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Dear Madam/Sir:

RE: Re-Determination of Tariff Classification of Goods Produced Wholly or in Part by Forced Labour

This letter is on behalf of our client, the Uyghur Rights Advocacy Project (“URAP”).

We are sending this letter to place evidence before the Canada Border Services Agency (“CBSA”) demonstrating that certain importations to Canada have been produced wholly or in part by forced labour in the Xinjiang Uyghur Autonomous Region (“**the XUAR**” or “**Xinjiang**”) of China. We submit that the CBSA should immediately take action in response to this information.

URAP’s position is that CBSA should take steps to re-determine the tariff classification of these importations under section 59 of the *Customs Act*.¹

For all importations identified in this letter, the evidence is sufficient to warrant re-determining the tariff classification of these importations without further verification. If CBSA feels that it does

¹ R.S.C. 1985, c. 1 (2nd Supp.).



not yet have sufficient evidence to determine that these shipments were prohibited, CBSA should immediately initiate compliance verifications under section 42.01 of the *Customs Act* to assess whether the tariff classifications of these goods should be re-determined.

Further, CBSA should verify all importations by the importers in question since July 1, 2020, when the prohibition on imports produced by forced labour was imposed, as well as all importations in which the producers/exporters in question were involved.

Finally, CBSA should add tomato products and gloves exported from China to its list of targeted verification priorities so that additional CBSA resources can be directed to monitoring shipments of these products and to incentivize voluntary disclosures from importers.

Regardless of the particular mechanisms used, we urge CBSA to take **urgent and expedited** action in response to this letter given the clear connection between forced labour and the specific importations raised below.

In this letter, we present evidence that certain importations to Canada were produced wholly or in part by forced labour. Next, we identify the tools available to CBSA to address these importations. We then explain why CBSA should take immediate steps to classify these importations under tariff item 9897.00.00. Finally, we ask CBSA to add the products in question to its list of targeted verification priorities for tariff classification.

I. Evidence of Imports Produced Wholly or in Part by Forced Labour

URAP has accessed detailed import statistics for shipments that initially arrived in the United States (“US”) and then were shipped to Canada. This data was accessed through Panjiva, a subscription-based service that aggregates public customs data for all shipments to the US. The statistics referenced below are enclosed at Attachments 1 and 2 to this letter.

These attachments show a series of importations to Canada that were produced wholly or in part by forced labour. To our knowledge, none of these goods have been classified under Chapter 98 of the Schedule to the *Customs Tariff*.²

We wish to emphasize in particular that data on these shipments were only available to URAP because the goods transited through the US. This may represent only a small proportion of the shipments of the products in question, from the importers in question, and/or from the shippers/exporters in question. As such, we are relying on CBSA to conduct a thorough analysis of all shipments with similar characteristics to the ones identified below.

² S.C. 1997, c. 36.



A) Tomato Paste (Attachment 1)

1) Evidence that Dollarama is importing tomato paste using tomatoes from the XUAR

Attachment 1-A is a collection of entries of tomato paste spanning from April 10, 2020, to September 6, 2022. These shipments were consigned to Dollarama at 5805 Avenue Royalmount, Mont-Royal, Quebec.³

The shipper is listed as “Baoding Sanyuan Food Packing” (“**Baoding SFP**”). On the Made-in-China website, a China-based online platform to promote exports, Baoding SFP’s profile states expressly that it uses tomatoes from the XUAR:

Our unwavering business dedication to integrity and innovation, in conjunction with support of premium quality yield of naturally vine-ripened tomato in Xinjiang Autonomous Region and geographically ideal neighbour Xingang Port (Tianjin), enables us to proactively expand our international business and cooperation in all different regions of the world.⁴ (emphasis added)

Baoding SFP’s website contains an identical passage on the “about us” page, with the only difference being the use of the term “northwest region” in the place of “Xinjiang Autonomous Region”:

Our unwavering business dedication to integrity and innovation, in conjunction with support of premium quality yield of naturally vine-ripened tomato in northwest Region and geographically ideal neighbour Xingang Port (Tianjin), enables us to proactively expand our international business and cooperation in all different regions of the world.⁵(emphasis added)

The northwest region of China is the Xinjiang Autonomous Region.⁶

Together, these sources confirm that Baoding SFP’s tomato paste is produced using tomatoes from XUAR.

³ Attachment 1-A: Panjiva Import Statistics, April 2020 to September 2022, Dollarama imports of Tomato Paste from “Baoding Sanyuan Food Packing”.

⁴ Attachment 1-B: “Baoding Sanyuan Food Packing Co., Ltd.”, Made-in-China.com, available online: <https://sanyuanfood132.en.made-in-china.com/>.

⁵ Attachment 1-C: About Us, Baoding Sanyuan Food Packing Co., Ltd, accessed October 7, 2022, available online: <http://www.sanyuanfoods.com/eninfo/enuser/view.asp?id=16>.

⁶ See Attachment 1-D: “Study of Supply Chain Risks Related to Xinjiang Forced Labour”, Global Affairs Canada at 5.



2) Tomatoes from Xinjiang are produced wholly or in part from forced labour

It is well documented that Tomatoes and Tomato products from the XUAR are produced with forced labour.

First, the Government of Canada's own report on supply chain risks lists Tomatoes as a product for which "there is a high probability of being produced wholly or in part by non-voluntary Uyghur workers".⁷

Second, the Government of the US has taken action to ban imports of tomatoes and tomato products from the XUAR region, including downstream products produced outside of the XUAR that incorporate tomatoes from the XUAR.⁸ This ban was issued on January 13, 2021 based on information that "reasonably indicates the use of detainee or prison labor and situations of forced labor". US Customs and Border Protection found the following indicators of forced labour in connection with tomatoes and tomato products from the XUAR:

- Debt bondage
- Restriction of movement
- Isolation
- Intimidation and threats
- Withholding of wages
- Abusive living and working conditions.⁹

The recognition that tomatoes from Xinjiang are produced by forced labour is broadly accepted across the US government, including by the Bureau of International Labour Affairs,¹⁰ the Department of State, the Department of the Treasury, the Department of Commerce, the Department of Homeland Security, the United States Trade Representative and the Department of Labor.¹¹

⁷ Attachment 1-D: "Study of Supply Chain Risks Related to Xinjiang Forced Labour", Global Affairs Canada at 6.

⁸ Attachment 1-E: "Withhold Release Orders and Findings List", United States Customs and Border Protection.

⁹ *Ibid.*

¹⁰ Attachment 1-F: "Against Their Will: The Situation in Xinjiang", United States Bureau of International Labor Affairs.

¹¹ Attachment 1-F: "Xinjiang Supply Chain Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China", July 13, 2021 at 8, 10, 25 (Annex 2), 31 (Annex 6).



Third, credible media outlets have investigated and uncovered the use of forced labour in the production of tomatoes and tomato products in the XUAR. On October 29, 2021, CBC's *Marketplace* released a report detailing its investigation that conducted along with the Guardian and the Investigative Reporting Project Italy. This report uncovered that major brands had purchased tomatoes from companies in Xinjiang. It also found that Canadian grocery stores including Loblaws, Sobeys and Whole Foods were working with Italian processors who did business with Xinjiang companies.¹²

Critically, CBC and Adrian Zenz, senior fellow in China studies at the Victims of Communism Memorial Foundation, reviewed Chinese state media reports that showed transfers of Uyghurs to tomato fields and factories in the XUAR. These transfers were reportedly done under the guise of “poverty alleviation”, a pretense for coercive labour transfer programs in Xinjiang according to a detailed report authored by Dr. Zenz in March 2021 for the Jamestown Foundation.¹³

According to CBC, two large Chinese companies – Cofco Tunhe Tomato (“**Cofco**”) and Xinjiang Guannong Tomato Products Co. (“**Guannong**”) – were beneficiaries of these labour transfers.¹⁴ Export records reviewed by CBC showed that Cofco sold tomato paste to companies such as Heinz and Del Monte, with Guannong selling in Russia. These companies both have ties to the Xinjiang Production and Construction Corps (“**XPCC**”), a paramilitary organization linked to Xinjiang's agricultural sector. The XPCC, according to a report by the US Congressional Executive Commission on China cited by the CBC, has been connected to the large-scale surveillance, detention and indoctrination program targeting Uyghurs and other groups.¹⁵ Canada has recognized the connection of the XPCC to forced labour by sanctioning it directly.¹⁶

CBC also interviewed a Uyghur individual from Xinjiang who noted that:

¹² Attachment 1-G: Eric Szeto et. al, “Canada’s Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour”, *CBC Marketplace*, October 29, 2021, available online: <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>.

¹³ Attachment 1-H: Adrian Zenz, “Coercive Labor and Forced Displacement in Xinjiang’s Cross-Regional Labor Transfer Program: A Process-Oriented Evaluation”, *The Jamestown Foundation*, Washington, DC: March 2021 (endnotes and Appendices omitted for size), available online: <https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/>.

¹⁴ Attachment 1-G: Eric Szeto et. al, “Canada’s Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour”, *CBC Marketplace*, October 29, 2021, available online: <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>.

¹⁵ *Ibid*, citing United States Congressional-Executive Commission on China, 2020 Annual Report, Chapter II, “Business and Human Rights” at 7, available online: <https://www.cecc.gov/publications/annual-reports/2020-annual-report>.

¹⁶ *Special Economic Measures (People’s Republic of China) Regulations*, SOR/2021-49, Schedule part II.



if they are not in [internment] camps ... my family is picking tomatoes. The Chinese Communist party has so many ways to torture you.

Finally, in March 2022 Parliamentarians questioned an official from Employment and Social Development Canada (“ESDC”) on why it has not taken action to block imports of tomatoes and tomato products from Xinjiang. The Honourable Michael Chong raised tomatoes as a product that is connected to forced or coerced labour in Xinjiang, questioning why CBSA had not blocked any shipments of such tomato products.¹⁷ The Honourable Sameer Zuberi also noted that “[m]ost global tomato paste comes from the region in question”. The answer from Rakesh Patry of ESDC was that CBSA still needed to “effectively operationalize” the ban.¹⁸ Over 7 months later, this remains a ban that has not been operationalized, at least in any way that is discernible to the public.

B) Gloves (Attachment 2)

1) Magenta Designs Ltd. is importing gloves from the XUAR

Attachment 2-A is an entry of “Women’s Fabric Velvet Gloves” on October 21, 2021. This shipment was consigned to Magenta Designs Ltd. in North Vancouver, BC.¹⁹

The shipper on this entry is listed as Xinjiang Xianzhen Garment, with its parent company listed as Xinjiang Xianzhen Garment Manufacturing Co., Ltd (“XXG”). The shipper’s address is listed as “Ili Kazakh Autonomous Prefecture Xinjiang Uyghur Province 835300, China.” The HS code subheading provided is 6116.93.

2) Gloves are being produced in the XUAR wholly or in part by Forced Labour

There is extensive evidence to document that gloves are one of the main products produced with forced labour in the XUAR. The US Bureau of International Labour Affairs has identified reports of glove factories “forcibly training and employing 1,500 to 2,000 ethnic minority adult workers with the government’s support.”²⁰

¹⁷ Attachment 1-I: Canada. Parliament. House of Commons. Standing Committee on Foreign Affairs and International Development. Evidence. (Issue No. 12, March 28, 2022). 44th Parliament, 1st Session. (Online). Available: <https://www.ourcommons.ca/Content/Committee/441/FAAE/Evidence/EV11663289/FAAEEV12-E.PDF> at 13, 14.

¹⁸ *Ibid* at 15.

¹⁹ Attachment 2-A: Panjiva Import Statistics, October 2021, Magenta Designs Import of Women’s Fabric Velvet Gloves from Xinjiang Xianzhen Garment Manufacturing Co., Ltd.

²⁰ Attachment 2-B: “Against Their Will: The Situation in Xinjiang”, United States Bureau of International Labor Affairs (China – Gloves – Forced Labor).



In the case of XXG specifically, its address is located amidst a cluster of internment camps connected to factories. It is also located near other glove-producing factories that are subject to Withhold Release Orders (“WROs”) in the US and which have been the subject of individual testimonies describing the production of gloves using forced labour. Further, it is located an industrial park, a preferred tool for the Government of China to industrialize the XUAR, a process which has gone hand-in-hand with the securitization of the region and the detention of its residents.

a) There is a cluster of Internment Camps Near the Exporter

XXG’s postal code (835300) allows its address to be searched on google maps. This location and its surroundings are shown in the screenshot below and at Attachment 2-C:



As shown above, the address provided for XXG is very close to the centre of Qapqal Xibe Autonomous County. Google maps shows this as a distance of 8.3km by car.

As part of its “Mapping Xinjiang’s ‘re-education’ Camps” project, the Australian Strategic Policy Institute (“ASPI”) maintains an interactive map of camps in Xinjiang. This map provides intelligence on 380 re-education camps, detention centres and prisons that were newly built or significantly expanded since 2017.



The ASPI interactive map shows five facilities in the Qapqal (also commonly written as Chapchal, including in the ASPI report) area, marked by black diamonds in the screenshot below. These camps have been labelled by ASPI as Chapchal Facility #1-5. The descriptions for each facility are attached at Attachment 2-D.



ASPI’s descriptions identify the number of factories within and adjacent to each facility as well as the growth in buildings at these locations since 2017. Each of these facilities has multiple factories either within or adjacent to the complex. Chapchal Facility #2, a former middle school that was converted into a “Vocation and Technical Education Centre,” has been photographed by the activist group “Bitter Winter.” At least four victims have been specifically tied to this facility, with



former detainees stating that the facility was expanded from a capacity of thousands to tens of thousands.²¹

Further, public materials state that XXG was established in 2018, during the time period when ASPI's has tracked the rapid expansion of the re-education camps in the area. The presence and expansion of this cluster of detention centres and re-education facilities near XXG's stated address provides strong evidence that its products are produced using forced labour.

b) Evidence of Forced Labour in Nearby Ghulja (Yining)

As noted, the address for XXG is in the "Yinan Industrial Park" in the Qapqal Xibe Autonomous Region of the Ili Kazakh Autonomous Prefecture.²² This location is only 50 kilometers by car from Ghulja (also known as Yining Prefecture), a region where there is extensive evidence that gloves are being produced using forced labour.

First, this has been recognized by the US Government. Since September 14, 2020, the US CBP has enforced WROs for "Apparel produced by Yili Zhuowan Garment Manufacturing Co., Ltd. ("**Zhuowan**") and Baoding LYSZD Trade and Business Co., Ltd in Xinjiang Uyghur Autonomous Region, China."²³ These companies are both located in the Ghulja region. The press release announcing these WROs states the following:

*Information reasonably indicates that these entities use prison and forced labor in apparel production. CBP identified forced labor indicators including the restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive working and living conditions.*²⁴

Second, the production of gloves using forced labour in this region, and by Zhuowan specifically, is supported by first-hand accounts. Less than 10 days after the issuance of the WROs, media outlet *Radio Free Asia* (RFA) published an article reporting that nine Kazakh women from Ghulja County, where these companies are located, were sent back to an internment camp after refusing

²¹ Attachment 2-D: Australian Strategic Policy Institute, "Mapping Xinjiang's 'Re-education' Camps", Chapchal Facilities 1-5, accessed November 3, 2022.

²² Attachment 2-E: Export Hub, "Xinjiang Xianzhen Garment Co. Ltd. Company Profile", accessed November 3, 2022, available online: <https://www.exporthub.com/xinjiang-xianzhen-garment-co-ltd/>. Please note that the website printed into a format that is difficult to read. For this reason, we have included a screenshot at page 1 of the attachment that shows how the website appears in the author's browser.

²³ Attachment 2-F: Excerpt from "Withhold Release Orders and Findings List" and Press Release Dated September 14, 2020, United States Customs and Border Protection, available online: <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

²⁴ *Ibid.*



to sign a labour contract for compensation that was 40% of a typical wage for a manual worker.²⁵ According to RFA, these women were sent to work in the Jiafang Garments Industrial Park after their release from an internment camp. They were expected to work 12-hour shifts sewing gloves and to attend one hour of “political education” every day.²⁶ RFA reported that Zhuowan produces leather and wool gloves.

RFA spoke with a Uyghur individual outside of China whose younger sister had, at the time, spent two years in a Zhuowan factory under forced labour conditions. This source provided RFA with photos and described factories in Ghulja that “produce name-brand gloves, bags, clothing and other goods, and then export them to Russia as well as Europe and the United States.”²⁷ This individual indicated that the factories “use people from camps basically for free” and punish them where they cannot meet demands, including 10-plus hours of work a day.²⁸

RFA also spoke to a Kazakh woman, Gulzira Auelkhan who worked at Zhuowan and who confirmed she had been sent there after spending 15 months at an internment camp that she was prohibited from leaving from July 2017 to October 2018. Having been showed the pictures of the factory provided by the source noted above, Ms. Auelkhan said: “This is Jiafang—I worked in a glove factory there for three months.” She further stated that “The Zhuowan glove factory and the camp were both on the grounds there. [The factory] was just like being in a camp. Even now, just thinking of it makes my heart cry. I can’t stand it.”

According to Ms. Auelkhan, the factory was surrounded by armed police and workers were punished if they did not meet a quota of 20 pairs of gloves a day. Ms. Auelkhan was promised pay for the three months she spent at Zhuowan, but received nothing at the end of the contract and was forced to sign a document indicating that she had received “free job training.” Ms. Auelkhan was beaten by police when she initially refused to sign the document.

In a report by Laura T. Murphy titled “Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains,”²⁹ Ms. Murphy provides the testimony of Erzhan Qurban, a 42-year-old man who was held in an internment camp and, once released, was sent to work in a glove factory in the Jiafang Clothing Industrial Park. Mr. Qurban was told that if he did not work in the

²⁵ Attachment 2-G: “New Evidence Further Links Xinjiang Company Sanctioned by US to Forced Labour”, *Radio Free Asia*, September 23, 2020, accessed November 3, 2022, available online: <https://www.rfa.org/english/news/uyghur/factory-09232020171245.html>.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Attachment 2-H: Laura T. Murphy, et al. (2021). “Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains.” Sheffield, United Kingdom: Sheffield Hallam University Helena Kennedy Centre.



glove factory, he would be sent back to the internment camp.³⁰ The report quotes Mr. Qurban as follows:

*We were watched by four cameras in our room, which ensured that we didn't talk to each other. Those who spoke anyways were handcuffed and had to stand by the wall. "You don't have the right to talk, because you are not humans," said the guards. "If you were humans, you wouldn't be here." [...] After nine months, on November 3, 2018, I was released. They sent me to a factory which produced leather and fleece gloves. I worked on a production line for 53 days, earning 300 yuan in total.*³¹

Ms. Murphy's report also includes the testimony of Gluzira Auelkhan, noted above, corroborating the very low pay she was provided and the fact that she was held in a dormitory at night and forced to take part in ideological education and Chinese language sessions.

The proximity of XXG to Ghulja further supports that it is likely producing gloves using forced labour.

c) Industrial Parks as a Primary Means of Industrializing the XUAR

Finally, XXG is located in an industrial park. Industrial parks are a preferred means of the Government of China to industrialize the XUAR, which has gone hand in hand with the securitization of the region and the detention of its residents.

As noted, XXG is located in the "Yinan Industrial Park." Non profit organization C4ADS in the US has released a report that identifies industrial parks as a primary vehicle, through the Xinjiang pairing assistance program, to industrialize the XUAR. This initiative links provinces and cities in Eastern China to prefectures and localities in the XUAR, with Chinese companies outside of the XUAR being incentivized to move manufacturing into the region.³²

According to C4ADS, industrial parks are the primary facilities through which industrial transfer takes place.

The C4ADS report explains:

The securitization of the region coincides with a considerable industrialization drive, which together constitute two facets of one strategy. The government sees the mass detention campaign and the establishment of a police state as prerequisites that allow Chinese

³⁰ *Ibid* at 15.

³¹ *Ibid* at 5.

³² Attachment 2-I: "SHIFTING GEARS: The Rise of Industrial Transfer into the Xinjiang Uyghur Autonomous Region", C4ADS, June 30, 2022, available online: <https://c4ads.org/reports/shifting-gears/>.



*manufacturing companies to feel secure enough to move into XUAR. In turn, these manufacturers move Uyghurs from their farms and villages to factories and industrial parks where they can be monitored, indoctrinated, and transformed into “modern” industrial workers.*³³

In its report, C4ADS includes the Yining Textile Industry Zone, which is the Ghulja industrial park where Zhuowan is located, as a case study. The report notes:

*The zone serves as an example of how industrial parks, built as pairing program initiatives, work as vectors for the transfer of companies from their paired region to XUAR. An analysis of these parks reveals how these linkages expose broader supply chains to coerced labor.*³⁴

If the Yinan industrial park is similarly connected to the Xinjiang pairing assistance program, this may be further evidence that forced labour is being used by XXG.

II. Tools at CBSA’s Disposal

A. The Prohibition under Tariff Item 9897.00.00

On July 1, 2020, the Government of Canada amended the Schedule to the *Customs Tariff* to prohibit the importation to Canada of “Goods mined, manufactured or produced wholly or in part by forced labour.” As of that date, goods of this description are to be classified under tariff item 9897.00.00.

In accordance with subsection 136(1) of the *Customs Tariff*, “The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited”.

Canada’s imposition of this prohibition stems directly the *Canada-United States-Mexico Free Trade Agreement* (“CUSMA”), which obligates Canada to prohibit the importation of goods into its territory produced “in whole or in part by forced or compulsory labor, including forced or compulsory child labor.”³⁵

This legislative framework prohibits the importation of goods produced “wholly or in part” by forced labour. The terms “wholly or in part” are not defined under the *Customs Act* or the *Customs*

³³ *Ibid* at 6.

³⁴ *Ibid* at 13.

³⁵ CUSMA, Art. 23.6, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-accum/text-texte/23.aspx?lang=eng>.



Tariff. These terms are also not defined in CUSMA. On its face, this language is broad and would encompass situations where forced labour is present anywhere in the supply chain of a good.

B. Re-Determination under section 59(1)

The *Customs Act* establishes an administrative process pursuant to which the tariff classification of goods imported to Canada is determined and can be re-determined and appealed.

When goods are imported to Canada, their tariff classification is either determined by an officer under subsection 58(1) or deemed to be determined as declared by the person accounting for the goods under subsection 58(2).

Under subsection 59(1), an officer may re-determine the tariff classification of any imported goods within four years after the date of the determination under section 58 on the basis of either:

- (i) An audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1; or
- (ii) If the Minister considers it advisable to make the re-determination.

C. Verification under section 42.01

Section 42.01 of the *Customs Act* allows CBSA to conduct a verification of compliance with tariff classification, and to re-determine tariff classification if warranted.

Section 42.01 states as follows:

42.01 An officer, or an officer within a class of officers, designated by the President for the purposes of this section may conduct a verification of origin (other than a verification of origin referred to in section 42.1), verification of tariff classification or verification of value for duty in respect of imported goods in the manner that is prescribed and may for that purpose at all reasonable times enter any prescribed premises.

Under its verification authority, CBSA conducts random verifications to measure compliance rates and revenue loss.³⁶ It also publishes “targeted verification priorities,” which are determined “through a risk-based, evergreen process, meaning that new targets are added throughout the year.”³⁷

³⁶ CBSA, Trade compliance verifications: July 2022, available online: <https://www.cbsa-asfc.gc.ca/import/verification/menu-eng.html>.

³⁷ *Ibid.*



To our knowledge, CBSA has not published the process that it uses to determine which shipments should be subject to verification and/or which products should be added to its targeted verification priorities. Presumably CBSA considers the level of risk associated with ‘red flags’ that arise from the customs information that it collects on a daily basis. We assume that CBSA also considers information that is brought to its attention by third parties, whether through its Border Watch Line³⁸ or otherwise. Further, we understand that in the context of suspected forced labour practices, CBSA would consider information from reports prepared by the Labour Program of ESDC.³⁹

D. Standards of Proof

CBSA does not need to be *certain* that goods were produced in part by forced labour in order to classify them under tariff item 9897.00.00. Rather, tariff classification decisions should be made by CBSA on a balance of probabilities, which is the standard that is applied by the Canadian International Trade Tribunal (“CITT”) on appeal.⁴⁰ In more practical terms, the evidence need only be sufficient to demonstrate that it is **more likely than not** that the goods in question were produced wholly or in part by forced labour.

Balance of probabilities is the standard applicable in most non-criminal proceedings in Canada. The leading case from the Supreme Court of Canada, *F.H. v. McDougall*, stipulates that to meet the balance of probabilities standard it is clear that evidence need not be absolute or actual proof, but rather proof showing that it is more likely than not that a fact exists or an event occurred.⁴¹ Canadian administrative tribunals and boards also consistently apply this civil standard in human rights, tax, labour/employment, immigration/refugee, and competition/economic contexts.

There is no prescribed standard of evidence to be used by CBSA for determining whether a verification under section 42.01 of the *Customs Act* should be conducted. However, given that a verification is conducted to gather evidence, and involves weighing resource availability and competing priorities within the agency, it is necessarily a lower threshold than a balance of probabilities. In this context, where CBSA is not yet satisfied that tariff classification should be re-determined but has evidence that is: (a) credible; (b) specific in respect of shipments and entities

³⁸ *Ibid*; CBSA, Memorandum D9-1-6, “Goods Manufactured or Produced by Prison or Forced Labour”, May 28, 2021, available at: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>.

³⁹ CBSA, Memorandum D9-1-6, “Goods Manufactured or Produced by Prison or Forced Labour”, May 28, 2021, available at: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>.

⁴⁰ *Best Buy Canada Ltd., P & F Usa Inc. and LG Electronics Canada Inc.*, AP-2015-034, AP-2015-036 and AP-2016-001, Decision and Reasons issued February 27, 2017 at paras 44, 84-87, 99.

⁴¹ *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 SCR 41 at paras. 40-49 (“**McDougall**”).



involved; and (c) reasonably indicates the **potential** presence of forced labour, then CBSA should conduct a verification to determine whether the goods were properly classified.

III. CBSA Should Take Steps to Re-determine Tariff Classification

This letter presents compelling evidence that, on its face, connects specific importations of goods to Canada to forced labour in the XUAR region. This evidence supports the conclusion that these imports were more likely than not produced in part by forced labour and are therefore prohibited under section 136 of the *Customs Tariff*.

With respect to the importations of tomato paste by Dollarama, the evidence presented in this letter establishes that, on a balance of probabilities, the goods imported were produced in part by forced labour. The evidence in this respect is clear and direct. This tomato paste was repeatedly imported from a producer in China whose marketing emphasizes the XUAR as its source of supply for tomatoes. These importations occurred both before and after the 2021 *CBC Marketplace* investigation, which caused public outrage and resulted in at least one prominent grocery chain taking action to remove an impugned product from its shelves.⁴² Further, the Government of Canada has itself accepted that “tomatoes and downstream processed food products” present a high probability of being produced wholly or in part by non-voluntary Uyghur workers.”⁴³ The evidence supports immediately determining that these importations are properly classified under tariff item 9987.00.00.

With respect to the importation of fabric velvet gloves, the evidence presented in this letter also establishes, on a balance of probabilities, that the goods imported were produced in part by forced labour. The Government of Canada has accepted that “cotton and downstream fabric and apparel products” present a high probability of being produced wholly or in part by non-voluntary Uyghur workers.”⁴⁴ Public information shows an adjacent cluster of rapidly expanding “re-education” camps and detention facilities and a nearby cluster of camps and factories for which there is extensive evidence of gloves being produced through forced labour. The evidence supports immediately re-determining that this importation is properly classified under tariff item 9987.00.00.

In the alternative, if CBSA feels that it does not yet have sufficient evidence to determine that these shipments were prohibited, CBSA should immediately initiate compliance verifications under section 42.01 of the *Customs Act* to assess whether the tariff classifications of these goods should

⁴² Attachment 1-G: Eric Szeto et. al, “Canada’s Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour”, *CBC Marketplace*, October 29, 2021, available online: <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>.

⁴³ Attachment 1-D: “Study of Supply Chain Risks Related to Xinjiang Forced Labour”, Global Affairs Canada.

⁴⁴ *Ibid.*



be re-determined. Given the strength of this evidence, any verifications should be conducted on an **expedited basis** and should move to a re-determination of tariff classification under paragraph 59(1)(a)(i) of the *Customs Act* as soon as CBSA is satisfied that the evidence supports doing so on a balance of probabilities.

Further, CBSA should take immediate steps to identify all shipments involving the importers and/or exporters in question since July 1, 2020 and should re-determine tariff classification or conduct compliance verifications as warranted.

IV. CBSA should add the Products in Question to its List of Verification Priorities Immediately

In addition to the above, CBSA should add tomato products and gloves exported from China to its list of targeted verification priorities for tariff classification. Given that this is a dynamic list of priorities, it is open to CBSA to do immediately.

Amending the list of verification priorities in this manner would allow CBSA to direct resources nationally to apply greater scrutiny to future shipments of these products, both of which present a high risk of being produced by forced labour. It would also incentivize importers of these goods to voluntarily disclose past importations of these products to avoid a more probing audit of their importing activities over the past four years. Finally, and perhaps most critically, it would incentivize importers to shift their supply chains away from the XUAR.

V. Conclusion

URAP urges CBSA to take action that gives meaning to the prohibition imposed in mid-2020 and which, to date, has not been used. The House of Commons has recognized that a **genocide** is occurring in the XUAR.⁴⁵ Further, the Government of Canada has pledged to its North American trading partners, and to the Canadian public, that it will prohibit goods produced by forced labour, in whole or in part.

While URAP appreciates that this is a complex problem for which evidence gathering is difficult, CBSA now has compelling evidence before it connected to specific entities, products and shipments. This creates both a moral and a legal imperative for urgent action.

⁴⁵ Ryan Patrick Jones, “MPs vote to label China’s persecution of Uighurs a genocide”, *CBC News*, February 22, 2021, available at: <https://www.cbc.ca/news/politics/uighur-genocide-motion-vote-1.5922711>.



URAP would be pleased to work with CBSA to provide any assistance that we can, through our counsel or our network of experts on the genocide occurring in the XUAR.

Yours truly,

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List of Attachments

Attachment	Description
Attachment 1-A	Panjiva Import Statistics, April 2020 to September 2022, Dollarama imports of Tomato Paste from “Baoding Sanyuan Food Packing”
Attachment 1-B	“Baoding Sanyuan Food Packing Co., Ltd.”, Made-in-China.com, accessed October 7, 2022, available online: https://sanyuanfood132.en.made-in-china.com/
Attachment 1-C	About Us, Baoding Sanyuan Food Packing Co., Ltd, accessed October 7, 2022, available online: http://www.sanyuanfoods.com/eninfo/enuser/view.asp?id=16
Attachment 1-D	“Study of Supply Chain Risks Related to Xinjiang Forced Labour”, Global Affairs Canada
Attachment 1-E	“Withhold Release Orders and Findings List”, Frequently Asked Questions and Press Release Dated January 13, 2021, United States Customs and Border Protection, https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings
Attachment 1-F	“Against Their Will: The Situation in Xinjiang”, United States Bureau of International Labor Affairs (China – Tomato Products – Forced Labor); “Xinjiang Supply Chain Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China”, July 13, 2021
Attachment 1-G	Eric Szeto et. al, “Canada’s Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour”, <i>CBC Marketplace</i> , October 29, 2021, available online: https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359
Attachment 1-H	Adrian Zenz, “Coercive Labor and Forced Displacement in Xinjiang’s Cross-Regional Labor Transfer Program: A Process-Oriented Evaluation”, <i>The Jamestown Foundation</i> , Washington, DC: March 2021 (endnotes and Appendices omitted for size), available online: https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/



Attachment	Description
Attachment 1-I	Canada. Parliament. House of Commons. Standing Committee on Foreign Affairs and International Development. Evidence. (Issue No. 12, March 28, 2022). 44 th Parliament, 1 st Session. (Online). Available: https://www.ourcommons.ca/Content/Committee/441/FAAE/Evidence/EV116632-89/FAAEEV12-E.PDF
Attachment 2-A	Panjiva Import Statistics, October 2021, Magenta Designs Import of Women’s Fabric Velvet Gloves from Xinjiang Xianzhen Garment Manufacturing Co., Ltd.
Attachment 2-B	“Against Their Will: The Situation in Xinjiang”, United States Bureau of International Labor Affairs (China – Gloves – Forced Labor)
Attachment 2-C	Google Maps, China Postal Code 835300, accessed November 3, 2022
Attachment 2-D	Australian Strategic Policy Institute, “Mapping Xinjiang’s ‘Re-education’ Camps”, Chapchal Facilities 1-5, accessed November 3, 2022
Attachment 2-E	Export Hub, “Xinjiang Xianzhen Garment Co. Ltd. Company Profile”, accessed November 3, 2022, available online: https://www.exporthub.com/xinjiang-xianzhen-garment-co-ltd/
Attachment 2-F	Excerpt from “Withhold Release Orders and Findings List” and Press Release Dated September 14, 2020 , United States Customs and Border Protection, available online: https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings
Attachment 2-G	“New Evidence Further Links Xinjiang Company Sanctioned by US to Forced Labour”, <i>Radio Free Asia</i> , September 23, 2020, accessed November 3, 2022, available online: https://www.rfa.org/english/news/uyghur/factory-09232020171245.html
Attachment 2-H	Laura T. Murphy, et al. (2021). “Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains.” Sheffield, United Kingdom: Sheffield Hallam University Helena Kennedy Centre
Attachment 2-I	“SHIFTING GEARS: The Rise of Industrial Transfer into the Xinjiang Uyghur Autonomous Region”, <i>C4ADS</i> , June 30, 2022, available online: https://c4ads.org/reports/shifting-gears/