

ETHICAL PROCUREMENT: EXCLUDING PRODUCTS MADE WITH FORCED LABOR

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Introduction

Procurement practices are typically guided by the pursuit of efficiency and value for money. Increasingly, however, procurement strategies incorporate social impact goals that include social and environmental standards that must be considered in contracting. International human rights law and ethical frameworks produced by the United Nations (UN) and the International Labor Organization (ILO) serve as a basis for the protection of human rights and the environment in global business. Current initiatives within the UN system underscore the importance of effective procurement management that extends beyond mere compliance with rules and regulations.

As a manager, buyer, or other professional committed to ethical procurement, it is important to understand how procurement practices impact business outcomes, risks, and human rights throughout the value chain. Whether your company wants to implement new CSR or ESG policies or simply wants to remain in compliance with the latest laws and regulations, an effective approach to responsible procurement will be oriented to the full value chain, aligning business actions with the values of your organization. In other words, it **is possible to seek value for money and be committed to accountability, integrity, and transparency.**

Ultimately, **responsible sourcing can support business ethics and also be a source of competitive advantage by connecting businesses with high-quality and innovative suppliers to build supply chain resilience and develop sustainable trade relationships.** Responsible sourcing practices and policies leverage procurement to support supply chain partners in countries with weak legislation and rule of law in strengthening their adherence to Codes of Conduct.

The sixth installment in a series of briefs about forced labor in the Uyghur Region, this brief is meant to guide procurement specialists in making ethical sourcing choices and thus avoiding involvement in forced labor in the Uyghur Region.

Key Points

- Products made with the forced labor of Uyghurs and other persecuted groups of the Uyghur Region have penetrated international supply chains, resulting in legal, economic, and reputational risk for companies sourcing internationally.
- Procurement specialists must take steps to identify and exclude Uyghur forced labor throughout the procurement cycle.
- Responsible sourcing can support business ethics and be a source of competitive advantage.
- Responsible sourcing practices and policies leverage procurement to support supply chain partners in countries with weak legislation and rule of law in strengthening their adherence to Codes of Conduct.

THIS RESOURCE PROVIDES:

- Strategies for ethical procurement for each stage of the process
- Forensic questions that can be posed to Chinese suppliers regarding the Uyghur Region
- Organizational actions that can be taken to ensure commitment to disengaging from the Uyghur Region

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This brief is designed to assist procurement specialists in making ethical sourcing choices in regard to forced labor in the Uyghur Region. Other briefs in this series provide the background and context necessary to make ethical choices. This guide turns to more practical aspects specific to procurement.

Businesses play a critical role in developing alternative sources for raw materials and intermediate goods. Businesses can help create global value chains free of forced labor by building business relationships and securing contracts for non-tainted supplies that might exist, distributing investments and development funds to other countries to expand production capacity, and writing anti-forced-labor clauses into tenders and contracts. With a forward looking strategy, your organization can position itself to have access to forced-labor-free supplies and materials and build resilience in your supply chains.

Procurement Challenges & the Crisis in the Uyghur Region

The Chinese government has enacted an unprecedented system of state-sponsored forced labor that violates the fundamental human rights of Uyghur, Kazakh, and other minoritized citizens in the Xinjiang Uyghur Autonomous Region (XUAR or Uyghur Region) and violates numerous international laws and conventions on the protection of human and labor rights. The products made by these laborers taint international supply chains across a dizzying array of industries.

In the case of the Uyghur Region, exposure to forced labor often occurs several steps upstream in the supply chain. The globalization of supply chains has made sourcing ethically much more complicated than in the past, in that companies often do not directly control the selection of their sub-suppliers further down the value chain, nor do they have a sense of their labor practices. There is a broader risk of exposure to unethical practices in longer, more complex supply chains. However, a truly ethical sourcing practice would require businesses to ensure that no tier of their supply chain is associated with harmful practices.

Companies that import the goods that are produced through forced labor programs affecting Uyghurs and other persecuted groups in the XUAR are at significant legal, economic, and reputational risk. They risk breaking

U.S. laws, including the Tariff Act, the Trafficking Victims Protection Act, the Uyghur Forced Labor Prevention Act, and the laws of other countries within which they operate or ship, including the proposed EU directive creating a market ban on forced labor made goods. The UK's Modern Slavery Act, as well as new due diligence laws in Germany, France, and Norway, for example, prompt companies to meet certain minimum transparency standards.

Companies that import goods made in whole or in part in Xinjiang also risk being in non-compliance with their own internal social responsibility policies or Modern Slavery Statements prohibiting the use of forced labor in the manufacture of goods. They violate consumer expectations that the companies they buy from are not complicit in egregious crimes against humanity. They further risk contributing to the oppression of minoritized people in China and legitimizing the PRC government's repressive regime in the region and economically benefiting the private, public, and state-owned suppliers in China that profit from forced labor.

REGION-WIDE STATE-SPONSORED FORCED LABOR: A SPECIAL CASE

Typically, responsible sourcing best practice dictates that when forced labor is identified, companies should work with suppliers to remediate the situation and compensate the affected workers. However, in the case of region-wide state-sponsored forced labor such as that occurring in the Uyghur Region, these steps are simply impossible. Thus, responsible sourcing best practice requires full withdrawal from all sourcing from the region.

Of course, all contractual clauses should conform to relevant local laws and regulations and should be reviewed by legal counsel. In general, the law should not interfere with a company's ability to prohibit the use of forced labor—including in a specified region—through tenders, contracts, or industry-wide collaborations.

Enhancing ethical procurement strategies in your organization

Procurement specialists should place significant emphasis on identifying and excluding Uyghur forced labor throughout the procurement cycle.

RISK IDENTIFICATION:

Your company should conduct a supply chain risk assessment to determine the highest risk areas of procurement, to heighten awareness of specific inputs or tiers that may be affected by Uyghur forced labor. See our [“Know Your Supply Chains”](#) brief for desk-based research strategies for risk assessment.

PRE-QUALIFICATION:

Pre-qualification questionnaires can set a minimum threshold for vendor commitments regarding exclusion of products made using forced labor, including all products made in whole or in part in the Uyghur Region. Uyghur forced labor, concern about modern slavery, forced labor and other human rights abuses, should be raised explicitly during all market engagement opportunities. Hesitation to discuss these issues should be a red flag that a supplier is a risk for transparency and sustainability.

SOLICITATION AND TENDERING:

The tendering phase is critically important for setting expectations with suppliers. The solicitation and tendering process is an opportunity to clearly state your company’s commitment to maintaining forced-labor-free supplier partnerships. Tender advertisements should clearly state your company’s intention to prohibit purchasing products tainted with forced labor, including all products made in whole or in part in the Uyghur Region. Social value points should be given to suppliers genuinely addressing the challenge within their application forms, which will reinforce the practical value your organization places on environmental and social criteria in contract selection.

SUPPLIER VETTING:

Effective supplier vetting, which requires knowing where products are made, who made them, and under what conditions they work, should be a priority in all procurement. All suppliers should be required to produce a full list of all sub-suppliers to the raw materials and thorough responses to forensic questions (elaborated below) before contracting. All suppliers should be able and willing to name their suppliers, including their English and Chinese names, their Chinese social credit code number and the full addresses of all relevant factory(s). For more information on how to identify Uyghur region exposure in your supply chains beyond self-answered questionnaires, see the “Know Your Supply Chains” brief.

CONTRACTING AND MONITORING:

All contracts should include clauses clearly prohibiting sourcing from companies using forced labor, including those sourcing from the Uyghur Region, and the use of state-sponsored labor transfers or recruitment from the Uyghur Region. Contracts should include a chain of custody protocol, including clear documentation expectations on Bills of Material and adherence to the Code of Conduct. During any review of contracts or agreements, sub-supplier lists requirements and forensic questionnaires should be repeated and reviewed thoroughly as Chinese companies are pivoting to obscure the XUAR origins of goods. Suppliers are changing names, shipping through logistics firms or intermediaries, moving goods to parent companies on the coast – all to obscure product origins. Full monitoring of chain of custody and enhanced research on all tiers of the supply chain should be an iterative process, particularly reviewed in contract re-negotiations or evaluation periods.

NON-COMPLIANCE INTERVENTION:

If suppliers are found to be sourcing from or operating in the Uyghur Region, your company should stage an intervention with the supplier to ensure a time-bound plan to end operations or relationships in the Uyghur Region and to shift sourcing outside the region. If a supplier refuses to cooperate, you should terminate the relationship immediately. Vendor sanctions are commonly used in the public sector to enforce the use of appropriate action in instances of social or environmental malpractice and can be replicated for the private sector through effective procedures to address the failure of suppliers to comply with contract requirements and ethical standards.

Forensic Questions for Chinese Suppliers

Forensic questioning — a process of gathering detailed information and evidence from suppliers that provide critical insight into their labor practices and involvement in human rights abuses — is best equipped to expose which suppliers are cooperating in the Chinese government’s state-sponsored ‘surplus’ labor programs and is an essential tool for effectively vetting your Chinese suppliers. Standard self-answered questionnaires are simply not enough. The questions below require companies to identify where they have engaged in harmful practices that they might not reveal otherwise.

As a rule, if suppliers respond that they are involved in or benefit from the state labor transfers, Xinjiang Aid or Pairing, or land cooperativization program, procurers can presume they are engaging in exploitative coercive programs. Similarly, companies that pay their workers through government schemes are likely to be directly linked to forced labor practices.

QUESTIONS TO ASK YOUR CHINESE SUPPLIERS:

- Have your company or any of your suppliers participated in any state-sponsored poverty alleviation campaigns involving the XUAR?
- Have your company or any of your suppliers benefited from Xinjiang Aid or City Pairing Programs? If yes, which ones?
- Have your company or any of your suppliers accepted any laborers from the Xinjiang region?
- Have your company or any of your suppliers participated in any land cooperativization schemes in the XUAR
- Do your company or any of your suppliers engage with the Xinjiang Production and Construction Corps?
- Is your company directly paying its employees or are your employees paid through a state program?
- Are “ethnic minority” workers (especially those from the XUAR) provided with equitable housing? Are they monitored by special guards or required to participate in mandatory ideological training?

- Are employment contracts signed between the direct employees and the company or are they employed through a government contract?
- Do “ethnic minority” workers (especially those from the XUAR) have full freedom of movement during their leisure time?
- Do “ethnic minority” workers (especially those from the XUAR) have the same holidays and are they able to return home for those holidays?
- Does your parent company own any businesses or factories in the XUAR, and if so, what sourcing relationships do you have with those entities?
- If your parent company has recently disposed of a property or factory in the XUAR or ended engagement in any of the above-named programs, please provide documentation of these changes.
- If your company has a factory in the XUAR, have you considered relocating out of the region? If so, what are your plans?

Any company that wishes to recruit Uyghur workers should do so exclusively through non-state-sponsored recruitment. If a company can demonstrate that all of their Uyghur Region originated workers were brought onto staff through open recruitment fairs unaffiliated with central, regional, or local government recruitment or transfer programs, this could be an instance of legitimate employment. However, any company that accepts laborers transferred from the Uyghur Region through state programs is participating in forced labor programs and should be excluded from supply chains and investments.

Revising Your Supplier Code of Conduct

Many companies have supplier codes of conduct or other ethical procurement policies with which their suppliers must comply. These codes of conduct or policies should be enhanced with specific reference to the issues associated with the Uyghur Region, as described below.

- [Your company name] will develop and implement human rights due diligence processes for all procurement.
- [Your company name] will ensure that all suppliers are not sourcing from or operating in the Uyghur Region. We are aware that there may be additional costs associated with relocating sourcing locations but believe that the environmental and humanitarian damage caused by the products of the Uyghur Region justifies the investment.
- [Your company name] will provide a full list of all suppliers and sub-suppliers across all tiers of the value chain, including registered company names in local language. You should be able to provide purchase orders, invoices, and receipts upon request at any time.
- At a minimum, we require all suppliers ensure that the following standards for workers' rights are upheld along the entire supply chain of the products they sell:
 - Employment is freely chosen; no state-sponsored labor programs are used for recruitment.
 - Freedom of association and the right to collective bargaining are respected.
 - Child labour is not used.
 - Working hours do not exceed local legal limits.
 - No discrimination is practiced, including in housing, payment, contracts, or holidays.
 - No harsh or inhumane treatment is allowed.
- [Your company name] compares all quotes for products based on their environmental and social impact, as well as price.

Any refusal to sign such codes of conduct or engage in dialogues that explicitly addresses forced labor and the Uyghur Region should be a red flag for risk. These are issues of basic due diligence, and a lack of transparency is unsustainable.

Organizational Behavior Change & Ethical Procurement Policy

In order to wholly commit to ensuring that your company or organization is not complicit in the perpetuation of forced labor and human rights abuses, ethical procurement policy must be a corporate priority. Often different steps in the procurement process are siloed within dedicated divisions or departments; however, an effective ethical procurement policy will hold all members of your company accountable. Making responsible purchasing goals an executive priority will promote greater adherence to ethics in procurement, and cross-functional teams can offer insights to diversify and improve procurement's social impact. Corporations should create an escalation process when supply chains include red flags to ensure business decisions do not compromise company level ethical standards and targets.

If your company is involved in sectors with known exposure to Uyghur forced labor such as in the solar or electric vehicle industry, it is important that the challenge of maintaining forced-labor free supply chains be addressed globally by your organization. Understanding current practices at every step in the production of a product and the supplies required to do so can further promote accountability in procurement. All companies can benefit from a business strategy that considers supply chain risks at all levels of the organization.

ACTIONS TO CONSIDER:

- Include ethical procurement as a strategic priority in company-level planning documents.
- Include ethical procurement as a company/organizational measurable objective in executive-level job descriptions.
- Create high-level KPIs related to responsible sourcing.
- Provide appropriate training and professional development opportunities to equip buyers in ethical goals and technical knowledge of production and supply chains, in particular regarding the crisis in the Uyghur Region.

Parts of this brief are drawn from the [Clean/Dirty Energy procurement guide](#) produced by UNISON in collaboration with Stop Uyghur Genocide and Sheffield Hallam University's Helena Kennedy Centre. The Centre thanks UNISON for permission to utilize some segments of that guidance.

OTHER USEFUL RESOURCES IN THIS SERIES

Sheffield Hallam University's Helena Kennedy Centre for International Justice has produced a series of evidence briefs designed to assist stakeholders in addressing Uyghur forced labor. Briefs in this series cover the context of forced labor in the region, products made with Uyghur forced labor, common concerns about addressing the issue, and various guidance for businesses, journalists, governments, affected community members, advocates, consumers, and others seeking to address the issue. Readers who want to learn more should [visit our website](#).

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