

Shadows on Solar: A Teaching Case on the Role of Corporate Governance in Addressing Forced Labor Concerns

Nava Cohen, Ph.D.¹

New Jersey City University – School of Business
ncohen@njcu.edu

Lukas J. Helikum, Ph.D.

Swansea University – School of Management
l.j.helikum@swansea.ac.uk

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Abstract

Forced labor continues to affect millions of people in the 21st-century and has worsened globally between 2016 and 2021 (ILO 2022). Notwithstanding its importance, the issue receives little attention in contemporary business school seminars. This teaching case explores the role of corporate governance as a means toward meaningful changes in the behaviour of large, multinational corporations using the recent case of Canadian Solar Inc., a leading solar energy company. The case delves into the allegations that the firm has benefited from forced labor by Uyghur Muslims and other ethnic minorities in China's Xinjiang region, exploring the board of directors' actions and a proxy proposal submitted by shareholders. Through this case, students will gain insights into the importance of robust corporate governance, accountability, and transparency in addressing sensitive issues like forced labor. The case highlights corporate governance best practices for companies to adopt, such as proactive board oversight, risk assessment, and transparency.

Keywords: corporate governance; forced labor; business ethics; corporate social responsibility.

¹ Corresponding author

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The Company: Canadian Solar Inc.

Canadian Solar is a global solar power company headquartered in Guelph, Ontario, Canada. The company designs, manufactures, and sells solar photovoltaic products, as well as provides solar power solutions and services to customers worldwide. Canadian Solar was founded in 2001 by Dr. Shawn Qu, who is the company's Chairman, President, and Chief Executive Officer. The company is publicly traded and its stock has been listed on the NASDAQ Global Select Market in the United States since its initial public offering (IPO) in 2006 (Blackwell 2014).

Canadian Solar operates in more than 160 countries (About Us - Canadian Solar n.d.). Its supply chain is quite complex, involving many suppliers, contractors, and partners around the world. The company has a significant presence in China, where it has manufacturing facilities and sources a significant share of its materials. Its distribution covers key markets such as the United States, Europe, and Asia and the company has been praised for its dedication to sustainable practices and renewable energy solutions (Canadian Solar Inc. 2006, 2021).

Forced Labor Allegations in the Solar Industry

Canadian companies, including Canadian Solar, have heavily invested in energy and mining in Xinjiang, making Canada a leading international investor in the region (Green and Vanderklippe 2021). Global solar companies rely on Xinjiang's polysilicon, crucial for solar panels. Roughly 40% of global polysilicon supply originates from Xinjiang, known for its low-cost electricity (IEA 2022; Murphy and Elimä 2021).

In 2020, a report by the Australian Strategic Policy Institute (ASPI) revealed evidence of the systematic use of forced labor involving Uyghurs and other ethnic minority groups in Xinjiang factories, implicating over 80 global brands in benefiting from this forced labor through their supply chains (Xu et al. 2020). Prior to this report, there were already numerous reports, testimonies, and investigations conducted by human rights organizations, journalists, and researchers that documented the widespread human rights abuses against Uyghurs. These abuses included mass surveillance, arbitrary detention, forced assimilation, and religious persecution, among others (Break Their Lineage, Break Their Roots 2021). In 2018, the United Nations reported that up to one million Uyghurs and other Muslim minorities were being held in internment camps in Xinjiang, where they faced various forms of abuse and repression (Cumming-Bruce 2018). In January 2021, Horizon Advisory, an independent strategic consulting firm, released an analysis showing Xinjiang solar industry's involvement in the "surplus labour" program, where many Uyghurs were forced into work in varying Chinese sectors (Vanderklippe 2021). The report claims that Uyghur workers have been subjected to abusive conditions and forced to work in different parts of China, against their will. Horizon Advisory discovered that companies seem to be actively involved in relocating ethnic Uyghurs from impoverished areas of Xinjiang, as well as contributing to and executing re-education programs that enforce political and military training on the resettled populations. This consulting firm identified GCL-Poly, a leading polysilicon supplier to Canadian Solar, as utilizing "coerced surplus laborers." Canadian Solar and GCL-Poly's relationship dates back to 2008 (Robinson 2023). GCL was also noted as Canadian Solar's primary silicon wafer supplier in their 2019 and 2020 sustainability reports.

Furthermore, Canadian Solar built a project near Tumxuk, Xinjiang, close to facilities that are used for forced indoctrination and detention, with the nearest center only 2,500 metres away (Green and

Vanderklippe 2021). Another report from Sheffield Hallam University highlights that Canadian Solar get benefits from its ties to a paramilitary organization in Xinjiang that has been accused of participating in human rights abuses against the Uyghur population (Murphy and Elimä 2021).

Canadian Solar's Response to Forced Labor Allegations

In January 2021, Canadian Solar released a statement responding to concerns about the risk of forced labor in its supply chain. The statement denied any involvement in forced labor practices and emphasized the company's commitment to maintaining ethical and responsible business practices (<https://modernslaveryregister.gov.au/statements/4494/>). The company claimed that no Uyghurs were employed at its Tumxuk farm in China's Xinjiang region, nor were any members of the persecuted Muslim community being forced into labor anywhere along its solar supply chain. Canadian Solar declared that it maintains a "zero-tolerance" policy for any instances of forced labor or human rights violations in its operations and supply chain.

Fallout from Forced Labor Allegations

In light of the forced labor allegations, Canadian Solar has found itself at the centre of negative media attention with the publication of numerous articles in the press related to the allegations (McNaughton 2021; Whalen 2021).

In June 2021, the U.S. Department of Commerce added GCL-Poly – one of Canadian Solar's key supplier of polysilicon – to its Entity List, which restricts American companies from exporting goods and technology to the listed entities (Office of Public Affairs 2021). In an official White House statement, GCL was accused of “participating in the practice of, accepting, or utilizing forced labour in Xinjiang and contributing to human rights abuses against Uyghurs and other minority groups in Xinjiang (McNaughton 2022).”

The U.S. Uyghur Forced Labor Prevention Act is a law that was enacted in December 2021 and aimed at prohibiting the import of goods produced in Xinjiang or by entities that use forced labor involving Uyghurs and other ethnic minorities. In August 2021, U.S. Customs and Border Protection (CBP) detained some Canadian Solar shipments, as well as products from various other solar manufacturers linked to Xinjiang due to forced labor (Bloomberg News 2021).

Shareholders' Reactions

In advance of the 2022 Canadian Solar' annual meeting of shareholders, the Shareholder Association for Research and Education (SHARE) – a Canadian non-profit organization focused on responsible investment services, research, and education – filed the following proposal

(<https://investors.canadiansolar.com/node/14811/html>):

Shareholders request the Board of Directors oversee a third-party party assessment and report to shareholders, at reasonable cost and omitting proprietary information, on the extent to which Canadian Solar Inc.'s (Canadian Solar) policies and procedures effectively protect against forced labour in its operations, supply chains, and business relationships, including in the Xinjiang Uyghur Autonomous Region. The report should:

- *Draw upon international standards such as the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work and ILO Forced Labour Convention, 1930 (No. 29);*
- *Explain how Canadian Solar identifies actual or potential adverse human rights impacts and how, once identified, the company prevents, mitigates and accounts for such impacts;*
- *Explain the extent to which Canadian Solar has identified suppliers and sub-suppliers that are at significant risk for forced labour violations;*
- *Disclose the number of suppliers against which Canadian Solar has taken corrective action due to such violations;*
- *Be posted on Canadian Solar's website.*



Decision: You are a director on the board of directors of Canadian Solar. How should the board respond to the shareholder proposal? Discuss specific recommendations and choose the best course of action.



Discussion: What specific corporate governance mechanisms should the board implement to prevent forced labor? What steps and responsibilities should be assigned to the executive team to ensure ethical sourcing and protect human rights?

Epilogue and Further Exploration

In June 2022, Canadian Solar excluded a shareholder proposal from its proxy materials, preventing a vote during the annual meeting. The company cited non-compliance with SEC requirements as the reason (<https://investors.canadiansolar.com/node/14811/html>). Despite selling their Xinjiang solar facilities in 2021, concerns about forced labor persisted due to ties with GCL (Vanderklippe 2022). Later, Canadian Solar agreed to a third-party audit as requested by SHARE, with the board resolving in May 2022 to assess protections against forced labor. The July 2022 ESG report announced the formation of an "Anti-Modern Slavery Task Force" by Chairman and CEO Shawn Qu and Chief Sustainability Officer Hanbing Zhang. Unsurprisingly, the decision to omit the proposal from the proxy materials prompted criticism from investors. SHARE – the group of investors who filed the proposal – sent a letter to Canadian Solar’s largest shareholders in June 2022, claiming Canadian Solar officials had improperly omitted the proposal from official shareholder briefings. The letter states:

“We are writing to draw your attention to significant shareholder concerns related to Board failures in responsiveness, accountability and material risk oversight at Canadian Solar Inc., and urge you to vote AGAINST the re-election of Directors Lap Tat Arthur Wong, Lauren C. Templeton & Karl E. Olsoni at the company’s annual meeting on June 22, 2022. In our judgement, votes should be withheld from Directors Wong, Templeton and Olsoni out of concern for the Company’s future, our own interests as shareholders in the Company, and

our belief that the Board of Directors has failed in key fiduciary duties. Each of these Directors chair relevant board committees that have failed in their duties to shareholders.”

In the same letter, they add, “the Company revealed to the media that it would request board approval in the next two weeks to hire a third party ‘with the qualification and willingness to implement a due diligence audit on human rights and forced labour issues in our operations and supply chain, providing no details on the scope of the assessment or whether its results will be made public.”

Additional Questions:



Decision 2: Considering Canadian Solar's decision to exclude the shareholder proposal, as a concerned shareholder, how might you respond to this situation? Explore strategies and actions that could be undertaken to effectively raise awareness about the forced labor issue within the company's supply chain.



Discussion 2: Discuss the implications of (not) sourcing goods or services from companies that use forced labor. Given the example of the Xinjiang region, be sure to address ethical, legal, and economic factors.

What Happened Next?

Canadian Solar produces most of its products in China and is adding significant production capacity (Canadian Solar Inc. 2022). For the financial year 2022, the company announced record revenue figures of close to \$7.5 billion (Canadian Solar Inc. 2023a). As of late 2023, the firm continues to face public scrutiny as a result of the alleged use of forced labor and its handling of the allegations (Robinson 2023; Wright 2023). The solar industry as a whole is increasingly accused of a lack of transparency concerning its supply chain and raw material sourcing (Swanson and Penn 2023).

In mid-2023, Canadian Solar issued its Corporate Sustainability Report for the financial year 2022 (Canadian Solar Inc. 2023b). In it, the firm highlights its commitment to global ESG initiatives. The company joined the United Nations Global Compact (UNGC) and signed on to the Ten Principles of the UNGC on human rights, labor, environment, and anti-corruption. Canadian Solar further describes how it aims to ensure ethical labor practices in its operations and supply chain by using audits and third-party assessments to evaluate its Anti-Modern Slavery Policy.

A recent report by solar industry and human rights experts rated Canadian Solar's overall exposure to the Xinjiang Uyghur Autonomous Region as "high" in August 2023 (Crawford and Murphy 2023), partially due to incomplete information disclosed by the company. This rating implies a high risk that the firm's production uses inputs from the Uyghur Region either directly or indirectly based on publicly available supply chain information. To comply with the Uyghur Forced Labor Prevention Act and maintain the ability to supply the US market, Canadian Solar added production capacity in Thailand and Vietnam.

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