



# As Forced Labor Scrutiny Grows, Industry Needs to React

BRANDS AND RETAILERS WILL SOON FIND IT DIFFICULT TO SWERVE RESPONSIBILITY BY PLEADING IGNORANCE.

JASMIN MALIK CHUA

**V**ivek Ramachandran, CEO of Serai, a supply chain visibility platform, anticipates a busy year ahead.

Governments around the world are enacting or toughening legislation aimed at warding off products made using forced labor. Across Europe, countries such as Belgium, Germany and the Netherlands, along with the wider European Union, plan to hold corporations legally liable for human-rights abuses that occur in their supply chains. In the United States, brands and retailers will have to grapple with a new law that bars imports from China's northwestern Xinjiang Uyghur Autonomous Region over the enslavement of persecuted Muslim minorities unless "clear and convincing" evidence demonstrates otherwise.

"We are getting to a tipping point where companies are genuinely expected to own the actions of their suppliers," Ramachandran said. The problem, however, is that globalization and the hunt for cheap production costs have rendered supply chains overly complex, fragmented and opaque. The further upstream you go, the less incen-

tive there is for suppliers to divulge information about what they do and who they work with, he noted.

This has resulted in a steep drop-off in visibility after Tiers 1 or 2. In a survey of brands, retailers, suppliers, manufacturers and sourcing agents that Serai and KPMG published in December, less than one in five respondents claimed to have full visibility of all their stakeholders. Even fewer—one in six—said they could trace all the materials used to pump out their products. "That is astonishingly low," Ramachandran said. "It's very difficult to own the actions of your suppliers if you don't know who they are."

As a data-gathering tool, Serai, a subsidiary of HSBC, isn't here to police supply chains or ensure compliance, he said. But regulators increasingly are. In November, Canada seized a shipment of clothing from China, the first time authorities enforced a rule that prohibits the entry of slavery-made goods since the passage of the United States-Mexico-Canada Agreement, the North America Free Trade Agreement's successor. Over the past year, U.S. Customs and Border Protection's (CBP) forced labor inves-

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tigations have yielded six Withhold Release Orders (WRO), including one on cotton and tomato products from Xinjiang and another on cotton products linked to the Xinjiang Production and Construction Corps (XPCC), a paramilitary organization with a sprawling reach. The Uyghur Forced Labor Prevention Act, which President Biden signed into law in December, expands those directives and shifts the burden of proof from customs officials to the importers themselves.

It's these measures that will test the limits of corporate codes of conduct, which labor campaigners have frequently accused brands and retailers of wearing like armor to deflect allegations of wrongdoing or culpability. Though these sets of voluntary standards and responsibilities are important to have, said Jewher Ilham, forced labor project coordinator at the Worker Rights Consortium, a Washington, D.C.-based advocacy group, they're meaningless if they don't translate into meaningful outcomes.

"It's easy to publish an 800-world statement on your website," Ilham said. "What's not as easy, but is absolutely doable and crit-

ically important, is taking precautions and measures to prevent your products from being tainted with forced labor; to really map out your supply chains and verify them. It's a matter of will. If you claim you don't know where you're sourcing from or you don't know if your items are made with forced labor or not, then you're choosing not to know."

From India's Sumangali scheme to debt bondage in Malaysia to the exploitation of Syrian refugees in Turkey, forced labor has long been endemic to the fashion industry, yet it has never received this much prolonged attention. Trade feuds with China aside, it's likely the scale of the Uyghur's state-sanctioned oppression that has made the issue more urgent, said Laura Murphy, professor of human rights at Sheffield Hallam University's Helena Kennedy Centre for International Justice. In an annual human-rights report, published in March, the Biden administration labeled Beijing's crimes of "imprisonment, torture, enforced sterilization and persecutions" against the Uyghurs as genocide, which China has vigorously denied.

CHINA'S NORTHWESTERN XINJIANG UYGHUR AUTONOMOUS REGION IS UNDER INCREASED SCRUTINY BY U.S. OFFICIALS.





Murphy said that the Uyghur crisis has “woken up” the international community to the problem of forced labor in supply chains. “I think that the scope and severity of the issue in the Uyghur region have so struck governments and legislators that they are willing to take action that we’ve needed around the world for a very long time,” she said. “Mandatory human-rights due diligence should have been in place already. All countries should have an import ban on forced labor-made goods. Most companies are not going to do this voluntarily. We need governments to say, ‘We expect it, we demand it.’”

Without a universal blockade, cotton products from Xinjiang that have been rejected by the United States will still wind up in the global marketplace, Murphy said. They might even be “laundered” back to American consumers through an export strategy that “obscures cotton’s origin.” A study she recently conducted found that Xinjiang cotton can infiltrate brands that have denounced Uyghur forced labor—Calvin Klein, Gap and Uniqlo, included—through intermediary suppliers in Ethiopia, India, Mexico or Vietnam. Even shipments of finished products can easily be diverted elsewhere.

“It’s not like the cotton is getting burned in the ports or stored in warehouses until this whole thing blows over,” she said. “That cotton and those cotton-made goods are going to the EU, the U.K. and Australia. Countries that are not banning the import of these products are simply creating an economy in which the U.S. gets primarily goods not made with forced labor and the rest of the world receives the goods made with forced labor. So, there’s a critical need for the whole world to get on board with this ban.”

But as more nations begin tightening their nets, so too will the risk of losing a shipment grow. “Having optics into your supply chain is no longer a luxury or nice-to-have in 2022; it’s going to become an operational risk,” said Justin Dillon, founder and CEO of FRDM (pronounced “freedom”), a San Francisco-based traceability platform that works with the Canada Border Services Agency, which he predicts will be adopting a similar enforcement cadence as the United States now that it’s crossed the Rubicon. The stakes are particularly high for fashion. Xinjiang contributes

85 percent of China’s cotton, which accounts for one-fifth of the world’s supply.

Bad PR is another pitfall, as Uniqlo learned over the summer after CBP declared a shipment of men’s shirts inadmissible, citing the Japanese retailer’s failure to provide “substantial evidence” to establish that the entities within the XPCC that processed the cotton into garments “did so without the use of forced labor.” Uniqlo argued that because the raw cotton used to produce shirts did not originate from the XPCC or even from China, they were not subject to the WRO and should be released, to no avail.

Having unblinkered visibility is key to making better decisions and avoiding potential snafus, Dillon said. “It has to be a workflow or priority for companies to be able to build that transparency,” he added. “Where most companies need to start with is their own spend data [because] the understanding of what they’re buying and where they’re buying from has traditionally not needed to be very organized. And so there’s a data transformation phenomenon that’s happening right now inside of companies.”

Dillon also anticipates something he calls the “network effect” around traceability. “We’ll start to see a bit more pressure on sellers to be able to disclose more about what they are or are not doing or what they plan to be doing in terms of their own supply chain because they’re passing along potential risks to their buyers,” he said. “I really do believe that we’re a part of something that we’re just seeing the very beginning of.”

While the readiness level of the average fashion business to cope with regulatory pressure remains “very, very low,” the Uyghur Forced Labor Prevention Act will provide brands and retailers will more clarity about what kind of due diligence will be demanded of them, said Angela Santos, a partner who leads Arent Fox Schiff’s task force on forced-labor risks in the supply chain. Most companies, she said, haven’t dedicated the time or money to map their operations because they haven’t had to. “The forced labor prohibitions have been on books for a long time, but until the last few years, they really were not enforced,” she said. “Now there’s a cost-benefit analysis: Is it possible that my goods will be stopped at the border

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and I won't have a spring line?"

The Biden administration is also poised to provide guidance on the type of technologies the companies can use to mitigate forced labor in their supply chains. Many newfangled systems, such as blockchain or DNA testing, are not only prohibitively expensive for smaller firms but they're also untested, Santos said. Knowing what to invest in—or skip—will save a lot of grief. "Although [the law] does create a higher burden for importers, it also provides some certainty and structure in terms of what's expected from customs and then also what's expected of companies," she added.

Santos believes the United States will take a "holistic" look at forced labor across the globe, not just in Xinjiang. Already, CBP has slapped WROs on three disposable-glove manufacturers in Malaysia after identifying indicators of forced labor such as restriction

of movement, debt bondage, withholding of wages, excessive overtime and physical and sexual violence. CBP has also staffed up a second forced labor investigations branch within its forced labor division, meaning importers should brace themselves for more enforcement actions outside Asia. "Particularly with this new division, we're going to see increased forced labor WROs and action in other parts of the world, including in Latin America, the Middle East and Africa," she said.

In other words, brands and retailers will soon find it difficult to swerve responsibility by pleading ignorance. For Santos, the choice is clear: review and rework your supply chains now or face the consequences later. "Companies have to start thinking about this because they don't want to have empty shelves," she added. "They really need to know who's producing their goods down every tier."

