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EU FACES A MOMENTOUS CHOICE ON THE FORCED LABOR BAN

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EXECUTIVE SUMMARY

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The Prague Security Studies Institute (PSSI) welcomes the EU‘s proposal to ban products linked to forced labor practices. However, we believe that the scope of the proposed ban should be expanded considerably to include both products and companies from offending nations, such as China, and that corporate offenders should be banned entirely from entering, or doing business with, EU countries. Moreover, it would be unconscionable to continue to allow publicly traded companies linked to forced labor practices to have their securities trade, or raise funds in, Europe‘s capital markets (both stocks and bonds).

We, therefore, strongly recommend the addition of an investment ban on companies trading, or raising capital, on European exchanges to potentially finance forced labor operations and other human rights abuses. Accordingly, PSSI is calling for a legal prohibition on EU institutions and persons holding the securities of these designated forced labor companies. Sadly, the continued absence of these logical and effective measures in the EU‘s proposal would be nothing short of a failure to live up to its own high standards on genuinely defending labor and human rights.

The Coalition for a Prosperous America‘s Chinese corporate forced labor list of publicly traded companies provides thoroughly researched evidence that many well-known, publicly traded Chinese companies exploit forced labor in their supply chains. In both Europe and the U.S., the more comprehensive forced labor legislation required to be truly effective is increasingly achievable and defensible politically. Resolutions of the European Parliament, as well as American Presidential Executive Orders EO 13959 (2020) and EO 14032 (2021), underscore this point. For PSSI’s part, we intend to continue to press for these strengthened European and American legislative penalties and deterrence-oriented adjustments to ensure that China — the world‘s leading forced labor abuser — is compelled to face sanctions that they actually fear for engaging in this modern day slavery.

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INTRODUCTION

The European Commission's recently proposed ban on products made with forced labor, entitled "Effectively Banning Products Produced, Extracted or Harvested with Forced Labour", is a critically important initiative, but is substantially weakened by glaring omissions.

First among these weaknesses is that the present iteration avoids even naming the specific (Chinese and other) companies responsible for these horrific abuses, instead focusing solely on individual products. As things stand today, if products are determined to be made with the use of forced labor — at any stage of the harvesting, production, or manufacturing processes — these products are to be removed from the EU market. The glaring omission here is that products do not make themselves or employ forced labor in doing so — companies do.

Sadly, the burden of proof on forced labor usage falls upon EU national authorities (e.g. customs authorities). In the United States, similar regulations properly place the burden of proof on the importers themselves, requiring evidence of *the absence* of forced labor, in what is known as a *rebuttable presumption*. Accordingly, the chances of European national authorities presenting sufficient hard evidence of forced labor abuses is in serious doubt in most cases.

With the directive and groundwork stemming from Ursula von der Leyen herself in her 2021 State of the Union speech, the proposed forced labor ban serves as the realization of the EU's commitments to combating forced labor laid out in Article 5(2) of the *EU Charter of Fundamental Rights*, which explicitly prohibits forced labor, as does the 2020-2024 *action plan on human rights and democracy* and *Directive* 2011/36/EU.

PROPOSAL OMISSIONS AND RECOMMENDED ADJUSTMENTS

While PSSI welcomes the proposal, we believe that it is Chinese and other nations' offending companies, in addition to their products, that must be banned from entering, and/or doing business with, EU countries. Second, we view it as unconscionable to continue to permit Chinese and other companies linked to forced labor practices to trade their securities (i.e., stocks and bonds), and/or to raise funds, on Europe's capital markets (e.g., the Frankfurt, London, Paris, Milan, Zurich and other exchanges). This is a reality which can be empirically demonstrated to be underway today involving dozens of Chinese forced labor companies.[1] Thus, the current iteration of the proposed ban is woefully inadequate and fails to live up to the high standards on defending human rights which the EU claims to embody.

The continuous evaluation and screening of products – *and, ideally, companies* – on a case-by-case basis by EU authorities will require more customs enforcement resources and a substantial increase in upstream

1 See section entitled "CPA's Chinese Corporate Forced Labor List" below

supply chain transparency by importers. The Commission should require importers to create and maintain an auditable trail demonstrating the absence of forced labor as a condition of importation.

The addition of an investment ban focused on companies raising capital and/or trading on European exchanges to potentially help finance their forced labor and other malign activities is simple and effective in comparison. After all, as stated above, these banned products do not manufacture themselves with forced labor. It is rather the calloused greed of senior corporate executives and their government sponsors that is on display here. It is these senior corporate executives and other such key stakeholders who benefit the most from the inflated market values of their publicly traded companies and who would stand to lose the most when facing investment bans following proof of the use of forced labor practices and other egregious human rights abuses.

An investment ban also avoids potential discrepancies, or capability gaps, among the various national authorities. For example, failure to "screen out" tainted products by just one member state would allow forced labor products to enter the entire European market.

Funding Chinese and other corporate forced labor abusers – via the purchase of their stocks and bonds on European and U.S. exchanges – must be strictly prohibited. Indeed, it should be made illegal for EU and U.S. persons to hold the securities (including bonds) of the designated companies. *In the current proposal, banning such offending companies from accessing European capital markets is not even referenced, much less included as a central pillar of this EU forced labor initiative*.

Continuing to permit such a glaring policy inconsistency would fundamentally undermine this otherwise worthy undertaking. Indeed, the consequence of ignoring or rejecting the above measure would be to allow Chinese and other companies identified as employing forced labor to continue enjoying "business as usual" with the EU's financial community — a reality that would, over time, severely damage Europe's credibility and human rights brand.

The EU has long known about — but has chosen to overlook — the powerful source of leverage represented by capital markets sanctions to help end this vicious abuse of human rights. The continued ability of corporate forced labor abusers to collect — in China's case — billions of euros annually from tens of millions of unwitting European retail investors should be viewed as completely unacceptable, not just politically, but from the perspective of basic human decency. Much of this capital markets access stems from so-called passive investment products (e.g. Exchange-Traded Funds, mutual funds and other index funds), which include Chinese and other publicly traded companies engaged in forced labor practices.

CPA'S CHINESE CORPORATE FORCED LABOR LIST[2]

The Coalition for a Prosperous America (CPA) — a non-partisan industry association focused on U.S. trade policy — has recently published a list of 50 publicly traded Chinese companies that have been alleged to make

2 With respect to this newly published publicly traded corporate forced labor list, CPA offered the following disclaimer: "This document is intended for general informational purposes. [CPA] disclaims, to the fullest extent permitted by applicable law, any and all liability for the accuracy and completeness of the information in this document and for any acts or omissions made based on such information. [CPA] does not provide legal, regulatory, audit, or tax advice. Readers are responsible for obtaining such advice from their own legal counsel or other licensed professionals. This publication is designed to provide

use of forced labor practices. These companies are traded on European and/or U.S. exchanges (primarily in passive investment products such as Exchange-Traded Funds). Not surprisingly, most are unregulated, non--transparent Chinese "A share" companies, drawn directly from China's domestic exchanges by American and other index providers, ending up in mainstream investment products via benchmarking.

This list includes such notable names as Geely Automobile Holdings Ltd. (the owners of Volvo Cars, alongside other major automobile brands), Li-Ning Company Ltd. (a major global sportswear brand with over 6400 stores worldwide), Luxshare Precision Industry Co., Ltd. (an electronics manufacturer and major subcontractor for companies including Apple), and LONGi Green Energy Technology Co. Ltd. (a major manufacturer of solar modules and the world's largest manufacturer of monocrystalline silicon wafers).

The sheer scale of these alleged corporate human rights abuses by the CCP-controlled enterprises ought to compel action by European lawmakers. It should inspire them to work diligently to ban the avenues available to Chinese and other corporate forced labor abusers to raise capital and/or trade on European and U.S. exchanges, and, in the process, shield European retail and institutional investors from unwittingly funding such heinous practices. Instead, we are witnessing legislative proposals that deliberately shy away from disrupting financial and trade relations with these Chinese corporate "bad actors" and turning a blind eye to alleged forced labor abuses by the companies identified.

PRECEDENTS

In June 2022, a non-binding resolution was passed in the EU parliament which illuminated the Chinese government's actions in Xinjiang, considering them crimes against humanity and "represent[ing] a serious risk of genocide". It explicitly called for a ban on products made with forced labor, as well as "products produced by all Chinese companies listed as exploiting forced labour". Although non-binding, the ease with which the resolution passed serves as a clear indicator of the sentiment of EU lawmakers and politicians — and helps pave the way for stronger actions to be taken in the future to safeguard human rights globally.

Across the Atlantic, a precedent has already been established with the Uyghur Forced Labor Prevention Act (UFLPA). Signed into law in the US in late 2021, it calls for a total ban on imports from the Xinjiang region. The failure of the EU proposal to include region-wide bans has been the subject of criticism by human rights groups in an open letter signed by Amnesty International, Human Rights Watch, and over 70 other civil society organizations.

Other useful precedents for European policy-makers are Presidential Executive Order (EO) 13959 signed by President Trump and EO 14032 issued under President Biden, which prevent American persons from holding the securities of Chinese companies with ties to the country's military establishment or surveillance technology which appear on the Treasury Department's list administered by the Office of Foreign Assets Control (OFAC).

With regard to international harmonization - by ensuring that the EU proposal mirrors, to the extent possible, an amended or modified UFLPA that names companies and terminates their access to U.S. capital markets, the dangers of loopholes could be largely mitigated, increasing the efficiency of the EU proposal and its potentially positive effect on global supply chains.

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CONCLUSION

This legislative proposal offers an opportunity for the EU to demonstrate global leadership in confronting and eliminating forced labor. Past commitments can, at long last, become policy realities. This cannot happen, however, within the present scope of the proposed Commission measures. Instead, it provides a "free pass" to Chinese and other companies implicated in the use of forced labor by not identifying them publicly and thereby *not putting at risk their corporate reputations and brands*. These human rights violators should also not be permitted to raise funds or trade on European or U.S. exchanges — a current privilege that, in effect, rewards these alleged corporate forced labor abusers.

The CPA's Chinese corporate forced labor list offers well-researched evidence of the employment of forced labor practices in the supply chains of dozens of prominent Chinese companies, all of which are publicly traded. Europe is facing an historic crossroads: to either take a deliberate financial — as well as a political — stand against corporate labor and human rights abusers and deliver harsh consequences to offenders which they actually fear, or allow these Chinese and other corporate offenders to continue to benefit hugely from the fundraising and prestige associated with EU financial "business as usual" . With the world is watching — which policy path will Europe choose?

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CHINESE FORCED LABOR COMPANIES FUNDED BY U.S. CAPITAL MARKETS

COALITION for a PROSPEROUS AMERICA

Wall Street, and tens of million of unwitting American investors, are currently funding Chinese entities with publicly reported links to or usage of forced labor in the People's Republic of China (PRC).

The following Chinese entities included in this list are publicly traded, including both mainland-listed and Hong Kong-listed stocks, as well as those traded in exchanges abroad. These companies are also included in several major indices and passive investment products -- like Exchange Traded Funds (ETFs) and mutual funds. Additionally, some of these companies have already been sanctioned by the U.S.

AGRICULTURAL INPUTS

Century Sunshine Group Holdings Limited

AUTO MANUFACTURERS & PARTS

Geely Automobile Holdings Ltd.
Camel Group Co., Ltd.

BEVERAGES

Xinjiang Yilite Industry Co., Ltd.

BUILDING MATERIALS

Xinjiang Qingsong Building Materials and Chemicals (Group) Co., Ltd.

CAPITAL MARKETS

Haitong Securities Co., Ltd.

CHEMICALS

Xinjiang Tianye Co., Ltd.

CONGLOMERATES

Wuchan Zhongda Group Co., Ltd.

CONSUMER ELECTRONICS

Goertek Inc.

ELECTRICAL EQUIPMENT, PARTS & COMPONENTS

Avary Holding (Shenzhen) Co., Ltd.
BOE Technology Group
Jiangsu Tanyuan Technology Co. Ltd.
Lens Technology
Luxshare Precision Industry Co., Ltd.
OFILM Group Co., Ltd.

ENGINEERING & CONSTRUCTION

Xinjiang Beixin Road & Bridge Group Co., Ltd.

FARM PRODUCTS & HEAVY CONSTRUCTION MACHINERY

Xinjiang Tianye Water Saving Irrigation Co., Ltd.
Chenguang Biotech Group Co., Ltd.
Xinjiang Sayram Modern Agriculture Co., Ltd.
Xinjiang Talimu Agriculture Development Co., Ltd.
Xinjiang Western Animal Husbandry Co., Ltd.

FURNISHINGS, FIXTURES & APPLIANCES

Changhong Meiling Co., Ltd. (fmr. Hefei Meiling Co., Ltd.)

INDUSTRIAL DISTRIBUTION

Xiamen International Trade Group Co., Ltd. (Xiamen ITG)

LEISURE

Anta Sports
Li-Ning Company Ltd.

PACKAGED FOODS

Chalkis Health Industry Co., Ltd.
Haoxiangni Health Food Co., Ltd.
Tecon Biology Co., Ltd.
Xinjiang Guannong Fruit and Antler Co., Ltd.

PAPER & PAPER PRODUCTS

Xinjiang Tianrun Dairy Co., Ltd.

PHARMACEUTICAL RETAILERS

Jointown Pharmaceutical Group Co., Ltd

RAILROADS

KTK Group

SEMICONDUCTORS

Suzhou Good-Ark Electronics Co., Ltd.

SOLAR

LONGi Green Energy Technology Co. (Xi'an LONGi Silicon Materials Co.)
Canadian Solar Inc.
JA Solar Holdings Company
Jinko Solar Holding Co Ltd.
Trina Solar Co., Ltd.
Xinjiang Daqo New Energy Co., Ltd.
GCL Technology Holdings Ltd.
Hoshine Silicon Industry Co.
TBEA Co., Ltd. (formerly Tebian Electric Apparatus Co.)
Xinte Energy Co., Ltd.

SPECIALTY BUSINESS SERVICES

Xiamen C&D

SPECIALTY INDUSTRY MACHINERY

Xinjiang Goldwind Science & TechnologyCompany

TEXTILE MANUFACTURING

Huafu Fashion Co., Ltd.
Jiangsu Lianfa Group
Shandong Ruyi Technology Group (Shandong Ruyi Woolen Garment
Texhong Textile Group

UTILITIES

Xinjiang Tianfu Energy Co., Ltd.