

Forced labour goods: a landmark decision

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The Proceeds of Crime Act 2002 (“POCA”) allows enforcement action to be taken against companies who generate, or take in, “criminal property”; including monies generated as a result of forced labour overseas.

In a recent landmark decision, the Court of Appeal in **World Ujghur Congress v National Crime Agency** overturned the High Court and clarified the law in this area. Notably, the judgment contradicted the previous (widely-held) view that money laundering offences under POCA would not be committed, where fair value was paid. The judgment means that:

- the National Crime Agency does not need to identify specific evidence of unlawful conduct before it can decide to open an investigation;
- trading in goods that are known or suspected to have been produced with forced labour (or other criminality), as well as products containing those goods may give rise to a money laundering offence, and
- someone paying adequate compensation (market value) for criminal property anywhere in the supply chain does not cleanse the property of its criminal nature.

In this case, the Court of Appeal accepted that 85% of cotton grown in China comes from the Xinjiang Uyghur Autonomous Region (XUAR) and that there is:

“a diverse, substantial, and growing body of evidence that serious human rights abuses are occurring in the XUAR cotton industry on a large scale.”

The implications of the decision are significant for UK companies at risk of importing and trading in forced labour goods. Such companies now face an increased risk of being investigated and prosecuted under POCA for money laundering or trading in criminal goods. Even at the investigate stage, the implications of this are huge. Companies may be required to produce books and records, attend interviews under caution and may, in the most serious of cases, find their business accounts frozen, leaving them unable to trade.

Companies such as those described above, regardless of their size, are accordingly encouraged to review their approach to avoiding importing and trading in forced labour goods to combat such practices, protect their reputation and reduce the risk of criminal prosecution. The judgment makes it far more likely that proactive action will be taken against those who transgress, which NGOs such as the World Ujghur Congress will continue to press.

Taking a documented, dynamic, proportionate and risk-based approach to supply chains is recommended.

Contents

[Financial Crime Watch: October 2024](#)



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[Understanding the Trade, Aircraft, and Shipping Sanctions \(Civil Enforcement\) Regulations 2024](#)



[Forced labour goods: a landmark decision](#)



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