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For more information,
contact:

Peter Hood
+44 20 7551 2107
phood@kslaw.com

Douglass Cassel
+1 212 556 2361
dcassel@kslaw.com

Michael Taylor
+1 202 626 2385
jmtaylor@kslaw.com

Patrick Togni
+1 202 626 2958
ptogni@kslaw.com

Jamieson Greer
+1 202 626 5509
jgreer@kslaw.com

Jules Quinn
+44 20 7551 2135
jmquinn@kslaw.com

King & Spalding

London
125 Old Broad Street
London EC2N 1AR
Tel: +44 20 7551 7500

New York
1185 Avenue of the Americas
New York, New York 10036-4003
Tel: +1 212 556 2100

UN High Commissioner reports serious human rights violations in Xinjiang – what does this mean for businesses with supply chains in the region?

On 31 August 2022, the UN Office of the High Commissioner for Human Rights (the “**High Commissioner**” or “**OHCHR**”) published its long-awaited [Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, China](#). It paints a bleak picture of life in Xinjiang, cataloguing a range of grave and discriminatory human rights violations. It also contains specific findings relevant to forced labour and trafficking and the reprisals visited upon representatives of multinational businesses who seek to conduct human rights due diligence in the region. Building on recent legislative developments introducing mandatory human rights due diligence and import bans on the products of forced labour, this client alert considers what the OHCHR findings might mean for businesses with supply chains that may have inputs from Xinjiang (and indeed from China more generally).

THE HIGH COMMISSIONER'S FINDINGS

The Assessment catalogues the widespread and systematic violation of a range of internationally recognised human rights, including: large-scale arbitrary deprivation of liberty in so-called Voluntary Education and Training Centres (“**VETCs**”); torture and ill-treatment, including forced medical treatment and incidents of sexual and gender-based violence; and undue restrictions on: religious identity; freedom of expression; privacy; and freedom of movement. It also reports that these violations are characterised by a discriminatory component, with the underlying acts often directly or indirectly affecting Uyghur and other predominantly Muslim communities. The scale and gravity of some of these human rights violations are such that the OHCHR suggests they may amount to international crimes, in particular crimes against humanity.



FORCED LABOUR AND HUMAN RIGHTS DUE DILIGENCE

The Assessment contains findings on two specific issues that are likely to be of particular significance for international businesses with supply chains that may have inputs from Xinjiang, (and from China more broadly):

- The OHCHR reports indications that labour and employment schemes, in particular those linked to the VETC system and the transfer of “surplus labour”, appear to be discriminatory and involve elements of coercion. It endorses concerns previously expressed by the International Labour Organisation, including in relation to “coercive measures” and the relocation or transfer of “surplus” workers under security escort and menace of penalty. These findings give rise to serious and credible indications of forced labour and human trafficking related to Xinjiang. Consistent with businesses’ responsibility to respect human rights according to applicable international standards, this may trigger a requirement for businesses with supply chains in the region (including at tier-two and beyond), to conduct enhanced human rights due diligence on these issues.
- However, the OHCHR also reports credible threats of reprisals against staff employed by, or conducting activities on behalf of, foreign enterprises seeking to carry out supply chain due diligence in Xinjiang. This confirms what a number of businesses and certification bodies have known for some time – it is extremely difficult, if not impossible, to carry out human rights due diligence related to Xinjiang.

WHAT DOES THIS MEAN IN PRACTICE?

The OHCHR report underscores the importance for businesses to ensure that any Chinese portion of their supply chains (*i.e.*, at the finished good or component levels), including at tier-two and beyond, does not involve forced labor and to mitigate risk associated with potential sourcing of inputs from Xinjiang or other designated entities of concern in China.

According to the international standards set out in the UN Guiding Principles and OECD Guidelines, where a business identifies a human rights impact linked to its products or services through its supply chain, it is expected to take concrete action in response. Ordinarily, this will involve further, enhanced due diligence and attempts to exercise leverage over entities in its value chain to prevent or bring an end to the impact. Where this is impossible, it may be appropriate for a business to terminate a business relationship and switch suppliers.¹ However, in the Xinjiang context, the OHCHR lays responsibility for forced labour at the door of the Chinese State. Thus, as noted above, conducting adequate due diligence in relation to forced labour in Xinjiang is extremely difficult. The idea that foreign enterprises could gain access to the relevant facilities and personnel to enable them to carry out enhanced due diligence, much less influence the Chinese State to bring to an end practices of forced labour and trafficking, is wholly unrealistic. Accordingly, businesses with supply chains in China will need to map their supply chains, including at tier-two and beyond, to determine whether they source any products and materials from Xinjiang (particularly those which have been credibly linked to VETC facilities or surplus labour programmes). Where this is the case, they will need to give careful consideration to whether they can continue to do so while acting in accordance with the relevant international standards.

MOUNTING REPUTATIONAL AND LEGAL RISK

For most businesses, this is likely to cause difficulties in stakeholder relations. Employees, investors, financiers and customers increasingly expect businesses to demonstrate adherence to international standards. However, for many businesses, this is rapidly becoming a legal problem as well. Businesses with supply chain links to Xinjiang who report under the UK or Australian Modern Slavery Act in accordance with the relevant guidance will be expected to disclose the risk relating to forced labour and trafficking in Xinjiang and the steps which they are taking to address it. Meanwhile, mandatory human rights due diligence (“MHRDD”) legislation is progressively entering into force across Europe, requiring businesses to go beyond reporting and implement human rights due diligence in accordance with the international standards. This is resulting in the crystallisation of “soft” international standards under the UN Guiding



Principles and OECD Guidelines into hard, legal obligations with civil and administrative liability potentially resulting from a failure to comply. MHRDD legislation is already in force in France and Norway with further legislation expected to come into force in Germany in January 2023 and, at an EU level, from as early as 2025 (see our previous client alerts on the [Norwegian Act](#) and proposed [EU Sustainability Due Diligence Directive](#)).

Separately, the United States recently amended its forced labour law to create a statutory presumption that any goods originating in whole or in part from Xinjiang (or otherwise in transactions that involve certain designated entities there) are the products of forced labour and prohibited entry to the United States. In order to secure the release of goods that are detained at the border under this law, importers must quickly provide customs authorities with detailed documentation meeting a standard of “clear and convincing” evidence to rebut this presumption and, where an instance of forced labour is uncovered, provide evidence that it has been fully remediated (see our client alert on the [Uyghur Forced Labor Prevention Act \(“UFLPA”\)](#)). To be clear, however, the ban on imports into the United States of goods made wholly or in part with forced labour applies to imports from any source, but the presumptions of violations are enhanced with respect to the Xinjiang region of China, including goods from elsewhere in China, or even from other countries, that contain components from Xinjiang.

U.S. customs authorities aggressively have increased forced labour enforcement actions at the border, and this is likely to continue for the foreseeable future.

Particularly in light of the OHCHR’s findings, in all but the rarest of circumstances it will be extremely difficult, if not impossible, to demonstrate the necessary steps have been taken for products sourced in whole or in part from Xinjiang.

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¹ UNGP 19 and Commentary.