



Initial Assessment Report

Guess? Canada Corporation

Country: China

File number: 220845

Complaint filed on: June 21, 2022

Report publication date: December 11, 2023



About the CORE

The Canadian Ombudsperson for Responsible Enterprise (CORE) is a business and human rights dispute resolution mechanism established by the Government of Canada. People can file complaints with the CORE about possible human rights abuses arising from the operations of Canadian garment, mining, and oil and gas companies outside of Canada.

For more information, see the [Canadian Ombudsperson for Responsible Enterprise](#) website.

What is the purpose of this report?

The CORE is reporting on the initial assessment stage of a complaint filed by a coalition of 28 Canadian organizations on June 21, 2022, about the activities of Guess? Canada.

Pursuant to section 16 of the CORE's [Order in Council](#), the parties had an opportunity to comment on the facts contained in this report. A summary of the comments received is at Part 5 of the Report.

Who are the parties to the complaint?

The Complainants are a coalition of 28 Canadian organizations listed in Annex 1.

Guess? Canada Corporation is a company formed under the Nova Scotia Companies Act. It was incorporated in Nova Scotia, Canada on 2007-11-19 under the corporation number 3223824 and name Guess? Canada Corporation (hereinafter referred to as "Guess? Canada").¹

What is the complaint about?

The complaint alleges that Guess? Canada has supply relationships with several Chinese companies identified as using or benefiting from Uyghur forced labour. It also asserts that there is no indication that Guess? Canada has taken any concrete steps to ensure beyond a reasonable doubt that forced labour is not implicated in their supply chain.

According to the complaint, Guess? Canada has business relationships or supply chain links with Shandong Zoucheng Guosheng, Luthai Textile Co. Ltd., and Xinjiang Zhongtai Group. The complaint links all of these companies with Uyghur forced labour.

To support their allegations, the Complainants refer to the findings documented in a report by the Australian Strategic Policy Institute, "Uyghurs for sale" (hereinafter referred to as the "ASPI Report"), regarding the company listed below:²

¹ Registry of Joint Stock Companies, Nova Scotia, <https://rjsc.novascotia.ca/e-commerce/company/3223824>.

² Australian Strategic Policy Institute, "Uyghurs for Sale", (March 2020), <https://www.aspi.org.au/report/uyghurs-sale> ["ASPI Report"].



*Jiangsu Guotai Guosheng ("Jiangsu")*³: The complaint alleges that in November 2019, a satellite factory of Shandong Zoucheng Guosheng ("Shandong") claimed that it "brought over 3,500 jobs to Xinjiang." According to a government report, these jobs were "set to be the biggest Xinjiang Aid [i.e., labour transfer] project in Kashgar Prefecture." Texworld USA, a US-based international business platform identified Shandong's parent company, Jiangsu, as a supplier to Guess (Guess? Inc. and its subsidiaries, including Guess? Canada).

To support their allegations, the Complainants also referred to a report by Sheffield Hallam University, "Laundering Cotton", regarding the companies listed below:⁴

*Luthai Textile Co. Ltd. ("Luthai")*⁵: The complaint alleges that Luthai has reportedly "absorbed" a large number of "surplus laborers" from rural areas and participated in vocational training programs. According to Chinese media, Luthai has been engaged in labor transfer programs for many years. Training conducted by its subsidiary, Xinjiang Luthai Fengshou, is characterized as "conducted in a centralized and closed militarized management mode," suggesting compulsory or forced labor.

To support their allegations, the Complainants also referred to the findings documented in a report by the Helen Kennedy Center for International Justice, "Built on Repression", regarding the company listed below:⁶

*Xinjiang Zhongtai Group ("Zhongtai")*⁷: The complaint alleges that Zhongtai is "an avid participant in state-sponsored labor transfer programs and publicizes its engagements regularly". According to Chinese media, there is a high risk of Uyghur forced labour at Zhongtai and that one of its subsidiaries, Aral Fulida, is a supply chain partner of Guess (Guess? Inc. and its subsidiaries, including Guess? Canada).

By way of a letter dated November 12, 2021, the Complainants indicated they asked Guess? Canada to conduct human rights due diligence (HRDD) to ensure Guess? Canada does not benefit from Uyghur forced labour, and specifically asked the company to cut off relations with Jiangsu. According to the Complainants, Guess? Canada did not reply to their inquiry. Guess? Canada stated that they found no record of receiving this letter.

The Complainants mentioned that in April 2022, in response to an inquiry by reporter Steven Chase of the Globe and Mail, Guess' Vice-President of Internal Audit, Debbie Herdere, stated that none of the factories linked to Guess by ASPI were present in the company's supply chain. Ms. Herdere further stated that "when companies buy finished goods from suppliers who have

³ ASPI Report at p. 38.

⁴ Sheffield Hallam University, "Laundering Cotton", (November 2021), <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton> ["Sheffield Report"].

⁵ Sheffield Report at pp. 39 and 42.

⁶ Laura T. Murphy et al., "Built on Repression: PVC Building Material's Reliance on Labor and Environmental Abuses in the Uyghur Region", (June 2022), <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/built-on-repression> ["HKCIJ Report"].

⁷ HKCIJ Report at pp. 13, 16, 26.



sourced materials themselves, it can be challenging to determine whether the fibres were grown in Xinjiang.” The complainants believe that Guess? Canada is obliged to ensure that they are not using forced labour throughout their supply chains by implementing supply chain tracing technology.

Part 1 – Summary of the intake stage (or admissibility stage)

1. On July 20, 2022, on the basis of the information provided by the Complainants, the Ombud decided that the complaint was admissible pursuant to section 6.1 of the [Operating Procedures](#). This means that the Ombud decided there was sufficient information for the Complainants to form a reasonable belief that each of the three admissibility criteria was met. The threshold for admissibility is a low one. The admissibility criteria are that:
 - The complaint concerns an alleged abuse of an internationally recognized human right;
 - The alleged abuse arises from the operations abroad of a Canadian company in the garment, mining or oil and gas sector; and
 - The abuse allegedly occurred after May 1, 2019 or, if it allegedly occurred before May 1, 2019, is ongoing at the time of the complaint (Section 5.7, [Operating Procedures](#)).
2. The Ombud’s decision was communicated to the Complainants on July 27, 2022.
3. The Ombud’s decision was communicated to Guess? Canada by email on July 28, 2022 with a copy of the complaint. The complaint was then moved from the intake stage to the initial assessment stage of the complaint process.

Part 2 – Initial assessment

Background

4. Initial Assessment is the process for deciding how to proceed with an admissible complaint including how to address any objections from the respondent (the company named in the complaint). The Ombud does not make a decision on the merits of the complaint during initial assessment.

1 Talk to both parties separately

to develop a better understanding of the complaint without deciding whether it is true or false.

2 **Begin to identify** the parties’ underlying needs and interests.

3 Provide information

regarding the role of the CORE and the different dispute resolution processes.

4 **Work with the parties** to decide what dispute resolution process may best address the issues raised by the complaint including any objections from the company.



5. The objectives of the initial assessment process are to:
 - Develop a better understanding of the parties' positions regarding the allegations including any objections to the complaint from the respondent;
 - Begin to identify the parties' underlying needs and interests;
 - Provide information regarding the role of the CORE and the different dispute resolution processes; and
 - Work with the parties to decide what dispute resolution process may best address the issues raised by the complaint including the allegations and any objections from the respondent.
6. During initial assessment, the Ombud meets with the parties to learn about their views regarding the allegations, respond to their concerns and questions, and seek their agreement to participate in early resolution or mediation. If the parties do not agree to participate in a consensual dispute resolution process, the Ombud will decide how to deal with the complaint including whether to begin a review.

The initial assessment process in this complaint

7. The steps taken by the CORE during the initial assessment of this complaint were as follows:
 - i. Desk review of the complaint.
 - ii. Desk research on academic reports and corporate statements.
 - iii. Guess? Canada's initial response to the complaint received October 27, 2022.
 - iv. The CORE's "Information Note: Privacy and Confidentiality in the CORE's Complaint Process" was sent to the parties on November 17, 2022 indicating that the CORE's complaint process is subject to Canada's [Privacy Act](#) and [Access to Information Act](#).
 - v. Virtual meeting with the Complainants' representatives on November 18, 2022.
 - vi. Virtual meeting with counsel for Guess? Canada on November 23, 2022.
 - vii. Letter sent to Guess? Canada on December 23, 2022 regarding options for a dispute resolution process and next steps.
 - viii. Guess? Canada's follow-up response to the complaint received March 7, 2023.
 - ix. Email to Guess? Canada dated April 11, 2023 requesting Guess? Canada's consent to share its March 7, 2023 letter with the Complainants.
 - x. Email from Guess? Canada dated April 14, 2023 refusing consent to share the March 7, 2023 letter with the Complainants.
 - xi. Email to Guess? Canada dated April 27, 2023 indicating that the CORE will proceed with drafting the Initial Assessment Report and will summarize Guess? Canada's objections and related documents and information.
 - xii. Email from Guess? Canada dated May 3, 2023 asserting confidentiality and stating that it must have an opportunity to review the Initial Assessment Report before anyone else, including the Complainants.



- xiii. Letter to Guess? Canada dated May 5, 2023 requesting that Guess? Canada identify specifically what information provided to the CORE it considers confidential and on what basis.
- xiv. Email from Guess? Canada dated May 16, 2023 asserting that Guess? Canada communicated with the CORE in confidence and reiterating its request to comment on the facts in the report before it shared to any other person, including the Complainants.
- xv. Letter to Guess? Canada dated May 18, 2023 repeating the CORE's earlier request for Guess? Canada to identify specifically what information provided to the CORE it considers confidential and on what basis.
- xvi. Email from Guess? Canada dated May 26, 2023 reiterating its claims of confidentiality.
- xvii. Letter to Guess? Canada dated July 4, 2023 indicating that the CORE will not reference the company's information, documents and submissions in the preparation of this Initial Assessment report, except for publicly available documents.
- xviii. Letter from Guess? Canada dated July 6, 2023 reiterating that Guess? Canada communicated with the CORE in confidence and asserting that the CORE must rule on Guess? Canada's objections before proceeding with this report.

What the Complainants told the CORE

8. During the initial assessment meeting on November 18, 2022, the Complainants expressed their willingness to participate in early resolution or mediation including agreeing to terms of confidentiality. The Complainants are willing to work towards a systemic resolution that does not name Guess? Canada and that finds solutions to address the possible use of Uyghur forced labour and that would help Canadian garment companies to undertake appropriate HRDD in this high risk context. The Complainants also indicated that given the complexity of tracing the origin of textiles, particularly from Xinjiang, it is preferable that garment companies use fibre tracing technology to map their supply chains from fibre to retail.

Guess? Canada Corp.'s response to the complaint

9. Through a series of letters and emails exchanged with the CORE, Guess? Canada asserts that certain information and documents it provided to the CORE during the complaint process are confidential and/or were communicated to the CORE in confidence.
10. Guess? Canada states that the information, documents, and submissions it provided to the CORE are confidential and should not be disclosed to the Complainants or others until the CORE makes a ruling on Guess? Canada's objections, provides Guess? Canada the opportunity to review and consider that ruling, and permits a reply by Guess? Canada.
11. The CORE requested, on two occasions, that Guess? Canada identify specifically what information provided to the CORE it considers confidential and on what basis. Guess? Canada stated it was not making a blanket assertion of confidentiality, indicating that some information could be shared publicly, but failed to indicate on what basis the remainder of



the material was confidential. Guess? Canada also took the position at other points in the exchange that its communications with the CORE were conducted in confidence. It is not clear from Guess? Canada's position whether this applies to some or all of its communications with the CORE.

12. As a result of Guess? Canada's position regarding confidentiality, the CORE has not referenced the company's information, documents, and submissions in the preparation of this report, nor will it rely upon this material in determining whether to proceed to an investigation.
13. Should the Ombud determine the complaint move forward to the investigation stage, and Guess? Canada wants the material to form part of the CORE's deliberations, Guess? Canada will have an opportunity to enter into a confidentiality agreement to mitigate against the risk of disclosure. Pursuant to s. 16 of the Order in Council, Guess? Canada also has an opportunity to comment on a draft version of this report. A summary of these comments is added at Part 5.
14. The information Guess? Canada provided to the CORE that it indicated is not confidential includes:
 - a. The Guess? Canada Privacy Policy;
 - b. The Guess? Inc. Code of Ethics;
 - c. Guess? Inc.'s list of Key Tier 1 Suppliers and its top ten Tier 2 Denim Suppliers;
 - d. Guess? Inc.'s corporate statement that Guess? Inc.'s Tier 1 suppliers are prohibited from sourcing goods and cotton from the XUAR;
 - e. Guess? Inc.'s statement that, in September, 2020, Guess? Inc. formalized its policy not to contract vendors or suppliers operating in the XUAR.
15. Guess? Canada told the CORE that in 2019, because of existing monitoring, risk management, and due diligence processes, and in line with the requirements of the Uyghur Forced Labor Prevention Act in the USA, Guess (Guess? Inc. and its subsidiaries, including Guess? Canada) ceased all business relationships with Tier 1 vendors in Xinjiang and forbids working with any company based in that region. Guess? Inc. formalized its policy to not contract vendors or suppliers in Xinjiang in September 2020. Tier 1 suppliers were also forbidden from sourcing materials from Xinjiang and training is provided to ensure vendors comply with this requirement.



Part 3 – How to deal with the complaint

16. The Ombud must decide how to deal with the complaint. The Ombud may decide to:
- Close the file - The Ombud may decide not to deal with the complaint and to close the file after publishing this report pursuant to section 14(2) of the [Operating Procedures](#); or,
 - Conduct an investigation using independent fact-finding - The Ombud may decide to investigate the complaint using independent fact-finding pursuant to section 7(b) of the [Order in Council](#).
17. In deciding whether to investigate a complaint, the Ombud considers the overall context of the complaint and relevant factors including whether:
- The complaint is trivial or frivolous;
 - The complaint is being reviewed or has been reviewed, in another forum;
 - The Canadian company has already provided a satisfactory response or remedy to the allegations in the complaint;
 - Relevant information is likely to be available; and
 - An investigation is likely to lead to unacceptable risk to the Complainants or others.
18. In considering whether relevant information is likely to be available, the cooperation of the Canadian company named in a complaint is not determinative. The CORE may consider the availability of information from all reasonably accessible sources. As well, in any final report, the CORE may comment on how the cooperation of the parties impacted on the availability of information and other aspects of the investigation.
19. In considering whether any practical or effective remedy is likely to be available in an appropriate case, the Ombud will consider the possible remedies.

Analysis

20. On their face, the allegations made by the Complainants raise serious issues regarding the possible ongoing abuse of the internationally recognized right to be free from forced labour, referred to in following instruments:
- Right to be free from slavery or servitude (Article 4, [Universal Declaration of Human Rights, 1948](#));
 - Right to work, to free choice of employment, to just and favourable conditions of work (Article 23(1), [Universal Declaration of Human Rights, 1948](#); Article 6.1, [International Covenant on Economic, Social and Cultural Rights, 1976](#));
 - Freedom from forced or compulsory labour (Articles 1 & 2, [ILO's Forced Labour Convention, 1930 \(No. 29\)](#), Article 8(3)(a), [International Covenant on Civil and Political Rights, 1976](#); [The Protocol of 2014 to the Forced Labour Convention 1930](#));



- d. Freedom from forced or compulsory labour as a means of political coercion or of racial, social, national or religious discrimination. (Article 1, [ILO's Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)).
21. The seriousness of the human rights impacts arising from the possible use of Uyghur forced labour is underlined by the [report of the Office of the UN High Commissioner for Human Rights](#) issued in August 2022. The report finds that far-reaching, arbitrary and discriminatory restrictions on human rights and fundamental freedoms were imposed on Uyghurs and other predominantly Muslim communities living in Xinjiang “in violation of international laws and standards” and calls on states, businesses and the international community to take actions in order to end the abuses.
22. Recognizing the seriousness of the possible use of Uyghur forced labour in Xinjiang, the Canadian government requires Canadian companies that source directly or indirectly from Xinjiang or from entities relying on Uyghur labour or who seek to engage in the Xinjiang market to sign the [Integrity Declaration on Doing Business with Xinjiang Entities](#) before receiving services and support from the Trade Commissioner Service (TCS). In addition, the Canadian government’s 2023 budget signaled its commitment to reducing supply chain vulnerabilities and its intention to strengthen Canada’s supply chain infrastructure by shifting critical supply chains away from dictatorships and towards democracies.
23. The complaint also raises questions about Guess? Canada’s due diligence activities. [Principles 14 and 17 of the UNGPs and related commentary](#) (PDF) indicate that HRDD relating to high-risk areas such as the Xinjiang region in China be tailored according to the nature and context of a company’s operation, types of vulnerable groups, and the intensity and severity of human rights risks and that a company may need to adopt more robust measures in a high-risk operating context.
24. As well, the UNGPs provide guidance regarding the responsibility of companies to be transparent about their HRDD activities. Companies whose business operations or operating context pose risks of severe human rights impacts should report formally about how they identify and address those serious human rights impacts ([Principle 21 and its commentary of the UNGPs](#) [PDF]). When concerns are raised by or on behalf of affected or other relevant stakeholders, companies need to provide sufficient information and ensure that their reporting/communication is accessible to the intended audiences.
25. Considering the information contained in the ASPI, “Laundering Cotton”, and “Built on Repression” reports, which suggests there may be a link between Guess? Canada and the Chinese Entities that the reports identify as using Uyghur forced labour, and the position of Guess? Canada, it appears that there is a conflict in the available information that may warrant a review.
26. The CORE’s complaint process is subject to Canada’s [Access to Information Act](#) (ATIA) and [Privacy Act \(PA\)](#). This means that the CORE cannot guarantee the confidentiality of information or documents shared during the complaint process unless they are exempted



the ATI and the PA. Someone who makes a request under the ATIA may be able to access information in the CORE's files. There are exceptions to disclosure under the ATIA, including for confidential business information. The *Privacy Act* protects the personal information of individuals held by the CORE from public disclosure in accordance with and subject to the *Act*. The *Privacy Act* defines personal information as information about an identifiable individual including their name, contact information, their health status, their physical safety, and their personal relationships.

27. The CORE may agree to keep information confidential during the complaint process. Section 20.6 of the CORE's [Operating Procedures](#) explains that the CORE may enter into a confidentiality agreement (or a non-disclosure agreement) with either or both parties to protect confidential information. However, the information may be disclosed under the ATIA, subject to its exemptions, as explained above.
28. The CORE strives to balance privacy and confidentiality with transparency in its complaint process. However, it should be noted that the CORE is obligated under its [Order in Council](#) (OIC) to establish procedures for review that are 'fair' and 'transparent' (section 9(1)). To that end, the CORE's [Operating Procedures](#) state, "the Ombud will strive to carry out their mandate in a transparent fashion and will generally share relevant information including with the parties or subjects of the review." (section 20.1).
29. While there may be steps the CORE can take to protect confidential information, in the absence of information from the Respondent on the specifics of their confidentiality claim, the CORE is unable to take steps to mitigate the risk of disclosure.
30. Also related to procedural fairness and transparency, where a company challenges the jurisdiction of the CORE to hear a complaint, the challenge must be: i) made available to the other party, to give them an opportunity to respond; and, ii) be publicized, given a clear public interest in having the public understand how the CORE is interpreting its jurisdiction. With respect to all complaints, the CORE interprets its jurisdiction as follows:
 - a. The CORE's authority to address allegations of human rights abuse is established by its OIC. The term "operates abroad" arises in two places in that instrument. The definition of "human rights abuse" in ss. 1(1) requires that the alleged abuse arise "...from a Canadian company's operations abroad". Subsection 1(2) specifies the entities that fall within the CORE's review mandate by defining Canadian company as "an entity that...operates abroad in the garment, mining, or oil and gas sectors, and includes an entity that it controls and that operates abroad in the garment, mining, or oil and gas sectors". (emphasis added)
 - b. The question of whether a company "operates abroad" under ss. 1(2) is distinct from the question of whether a human rights abuse "aris[es] from a Canadian company's operations abroad" under ss. 1(1). For example, a company may operate abroad within the definition of Canadian company in ss. 1(2) of the OIC. However, in a



specific complaint, an alleged human rights abuse may or may not arise from the operations abroad of that company, as required by ss. 1(1). The question of whether the human rights abuse “arises from a Canadian company’s operations abroad” relates to the merits of the complaint and will usually require an extensive factual basis to be addressed through investigation before being determined.

- c. The Ombud must be satisfied that they have jurisdiction over the company named in a complaint. At the admissibility stage, the Ombud makes a preliminary decision regarding their jurisdiction based on the information and reasonable inferences submitted by a complainant. The Ombud may revisit this decision at any stage in the complaint process. When a respondent objects that they do not operate abroad within the meaning of “Canadian company” in ss. 1(2), the Ombud has discretion over the timing of when to decide that issue.
- d. The OIC does not define the term “operates abroad”. A broad and purposive approach to its interpretation is appropriate and in keeping with the nature of the human rights and obligations that underlie the CORE’s mandate, and its role in representing the public interest in the protection of human rights including preventing human rights abuses.
- e. Section 5 of the OIC also provides guidance regarding how to approach the interpretation of “operates abroad”. It requires that the CORE be guided by the [United Nations Guiding Principles on Business and Human Rights](#) (“UNGPs”) and the [Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises](#) (“OECD Guidelines”) in discharging its mandate. According to UN Guiding Principle 13 and its related commentary, business activities can include a wide variety of actions and omissions.
- f. A broad interpretation of “operations” is also supported by the language in the French version of the OIC, which uses the term *activités*.
- g. As well, ss 1(2) and 1(3) of the OIC define a Canadian company as including entities that it controls directly or indirectly and any entities controlled by those entities. This means that the CORE can review possible human rights abuses arising from entities that have business relationships with a Canadian company, which includes their supply chain. This is consistent with UN Guiding Principle 13 and its related commentary that state that business relationships “include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”
- h. The garment sector, in particular, is frequently composed of complex supply chains where production of a garment can take place in multiple countries by multiple



entities, many with whom a Canadian company may not have a direct contractual relationship. As outlined in section 2 of the CORE's [Operating Procedures](#), the garment sector includes all of the processes involved in the manufacture of clothing and footwear including making the raw materials (for example, fabric and leather), distribution, use, and disposal. In companies that are not vertically integrated, these processes take place through a company's supply chain.

31. If the Ombud decides to investigate the complaint, there will be an ongoing opportunity for Guess? Canada to respond and participate in the process, including by providing additional information regarding its HRDD activities.
32. Given the broader context of the complaint and challenges in gathering information on an in-country-basis, independent fact-finding may be limited. The availability of the information would need to be assessed as the investigation progresses and would be considered in any final report.
33. The complaint does not name individuals or make individuals identifiable thereby reducing the potential for an investigation to increase risk to individuals. If the Ombud decides to investigate the complaint, an assessment of risk will be ongoing throughout the review.

Part 4 – Participation in the complaint process

34. As outlined above, Guess? Canada provided a response to the complaint. Guess? Canada also agreed to meet for an initial assessment meeting, and this meeting was held on November 23, 2022. Guess? Canada has responded to all correspondence from the CORE, but did not provide a basis for its assertion of confidentiality over the information, documents, and submissions it provided to the CORE as part of the complaint process.
35. The CORE's [Operating Procedures](#) provides that full and active participation in the complaint process is part of good faith:

Section 11.1 requires the parties to fully participate in the complaint process including by providing the Ombud with relevant information and documents and making witnesses available on reasonable notice, according to the timelines established by the Ombud.

Section 11.2 provides that where a Canadian company does not participate actively in the complaint process, including refusing to provide relevant information and documents, the Ombud may draw appropriate negative conclusions or adverse inferences during fact finding.

Section 12.4 provides that the Ombud may consider a party not to be acting in good faith if the party does not actively participate in a review without reasonable explanation.



36. Should the Ombud decide that Guess? Canada is not acting in good faith, the Ombud may exercise their discretion to make a recommendation to the Minister under section [10 of the Order in Council](#) which provides that the Ombud may make recommendations to the Minister on implementing trade measures including any of the following:
- Withdrawal or denial of trade advocacy support provided to the Canadian company by the Department of Foreign Affairs, Trade and Development (known as “Global Affairs Canada”);
 - Refusal by the Department of Foreign Affairs, Trade and Development to provide future trade advocacy support to the Canadian company; and
 - Refusal by Export Development Canada to provide future financial support to the Canadian company.

Part 5 – Comments from the parties

Comments from the Complainants

37. In a letter dated September 22, 2023, the Complainants provided the following comments on the draft initial assessment report. The Complainants assert that the CORE should conduct a review using independent fact-finding. To support their assertion, the Complainants apply the factors set out in paragraph 17.
38. First, the Complainants assert that the complaint is not trivial or frivolous. Referring to the ASPI report, the research by Laura Murphy, as well as the Laura Murphy, Jim Vallette, and Nyrola Elimä’s research, the Complainants state that the “... evidence presented against Guess? Canada Corporation is substantial.”
39. Second, the Complainants note that the complaint is not being reviewed in another forum, nor has it been reviewed in the past in another forum.
40. Third, the Complainants assert that Guess? Canada Corporation has not provided a satisfactory response or remedy to the allegations in the complaint. Specifically, the Complainants state that they received no response to their letter to Guess? Canada Corporation of November 2021. The Complainants also assert that the statement by Debbie Herdere, Vice-President of Internal Audit at Guess relating to “the challenges of discerning the use of forced labour when suppliers have sourced materials themselves” is not persuasive. The complainants note that while Guess? Canada communicated to the CORE that in 2019 it stopped all business relationships with Tier 1 vendors in Xinjiang; forbid working with any company based in the Xinjiang region; forbid Tier 1 suppliers from sourcing materials from Xinjiang; and, provided training to ensure vendors comply with its requirement; that these statements are unsatisfactory. According to the Complainants, Guess? Canada’s denial of any link with forced labour is also contradicted by the findings of ASPI and Laura Murphy.



41. Fourth, the Complainants state that relevant information is likely to be available in the public domain, including through the Australian Strategic Policy Institute, and Laura Murphy et al.. They note that even if Guess? Canada Corporation fails to cooperate, the relevant information that is available in public domain is substantial.
42. Finally, the Complainants note that conducting a review is not likely to lead to unacceptable risk to the Complainants or others.

Comments from Guess? Canada Corporation

43. On September 22, 2023, Guess? Canada Corporation provided its comments on the draft initial assessment report as follows:

- First, they assert the “reports” presented by the CORE do not mention Guess? Canada and do not provide any verifiable and credible evidence that Guess Canada? is linked to any entities in China utilizing forced labour. They note that the Facebook post titled “Introducing Our Mill of the Month for May” which inaccurately identified Guess? as one of the clients of an exhibitor at a trade show does not constitute accurate and verifiable evidence. They note that the exhibitor has not been a supplier to Guess? Inc. since prior to 2017. They also note that while Guess? Canada has carefully reviewed and responded to the allegations in the complaint, the CORE has yet to acknowledge Guess? Canada’s responses to the allegations.
- Second, Guess? Canada objects to the CORE’s jurisdiction, expressing serious reservations about the CORE’s process and admissibility criteria. They assert that “the CORE lacks jurisdiction over Guess? Canada as Guess? Canada does not operate abroad”. They add that Guess? Canada has never done business in China, has no business relationship with any supplier or manufacturer in China, and opposes the allegation that it is implicated in any human rights abuses in China. Furthermore Guess? Canada notes that “the CORE decided the complaint was admissible based solely on the information provided by the Complainants, and did so without any notice to Guess? Canada and without giving Guess? Canada an opportunity to make submissions.”
- Third, Guess? Canada asserts that it has promptly provided all the information the CORE has requested, participated in the complaint process, and continues to act in good faith throughout the process, despite its objections to the allegations, as well as its objections to the CORE’s jurisdiction. With respect to its concerns regarding confidentiality which has yet not been addressed, it notes that “contrary to the CORE’s suggestion, Guess? Canada did provide a basis for its assertion of confidentiality over its submissions.” Guess? Canada added that its understanding was that its objections to the jurisdiction of the CORE and the admissibility of the complaint were confidential, and solely between it and the CORE.
- Fourth, Guess? Canada reiterates its commitment to eradicating forced labour from its supply chains and prohibiting its contractors and vendors from using any forced labour,



and highlights some of its efforts in that regard including the GUESS? Code of Conduct and Standards for Business Practices, as well as the GUESS? ESG Report.

Part 6 – Ombud’s decision

44. In order to address the allegations raised in the complaint, the Ombud has decided to launch an investigation using independent fact-finding. In reaching their decision, the Ombud considered the factors addressed in paragraph 17 of this report and, in particular, whether there is a gap in the information currently available that warrants an investigation.
45. Guess? Canada has responded to the complaint, denying the allegations in the complaint. Guess? Canada also raised jurisdictional questions which have been addressed in paragraph 30 of this report. While Guess? Canada has responded to the complaint, its response does not appear to consider fully the complex nature of the garment supply chain, discounts risks at the lower tiers of its supply chain, and creates a gap in the available information that warrants an investigation. In particular, Guess? Canada provided the CORE with its list of key Tier 1 suppliers and its top ten Tier 2 Denim suppliers; highlighted its social compliance requirements for its Tier 1 factories; asserted that it has ceased all business relationships with Tier 1 vendors in Xinjiang; noted that its Tier 1 suppliers are prohibited from sourcing goods and cotton from the Xinjiang, and emphasized that it provides training for its Tier 1 vendors to ensure they do not source goods and cotton from Xinjiang. Nevertheless, considering the complex nature of the garment supply chain and the complexity of tracing the origin of textiles, it is possible that factories in lower tiers of Guess? Canada’s supply chain use Xinjiang cotton. The investigation will consider this, and other related indicators of risks.
46. While the availability of relevant information may be limited given the broader context of the complaint, the Ombud will seek assistance from investigators with expertise in researching and analyzing publicly available data. If available information is limited – or Guess? Canada’s cooperation limits the availability of information – the Ombud can comment in the investigation report on how the availability of information affects their ability to make findings.
47. Guess? Canada will have an ongoing opportunity to provide further relevant information during the investigation, including information regarding its HRDD activities.
48. While the CORE will proceed with an investigation through independent fact-finding, mediation is available at any stage of the complaint process at the Ombud’s discretion and with the agreement of the parties. The Ombud encourages the parties to consider mediation and the related confidentiality that it can provide including with respect to commercially sensitive information.



ANNEX-1

Complainants: A coalition of 28 organizations

1. Canadians in Support of Refugees in Dire Need (CSRDN)
2. Alliance Canada Hong Kong
3. Anatolia Islamic Centre
4. Canada Tibet Committee
5. Canadians Against Oppression & Persecution
6. Canadian Council of Muslim Women (CCMW)
7. Canadian Council of Imams (CCI)
8. Canada-Hong Kong Link
9. Doctors for Humanity
10. East Turkistan Association of Canada
11. End Transplant Abuse in China (ETAC)
12. Human Rights Research and Education Centre, University of Ottawa
13. Human Concern International (HCI)
14. Islamic Circle of North America Canada (ICNA)
15. Islamic Society of North America (ISNA)
16. Justice for All
17. Lawyers for Humanity
18. Muslim Association Canada (MAC)
19. National Council of Canadian Muslims (NCCM)
20. Raoul Wallenberg Centre for Human Rights
21. Canadian Security Research Group



22. Share 2 Care (S2C)
23. Stop Uyghur Genocide Canada
24. Toronto Association for Democracy in China
25. Union of Medical care and Relief Organizations-Canada (UOSSM)
26. Uyghur Refugee Relief Fund
27. Uyghur Rights Advocacy Project
28. Vancouver Society in Support of Democratic Movement