

Human Rights and Global Strategy

The EU Proposed Ban on Products Made with Forced Labour: Four Things You Need to Know

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The European Commission (EC) [published](#) details about its long-awaited proposed legislation to ban products made with forced labour on 14 September 2022. This follows an [announcement](#) last year to introduce a ban after the EC President acknowledged that products made with forced labour had ended up “*for sale in shops here in Europe*” and made clear that “*human rights are not for sale – at any price*”.

The EC’s proposed legislation is part of a global trend whereby governments are trying to prevent products made from forced labour from entering their markets. In particular, the US recently implemented the Uyghur Forced Labor Prevention Act in June 2022 (which we address in more detail in our client alert “[Ten Questions Answered About Implementation of the Uyghur Forced Labor Prevention Act](#)”), which imposes a rebuttable presumption that all products of Xinjiang Uyghur Autonomous Region origin are made with forced labour and therefore prohibited from being imported into the United States.

This client alert sets out what companies need to know about the EC’s proposed legislation and how they can prepare before it comes into force.

1. Which companies will be affected by the proposed legislation?

The proposed legislation will impact any company selling goods in, or exporting goods from, the EU.

The proposed legislation will prohibit any “*products made with forced labour*” from being made available within the EU market regardless of whether they were manufactured inside or outside the EU. It will also prohibit products made from forced labour in the EU being exported overseas.

2. What are products made from forced labour?

“Forced labour” is defined in line with the International Labour Organisation’s definition as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”.

In addition, a “product made with forced labour” is defined as “*a product for which forced labour has been used in whole or in part at any stage of its extraction, harvest, production or manufacture, including working or processing related to a product at any stage of its supply chain*”. This means that a product may be banned from the EU even if only a small component of it was made by forced labour at any level of the supply chain.

3. How will the ban be enforced?

Under the proposed legislation, EU Member States will be required to designate “competent authorities” responsible for investigating and enforcing the proposed legislation. The investigation should involve a triage process: first, an assessment of whether there is a “*substantiated concern*” built on “*well founded reasons... to suspect*” the products were likely to have been made with forced labour; and secondly, a more detailed investigation. In addition, the proposed legislation requires Member States' customs authorities to take charge of enforcement at the EU borders.

Whilst the proposed legislation sets out detailed steps relating to the investigation process, it remains to be seen how Member States will establish whether products have been made with forced labour in practice. The EC has said that it will create a database of forced labour risk areas or products and expects EU Member States to follow a risk-based approach in conducting investigations to establish whether products are made using forced labour. Companies selling products made with forced labour will be required either to refrain from selling those products or, if already on the market, to withdraw the products and dispose of them at their own cost.

If a company does not follow a decision with regards to a product under the proposed regulations, they face penalties under national law.

4. What do companies need to do?

The proposed ban will come into effect two years after it has been discussed and agreed by the European Parliament and Council. Some commentators have speculated that agreement is likely to be reached at the end of 2023, but there is no clear timeline. In the meantime, companies may wish to start preparing their supply chains and business practices in readiness for the legislation.

In particular, the proposed legislation will require competent authorities to take into account the extent to which a company has vetted human rights risks in its supply chain when considering whether there are “*well founded reasons... to suspect*” a product was made with forced labour. Companies can therefore start their preparation by implementing processes and procedures in line with:

- the EU’s wider proposals on conducting human rights due diligence (see our client alert: [Human Rights in Supply Chains: How New Laws in Europe and the UK Impact Companies Around the World](#)); and
- the EC’s Guidance “On Due Diligence For EU Businesses To Address The Risk Of Forced Labour In Their Operations And Supply Chains” (see our client alert: [EU Guidance on Forced Labour in Supply Chains](#)); and
- international guidance issued by organisations such as the United Nations (see our Client Alert: [Six Best Practices in Corporate Human Rights and Social Responsibility](#)).

This preparation will also help companies meet the standards of proof necessary to overcome a presumption of forced labor under the Uyghur Forced Labor Prevention Act, as detailed in our [Law360](#) article, [Import Best Practices Under New Uyghur Forced Labor Law](#).

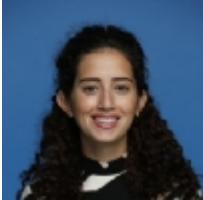
The proposed legislation in the EU combined with the new legislation in the US banning forced labour will present complex challenges for global supply chains. Lawyers in Jenner and Block’s Human Rights & Global Strategy Practice are ready to help companies navigate both the legal requirements and business human rights best practices.

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