



# Initial Assessment Report

**Zara Canada Inc.**

**Country: China**

**File number: 220852**

**Complaint filed on: June 21, 2022**

**Report published on: November 6, 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 Zara Canada Inc.

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 (hereinafter referred to as Complainants) listed in Annex 1.

Zara Canada Inc. is a garment company formed under the [New Brunswick Business Corporation Act](#). It was incorporated in New Brunswick, Canada on 1999-06-03 under the corporation reference number 509535 under the name Zara Canada Inc. (hereinafter referred to as “Zara”).<sup>1</sup>

## What is the complaint about?

The Complainants allege that Zara has supply relationships with three Chinese companies that the Australian Strategic Policy Institute (ASPI) identified in March 2020 and the Helena Kennedy Centre for International Justice (HKCIJ) identified in June 2022 as using or benefitting from Uyghur forced labour.<sup>2</sup> According to the allegations, the use of Uyghur forced labour by Zara through its suppliers started before May 1, 2019 and is ongoing.

According to the complaint, Zara Canada Inc. has relationships or supply chain links with Huafu Top Dyed Melange Yarn Co. Ltd., Shandong Zoucheng Guosheng, and Xinjiang Zhongtai Group (hereinafter collectively referred to as the “Chinese Entities”). To support their

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<sup>1</sup> Service New Brunswick, [B-9.1 - Business Corporations Act \(gnb.ca\)](#).

<sup>2</sup> Australian Strategic Policy Institute, *Uyghurs for Sale*, (March 2020), pp. 5 & 27, <https://www.aspi.org.au/report/uyghurs-sale> [“ASPI Report”]; 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”].



allegations, the Complainants refer to the findings documented in the ASPI report regarding the companies listed below:<sup>3</sup>

Huafu Top Dyed Melange Yarn Co. Ltd. (“Huafu”):<sup>4</sup> The complaint alleges that between April 2017 to June 2018, Huafu Top Dyed Melange Yarn was one of fifteen factories that received a percentage of the 2,048 Uyghur labourers who were taken from Hotan Prefecture in Xinjiang to Anhui Province. ASPI references a Chinese media source claiming that Zara is one of “Huafu’s long term customers.”

Shandong Zoucheng Guosheng (“Shandong”):<sup>5</sup> The complaint alleges that in November 2019, a satellite factory of 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 Guotai Guosheng Co. Ltd. (“JGG”), as a supplier to Zara.

To support their allegations, the Complainants also refer to the findings documented in the HKCIJ report “Built on Repression” regarding the company listed below:<sup>6</sup>

Xinjiang Zhongtai Group (“Zhongtai”):<sup>7</sup> The Complainants allege that 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 Zara. In a letter to Zara in November 2021, the Complainants asked Zara to ensure “beyond a reasonable doubt” that they do not benefit from Uyghur forced labour and to conduct due diligence to ensure that they are not using Uyghur forced labour. In December 2021, Zara’s parent company, Inditex, replied stating it did not have commercial relations with any factory in Xinjiang and considers legal complaints made against it on the issue of forced labour in France “completely unfounded.”

The Complainants also mention that in December 2021, Zara’s parent company, Inditex, stated that it did not have commercial relations with any factory in Xinjiang. The Complainants believe that ASPI’s findings directly contradict statements from Zara (and its parent company Inditex) that it did not have commercial relations with any factory in Xinjiang. The Complainants assert that this means that Zara has not addressed, nor intends to address, its connections with the Chinese Entities. The Complainants state that Zara’s use of factories in China almost inevitably means that there is Uyghur forced labour in its supply chain and that there is no indication that Zara has taken any concrete steps, such as desk-based due diligence, to ensure “beyond a

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<sup>3</sup> ASPI Report.

<sup>4</sup> ASPI Report at pp. 33 & 50.

<sup>5</sup> ASPI Report at p. 38.

<sup>6</sup> HKCIJ Report.

<sup>7</sup> HKCIJ Report at p.13.



reasonable doubt” that they are not using forced labour. There are criticisms of the ASPI report,<sup>8</sup> however, they are not addressed at the initial assessment stage because neither the critiques or the Complainants’ allegations are assessed for their truth at this stage of the complaints process.

## 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 Zara by letter and delivered via process server on August 22, 2022. A copy of the complaint was provided to Zara on September 29, 2022. 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.

### Talk to both parties separately

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

Begin to identify the parties’ underlying needs and interests.

### Provide information

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

### 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 an investigation.

### **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. Initial objections by Zara to the complaint received via letter dated October 28, 2022.
  - iii. Virtual meeting with the Complainants' representatives on November 18, 2022.
  - iv. In person meeting with counsel for Zara on November 18, 2022.
  - v. Follow-up letter sent to Zara on December 23, 2022 requesting the position of Zara regarding participating in mediation.
  - vi. Letter dated January 16, 2023 received from Zara declining mediation and setting out further argument with respect to procedural fairness.
  - vii. Email to Zara dated February 1, 2023 requesting participation in second initial assessment meeting to discuss objections to the complaint.
  - viii. Email dated May 5, 2023 requesting Zara's consent to share objections with the Complainant
  - ix. Email dated May 11, 2023 to Complainants re: Zara Canada's objections
  - x. Reply submission from the Complainants regarding Zara's objections received by way of letter dated June 23, 2023.
  - xi. Desk research on academic reports and corporate statements.

### **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

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<sup>8</sup> See <https://citizensparty.org.au/independent-legal-analyst-shreds-aspis-uyghur-forced-labour-claims> ; and <https://www.cowestpro.co/papers.html>



not name Zara and that finds solutions to address the possible use of Uyghur forced labour and that would help Canadian garment companies to undertake appropriate human rights due diligence (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.

9. In response to Zara's objections regarding jurisdiction, the Complainants believe that Zara has misinterpreted the CORE's Operating Procedures with respect to admissibility. In a letter dated June 23, 2023, the Complainants state that, pursuant to Operating Procedure 5.7, the CORE is not making a decision on the merits of a complaint at the admissibility stage. The Complainants understand Zara to be interpreting Operating Procedure 5.7.2 as a question of whether the alleged human rights abuse arises, *in fact*, from the operations abroad of a Canadian company in the garment, mining, or oil and gas sectors. The Complainants state that this interpretation is incorrect and that at the admissibility stage, the CORE is making a determination only that an allegation has been made. The Complainants suggest that this approach better reflects the intent of Operating Procedure 5.7 and is consistent with the duty of procedural fairness. With respect to Zara's confidentiality concerns, the Complainants believe that a non-disclosure agreement could operate even after the Ombud releases or publishes a report.

#### **Zara Canada Inc.'s response to the complaint**

10. On October 28, 2022, by way of letter, Zara provided a response to the complaint taking the position that the CORE lacks jurisdiction to review the complaint. Zara stated that "... the Chinese entities and/or any manufacturing processes.... are not the "operations abroad" of ITX Canada, and ... the alleged abuses do not "arise from" ITX Canada's operations abroad..."
11. Zara further states that Zara Canada's passive membership in a larger corporate group (i.e. the Inditex S.A. group of companies) where the company is not directly connected to the Chinese Entities, means they are not the "operations abroad" of Zara Canada. Zara acknowledged that Inditex SA, Zara Canada Inc.'s parent company, and parts of the Inditex group of companies, have a presence in China. However, Zara believes that mere involvement with a Chinese entity does not meet the admissibility threshold required; a direct link to the Chinese Entities that is more than merely incidental or fortuitous is necessary.
12. In its October 28, 2022 letter, Zara refers to section 1(1) of the [Order in Council](#), which defines human rights abuse as "an adverse impact on an internationally recognized human right...arising from a Canadian company's operations abroad." Zara argues that the term "operations abroad" and "arising from" should be interpreted consistently with case law in



the Canadian tax and insurance law contexts.<sup>9</sup> Zara states that although the cases it cites are in different legal contexts, these cases should “instruct the interpretation of the CORE’s jurisdiction” in order to “promote consistency and clarity in the law” and because “there is no reason to adopt a different interpretation of the phrases “operations” or “arising from””.

13. Zara also argues, with respect to the allegations regarding Huafu, that the time period between April 2017 to June 2018 in which Uyghur workers were allegedly taken to Huafu, as stated in the ASPI report, is before the first appointment of the CORE. Therefore, Zara argues, this allegation is inadmissible.
14. In a subsequent letter dated January 16, 2023, Zara responded to the CORE’s letter dated December 23, 2022 requesting that Zara participate in mediation. Zara had initially refused to participate in mediation, but demonstrated some openness to it during the initial assessment meeting. However, in its letter of January 16, Zara ultimately refused to participate in mediation, restating its position that the complaint is inadmissible. In addition, Zara raised concerns about the CORE’s ability to provide binding assurances regarding the treatment of confidential information.
15. Zara told the CORE that by proceeding with the initial assessment of the complaint, the CORE had violated Zara’s right to procedural fairness by:
  - a. Failing to revisit the admissibility decision; and
  - b. Failing to provide an opportunity for Zara to know the case against it and make submissions with respect to jurisdiction at the admissibility stage.
16. In response to the CORE’s letter dated February 1, 2023 requesting participation in a second initial assessment meeting to discuss Zara’s objections to the complaint, Zara declined to meet. Zara stated that further assessment would be premature given Zara’s objections with respect to jurisdiction and admissibility. and also concerns around confidentiality of information.
17. In its letters dated October 28, 2022 and January 16, 2023, Zara effectively submits that:
  - a. the CORE lacks jurisdiction because the Chinese Entities are not the “operations abroad” of Zara Canada;
  - b. the alleged human rights abuses are not “arising from” Zara Canada’s operations abroad; and
  - c. the CORE must revisit its admissibility decision regarding the complaint before proceeding with the initial assessment process.

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<sup>9</sup> See: *Clevite Development Ltd. v Minister of National Revenue*, 1961 CarswellNat 293; *Vernon Vipers Hockey Club v. Canadian Recreation Excellence (Vernon) Corporation*, 2012 BCCA 291; *Sky Clean Energy Ltd. (Sky Solar (Canada) Ltd.) v. Economical Mutual Insurance Company*, 2020 ONCA 558.



### Part 3 - How to deal with the complaint

18. 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](#).
19. 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.
20. 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.

## Analysis

### The Jurisdictional Objection

21. The Respondent has made a jurisdictional objection and states that the CORE must decide this objection before proceeding any further in the complaint process. The crux of the Respondent's objection turns on the interpretation and application of the term "operates abroad."
22. The CORE's legal authority to address allegations of human rights abuse is established by its [Order in Council](#) (OIC). The OIC is a human rights legal instrument. The term "operates abroad" arises in two places in the legal scheme created by 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).





23. The question of whether a company “operates abroad” under ss. 1(2) is distinct from the question of whether a human rights abuse “arise[s] 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(1) of the OIC. However, in a specific complaint, an alleged human rights abuse may not arise from the operations abroad of that company, as required by ss. 1(2). 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.
24. The Ombud must be satisfied that they have jurisdiction over the company named in a complaint. Like any government actor, the CORE cannot act without legal authority. At the admissibility stage, the Ombud makes a preliminary decision regarding their legal authority 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.
25. The OIC does not define the term “operates abroad.” A broad and purposive approach to its interpretation is appropriate – one that reflects what the OIC is intended to do. This is also 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. The Respondent’s reliance on Canadian tax and insurance law cases is inconsistent with a broad and purposive interpretation of the CORE’s OIC. That case law reflects a different purpose.
26. 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) (PDF) 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.
27. A broad interpretation of “operations” is also supported by the language in the French version of the OIC, which uses the term *activités*.
28. Furthermore, 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.”



29. The garment sector, in particular, is frequently composed of complex supply chains where production of a garment can take place in multiple different countries by multiple different 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.

### The Complainants' allegations

30. 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:

- a. Right to be free from slavery or servitude (Article 4, [Universal Declaration of Human Rights, 1948](#));
- b. 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](#));
- c. 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 \(No. 105\)](#)).

31. The seriousness of the human rights impacts arising from the possible use of Uyghur forced labour is underlined by the report [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#) 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.

32. 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.



33. The complaint also raises questions about Zara's due diligence activities. Principles 14 and 17 of the [Guiding Principles on Business and Human Rights](#) (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.
34. 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.
35. Considering the information contained in the ASPI and HKCIJ reports, which suggests there may be a link between Zara Canada and the Chinese Entities that the reports identify as using Uyghur forced labour, and the position of Zara, it appears that there is a conflict in the available information that may warrant a review.
36. If the Ombud decides to investigate the complaint, there will be an ongoing opportunity for Zara to respond and participate in the process, including by providing additional information regarding its HRDD activities.
37. 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.
38. 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

39. 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.

40. Should the Ombud consider that Zara 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](#) provides that the Ombud may make recommendations to the Minister on implementing trade measures including any of the following:

- a. 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”);
- b. Refusal by the Department of Foreign Affairs, Trade and Development to provide future trade advocacy support to the Canadian company; and
- c. Refusal by Export Development Canada to provide future financial support to the Canadian company.

## Part 5 – Comments from the parties

### Comments from the Complainants

41. The Complainants provided their comments on the draft initial assessment report and assert that the CORE should conduct an investigation using independent fact-finding. To support this assertion, the Complainants apply the factors set out in paragraph 19:

- a. First, the Complainants argue that the complaint is not trivial or frivolous. The Complainants reiterate the evidence provided in the complaint, specifically from the ASPI and HKCIJ reports.
- b. Second, the Complainants state that the complaint is not being reviewed in another forum. The Complainants note that Zara's parent company, Inditex, is currently under



investigation in France. They point out that this is a criminal investigation relating to crimes against humanity and not responsible business conduct pursuant to the OECD guidelines.

- c. Third, the Complainants assert that Zara Canada has not provided a satisfactory response or remedy to the allegations in the complaint. The Complainants state that ASPI's findings directly contradict statements from Inditex (Zara Canada's parent company) that it did not have commercial relations with any factory in Xinjiang. The Complainants believe that this indicates that Zara Canada has not addressed, and does not intend to address its connections with Huafu or Jiangsu Guotai Guosheng Co. Ltd.
- d. Fourth, the Complainants believe that relevant information is likely to be available in the public domain. The Complainants note that if the CORE were to close the file, this would incentivize Canadian companies to not cooperate with the CORE in the future.
- e. Fifth, the Complainants argue that conducting an investigation is not likely to lead to unacceptable risk to the Complainants or others.

#### Comments from Zara Canada Inc.

42. Zara Canada disagreed with the draft report's statement that "Zara had initially refused to participate in mediation" since it states that the issue of mediation did not arise until the initial assessment meeting on November 18, 2022 and it did not state a formal position on mediation until January 16, 2023.
43. Zara Canada is concerned that the draft report does not reference relevant policies applicable to Zara Canada. In particular, Zara Canada points to its policies and procedures relating to forced labour, and includes excerpts from the following policies in its:
  - a. **Code of Conduct for Manufacturer's and Suppliers:** This policy sets out compliance standards for Zara Canada's manufacturers and suppliers, which includes, among other provisions, a prohibition against the use of forced labour and outsourcing.
  - b. **Code of Conduct and Responsible Practices for the Inditex Companies in Canada (2012):** This policy states that any and all suppliers working with Inditex shall undertake to observe human and labour rights of all employees recruited and to involve its business partners and convey these principles to them.
  - c. **Policy on Human Rights (2016):** This policy indicates Inditex's stance on human and labour rights, namely that it rejects forced or compulsory labour and that it



requires suppliers and business partners to respect and promote internationally recognized human rights in the performance of their activities. For suppliers, this also means involving their business partners and conveying to them these principles.

- d. **Inditex Group Modern Slavery, Human Trafficking and Transparency in Supply Chain Statement (2021):** This policy refers to Inditex’s supply chain traceability systems and also Inditex’s use of due diligence processes.
- e. **Inditex Group Modern Slavery, Human Trafficking and Transparency in Supply Chain Statement (2022):** This policy refers to the introduction of new traceability provisions in the Code of Conduct, describes due diligence, and discusses Inditex social audit procedures.

44. Zara Canada argues that the CORE should not proceed with an investigation. To support this assertion, Zara Canada applies some of the factors set out in paragraph 19:

- a. First, Zara Canada argues that the complaint is frivolous or vexatious because it is factually unfounded and provides insufficient factual information. Zara Canada reiterates its prior arguments, specifically that it does not have any commercial relations with any factory in Xinjiang and the lack of information in the complaint linking Zara Canada to the factories in Xinjiang.
- b. Second, Zara Canada argues that it has already provided a satisfactory response or remedy through its policies and in particular, those outlined above.
- c. Third, Zara Canada believes that relevant information is unlikely to be available in the public domain, and that relevant information will likely be considerably limited given the difficulty of conducting an in-country investigation.
- d. Lastly, Zara Canada sets out other “relevant factors” including that the CORE applied the incorrect admissibility standard and incorrectly interpreted its mandate. Zara Canada also repeats its procedural fairness and confidentiality concerns.

## Part 6 - Ombud’s decision

45. To move forward with mediation or joint fact-finding, the agreement of both parties is essential. The Complainants indicated that they are open to all dispute resolution options. Zara Canada declined to participate in mediation in its January 16, 2023 letter because it believes the complaint is inadmissible. Consequently, it appears that mediation is not currently a viable option.



46. In order to address the allegations raised in the complaint, and to assess whether the allegations arise from the operations abroad of Zara Canada, the Ombud has decided to launch an independent fact-finding investigation. In reaching their decision, the Ombud considered the factors mentioned in paragraph 19 of this report:
- a. On its face, the complaint raises serious allegations regarding the possible abuse of the international human right to be free from forced labour. Closing the file before conducting an investigation would prevent the Ombud from considering every process available to them to pursue their mandate of promoting human rights and preventing human rights abuses;
  - b. The complaint is not pending for review or has not been reviewed in another forum;
  - c. Despite Zara Canada's comments on the draft report, it did not provide a satisfactory response to the complaint. Zara Canada generally denied the allegations in the complaint, but its statement that it did not have commercial relations with any factory in Xinjiang is directly contradicted by the ASPI findings. While Zara Canada referred to its extensive policies and procedures regarding the issue of forced labour, which includes policies aimed at prohibiting or rejecting the use of forced labour in its supply chains, it did not provide any further information to specifically address the complaint.
  - d. Given the difficulty of obtaining information from Xinjiang, relevant information may be limited and the Ombud may seek assistance from experts to carry out context-appropriate research.
  - e. An investigation is not likely to lead to an unacceptable risk to the Complainants and others.
  - f. During the investigation, Zara Canada will have the opportunity to provide further relevant information, including information regarding its human rights due diligence activities.
47. 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.



## 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