and accounts that violate the provisions may be subject to closure.<sup>59</sup> WeChat issued a notice to its users recommending that accounts that have not obtained an “Internet News Information Service Permit” not “edit, report, or comment on content related to politics, the economy, military, foreign affairs, major emergencies, and other related content.”<sup>60</sup> WeChat advised that not complying may hinder one’s ability to publish and create content in the future.<sup>61</sup> In March 2021, the New York Times reported that the CAC found “objectionable posts” on **LinkedIn**.<sup>62</sup> LinkedIn was required to perform a “self-evaluation,” suspend all new signups in China for 30 days, and submit a report to the CAC.<sup>63</sup> LinkedIn, which is owned by **Microsoft**, reportedly used software algorithms and human reviewers to remove posts that violated local rules.<sup>64</sup> In addition, May 2021 reporting from the New York Times found that **Apple** removed tens of thousands of apps from Chinese app stores<sup>65</sup> and removed apps from its own app store which covered sensitive topics such as the Dalai Lama, Tiananmen Square, and Taiwan.<sup>66</sup>

Companies censored social media groups and content, including content about the COVID-19 pandemic, to comply with government and Party requirements.<sup>67</sup> According to an August 2020 report from the Citizen Lab, a research project based at the University of Toronto,<sup>68</sup> the Chinese messaging app **WeChat** censored more than 2,000 keywords related to COVID-19 between January 2020 and May 2020.<sup>69</sup> The report found that censored content included “how the virus [was] contained in China, international diplomacy . . . tensions between the U.S. and China, the number of confirmed COVID-19 cases and deaths . . . personal protective equipment supplies and medical facilities.”<sup>70</sup> In January 2021, family members of individuals who died from COVID-19 in Wuhan municipality, Hubei province, told the Guardian that their WeChat group had been deleted.<sup>71</sup> The deletion of the group used by 80 to 100 family members came less than 2 weeks before a team from the World Health Organization completed quarantine and conducted a joint study with Chinese counterparts into the origins of the COVID-19 pandemic.<sup>72</sup>

In addition, the Chinese government hired companies to manage online commentary, including commentary on COVID-19. Analysis of thousands of government procurement documents revealed that local governments and Party organizations hired private companies to help monitor and censor online public commentary.<sup>73</sup> In one example, the CAC used software from **Urun Big Data Services** (Urun) to scan the internet for keywords such as “virus” and “pneumonia.”<sup>74</sup> Urun’s software allows users to “track online trends, co-

ordinate censorship activity[,] and manage fake social media accounts for posting comments.”<sup>75</sup> [For more information on Chinese government censorship inside China, see Section II—Freedom of Expression. For more information on Chinese government censorship outside of China, see Section II—Human Rights Violations in the U.S. and Globally.]

### Corporate Censorship and Xinjiang Cotton

The Chinese Communist Party and government threatened corporations with loss of revenue or other forms of punishment if they voiced their support for preventing forced labor and other human rights violations in the Xinjiang Uyghur Autonomous Region (XUAR). In March 2021, the Chinese Communist Youth League posted on the Chinese microblogging site Weibo a criticism of Swedish clothing company H&M for a September 2020 post on H&M’s website.<sup>76</sup> The H&M post said the company was “deeply concerned” regarding reports of forced labor in the XUAR and would work to reduce its exposure in the region.<sup>77</sup> Chinese state media subsequently highlighted calls on social media for Chinese consumers to boycott H&M,<sup>78</sup> and state broadcaster CCTV said H&M “will definitely pay a heavy price for its wrong action.”<sup>79</sup> International media reported that H&M was removed from maps and e-commerce sites including **Apple Maps, Baidu Maps, Gaode maps**, the Chinese ridesharing app **Didi**, phone app stores of **Google Android, Xiaomi, Huawei, and Vivo**, and e-commerce companies **Alibaba, Pinduoduo, Jingdong, Dianping.com, and Tmall**.<sup>80</sup>

The campaign against H&M soon expanded to other international companies affiliated with the social compliance group Better Cotton Initiative (BCI) which in October 2020 announced it would cease all field-level activities in the XUAR.<sup>81</sup> In addition to removing H&M from its platform, the Huawei app store removed content related to Nike and Adidas.<sup>82</sup> Furthermore, **Tencent** removed character outfits designed by Burberry from one of its online games.<sup>83</sup> International media reported that Chinese state media and streaming platforms such as **Tencent Video, Mango TV, and iQiyi** blurred or scrubbed Western brands such as Adidas from their programming in what academics said was likely self-censorship in response to state and public nationalism.<sup>84</sup> The urgent appeal coordinator for the garment advocacy network Clean Clothes Campaign said that the backlash against Western firms for distancing themselves from cotton from the XUAR “is driven by nationalist sentiment, amplified by Chinese state media, and is being used to retaliate against increasing international scrutiny on the genocide that is happening in Xinjiang.”<sup>85</sup>

Following the backlash against Western apparel companies, companies affiliated with BCI<sup>86</sup> including **H&M, Inditex**,<sup>87</sup> **PVH Corporation**,<sup>88</sup> and **VF Corporation**<sup>89</sup> removed forced labor policies from their websites.<sup>90</sup> In addition, both international and Chinese brands stated their support for the use of cotton from the XUAR.<sup>91</sup> These brands included sportswear companies **Anta Sports**,<sup>92</sup> **Asics**,<sup>93</sup> **FILA**,<sup>94</sup> **Kelme**,<sup>95</sup> **Li-Ning**,<sup>96</sup> and **Peak**,<sup>97</sup> fashion company **Hugo Boss**,<sup>98</sup> and retail company **Muji**.<sup>99</sup>

*Worker Exploitation, Corporate Supply Chains, and Limited Legal Right to Freedom of Association*

Outside of the XUAR, the lack of protection of Chinese workers under Chinese law, as well as a lack of enforcement of existing Chinese laws, allowed for continued abusive practices toward workers in the supply chains of Chinese and international businesses. The Party-led All-China Federation of Trade Unions (ACFTU) remains the only trade union organization permitted under Chinese law,<sup>100</sup> and Chinese law does not grant Chinese workers the right to freedom of association or permit them to form or join independent unions.<sup>101</sup> In a joint submission to the UN Committee on Economic, Social and Cultural Rights, the International Federation for Human Rights and China Labor Watch (CLW) stated that the “lack of enforcement of labor laws and regulations is the single greatest factor limiting individuals’ right to just and favorable conditions of employment. Despite strong legislation, government labor bureaus and labor inspectorates are not equipped to enforce the provisions, giving employers wide latitude to disregard the law.”<sup>102</sup>

In this context, the Commission observed reports of abusive labor practices taking place in factories of the supply chains of international and Chinese businesses, including practices that the International Labour Organization classifies as indicators of forced labor:<sup>103</sup>

- In July and August 2020, China Labour Bulletin (CLB) reported that Chinese workers in factories producing masks faced wage arrears, unsafe working conditions, and excessive overtime.<sup>104</sup> CLB highlighted a social media post that linked worker deaths and injuries to excessive overtime at a **BYD Electronics Co., Ltd.** (BYD) factory, in Changsha municipality, Hunan province.<sup>105</sup> In July 2020, the government of California had contracted with BYD to supply 420 million masks to the state.<sup>106</sup>
- In September 2020, CLW highlighted a technical college in Guangxi Zhuang Autonomous Region that threatened to withhold diplomas from students who did not complete their internship in a **Wuling Motors** factory despite unsafe working conditions.<sup>107</sup>
- In November and December 2020, CLW, the Financial Times, and Radio Free Asia found that workers at **Pegatron**, a supplier of **Apple**, faced restricted movement, withheld wages, and threats.<sup>108</sup> Some of the workers were student interns, despite regulations against students performing factory work unrelated to their studies.<sup>109</sup>
- In December 2020, a CLW investigation into the labor practices of **Dongguan Chang’an Mattel Toys Co., Ltd.** and **Dongguan Dongyao Toy Co., Ltd.**, found instances of excessive overtime and abusive working conditions in addition to insufficient provisions for worker safety.<sup>110</sup> Both factories produce toys for **Mattel**, and Dongguan Dongyao Toy Co., Ltd. produces toys for **Chicco**, **Fisher-Price**, and **Tomy**.<sup>111</sup>

When faced with accusations of labor rights violations in their factories, Western brands have pointed to the use of audits to verify that their supply chains are free of labor violations.<sup>112</sup> Ac-

cording to reporting from the South China Morning Post (SCMP) and Sourcing Journal, however, fraudulent consulting practices continue to exist among factory auditing inspectors.<sup>113</sup> SCMP and Sourcing Journal found that in order to help factories pass inspections, suppliers have:

- Paid consultants who coached workers on how to respond to auditors' questions;
- Provided falsified record books so their factories would appear to be compliant;
- Arranged for an auditor of the consultant's choosing;
- Posed as factory managers;
- Arranged a different factory for inspection; and
- Bribed auditors to obtain a passing score for a factory.<sup>114</sup>

According to Sourcing Journal, from 2011 to 2017, 54 percent of audits conducted in China contained unreliable data.<sup>115</sup> In one example, the SCMP report found that a supplier for **Aldi**, **Costco**, and **Lidl**, which had been previously accredited in an audit-sharing platform, had factory employees working more than 80 hours a week without overtime pay.<sup>116</sup> Prior to this reporting year, international media and labor experts also raised concerns over the reliability of factory audits in China.<sup>117</sup> [For more information on the right of Chinese workers to form trade unions, see Section II—Worker Rights. For more information on forced labor, see Section II—Human Trafficking.]

## Notes to Section II—Business and Human Rights

<sup>1</sup> Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly resolution 217A (III) of December 10, 1948, art. 12; International Covenant on Civil and Political Rights (ICCPR), adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976, art. 17; United Nations Treaty Collection, Chapter IV, Human Rights, International Covenant on Civil and Political Rights, accessed February 25, 2021. China has signed but not ratified the ICCPR. See also UN Human Rights Council, The Right to Privacy in the Digital Age, Report of the United Nations High Commissioner for Human Rights, A/HRC/39/29, August 3, 2018, paras. 5–11, 17, 23; UN General Assembly, The Right to Privacy in the Digital Age, A/RES/68/167, January 21, 2014.

<sup>2</sup> Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly resolution 217A (III) of December 10, 1948, art. 19.

<sup>3</sup> *Zhonghua Renmin Gongheguo Gonghui Fa* [PRC Trade Union Law], passed April 3, 1992, amended August 27, 2009, arts. 9–11; Freedom House, “China,” in *Freedom in the World: Democracy Under Siege*, 2021; China Labour Bulletin, “Holding China’s Trade Unions to Account,” February 17, 2020; International Labour Organization, Interim Report—Report No. 391, Case No. 3184 (China), Complaint date February 15, 2016, October 2019, para. 149.

<sup>4</sup> Office of the UN High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, June 16, 2011, principle 13.

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