

Key Considerations for an EU Instrument to Control the Importation of Forced Labour Products into the EU

NGO Position Paper

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Forced labour is publicly recognised as the most common form of modern slavery, and in many cases, it affects the most vulnerable and excluded groups in society.¹ Currently, it is estimated that 16 million people are in forced labour in the private sector at any given time. Due to the scale of this abuse, the result is that many companies active in the European Union provide products and services on the single market which have forced labour in their value chains. Civil society has long called for the EU to tackle this issue and ensure that companies acting in the EU are tackling and removing forced labour from their value chains.

EU aiming to tackle forced labour in global value chains

Forms of import controls on products made or transported, in whole or in part, with forced labour already exist in other jurisdictions around the world, notably the United States.² The European Parliament has consistently called for “import bans” for products made with forced labour into the EU.³ In response, the European Commission is currently assessing how to introduce “effective action and enforcement mechanisms to ensure that forced labour does not find a place in the value chains of EU companies”.⁴

Consideration of import controls on forced labour products coincides with the forthcoming European Commission legislative proposal on **Sustainable Corporate Governance (SCG)**. A key element of the SCG directive is set to be a general corporate duty to respect human rights and the environment and an obligation for companies to undertake **human rights & environmental due diligence (HREDD) throughout their value chains**. This would be applicable to EU and non-EU companies active in the internal market.⁵ If based on international standards, as expected, the legal obligation would mean companies must identify risks to human rights and the environment in their global operations, subsidiaries, business relationships and value chains as well as prevent, mitigate, track and communicate and redress those risks and impacts.⁶ As a serious violation of a fundamental human

¹ International Labour Organization Forced Labour Convention, 1930 (No. 29)

² As well as Canada and Mexico, with the UK and Australia currently considering. For an overview see the discussion paper: [https://www.annacavazzini.eu/wp-content/uploads/Towards an EU import ban on forced labour and modern slavery February.pdf](https://www.annacavazzini.eu/wp-content/uploads/Towards_an_EU_import_ban_on_forced_labour_and_modern_slavery_February.pdf)

³ See, for example: https://www.europarl.europa.eu/doceo/document/RC-9-2020-0432_EN.html; https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html; https://www.europarl.europa.eu/doceo/document/TA-9-2020-0337_EN.html

⁴ https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf

⁵ The notion of “activity” includes companies placing, transporting or producing/manufacturing products within the EU.

⁶ For the position of leading EU NGOs working on corporate due diligence, see: <https://corporatejustice.org/principal-elements-of-an-eu-mhredd-legislation.pdf>

right, companies will be required to address the risk of forced labour as part of their forthcoming HREDD obligation. The corporate mHREDD obligation and a potential import control measure must therefore work efficiently in tandem.

As civil society organisations working in this field, we would like to highlight some key considerations relevant to the development and functioning of these two parallel policy processes.⁷

Relation of potential EU import controls with upcoming corporate mHREDD obligation

1. It is of primary importance that the EU legislates a stand-alone duty for companies to undertake HREDD in company law; whilst also improving access to judicial remedy for victims of corporate abuse in global supply chains. This would advance the EU and all individual member States towards fulfilling their obligations under the *UN Guiding Principles on Business & Human Rights*.
2. The anticipated SCG directive must contain both administrative enforcement by authorities as well as judicial enforcement by virtue of claims by (potential) victims and representative stakeholders that can be injunctive (to prevent harm from occurring); compensatory (to ensure redress when harm has occurred) and restorative (to otherwise fix or restore situations of harm).
3. EU import controls on products made in whole, or in part, or transported with, forced labour represent a powerful *supplementary instrument* to enforce the forthcoming HREDD legal obligation on companies whose products are destined for the EU market. This will particularly be the case when corporate HREDD efforts are effectively impossible to implement on the ground (such as in cases of State-imposed forced labour) or where HREDD efforts have proven ineffective or are unlikely to deliver.

As an example, there is a need for the urgent introduction of import controls in response to state-imposed forced labour (against particular sites of production, companies, and at a regional level, see point 12), which would cover all raw materials and finished products made in-whole and in-part with state-imposed forced labour. These are contexts where it is impossible for companies to perform HREDD on the ground due to the scale of abuses, the restrictions on freedoms and the role of the state, which restricts all possibilities for companies to exert constructive leverage over the situation.

4. The objective of both instruments must be the prevention and mitigation of human rights violations in global value chains and the remediation of rights-holders in instances of harm. Import controls represent an additional form of EU state leverage vis-à-vis companies active in the EU market that can be used to seek to compel improvements in global value chains as well as the provision of remedy to rights-holders.
5. As a form of EU state leverage vis-à-vis non-EU companies, forced labour import controls must be **carefully coordinated** with the *bona fide* HREDD efforts of EU companies seeking to use their leverage in order to improve human rights protection throughout their value chains.
6. For the regime of import controls to be efficient, it is essential that the SCG directive requires companies to map and disclose subsidiaries, suppliers and business partners in their value chains in order that stakeholders (including trade unions and NGOs) and public officials can externally

⁷ See also Anti-Slavery International and European Center for Constitutional and Human Rights' position on import controls to address forced labour in supply chains, June 2021. <https://www.antislavery.org/wp-content/uploads/2021/06/Anti-Slavery-International-ECCHR-Import-Controls-Position-Paper-1.pdf>

monitor their operations and ultimately hold them accountable. Such an obligation would best be provided for in the corporate HREDD obligation in the SCG directive.

Scope of import controls

7. In order to better align the functioning of any future import controls regime with the forthcoming HREDD obligation, the Commission should actively explore extending import controls on products made in violation of other types of human rights or environmental harm.

Elements of a forced labour import controls instrument

8. Stakeholders should have the right, through a formalised and secure procedure, to make complaints to relevant authorities without fear of reprisal, concerning products made or transported in whole or in part, with forced labour. The complainant should have the right to request that their concerns and identity remain confidential or anonymous. Complaints should lead authorities to carry out checks and a review of the evidence; as well as respond to the complainant within a reasonable period of time.
9. Throughout the investigation process, stakeholders **must be consulted for information, and be invited to submit evidence or perspective, prior to the imposition of any import controls as part of a human rights impact assessment in order to determine potential consequences.** Should restrictions be imposed, said stakeholders must be consulted, or have the ability to submit, in order to determine the most appropriate prevention, mitigation and remediation measures as possible.⁸
10. It is essential that once in place, the **easing of import controls be made strictly contingent on the remediation of harmed rights-holders**, as is emerging best practice in other jurisdictions.⁹ Remediation processes and payments should also be rights compatible and follow international standards of best practice. **The easing of import restriction should also be contingent on measures taken to guarantee non-repetition and the prevention of new harm.**
11. **Monitoring of remediation/corrective actions should be undertaken in cooperation with relevant civil society stakeholders, including trade unions.** Monitoring should consider improvements and corrective actions made, including changes to operations/business models to prevent future abuses from taking place; the appropriateness of mitigation measures; and the effectiveness of remediation provided.
12. Additional sanctions should be foreseen in the case of actual, attempted or repeated circumvention of a specific import control or decision, or in the case of a lack of cooperation with relevant authorities, including a failure to provide information necessary in order to assess the situation.
13. Categories of forced labour import restrictions should include those on forced labour products from:
(i) a particular site of production, or sites of production, (ii) a particular importer or company, or group of importer or companies; (iii) those from a particular country or region; (iv) those from a particular transport vessel or fleet.

⁸ As part of the corporate HREDD obligation and according to international standards, affected and representative stakeholders should also be engaged and consulted in the due diligence identification; prevention; mitigation and remediation processes.

⁹ See, <https://www.voanews.com/east-asia-pacific/after-us-sanctions-malaysia-migrant-workers-get-millions-restitution-glove-makers>; <https://www.reuters.com/article/top-glove-corp-labour-idUSL4N2GX22A>.

14. **A public list of sanctioned entities, regions and products should be created and maintained.** Such a list should be updated to include any new allegations/abuses against the same entity, as well as to be transparent about defined criteria for lifting an import restriction.¹⁰

Accompanying reforms

15. To facilitate the identification and monitoring of the importation of products made in whole or in part by, or transported with, forced labour, it is crucial to ensure improved public access to Customs data. This is why the European Commission and Member States must amend the Union Customs Code to clarify that customs data is not confidential and can be disclosed publicly, as well as requiring companies that import goods into the EU to disclose the name and address of the manufacturer to the relevant customs authorities. In other jurisdictions, notably the USA, customs data is subject to Freedom of Information requests.

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¹⁰ Examples of forced labour lists identifying companies found to be using forced labour exist in Brazil. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_111297.pdf; page 88.