

THE DANISH  
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HUMAN RIGHTS

SETTING THE  
SCENE FOR AN  
EFFECTIVE  
FORCED LABOUR  
BAN IN THE EU



## SETTING THE SCENE FOR AN EFFECTIVE FORCED LABOUR BAN IN THE EU

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# EXECUTIVE SUMMARY

The European Union is in the process of developing new legislation to address the challenge of forced labour along global value chains by banning products made with forced labour from the common market. Following the publication of a Proposal for a Regulation (Draft Regulation) by the European Commission in September 2022, the European Parliament and the Council of the European Union are in the process of adopting their own positions. To contribute to the discussion, this paper analyses the Draft Regulation, responds to several concerns, and provides recommendations drawing on comparable legislation in the United States and other authoritative sources. It argues that a Forced Labour Ban under European Union law should align with the Corporate Sustainability Due Diligence Directive, currently at the trilogue negotiation stage, to harness synergy effects and ensure that the laws are mutually reinforcing. Moreover, the Forced Labour Ban should take a human rights-based approach with a view to improve the situation of victims of forced labour. It is key to strengthen the involvement of rightsholders and other stakeholders throughout the enforcement process. The Forced Labour Ban should also provide sufficient incentives for companies, first, to cooperate proactively with Competent Authorities and stakeholders and, second, to adequately address identified cases of forced labour through remediation, measures to prevent recurrence and, where necessary, responsible disengagement. Finally, the lawmakers must ensure that the Forced Labour Ban is effectively enforced, which requires that companies bear the burden of proof that goods are not made by forced labour where these products stem from a high-risk area.

# CHAPTER 1

## 1 INTRODUCTION AND GLOBAL CONTEXT AROUND FORCED LABOUR

### 1.1 FORCED LABOUR IN GLOBAL VALUE CHAINS

Forced labour constitutes a particularly severe human rights abuse that remains prevalent in the global economy. According to estimates by the [International Labour Organization \(ILO\)](#), about 27.6 million people are victims of forced labour, 17.3 million of which can be found in the private sector, 6.3 million in forced commercial sexual exploitation, and 3.9 million in state-imposed forced labour. What is particularly concerning is that the [number of victims has risen](#) in the past years. This reality stands in stark contrast to the demands of international law. Forced labour is condemned by the [ILO Forced Labour Convention No. 29 \(1930\)](#) and the [ILO Abolition of Forced Labour Convention No. 105 \(1957\)](#), both of which enjoy nearly universal ratification. This framework has been further supplemented by the [Protocol of 2014 to the Forced Labour Convention \(1930\)](#) and the [Forced Labour \(Supplementary Measures\) Recommendation 2014 \(No. 203\)](#). Also the [United Nations Agenda 2030](#) defines in Target 8.7 of the Sustainable Development Goals the aim of taking “immediate and effective measures to eradicate forced labour”. In the European context, Article 5(2) [Charter of Fundamental Rights of the European Union](#) and Article 4 [European Convention on Human Rights](#) prohibit forced or compulsory labour. Article 207 Treaty on the Functioning of the European Union (TFEU) holds that the European Union’s (EU) “common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action”, which include respect for human dignity and the universality and indivisibility of human rights (compare Articles 205 and 21 TFEU). The gap between the reality of forced labour, on one hand, and the demands of international and European law, on the other, gives cause for action at the EU level.

### 1.2 FORCED LABOUR REMAINS A CHALLENGE FOR EU COMPANIES

Due to the interconnectedness of global value chains, forced labour constitutes a challenge for non-EU and EU companies alike. Despite the growing recognition and integration of human rights issues in corporate policy statements, reporting and management processes, assessments of EU companies that focus on the

management of forced labour risks show mixed results. Take, for instance, the [2023 benchmark report on food and beverage companies](#) by the civil society organisation Know the Chain, which assesses publicly available information on corporate forced labour policies against the [UN Guiding Principles on Business and Human Rights](#). The 14 European companies assessed have an average score of 21 on a scale from 0 to 100. A parallel [benchmark report on information, communication and technology companies](#) from 2023 featuring 10 European companies comes to similar results. These evaluations indicate that EU companies are not yet addressing the significant challenge of forced labour in line with international standards.

### **1.3 THE EU'S FORCED LABOUR BAN**

To address the problem of forced labour, the European Union (EU) is taking legislative action in the form of a so-called Forced Labour Ban (FL Ban). The European Commission (Commission) published a [Proposal for a Regulation on prohibiting products made with forced labour on the Union market](#) (Draft Regulation) in September 2022, following a call for evidence but no dedicated impact assessment. In essence, the Draft Regulation prohibits the placing of products made with forced labour on the common market as well as the export of such products from the EU. Further, it empowers the EU Member States to investigate goods potentially made by forced labour and, if evidence confirms the suspicion, to prohibit, withdraw and dispose affected products. To facilitate compliance by companies, the Commission is tasked under the Draft Regulation to provide an indicative, non-exhaustive, verifiable, and regularly updated database on forced labour risks.

At present, the legislative process is still ongoing. In the European Parliament (Parliament), the responsible co-rapporteurs of the Committee on International Trade and the Committee on the Internal Market and Consumer Protection, Samira Rafaela and Maria-Manuel Leitão-Marques, published a [Draft Report](#) in April 2023. On 16 October, the joint committee adopted, notably without a dissenting ballot, its [Final Position](#), which shall form the Parliament's mandate in the upcoming trilogue negotiations. The Council of the European Union is currently working towards a common approach among the EU Member States on the Draft Regulation for a FL Ban.

### **1.4 LESSONS LEARNED FROM FL BANS IN OTHER JURISDICTIONS**

The Commission chose to adopt a FL Ban without a dedicated impact assessment setting out the empirical and theoretical foundations of the legislative approach, which has been criticised by stakeholders (see, Explanatory Memorandum to the Draft Regulation, page 6). Notwithstanding the lack of an impact assessment,



important lessons can be drawn from legislation on forced labour in other countries, especially the United States (US).

[Section 307 of the US Tariff Act of 1930](#) prohibits the import of products made wholly or in part by forced labour. The US Customs and Border Protection (CBP) enforces the act either *ex officio* or following the submission of allegations. If the investigation finds reasonable but not conclusive evidence that goods were made by forced labour, CBP can issue a so-called Withhold Release Order (WRO) that prevents products under investigation from entering the US market. Where CBP finds conclusive evidence of a violation of Section 307 of the US Tariff Act, it adopts a Finding and seizes affected products remaining within its jurisdiction. Active WROs and Findings are published on the [website](#) of CBP. In 2021, the US government further adopted the [Uyghur Forced Labor Prevention Act](#) (UFLPA) amending Section 307 of the US Tariff Act. The UFLPA creates a rebuttable presumption that goods produced in Xinjiang, China, or by [certain entities](#) with economic ties to that region are made with forced labour. The Act also introduces reporting obligations and specifies that it is the policy of the United States to coordinate with Canada and Mexico on forced labour in Xinjiang.

The US example provides important lessons for EU lawmakers, specifically on the factors driving change and facilitating remediation for victims of forced labour. A 2023 [report](#) by The Remedy Project analyses the effects of import bans issued under Section 307 of the US Tariff Act based on nine case studies. It identifies a range of positive changes that were driven by the threat or issuing of a WRO or Finding and the related public indignation. These changes range from the repayment of recruitment fees to migrant workers falling victim to forced labour, over amendments to corporate policies and governance processes in companies under investigation, to policy and legislative reforms in affected countries. The report concludes that “[i]mport bans under the Tariff Act have had a wide-reaching impact, and they have often been a catalyst to prompt rapid changes in industries that have been resistant to reform”. At the same time, The Remedy Project did not find negative economic impacts for workers resulting from the enforcement of Section 307 of the US Tariff Act. Drawing on the US example and other authoritative sources, this paper analyses the Draft Regulation by the Commission and makes recommendations in view of the ongoing legislative process.

## CHAPTER 2

# 2 WHAT DOES THE FORCED LABOUR BAN ADD TO THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE?

The legislative process on a FL Ban is developing in parallel with the negotiations for an EU Corporate Sustainability Due Diligence Directive (CSDD). Both measures aim to address human rights impacts in the business context, but take a distinct approach. The CSDD imposes an obligation of means, requiring companies to manage human rights and environmental impacts in their global operations and business relationships through due diligence processes. The Draft Regulation for a FL Ban, by contrast, is result-based, prohibiting goods made with forced labour from entering or leaving the EU market. Combining both approaches could create important synergies if the two laws are designed to be complementary, forming a smart mix of measures.

### 2.1 PREVENTING A RE-EXPORT OF PRODUCTS MADE WITH FORCED LABOUR TO THE EU MARKET

The CSDD does not prevent goods linked to serious human rights abuses from entering the EU market. A FL Ban would address this gap when it comes to forced labour, which is justified given the severity of forced labour and the international context, including the adoption of forced labour bans in a range of jurisdictions. Generally, import bans like a WRO under Section 307 of the US Tariff Act do not prevent companies under investigation from redirecting their goods to other countries. In the absence of a FL Ban, products that were rejected by other countries due to suspicions of forced labour could therefore be re-exported to the EU. This is the case not only in relation to the US, but also to [Canada](#) and [Mexico](#), which have recently adopted import bans for products made with forced labour. Similar legislation has at least been discussed in [Australia](#) and [New Zealand](#). As more countries consider forced labour bans, there is a heightened risk that without a FL ban at EU level goods made with forced labour are re-exported to the EU market.



## 2.2 ENSURING ADEQUATE REMEDIATION

The Draft Regulation by the Commission refers to a requirement under the proposed CSDD for companies “to engage with business partners in their value chains to remedy the violation” of human rights (Explanatory Memorandum to the Draft Regulation, page 2). However, although the CSDD’s future enforcement mechanisms include administrative enforcement and civil liability, it is not fully aligned with the UNGPs approach to remedy. The degree to which the CSDD will require companies to provide remedy to victims of human rights abuse is still under negotiation. It is possible that there will be no express obligation for companies falling within the scope of the CSDD to establish an operational level grievance mechanism available to those in a situation of forced labour, or otherwise provide remediation through means other than litigation under the civil liability provision. If requirements to remediate are embedded in the FL Ban, it could create more accessible pathways for remediation to victims than the civil liability mechanism envisaged by the CSDD. There are several ways to incorporate remediation requirements in the FL Ban. One approach would be to condition the decisions of Competent Authorities not to withdraw and dispose of banned products or to lift a ban for the future to the provision of evidence by companies that a specific instance of forced labour has been eliminated, which also requires adequate remediation (see [Chapter 3 a](#)) below).

## 2.3 DRIVING CHANGE WHERE DUE DILIGENCE MEASURES REACH THEIR LIMITS

A FL Ban can drive change where the approach of the CSDD reaches its limits. Forced labour is notoriously difficult to identify through conventional due diligence measures, such as social audits,<sup>1</sup> since victims are not organised, rarely visible (for instance, in the case of distant fishing vessels), and often afraid to speak up. In case of state-imposed forced labour, companies also face challenges to exercise leverage as part of their due diligence – often leaving business actors no choice but to disengage.<sup>2</sup> Import bans and the public attention allegations receive, by contrast, provide an additional avenue to drive change even at state level. The implementation of Section 307 of the US Tariff Act provides relevant [examples](#). One such example is the case of the distant fishing vessel *Da Wang*, which is owned by a Taiwanese company. Following a report by civil society organisations, the US enforcement authority [CBP imposed a WRO](#) on seafood caught by the *Da Wang* in August 2020 due to reasonable evidence of forced labour on board of the ship. Further investigations led CBP to issue a [final decision](#) on 28 January 2022, which concludes that all ILO indicators of forced labour are met. On 30 January 2022, the Taiwanese fishery authorities revoked the right of the owner of the *Da Wang* to operate fishing vessels in Taiwan. Moreover, Taiwanese prosecutors charged nine crew members of the vessel for human trafficking, coercion and forgery in relation to 20 migrant workers. In

May 2022, the government of Taiwan adopted an [Action Plan for Fisheries and Human Rights](#). The document refers to the case of the *Da Wang* fishing vessel, among others, and announces a set of reforms to improve the conditions on board of distant fishing vessels, including a raise of the minimum wage from USD 100 to USD 550, the establishment of grievance mechanisms for workers, and improved public oversight.

#### **2.4 NO EXTENSION OF THE CSDD’S SCOPE THROUGH “THE BACKDOOR”**

The personal scope of the proposed FL Ban is broader than that of the CSDD covering also small and medium-sized enterprises (SMEs). This choice of scope is due to the nature of the FL Ban as an instrument regulating the import and export of products. The comprehensive personal scope places the important fight against forced labour on the agenda of more companies without *de facto* extending the scope of the CSDD, given that the FL ban is confined to the issue of forced labour rather than the full scope of human rights and environmental impacts covered by the CSDD. Moreover, the FL Ban neither imposes broad due diligence nor reporting obligations on companies.

#### **2.5 DIFFERENT ROLE OF DUE DILIGENCE PROCESSES**

The role due diligence processes play in the FL Ban differs from the CSDD. The Draft Regulation for a FL Ban incentivises companies to undertake “due diligence in relation to forced labour”, defined as efforts “to implement mandatory requirements, voluntary guidelines, recommendations or practices to identify, prevent, mitigate or bring to an end the use of forced labour with respect to products that are to be made available on the Union market or to be exported”. As noted above, this is a less comprehensive due diligence process than what is expected under the CSDD. The key requirement of the planned FL Ban, however, is not an obligation of means but an obligation of result: the prohibition of placing products made with forced labour on the EU market or exporting them. Due diligence in relation to forced labour can help companies to both prevent a violation of this prohibition and to remedy an impact identified. Where a company places a product made with forced labour on the EU market or exports it, however, the fact that the company exercises due diligence (voluntarily or to comply with the CSDD) should not prevent Competent Authorities from investigating and potentially sanctioning the violation – a key point not made sufficiently clear in the Draft Regulation of the Commission. In other words, the FL Ban should not provide a safe harbour for companies undertaking due diligence. However, Competent Authorities should consider those due diligence measures that a company takes to address a specific instance of forced labour *in response* to an investigation or sanction with a view to incentivise businesses to stay engaged (see further [Chapter 3 a\)](#) below).

# CHAPTER 3

## 3 RECOMMENDATIONS TO ENSURE THAT A FORCED LABOUR BAN EFFECTIVELY CONTRIBUTES TO ADDRESSING FORCED LABOUR

### 3.1 STRENGTHENING PATHWAYS TO REMEDIATION

The stated objective of the FL Ban is to “contribute to the international efforts to abolish forced labour” by “eliminating forced-labour products from the Union market” (recitals 12 and 17 of the Draft Regulation). While this ambition is commendable, there is insufficient consideration of the situation of victims of forced labour in the Draft Regulation. As argued in a previous [consultation response](#), the Danish Institute for Human Rights (the Institute) “welcomes the Commission’s strong stance on the eradication of forced labour [while cautioning that] when designing an initiative to address this pressing issue, the utmost care must be taken to ensure that any such measure would be likely to minimise and mitigate instances of forced labour rather than focusing only on the protection of European consumers. The Proposal should adopt a human rights-based approach by having a specific focus on rightsholders and victims of human right abuses.”

To strengthen the focus on rightsholders, the FL Ban must create incentives for companies to stay engaged with a view to remedy and prevent the recurrence of forced labour in the context of their own operations and value chains.

Otherwise, businesses may simply switch suppliers to comply with the law, [as some companies reportedly did](#) in response to Section 307 of the US Tariff Act, rather than relieving the situation of victims. To provide relevant incentives, Competent Authorities should consider adequate due diligence measures that a company takes to eliminate a specific instance of forced labour *in response to* an investigation or sanction. This can be done in two ways. First, companies under investigation for violating the prohibition to place products made with forced labour on the common market or to export them should be given the chance to eliminate a specific instance of forced labour within a set timeframe to avoid the ultimate withdrawal and disposal of their products by order of Competent Authorities. The prospect of maintaining the opportunity to retain affected products would provide a strong incentive for companies to stay engaged and

provide remedy. A second measure is to make the lifting of an import ban conditional upon evidence that the company in question has eliminated the specific instance of forced labour. This approach draws on the US experience and is also favoured by the [Final Position](#) of the responsible committees of the European Parliament.

Crucially, the FL Ban should also clarify what “eliminating forced labour” requires from a company in order to avoid a Competent Authority ordering the withdrawal and disposal of banned products or the lifting of an import ban. Article 6(6) of the Draft Regulation demands “evidence [...] that [companies] have *eliminated forced labour* from their operations or supply chain with respect to the products concerned” for an import ban to be lifted, without further specification of what such “elimination” implies. Similarly, Article 6(6) of the [Final Position](#) of the responsible committees of the European Parliament applies the term without further clarification, while adding the additional requirement that relevant cases of forced labour must be remediated for an import ban to be lifted.

The requirement to “eliminate” forced labour should feature two elements: “eliminating forced labour” should imply, first, the removal of all ILO indicators of forced labour in the specific instance or, where necessary, responsible disengagement and, second, substantive measures taken to provide remediation, for example, compensation, reimbursement of recruitment fees, restitution, rehabilitation, measures preventing recurrence, sanctions and initiating the prosecution of offenders. A definition of “elimination” which includes these elements is necessary to strengthen the role of remediation as well as to provide legal certainty to companies and Competent Authorities alike.

To facilitate corporate engagement and adequate remediation, the EU lawmakers should:

- **Provide companies with the chance to eliminate instances of forced labour within a specified timeframe to avoid the ultimate withdrawal and disposal of their products by order of Competent Authorities.**
- **Make the lifting of an import ban conditional upon evidence that the company in question has eliminated the specific instance of forced labour.**
- **Specify that “eliminating forced labour” requires both, the removal of all ILO indicators of forced labour in the specific instance or, where necessary, responsible disengagement and substantive measures of remediation like compensation, reimbursement of recruitment fees,**

**restitution, rehabilitation, measures preventing recurrence, sanctions and initiating the prosecution of offenders.**

### **3.2 INVOLVEMENT OF RIGHTSHOLDERS**

Another crucial measure is the involvement of rightsholders and other stakeholders, such as whistleblowers and civil society organisations. These actors are likely to have better visibility of forced labour risks and can provide companies and Competent Authorities with valuable input. Rightsholders and other stakeholders should be involved in the process of identifying, investigating, and remedying instances of forced labour. In the US context, proactive collaboration between state authorities and civil society stakeholders has proven key for the successful use of import bans – whether it involved the imposition *or* the lifting of a WRO.<sup>3</sup> In the context of the FL Ban, stakeholder input should be added to the sources of information Competent Authorities must draw upon for their assessments (Art. 4(1) Draft Regulation) and to the type of information companies are asked to submit upon request by Competent Authorities (Art. 4(3) Draft Regulation). In addition, to ensure free and full participation, those providing information to Competent Authorities should be adequately protected, allowing them to participate in the process without fear of reprisals.

To ensure adequate stakeholder involvement, the FL Ban should ensure that:

- **Civil society organisations and rightsholder representatives are involved throughout the investigation and enforcement process, including remediation.**
- **Rightsholders and other stakeholders are involved in the process of identifying, investigating, and remedying instances of forced labour.**
- **Informants providing information to Competent Authorities are fully protected, also in third countries.**

### **3.3 ENFORCEMENT**

Whether the FL Ban would effectively address instances of forced labour depends to a considerable extent on the applicable enforcement regime. Under the Draft Regulation proposed by the Commission, the task of enforcement lies with Competent Authorities in EU Member States. Competent Authorities will be empowered to request information from a company as part of their investigation as well as relying on other sources of information and processes envisaged by the FL Ban, including: a database of forced labour risk areas or products; structures to allow for coordination between Competent Authorities; the development of guidance; as well as the provision of avenue for any natural or legal person to submit information to Competent Authorities. However, due to

the nature of the abuse, instances of forced labour may not always be immediately visible and can be challenging to investigate and prove. Even with the mechanisms envisaged by the FL Ban, the task of investigating and proving that specific products were made by forced labour is highly burdensome especially where forced labour occurs within complex global value chains. A number of amendments should be considered to alleviate this burden and allow for more effective enforcement.

First, one means of simplifying the task of Competent Authorities is to reverse the burden of proof for products stemming from high-risk areas. Article 11 of the Draft Regulation already foresees the creation of “an indicative, non-exhaustive, verifiable and regularly updated database of forced labour risks in specific geographic areas or with respect to specific products including with regard to forced labour imposed by state authorities”. This list could be the basis for a reversal of the burden of proof by imposing enhanced requirements for importers (or exporters) of products stemming from areas with a high-risk of forced labour. Shifting the burden of proof to companies dealing with goods of heightened risk exposure would facilitate the task of Competent Authorities to investigate forced labour along complex global value chains with limited resources. It would also well-align with the risk-based approach to enforcement envisaged by the Draft Regulation. The [Final Position](#) of the responsible committees of the European Parliament takes a similar approach with respect to forced labour imposed by state authorities. It empowers the Commission “to adopt delegated acts determining specific economic sectors in specific geographic areas, where high risk of forced labour imposed by state authorities has been identified” (compare Article 11a Final Position).

Second, it is key to encourage companies to participate actively in the investigation and enforcement of the FL Ban. Forced labour takes different forms, is not always easy to detect and sometimes difficult to address, – particularly so in the case of state-imposed forced labour. Care should be taken to ensure that the FL Ban does not incentivise companies to be less transparent about their global value chains and the challenges they face in relation to the issue of forced labour. Insights into specific contexts in terms of sector and geography are key to facilitate remediation and, where possible, to address root causes which are not always immediately visible. For that reason, the FL Ban should create additional incentives for companies to share insights and proactively cooperate with Competent Authorities and relevant stakeholders. To that end, the FL Ban should take inspiration from [leniency reductions under EU competition law](#) and offer sanction reliefs for companies that voluntarily and proactively self-disclose forced labour in their value chain, provided they commit to undertake appropriate due diligence in collaboration with stakeholders and

Competent Authorities. Where an import ban is imposed, Competent Authorities should engage with companies and set out clearly what is necessary in the specific context to avoid the ultimate withdrawal and disposal of affected products or to ensure a lifting of the import ban.

Third, another key measure to facilitate the effective enforcement of the FL Ban is to grant Competent Authorities the power to reject goods from entering or leaving the EU market based on a lower standard of evidence, while being empowered to seize, donate, recycle, or destroy goods only in case of conclusive evidence. This is a lesson to be learnt from Section 307 of the US Tariff Act, where the CBP can issue a WRO provided there is “reasonable but not conclusive evidence” of forced labour, meaning that the available information is sufficient for a reasonable person to conclude that a product is made with forced labour.<sup>4</sup> Linking WROs to a lower standard of evidence has proven effective to drive change for rightsholders without overburdening enforcement agencies. As of October 2023, [CBP](#) enforces 51 WROs but only eight Findings. Different standards of evidence would also ensure proportionality. Whereas conclusive evidence would allow Competent Authorities to seize, donate, recycle or destroy products, reasonable but not conclusive evidence would only provide for the preliminary measure of blocking products from entering the EU market – which leaves companies the option to challenge the decision in court or to re-export the goods to a different market.

Fourth, Competent Authorities need a feasible and flexible timeframe to collect the evidence that is necessary to identify and sanction non-compliant companies. The [enforcement of Section 307 of the US Tariff Act](#) provides some orientation. The CBP strives to conclude the preliminary review of allegations within 30 days, while reserving 90 to 180 days to determine whether there are reasonable suspicions to issue a WRO, and another 185 days to find probable cause to conclude the investigation. The FL Ban should similarly define differentiating timelines that allow Competent Authorities to meet either standard of evidence, providing for extensions where the circumstances demand.

Finally, the enforcement of the FL Ban requires effective coordination at the EU level. Drawing on the example of shared enforcement in EU competition law, the Commission could be granted the same enforcement powers as EU Member States. A shared mandate would ease the burden of Competent Authorities and customs agents at the national level. It may further be expedient to grant the Commission primary responsibility for the challenging tasks of investigating cases of state-imposed forced labour and undertaking on-site investigations in third countries. In parallel, the Union Network Against Forced Labour Products,



proposed in the Draft Regulation, could take on the role of issuing guidance, building capacity, and disseminating expertise and best practices. There is also a need for EU coordination for the submission of information to provide stakeholders with a single point of contact instead of 27 different Member State mechanisms. Moreover, the sanctions to be applied in case of non-compliance with a decision under Article 6(4) of the Draft Regulation should be harmonised to prevent a fragmentation of enforcement regimes and regulatory arbitrage. For the purpose of coherence and efficiency, it should also be clarified how Competent Authorities enforcing the FL Ban interact or cooperate with national supervisory authorities responsible for the implementation of the CSDD and other legislation with linkages to forced labour.

To ensure an effective enforcement of the FL Ban, several amendments to the Draft Regulation are recommended.

- **Companies should bear the burden of proof that goods are not made by forced labour where these products stem from a dedicated high-risk area.**
- **The FL Ban should create incentives for companies to share insights and proactively cooperate with Competent Authorities and relevant stakeholders on instances of forced labour. This could be achieved through sanction reliefs for companies that proactively self-disclose forced labour in their value chain and commit to eliminate the instance.**
- **Competent Authorities should have the power to reject goods from entering or leaving the EU market based on a lower standard of evidence, while being empowered to seize, donate, recycle, or destroy goods on the basis of conclusive evidence.**
- **To collect the necessary evidence, Competent Authorities must be granted a feasible and flexible timeframe.**
- **The enforcement of the FL Ban needs to be coordinated effectively at the EU level.**

# END NOTES

- <sup>1</sup> On the limitations of social audits see, for example, Human Rights Watch, [“Obsessed with Audit Tools, Missing the Goal” – Why Social Audits Can’t Fix Labor Rights Abuses in Global Supply Chains](#), November 2022; European Center for Constitutional and Human Rights, Brot für die Welt, MISEREOR, [Human rights fitness of the auditing and certification industry?](#), June 2021.
- <sup>2</sup> See Anti-Slavery International and European Center for Constitutional and Human Rights, [Briefing note on import controls to address forced labour in supply chains](#), June 2021, page 6 (pointing to the limitations of due diligence processes in cases of state-imposed forced labour). Also, United States Department of Labor, Steps Toward a Worker-Driven Social Compliance System, [Step 6: Remediate Violations, Key Topic: Developing a Corrective Action Plan](#) (recognising that state-imposed forced labour may limit the corrective actions companies have at hand to responsible disengagement).
- <sup>3</sup> See The Remedy Project, [Putting things right: Remediation of forced labour under the Tariff Act 1930](#), April 2023, page 20 f.
- <sup>4</sup> Compare [19 Code of Federal Regulations \(CFR\) § 12.42](#) “Findings of Commissioner of CBP”, (e) and (f).

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