

Chain Reaction: Understanding the Impact of the UK Court of Appeal's Judgment on Uyghur Cotton on the Global Supply Chain Accountability Framework

Client Alerts

July 22, 2024

By: Lucy Blake, André Nwadike, Abi Dore, Elizabeth Powers

On 27 June 2024, the UK Court of Appeal upheld an action by international NGO, World Uyghur Congress, and found that the National Crime Agency had acted unlawfully in deciding not to open a money laundering investigation into the importation of cotton allegedly produced using forced labour in China's Xinjiang Uyghur Autonomous Region.

Bringing an action against an investigator for failure in applying money laundering legislation may seem like a novel and ambitious means by which to enforce supply chain accountability. However, the decision forms part of a growing litigation trend to hold companies to account in increasingly creative ways in connection with human rights violations. More broadly, the decision dovetails with a wider global effort to compel global companies to minimise their adverse human rights and environmental impacts, not only by way of litigation, but also through regulations, enforcements, media scrutiny and consumer actions.

This client alert takes a closer look at the Court's decision, and what this means for businesses with global supply chains.

Background

The World Uyghur Congress (**WUC**) is an international NGO that aims to defend and promote the interests of the Uyghurs – a Turkic ethnic group predominantly resident within China's Xinjiang Uyghur Autonomous Region (**XUAR**). In April 2020, the WUC provided the National Crime Agency (**NCA**), and several other UK agencies, with material alleging the use of slavery and forced labour in supply chains located within the region. As a consequence, the WUC requested that the NCA investigate companies trading in XUAR cotton in the UK for money laundering offences on the basis that the cotton represented the proceeds of criminal conduct, namely the use of forced labour in the XUAR. The NCA ultimately decided not to open an investigation; attributing its decision, in part, to its interpretation that the Proceeds of Crime Act 2002 (**POCA**) provided that the proceeds of criminal

conduct would be cleansed of their criminal character if acquired for market value (known as the “adequate consideration” defence). The NCA additionally claimed that POCA provided that an investigation could not be commenced without specific criminal property being identified.

The WUC challenged this decision, seeking judicial review of the NCA’s application of the money laundering framework under POCA. Whilst the High Court found in favour of the NCA in the first instance (see our client alert: *World Uyghur Congress v Secretary of State for the Home Department: Can Forced Labour Goods Cause UK Money Laundering Violations?*), the Court of Appeal reversed the decision, disagreeing on the proper application of the “adequate consideration” defence under POCA.

Money Laundering Under POCA

Under POCA, property (such as money or goods) is considered “criminal property” if:

1. It was obtained as a result of or in connection with unlawful conduct (i.e. a UK criminal offence or foreign conduct that would be unlawful if it took place in the UK); and
2. The person handling the property knows or suspects the property to have been obtained as a result of or in connection with unlawful conduct.

There are three principal offences relating to handling criminal property or ‘money laundering’:

- Dealing with criminal property (by concealing it, disguising it, converting it, transferring it, or removing it from the UK) under section 327;
- Making arrangements in relation to criminal property (namely the acquisition, retention, use or control of criminal property by or on behalf of another person) under section 328; and
- Acquiring, using or possessing criminal property under section 329.

In the specific case where a person acquires, uses, or possesses criminal property, however, it is a defence under section 329 to demonstrate having paid fair market value – or adequate consideration – for the property in question. Notably, however, there is no such express exception for the remaining two principal money laundering offences – namely, dealing with, or making arrangements in relation to, criminal property. As such, prior to this appeal, a question mark remained as to whether a person who acquires criminal property, having provided adequate consideration, is free to treat it like non-criminal property thereafter and transact with it as normal. In the WUC’s judicial review, the issue to be resolved by the Court was therefore whether the provision of adequate consideration for the cotton “cleansed” the criminal property, such that any subsequent dealings with the property throughout the supply chain (which might be caught by sections 327 or 328) would not amount to money laundering.

Court of Appeal Decision

In the High Court proceedings, the NCA had successfully argued that purchasing cotton produced by forced labour for fair market value at any point in the supply chain would sanitise its downstream use, even if the person handling it had suspicions about the cotton's origin. The Court of Appeal, however, did not agree. In the Court of Appeal's judgment, it was incorrect to suggest that, "At any point in a market supply chain stretching many thousands of miles, the chain could be broken merely by the use of adequate consideration in any of the transactions involved". The argument that specific criminal property needed to be identified before an investigation was also dismissed, "since the specific purpose of that investigation may be to ascertain that fact".

In finding that the adequate consideration defence only serves to absolve a person who acquires, uses, or possesses criminal property, the Court of Appeal confirmed that it only does so in relation to liability *for that acquisition* – any subsequent transfer, deposit or any other dealing or arrangement could still amount to a money laundering offence. The Court of Appeal made clear, however, that if an individual obtained the property in good faith (i.e. without the requisite knowledge or suspicion of unlawful conduct), they would not need to rely on the adequate consideration defence, as the product would not have been criminal property in their hands in any event. As such, unsuspecting consumers would not be criminally liable under the POCA.

Implications for Global Supply Chains

Though pursued via a novel route, this decision does not occur in a vacuum. Instead, it forms part of a growing global effort to drive good corporate governance by compelling companies to identify, assess, prevent, and mitigate adverse human rights and environmental impacts in their supply chains. Outside of the UK, other countries around the world have enacted targeted Environmental, Social, and Governance (**ESG**) and human rights legislations to ban the sale of products derived from forced labour in the XUAR and beyond.

Within the EU, the forthcoming Forced Labour Regulation will prohibit companies selling goods in, or exporting goods from, the EU from making any products made with forced labour available within the EU, regardless of where they were manufactured. A "product made with forced labour" is defined as one where forced labour is used in extraction, harvest, production, or manufacture, at any stage of the upstream supply chain. This approach complements the Corporate Sustainability Due Diligence Directive, approved by the European Parliament in April 2024, which imposes requirements on companies to conduct due diligence on their human rights impact throughout their operations and whole chain of activities—both upstream (design, manufacture, supply) and downstream (transportation and storage).

Similarly, in the US, there are two key pieces of legislation prohibiting forced labour – section 307 of the Tariff Act 1930 and the more recent Uyghur Forced Labor Prevention Act 2022 (**UFLPA**). Where the Tariff Act (like the EU Forced Labour Regulation), covers goods made anywhere in the world, the UFLPA mandates broad prohibitions solely on the importation of goods from the XUAR. Whilst the UFLPA is narrower in jurisdictional scope, it carries stricter obligations than both the Tariff Act and

the EU Forced Labour Regulation. It reverses the burden of proof, instead, requiring importers to prove, with clear and convincing evidence, that their supply chains do not involve Uyghur forced labour.

Next Steps for Businesses

Though the Court of Appeal judgment is expected to be appealed and the “adequate consideration” defence is likely to be the subject of further judicial consideration, the underlying principle of supply chain accountability is not going away. Fines for breaching the EU legislation could be up to 5% of a company’s global turnover (plus possible debarment from public contracts). In addition to fines, the legislation has a commercial ripple effect whereby a company’s customers and finance providers (themselves subject to the same legislation) will require transparency so they too can vet and report on their own supply chains. Reputational damage can result in consumers boycotting products and devalued shares. Companies can also be on the hook for damages (potentially of hundreds of millions of dollars) and/or burdensome court orders, arising from litigation by private plaintiffs (including NGOs and investors).

In order to mitigate these risks, companies need to ensure that they properly vet and risk assess their upstream and downstream chains of activities to minimise the risk of receiving products derived from forced labour. This should include:

- Carrying out a risk-mapping and impact assessment across their global operations and supply chains;
- Developing a coordinated strategy to meet reporting obligations; and
- Implementing a global, integrated, and centralised third-party ESG and human rights management system to conduct due diligence, assess risks and monitor and review compliance.

(For more guidance, see our client alerts: Human Rights in Supply Chains: How New Laws in Europe and the UK Impact Companies Around the World; EU Guidance on Forced Labour in Supply Chains, and Six Best Practices in Corporate Human Rights and Social Responsibility).

The decision in *R. (on the application of the World Uyghur Congress) v National Crime Agency* is part of a growing legal framework that presents an increasingly complex challenge for global supply chains. Jenner & Block’s Human Rights and Global Strategy Practice is ready to help companies navigate both the legal requirements and business human rights best practices.

Related Attorneys



Lucy Blake

Partner

lblake@jenner.com

+44 330 060 5409



André Nwadike

Associate

anwadike@jenner.com

+44 330 060 5464



Abi Dore

Associate

adore@jenner.com

+44 330 060 5448



Elizabeth Powers

Associate

epowers@jenner.com

+1 312 840 7390

Related Capabilities

Human Rights and Global Strategy

Investigations, Compliance, and Defense

Related Locations

London

Chicago

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

