



The Potential Consequences of
Doing Business with PRC Firms
for Belgian Companies

Briefing Title: The Potential Consequences of Doing Business with PRC Firms for Belgian Companies

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Executive Summary

EN: The suffering of the Uyghur minority in the People's Republic of China (PRC) and testimonies demonstrating that they are victims of forced labour on a massive scale have triggered all kinds of policy reactions in the West, whereby due diligence obligations are imposed on companies that are trading with PRC firms to make sure that there is no forced labour benefitting their supply chains. France has been the first country to issue such regulation and has been followed by the Netherlands, Germany and the United States, in various forms. A legislative proposal has also been submitted in Belgium, while the European Commission has presented its proposal for a directive. On top of this, both reputational and legal issues have arisen for multinationals companies.

NL: Het lijden van de Oeigoerse minderheid in de Volksrepubliek China en de vaststellingen dat zij het slachtoffer zijn van dwangarbeid op grote schaal hebben in het Westen tot allerlei beleidsmaatregelen geleid, waarbij aan bedrijven die handel drijven met China een "due diligence"-verplichting wordt opgelegd om ervoor te zorgen dat er in hun toeleveringsketens geen dwangarbeid voorkomt. Frankrijk was het eerste land dat dergelijke regelgeving uitvaardigde, wat ook in aangepaste vorm werd gevolgd door Nederland, Duitsland en de Verenigde Staten. In België is ook een wetsvoorstel ingediend, terwijl ook de Europese Commissie met een voorstel voor een richtlijn hierover kwam. De kwestie heeft er bovendien toe geleid dat multinationals zowel met reputatierisico's als met juridische risico's te maken krijgen.

FR: La souffrance de la minorité Ouïghoure dans la République populaire de Chine (RPC) et le constat qu'elle est victime de travail forcé à grande échelle ont déclenché toute une série de mesures politiques en Occident imposant des obligations de « due diligence » aux entreprises ayant des relations commerciales avec la RPC afin de s'assurer qu'il n'y ait pas de travail forcé dans leurs chaînes d'approvisionnement. La France a été le premier pays à publier une telle réglementation, suivie depuis par les Pays-Bas, l'Allemagne et les États-Unis, sous diverses formes. Une proposition législative a également été soumise en Belgique, tandis que la Commission européenne a présenté une proposition de directive. Ce problème a également amené des multinationales à être confrontées à la fois à des risques juridiques et d'atteinte à leur réputation.

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I. Introduction

Background:

More and more attention is being dedicated to the importance of the protection of human rights in the context of trade and production. Companies are faced with regulations imposing “due diligence” requirements on them. Often, this involves requirements to provide a certain degree of transparency in a company’s supply chain.

The problem of modern slavery has been highlighted in reports, such as the “Global slavery index”² or the International Labour Organization’s “Global estimate of forced labour” report³. Migration crises notably contributed to the increase in severity of this problem in Europe⁴.

The International Labour Organization defines victims of forced labour as people that are “trapped in jobs which they were coerced or deceived into and which they cannot leave”⁵. There are estimates of up to 40 million victims worldwide⁶.

Forced labour in the PRC:

The forced labour in the PRC highlights a specific challenge given the prominence of the PRC as a manufacturing hub. Many countries have criticized the PRC for its treatment of the Uyghurs, including the UK, Canada, Australia, Japan as well as the EU and its member states⁷. The United States have accused the PRC of having “carried out a mass detention and political indoctrination campaign against Uyghurs, who are predominantly Muslim, and members of other ethnic and religious minority groups in the Xinjiang Uyghur Autonomous Region (Xinjiang), a large region in western China”⁸.

One estimate puts the number of victims at one million people, detained under the pretext of “vocational training” and to counter “terrorism.” The European Union has stated that it “is gravely concerned about the arbitrary detentions, unfair trials and unjust sentencing of human rights defenders, lawyers, and intellectuals.” The EU goes on to mention a number of concrete names that “among many others, Chang Weiping, Chen Jianfang, Chen Yunfei, Cheng Yuan, Ding Jiayi, Gao Zhisheng, Guo Quan, Huang Qi, Li Qiaochu, Li Yuhan, Liu Feiyue, Qin Yongmin, Qin Yongpei, Tiyyip Tashpolat, Sakharov Prize laureate Ilham Tohti, Pastor Wang Yi, Wang Zang, Wu Gan, Wuge Jianxiong, Xu Zhiyong, and Yu Wensheng, as well as the EU citizen Gui Minhai have been unjustly convicted, arbitrarily detained, or forcibly disappeared. We call for the immediate and unconditional release of these individuals, as well as other prisoners of conscience.” Human rights groups have long complained about this as well⁹.

² <https://www.globallslaveryindex.org/>

³ <https://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang--en/index.htm> and https://knowledge4policy.ec.europa.eu/dataset/ds00079_en

⁴ <https://reliefweb.int/report/world/europe-records-biggest-rise-slavery-due-vulnerable-migrants-global-index>

⁵ <https://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang--en/index.htm> and https://knowledge4policy.ec.europa.eu/dataset/ds00079_en

⁶ <https://reliefweb.int/report/world/global-estimates-modern-slavery-forced-labour-and-forced-marriage>

⁷ <https://www.wsj.com/articles/japan-calls-on-china-to-improve-conditions-for-uyghurs-hong-kong-11617629893>

⁸ <https://www.state.gov/forced-labor-in-chinas-xinjiang-region/>

⁹ <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting>

Why does this matter for Belgian businesses?

Belgium's thriving business sector is deeply integrated into global supply chains. This means that the activities of Belgian companies in the global market, may at one point feel or have already been impacted by the consequences of all kinds of new "due diligence" obligations regulations, whether they are Belgian, EU or even U.S. regulations¹⁰.

II. An overview of potential new legislation aimed at countering forced labour in supply chains

At the EU level:

In February 2022, the European Commission released its Proposal for a Directive on corporate sustainability due diligence¹¹. This is meant to "include effective action and enforcement mechanisms to ensure that forced labour does not find a place in the value chains of EU companies"¹², as it has concluded that "voluntary action does not appear to have resulted in large scale improvement across sectors"¹³. The European Parliament has demanded that the proposal should include "other measures such as the prohibition of the importation of products related to severe human rights violations"¹⁴, but such a ban on goods produced with forced labour was not included by the Commission in its proposal¹⁵, even if the Commission is reportedly still working on this aspect of the proposal, however, this may take years¹⁶.

In July 2021, the Commission and the European External Action Service (EEAS) published a document titled "Guidance on due diligence to help EU companies to address the risk of forced labour in their operations and supply chains, in line with international standards", which "explains the practical aspects of due diligence"¹⁷. On top of this, the EU has already put in place mandatory standards in some sectors.

If passed, the newly proposed obligations¹⁸, aimed at addressing human rights violations and environmental abuses in company's supply chains, would apply to companies with more than 500 employees and a net worldwide turnover of €150 million, as well as to companies with more than 250 employees and a net turnover of more than €40 million, if at least half of their turnover comes from a "high impact" sector, such as the textile industry, mining or agriculture¹⁹. Companies from countries outside of the EU would also need to comply if they

¹⁰ <https://www.brusselstimes.com/news/business/145679/masks-produced-by-slave-labour-in-china-on-sale-in-belgium>

¹¹ https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en
https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3664

¹² https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3664

¹³ https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

¹⁴ <https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-corporate-due-diligence>

¹⁵ <https://www.politico.eu/newsletter/brussels-playbook/on-high-alert-due-diligence-law-world-of-yesterday/>

¹⁶ <https://www.scmp.com/news/china/article/3168094/eu-punish-rights-abuses-supply-chains-forced-labour-ban-follow> <https://twitter.com/fbermingham/status/1496483612291739649>

¹⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3664
https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf

¹⁸ <https://www.scmp.com/news/china/article/3168094/eu-punish-rights-abuses-supply-chains-forced-labour-ban-follow>

¹⁹ <https://twitter.com/fbermingham/status/1496428995939815424>

have a net turnover of at least €150 million or €40 million within the EU, depending on their size and the industry sector in which they operate²⁰.

The proposal's enforcement mechanisms would include both the use of sanctions and the establishment of a civil liability regime to deal with cases of non-compliance²¹. In the case of sanctions, this would come in the form of fines, to be determined at the national level²², while the civil liability regime would allow people who have been negatively affected by an EU company's practices to take the company to court in an EU member state, if the company did not sufficiently act to prevent, minimise, end, or mitigate the adverse impacts of its business activity. However, if EU companies have "used contractual cascading and assurance and put in place measures to verify compliance with it", they can escape civil liability²³.

At the Belgian level:

Belgian Members of Parliament have proposed due diligence legislation for companies that would "impose a duty of care on companies and to make them accountable with regards to respect for human, labour and environmental rights, throughout their value chain"²⁴. The proposal was submitted by the Social Democrat and Green Parties. In February 2021, 60 Belgian companies issued a letter in support of such legislation, lamenting that "only 37 per cent of companies practice integrated care, according to a European Commission poll"²⁵. The largest Belgian business association VBO-FEB has called for a "nuanced, pragmatic approach"²⁶, putting forward a number of principles that need to be followed, including proportionality, avoiding legal uncertainty and fragmentation, opting for a sectoral approach, merely imposing an obligation to make an effort, and avoiding making companies liable for things beyond their control.

Direct/indirect consequences of these legislations for Belgian companies:

According to a recent study that was commissioned by the European Commission and conducted by the British Institute of International and Comparative Law, Civic Consulting and LSE Consulting, the cost of "due diligence requirements to identify, prevent, mitigate and account for abuses of human rights, including the rights of the child and fundamental freedoms, serious bodily injury or health risks, environmental damage, including with respect to climate" would amount to 0.14 percent of turnover for small and medium-sized enterprises and 0.009 percent for multinationals²⁷. Complying with due diligence requirements in foreign jurisdictions comes with a cost for Belgian companies, while non-compliance carries legal consequences. On top of that, apart from the challenge to comply, there are all kinds of other risks involved, including

²⁰ <https://www.euractiv.com/section/economy-jobs/news/leak-eu-due-diligence-law-to-apply-only-to-1-of-european-companies/> https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

²¹ <https://www.politico.eu/newsletter/brussels-playbook/on-high-alert-due-diligence-law-world-of-yesterday/> https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

²² <https://www.politico.eu/newsletter/brussels-playbook/on-high-alert-due-diligence-law-world-of-yesterday/> https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

²³ https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

²⁴ <https://www.dekamer.be/FLWB/PDF/55/1903/55K1903001.pdf>

²⁵ <https://www.tijd.be/opinie/algemeen/belgie-is-toe-aan-inhaalbeweging-voor-ketenzorg-bedrijven/10333702.html>

²⁶ <https://www.vbo-feb.be/actiedomeinen/ethiek--maatschappelijke-verantwoordelijkheid/ethiek--maatschappelijke-verantwoordelijkheid/zorgplicht-een-genuanceerde-pragmatische-houding-op-basis-van-feiten-en-rede/>

²⁷ <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en> <https://www.tijd.be/opinie/algemeen/belgie-is-toe-aan-inhaalbeweging-voor-ketenzorg-bedrijven/10333702.html>

reputational damage and even criminal liability, which will be discussed at the end of this briefing.

III. Legislation in other countries on countering forced labour in supply chains

EU Member States:

In 2017, **France**, adopted due diligence legislation, entitled '*loi relative au devoir de vigilance*' the first EU country to do so²⁸. This law obligates major French companies to develop, publish and implement appropriate measures to identify risks and prevent violations of human rights and fundamental freedoms, human health and safety, and the environment. It came in response to various human and environmental disasters involving multinational companies. The law only applies to companies established in France that employ at least 5,000 employees in France or 10,000 worldwide.

The obligation rests on parent companies and contractors to identify and prevent violations of human rights and damage to the environment resulting not only from their own activities, but also from activities by the companies they control, as well as the activities of their subcontractors and suppliers with whom they have an established business relationship²⁹.

In 2019, the **Netherlands** passed a law on the duty of care for child labour³⁰. This legislation obligates companies that sell goods or provide services to Dutch end-users, to exercise due care and to prevent those goods and/or services from being produced with the help of child labour.

In 2021, **Germany** adopted legislation on mandatory supply chain care. The legislation will come into force in 2023 to initially cover companies with 3,000 or more employees, and from 2024 onwards, companies with 1,000 or more employees. These companies are required to identify risks of human rights violations and environmental destruction from direct suppliers if they gain "substantiated knowledge" of potential abuses. This has been extended to indirect suppliers. They must also take countermeasures and demonstrate these measures to the German authorities, which can issue fines if companies violate their due diligence obligations³¹.

United Kingdom:

No legislation similar to the one in Germany or France currently exists in the UK, despite campaigners demands.³² The UK's new Environment Act 2021 does introduce due diligence and reporting obligations in relation to "forest risk commodities"³³. There is the 2015 "Modern Slavery Act"³⁴, which grants tools to law enforcement to fight modern slavery. In December 2021, the UK government hinted it may follow the U.S. lead in banning PRC imports with

²⁸ <https://www.asso-sherpa.org/wp-content/uploads/2019/03/FAQ-FR-2017-comp.pdf>

²⁹ <https://www.asso-sherpa.org/wp-content/uploads/2019/03/FAQ-FR-2017-comp.pdf>

³⁰ <https://www.stibbe.com/en/news/2021/april/de-wet-zorgplicht-kinderarbeid-en-de-opkomst-van-human-rights-due-diligence-van-vrijwilligheid-naar>

³¹ <https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>

³² <https://www.ecotextile.com/2021070628042/labels-legislation-news/campaigners-call-for-uk-due-diligence-law.html>

³³ <https://www.herbertsmithfreehills.com/latest-thinking/uk-government-opens-consultation-on-world-leading-due-diligence-law>

³⁴ <https://www.gov.uk/government/news/uk-government-announces-business-measures-over-xinjiang-human-rights-abuses>

forced labour links. UK MPs have called for such a move, suggesting restrictions on imports of cotton and solar panels³⁵.

United States:

In July 2021, six U.S. agencies published the “Xinjiang Supply Chain Business Advisory”, which includes guidelines and information on dealing with human rights abuses in the PRC province of Xinjiang³⁶. The agencies are able to issue and/or enforce legally binding measures, which can include, for example, Withhold Release Orders (WROs) from the U.S. Customs and Border Protection (CBP), entry of companies or individuals into the U.S. Department of Commerce’s Entity List or List of Goods Produced by Child Labor or Forced Labor, visa restrictions and other sanctions by the Department of the Treasury.

Importantly, European companies can also be affected by these developments³⁷. If they maintain business relations in or into the U.S., they are advised to examine more closely their supply chains for potential human rights abuses, particularly in regard to products/companies from the PRC.

The U.S. agencies have listed four main areas that entail risks of human rights abuses in supply chains³⁸:

- Developing or investing in surveillance software or technology that the PRC government uses in Xinjiang.
- Directly or indirectly procuring goods or workers from Xinjiang if there is or could be a connection to forced labour.
- Delivering commodities, software, or technology from the U.S. to companies that use the described surveillance methods or forced labour.
- Cooperating in the construction or operation of re-education camps.

On top of this, in December 2021, the U.S. Senate unanimously passed the “Uyghur Forced Labor Prevention Act”, which will ban all imports from Xinjiang unless the United States can determine “clear and convincing evidence” that they are not made with forced labour³⁹. President Biden signed the act shortly thereafter⁴⁰.

IV. Reputational Risks - A case study

A case study can clarify the challenges with regards to reputational risks related to due diligence. In 2020, a study by the Australian Strategic Policy Institute (ASPI) linked 83 multinationals including Nike, Adidas, Apple, Microsoft and Samsung to forced labour of

³⁵ <https://www.politico.eu/article/uk-could-impose-chinese-forced-labor-import-ban/>
<https://www.theyworkforyou.com/debates/?id=2022-01-20b.489.6&s=c> <https://www.reuters.com/article/us-britain-china-rights-idUSKBN2B9038>

³⁶ <https://www.noerr.com/en/newsroom/news/human-rights-supply-chain-requirements-in-the-usa>

³⁷ <https://www.noerr.com/en/newsroom/news/human-rights-supply-chain-requirements-in-the-usa>

³⁸ <https://www.noerr.com/en/newsroom/news/human-rights-supply-chain-requirements-in-the-usa>

³⁹ <https://www.axios.com/uyghur-forced-labor-china-nicholas-burns-cf503f53-3031-4a84-9320-eaa7309cf535.html>

⁴⁰ <https://www.state.gov/the-signing-of-the-uyghur-forced-labor-prevention-act/#:~:text=This%20new%20law%20gives%20the,a%20priority%20for%20this%20Administration.>

Uyghurs in factories across the PRC⁴¹. It is worth taking a closer look at Nike, which issued a statement claiming it "does not have relationships with" the factories in the Xinjiang Uyghurs Autonomous Region (XUAR) named in the ASPI report and does not source directly from the XUAR⁴². It added that the company is "conducting ongoing diligence with our suppliers in [the PRC] to identify and assess potential risks related to employment of people from XUAR"⁴³.

Similar statements, concerning reports that Uyghurs were being forced to pick cotton in Xinjiang were made by other companies, like H&M, in 2020⁴⁴. These resurfaced early 2021 following the announcement of Western sanctions on senior PRC officials over human rights abuses and the mass internment of Uyghur Muslims in Xinjiang, with the PRC immediately retaliating with tit-for-tat measures.⁴⁵ Nike's refusal to use Xinjiang-made cotton was followed by PRC consumer boycotts. This fate also befell other Western brands, like H&M, Burberry, and Adidas, following their decision to no longer source cotton from Xinjiang due to difficulties conducting credible due diligence in the region.⁴⁶ Still, at least for Nike, these consumer boycotts were only temporary.⁴⁷

V. Legal Risks - A case study

Another interesting case-in-point to clarify is how criminal law may already impose due diligence obligations. This case involves a legal complaint in France against fashion retailers⁴⁸. The claimants here are three civil society organisations – Sherpa, Collectif Ethique sur l'étiquette and European Uyghur Institute – that have filed a complaint with the Paris Prosecutor Office against several multinationals in the garment industry, accusing them of being involved, through their suppliers, in the forced labour imposed on the Uyghur population within the PRC. Similar complaints were filed in other European countries. In Germany, in September 2021, and in the Netherlands, in December 2021.

In France, the alleged legal basis for the claim is “concealment of the crime of aggravated bondage, crime of human trafficking in an organized gang, crime of genocide and crime against humanity”⁴⁹. French prosecutors decided to open an investigation into four multinational fashion retailers: Uniqlo France, owned by Fast Retailing; Inditex, which owns Zara and Bershka; SMCP, the owner of the French fashion labels Sandro and Maje; and the footwear company Skechers⁵⁰. The case is still pending.

⁴¹ <https://www.aspi.org.au/report/uyghurs-sale>

⁴² <https://purpose.nike.com/statement-on-xinjiang>

⁴³ <https://www.supplychaindive.com/news/nike-apple-supply-chains-forced-uyghur-labor/573556/>

⁴⁴ <https://www.bbc.com/news/world-asia-china-56519411>

⁴⁵ <https://www.theguardian.com/world/2021/jul/02/france-investigates-fashion-brands-over-forced-uyghur-labour-claims>

⁴⁶ <https://www.reuters.com/article/us-china-xinjiang-sanctions-idUSKBN2BL03L>

⁴⁷ <https://sgbonline.com/survey-finds-nike-and-adidas-back-in-favor-with-chinese-consumers/>

⁴⁸ <https://www.asso-sherpa.org/forced-labor-of-uyghurs-filing-of-a-complaint-in-france-against-multinationals-for-concealment-of-forced-labor-and-crimes-against-humanity>

⁴⁹ <https://www.asso-sherpa.org/forced-labor-of-uyghurs-filing-of-a-complaint-in-france-against-multinationals-for-concealment-of-forced-labor-and-crimes-against-humanity>

⁵⁰ <https://www.theguardian.com/world/2021/jul/02/france-investigates-fashion-brands-over-forced-uyghur-labour-claims>

VI. Conclusion

In a relatively short period of time – less than five years – doing business with the PRC has been complicated with all kinds of policy action intended to prevent and counter forced labour. Some governments, like France and the U.S. have already introduced specific legislation, while others, like Belgium or the European Commission, are currently deliberating on how to tackle this issue.

On top of this, the increased awareness about the Uyghur issue has created reputational risks for companies, not only in the West but also in the PRC, where consumer boycotts against firms seen to be accusing the PRC of forced labour have troubled multinationals. Last but not least, criminal law may already impose due diligence obligations on companies, as they could be convicted for being aware of forced labour in their supply chains and not doing enough about to prevent or counter it.

It is therefore of the utmost importance for companies trading with the PRC to pre-empt more legislation or to avoid falling into troubled from U.S. regulation, by ensuring that there is no forced labour in their supply chains.