

Client Alert: *World Uyghur Congress v Secretary of State for the Home Department*: Can Forced Labour Goods Cause UK Money Laundering Violations?

Publications

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On 20 January 2023, the High Court in London issued a historic judgment in relation to the World Uyghur Congress' (WUC) challenge to the UK government's failure to investigate the importation of cotton produced in China's Xinjiang Uyghur Autonomous Region (Xinjiang). WUC's concerns at the heart of this litigation are well documented: that cotton exported out of China to the UK and elsewhere is produced by forced labour in Xinjiang where the UN High Commissioner for Human Rights has concluded that China committed "serious human rights violations" against Uyghur and "other predominantly Muslim communities."

WUC argued that the UK government ought to have actively investigated and thereafter prohibited the importation of cotton goods originating from Xinjiang under two pieces of legislation:

1. **The Proceeds of Crime Act 2002 (2002 Act)**: the 2002 Act includes various money laundering offences preventing dealings with criminal property (i.e. property that constitutes or represents a person's benefit from criminal conduct, wherever in the world that conduct takes place, including for example in this case offences of forced labour contrary to section 1 of the Modern Slavery Act 2015).
2. **Foreign Prison-Made Goods Act 1897 (1897 Act)**: section 1 of the 1897 Act prohibits the import into the UK of goods produced wholly or in part in any foreign prison.

The judgment highlighted at the outset that the underlying evidence in the case in relation to the mistreatment of the Uyghur people and the incidence of human rights abuses in the production of cotton in Xinjiang was not the subject of dispute. Rather, the dispute concerned whether there was enough evidence to investigate this issue under the 1897 Act and 2002 Act.

The judgment noted that a House of Commons Foreign Affairs Committee (FAC) report^[1] attested that forced labour was “pervasive” and “widespread” but also “extremely difficult to monitor effectively”. The FAC report also recommended that, given the mass incarcerations, and connected factories and farms in Xinjiang, it should be assumed that any product originating from Xinjiang is the product of forced labour unless proven otherwise.

Nonetheless, the court found that there was insufficient evidence to prove that specific consignments of goods imported to the UK from China were produced by forced labour or in foreign prisons under the 2002 Act and 1897 Act respectively. The court considered the evidence of the statistical risk of goods being made with forced labour or in foreign prisons insufficient to prove that a specific consignment of goods was produced by forced or imprisoned labour. Further, the court found that the FAC’s recommendation, which “was undoubtedly made in recognition of the difficulties of establishing the necessary proof in relation to a specific consignment of goods that it was produced by forced labour”, underlines the difficulties of meeting the evidential requirements in the 2002 Act and 1897 Act. This outcome notably contrasts with the approach the United States has taken to prohibit the import of all goods containing content derived from Xinjiang under the Uyghur Forced Labor Prevention Act.

While the court dismissed WUC’s challenge in this case, this decision leaves the door open for future UK money laundering enforcement in relation to goods made with forced labour. The judgment accepts that the 2002 Act is capable of applying in cases concerning the proceeds of human rights abuses as criminal property under the 2002 Act. Therefore, if more evidence comes to light of specific consignments linked to forced labour, there could be money laundering enforcement under the 2002 Act against companies in the UK that are trading in goods produced through forced labour.^[2] It will also be interesting to see whether this decision will lead banks (who as regulated entities are under an obligation to disclose their knowledge or suspicion of money laundering to the UK authorities) to consider reporting transactions involving goods potentially made with forced labour to the UK authorities.

Moreover, this may not be the end of the instant case, as the WUC said that it is considering appealing the High Court judgment.

Footnotes

[1] “Never Again: The UK’s Responsibility to Act on Atrocities in Xinjiang and Beyond”

[2] Even if there is sufficient evidence that specific consignments amount to criminal property under the 2002 Act, as the court noted, a prosecution may fail because the 2002 Act provides a defence to certain money laundering allegations for those who have acquired criminal property for adequate consideration.

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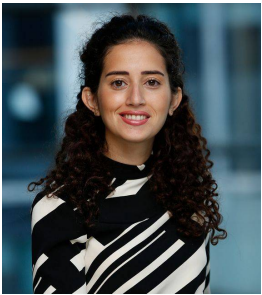
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