

Anti-Slavery International and European Center for Constitutional and Human Rights response to the European Commission Call for Evidence on the proposed EU forced labour instrument to “keep the EU market free from products made, extracted or harvested with forced labour, whether they are made in the EU or elsewhere in the world.”

June 2022

Introduction

Over the past two years, momentum has grown in the European Union on the need to tackle forced labour in global supply chains. In December 2020, the European Parliament [reiterated](#) their consistent call from over the past decade for a Europe-wide ban on forced labour in supply chains. Then, in September 2021, the European Commission President van der Leyen’s commitment to a ban on products made by forced labour in her State of the Union [address](#) 2021 provided the political signal for a legislative instrument in this regard. In response to this commitment, in its February 2022 [Communication on Decent Work Worldwide](#), the European Commission committed to preparing a new legislative instrument to “effectively ban products made by forced labour from entering the EU market”.

The European Commission has since [committed](#) to publishing its proposal for this instrument in September 2022, and in May 2022 published its [Call for Evidence](#) for this proposal, committing to a ban which would cover both domestic (EU) and imported products. On 9 June 2022, the European Parliament voted overwhelmingly in favour of a [resolution](#), which advocates strongly for a new trade instrument to ban products made by forced labour.

Anti-Slavery International and the European Centre for Constitutional and Human Rights (ECCHR) welcome these developments with a view to ensure that goods made or transported in-whole or in-part with forced labour, including forced labour of children, cannot be sold in the European Union.

This contribution builds on Anti-Slavery International and ECCHR’s experience in working with partners based in countries with a high prevalence of forced labour which are linked to supply chains of products sold in the EU. Furthermore, this contribution builds on the lessons learnt from existing import control measures in the USA, and analysis of current gaps in EU legislation.

We believe that the EU forced labour instrument should be designed and enforced considering factors on the need for: scope which covers the potential to target both specific entity(ies) and entire regions/industries; remediation; the prevention of ‘unintended consequences’; a border mechanism as part of the forced labour instrument; transparency and disclosure of supply chains and customs data; evidentiary standards and the burden of proof; and enforcement. These points are further elaborated upon below.

A. Complementarity with the EU Corporate Sustainability Due Diligence Directive

As a standalone mechanism, a forced labour instrument can potentially be a “blunt” enforcement measure. Consequently, it can and should be complemented with other approaches in order to tackle the root causes of forced labour. The forced labour instrument should therefore be viewed as part of a broader EU framework to address forced labour (see also Section K), which includes the recently introduced proposal for a Corporate Sustainability Due Diligence Directive (CSDDD).

The proposal for a CSDDD includes key rights and standards relating to slavery and forced labour in its material scope, and as such, [if designed meaningfully](#), should compel companies to take meaningful steps to prevent forced labour.

However, we note that the current CSDDD proposal has a limited personal scope, currently covering only 17000 companies operating in the EU (note Anti-Slavery International and ECCHR are [calling for](#) expansion of this scope). In contrast, the EU's proposed forced labour instrument should cover products tainted by forced labour, independent of the size of the company producing or manufacturing, transporting, retailing or importing the product. Further, the current CSDDD proposal limits companies' due diligence obligations to their "established business relationships", which creates the risk that some companies will not address forced labour in more remote tiers or services of a value chain (see further explanation [here](#)).

These limitations make the application of companies' due diligence obligations, as prescribed under the current proposal for the CSDDD, difficult to directly apply to this instrument. Therefore, the instrument should empower companies not covered by the CSDDD with a (proportionate) duty to prevent and end forced labour.

Crucially, we view the use of the forced labour instrument, and in particular its non-EU component, as appropriate for when 'on-the-ground' interventions as part of human rights due diligence efforts to address forced labour are not feasible, not reasonably expected to address the forced labour, or simply impossible (as, for example, in cases of state-imposed forced labour).

In addition, the instrument should provide an enforcement option to compel companies whose products are intended for the EU market to undertake meaningful preventative and remedial actions on forced labour. This includes when those companies are out of scope of the CSDDD, when the forced labour is outside the value chain scope of companies' CSDDD obligations, or current actions under the CSDDD are insufficient, unlikely to produce results or wholly lacking.

In that context, the forced labour instrument should be used to complement the CSDDD in instances where it could, for example:

- Dissuade and prevent companies from importing goods made in-whole or in-part with state-imposed forced labour, where 'on-the-ground' interventions through due diligence are impossible;
- Provide for urgent access to remedy for victims of forced labour, whether in or outside the EU, and compel effective corrective and preventative action by companies to prevent further instances of forced labour, where current actions are insufficient or wholly lacking under the CSDDD, or outside the scope of the CSDDD (see above);
- Increase companies' leverage in situations where appropriate measures are not likely to produce sufficient results and would result in disengagement of the company, for example in situations in which several companies are linked to the same instances of forced labour;
- Act as an additional enforcement measure to all companies exporting to/ retailing in the EU market to undertake preventative actions and, if necessary, ensure the provision of remedy to victims of forced labour, thereby further levelling the playing field between companies in the scope of the CSDDD and companies outside of its scope.

Furthermore, the complementarity between the CSDDD and the forced labour instrument – and in particular its border mechanism, can be further developed through the creation of gateways between the two instruments such as through: the sharing of allegations of forced labour between Enforcement

Authorities¹; the creation of a centralised risk register, based on data collected through both processes; exclusion from public procurement and institutional funding for companies which have used forced labour; and the publication of list of determinations, for example, analogous with the “Dirty list” published in Brazil by the Brazilian Ministry of Labour or the US list of Withhold Release Orders issued, among other measures.

B. Considering the use of a forced labour instrument in response to different scenarios

We envisage the following types of controls:

1. Blocking imports and market access of products from a particular site of production: a particular factory, farm, [vessel](#), etc, or from a group of particular sites of production: factories, farms, vessels/fleet etc.
2. Blocking imports and market access of products from a particular importer or company, or a significant group of importers or companies.
3. Blocking imports and market access of an entire industry, likely manufactured in-whole or in-part, through state-imposed forced labour² from a particular country or region.
4. Blocking imports and market access of products from an entire industry, likely manufactured in-whole or in-part, through *non*-state-imposed forms of forced labour³ from a particular country or region.

Inclusion of services

The European Commission has proposed that the forced labour mechanism covers products “made, extracted or harvested with forced labour,” wholly or partially. We strongly recommend that this scope is expanded to include the services used within a product’s value chain. This is due to the extremely high-risk of forced labour being used in the provision of many services linked to the journey of a product to retail, such as transport, warehousing and logistics, and the leverage that the use of the forced labour instrument could have to drive change in such working conditions. This risk is apparent both outside the EU, but also within the EU. For example, in Germany, the [Global Slavery Index](#) notes that forced labour takes place in construction, agriculture, *meat processing*, hospitality, *retail*, and *transport and logistics*. Globally, the shipping industry, which [carries](#) 90% of the world’s trade, is extremely high risk for labour exploitation and forced labour.

State-imposed forced labour

There is an urgent need for the introduction of import controls in response to state-imposed forced labour, such as the ongoing situations in Turkmenistan and the Xinjiang Uyghur Autonomous Region (Uyghur Region). Import controls should cover all raw materials and finished products made in-whole *and* in-part with state-imposed forced labour and be issued against particular site(s) of production, importer(s), and at a regional level across entire industries.

These are contexts and scenarios where it is impossible for companies to prevent, mitigate or remedy abuses through due diligence 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 leverage over the

¹ For the purpose of this paper, Enforcement Authorities should be understood as Market Surveillance authorities as well as Custom Authorities.

² As defined under ILO Abolition of Forced Labour Convention No. 105

https://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312250,en

³ Forms of forced labour which fall under the [ILO Forced Labour Convention, 1930 \(No. 29\)](#), but not the ILO Abolition of Forced Labour Convention no 105.

situation. These are also scenarios where civil society groups representative of the population have called for such measures.

EU measures in this regard would follow the U.S. regional Withhold Release Orders (WROs) on products made in-whole or in-part from cotton from Turkmenistan and the Uyghur Region already in place, U.S. WROs imposed on specific manufacturers in the Uyghur Region, and the Uyghur Forced Labour Prevention Act, which enters into force on 21 June 2022.

If/when a country/region begins to transition away from the use of state-imposed forced labour, ongoing monitoring, including through support for an enabling environment for civil society and trade unions, should then be required.

C. Remediation and lifting of “bans”

A key objective of a forced labour instrument must be to ensure the provision of effective remedy to affected rightsholders (both inside and outside the EU). Therefore, in order to meet the objective of the instrument to bring positive impact for workers, the lifting of a prohibition on a product should be conditioned on the provision of effective and rights-compatible remedy.

Remediation processes and remedial action should be based on, and be aligned with, international standards of best practice, including through consultation with trade unions. Remedy may, for example, include apologies, restitution, rehabilitation (for example, provision of treatment, counselling) and financial or non-financial compensation. For remediation of harm that has occurred inside the EU, the European Commission should factor in the role of existing authorities – namely labour enforcement, labour courts and other existing EU Member States’ institutions and processes relevant to remediation. However, this must consider the risks posed to undocumented migrants due to current enforcement approaches (see section K).

Crucially, a prohibition on products should be lifted through consultation with affected rightsholders and other stakeholders and upon effective provision of remedy. Hence, a prohibition should only be lifted when there are no indicators of forced labour remaining, when adequate compensation and remedy has been provided to the victims of forced labour, and when appropriate preventative actions have been taken. All these measures, from the definition and implementation of remedy, to the monitoring of the preventative measures (such as changes to the operations/business models), should involve verification/independent monitoring by trade unions and civil society organisations which are representative of the affected workers⁴.

Such monitoring of corrective and preventative actions should be undertaken in cooperation with, where applicable, the authorities of the home country of the sanctioned entity. This will not be feasible in a number of scenarios, including where state authorities have imposed the forced labour.

Given that remedy should go beyond a removal of the indicators or forced labour, and also include remedy to victims of forced labour, it is clear that the objective of the legislation cannot solely be to protect EU consumers against products by forced labour. Instead, the provision of remedy should be included as part of the ratio legis of the instrument.

⁴ See, for example, a letter from US NGOs relating to remediation of forced labour in palm oil, which highlights the necessity for the European Union to consult with credible representatives of workers on whether corrective actions have been sufficient.
<https://laborrights.org/publications/one-year-later-ngos-call-us-customs-and-border-protection-block-import-palm-oil>

D. Preventing unintended consequences

We note that the use of such an enforcement measure can carry the risk of “unintended consequences.” If not designed and used effectively, such an instrument could encourage full disengagement by EU companies from ‘risky’ contexts – instead of supporting efforts to address the root causes of forced labour and improve the situation. It can also have consequences for individual workers.⁵

Such unintended consequences must be considered. However, this will vary across the facts of the case, the type of market prohibition measures and each specific scenario. In a context of forced labour in a supply chain, where it is reasonable to expect that meaningful due diligence efforts to remedy the forced labour and prevent future occurrences are feasible, the interplay with an EU company’s due diligence obligation to engage meaningfully with affected stakeholders and suppliers, prior to considering potential disengagement, is thus useful.

However, considerations on unintended consequences have no validity in relation to contexts with state-imposed forced labour, where forced labour is a widespread or systematic violation committed in furtherance of a state policy – see above. For such scenarios, a strong border mechanism as part of the market prohibition measures is urgently needed.

After determining findings of forced labour, (EU and national) Enforcement Authorities must consult with credible, independent and legitimate representatives of potentially affected rightsholders, as well as allow additional observations by other stakeholders, prior to the issuing of any market prohibition measures, as part of an impact assessment. Should market prohibition measures be issued, the impact assessment should be used to determine, as much as possible, the appropriate prevention, mitigation and remediation measures needed to lift them, including to define the actions required to be implemented during a “grace period” if applicable (see below).

In these contexts, prevention and mitigation of negative impacts is possible when considering market prohibition measures against particular site(s) of production, or particular importer(s). In such instances, potential unintended consequences may affect a singular group of workers, and mitigating strategies will be possible if designed and implemented effectively, through consultation with legitimate representatives of affected workers – i.e., where possible trade unions. For example, this could include measures to ensure immediate provision of remedy to workers.

Arguably, unintended consequences will be more difficult to mitigate in the case of blocking products from an entire industry from a particular country or region *not* linked to state-imposed forced labour, as market prohibition measures could lead to wide economic consequences. This will be context-specific, for example depending on the extent to which the local economy relies on the EU market/EU trade. This further highlights the need to undertake analysis of the potential consequences per product prior to issuing market prohibition measures, to consider the necessary mitigative response.

⁵ As the Corporate Accountability Lab has explained “[...] A WRO, if issued without accompanying efforts that push companies to make changes that benefit their workers, can have devastating consequences for workers and local economies. For instance, instead of dealing with the underlying forced labor issues, companies may shut down and lay off their workers, leaving workers in a worse situation -- in some cases stranded in foreign countries with no work and no way to pay off debts or return home. Depending on the breadth of the WRO, it can also lead to real economic consequences for local economies, especially in the case of a country-wide WRO. These unintended consequences mean that, if not applied carefully, there can be a big risk inherent in using a protectionist statute that is meant to protect US companies, not workers.” <https://corpaccountabilitylab.org/calblog/2020/8/28/using-the-masters-tools-to-dismantle-the-masters-house-307-petitions-as-a-human-rights-tool>

The use of “grace periods”

In scenarios where a perceived high risk of unintended consequences is identified, for example due to a high reliance on the EU market, we propose that Customs Authorities could consider employing a *grace period* prior to issuing market prohibition measures, in particular when considering regional-level controls on non-state imposed forced labour.

A grace period could be used in select scenarios by Enforcement Authorities to compel prevention, mitigation and remediation of forced labour by companies importing into/retailing in the EU, or the manufacturing entity itself. A grace period would impose a specific timeframe (for example, weeks or months) in which such measures must be taken, including the provision of remedy, and if adequate and credible evidence is not provided, by the end of the grace period, that remedy has been provided and corrective measures introduced to prevent future instances of forced labour, the market prohibition measures would be issued.

Sole reliance on audits and certification schemes must not be considered reasonable evidence due to the inadequacy of such approaches to provide credible verification on an absence of forced labour. Monitoring of the effectiveness of actions within the grace period must be public, allowing third parties - including trade unions and civil society organisations – to track progress, as well as the submission of additional observations.

Essentially, this will enable Enforcement Authorities to use the proposal for market prohibition measures as a “stick” to compel corrective action and remedy and promote transparency by companies whose products are intended/destined for the EU market, including, where in scope, in line with companies’ responsibilities under the CSDDD. The use of a grace period should be under continuous review, not precluding the possibility for the *immediate* issuing of market prohibition measures.

For example, in the USA, civil society groups petitioning for a WRO on cocoa and cocoa products from Côte d’Ivoire, produced with trafficked child labour for Nestlé, Mars, Hershey, Barry Callebaut, World’s Finest Chocolate, Inc., Blommer Chocolate Co., Cargill, Mondelēz, and Olam requested that the U.S. CBP order U.S. cocoa importers to produce, within 180 days, credible and verified evidence on meaningful steps to prevent forced child labour.⁶

Such a grace period compels urgent remedy and corrective actions, while alleviating the risk of potential negative consequences of immediately issued market prohibition measures on workers. It would also contribute to creating a level playing field – for example, imposing controls on specific entities and companies that fail to provide remedy and introduce corrective action within the grace period, while allowing products from entities and companies that introduce credible corrective measures and ensure the provision of remedy. This would therefore secure the sustainability of jobs and livelihoods for affected workers.

⁶ The petition requested “satisfactory evidence that [any shipment of cocoa from CDI to the US] was not ... manufactured in any part with the use of a class of labor specified in the finding.” 19 C.F.R. § 12.42 (g). This evidence shall include a transparent map of companies’ supply chains down to the farm level, public reports on how each company is utilizing an acceptable independent third-party monitoring and certification system to implement its own Code of Conduct banning illegal child labor and overseeing its Supplier Codes of Conduct related to the issue of child and forced labor, and an externally-run grievance mechanism related to the company’s commitments on cocoa that is in line with the UN Guiding Principles on Business and Human Rights and is in place as of the date produced. Any shipment of cocoa from CDI that does not meet this standard will be subject to a Withhold Release Order (WRO) and held at the port of entry”
<https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/5e4607e90bd7ed452a1c8c6e/1581647858374/FINAL+307+PETITION+WITH+EXHIBITS.pdf>

E. The necessity of a border mechanism to ensure the efficiency of the EU forced labour instrument

In the Call for Evidence, the European Commission highlighted that the proposed forced labour instrument would employ a market prohibition instrument (art. 114 TFEU), possibly with a border mechanism (art. 207 TFEU), which would cover both domestic (EU) and imported products. We strongly call for the instrument to allow for border measures.

Border control measures already exist in the USA and Canada and are anticipated to be introduced in Mexico under the 2018 United States–Mexico–Canada Agreement. In the USA, section 307 of the Tariff Act (19 U.S.C. § 1307) has banned the import of goods linked to forced labour since 1930. Specifically, it prohibits the import of “*all goods and merchandise mined, produced, or manufactured wholly or in part in any foreign country by forced labour, convict labour, or/and indentured labour under penal sanctions, including forced child labour.*”

The potential to use an equivalent border mechanism is established in EU law. The EU has established some specific sectoral legislative frameworks, such as the [Conflicts Mineral Regulation](#) (2017), the [Timber Regulation](#) (2010), the recent proposals on a [regulation on Deforestation-free products](#) (2021) or the [regulation on batteries](#) (2021), which include mechanisms that make it possible to ban the import of specific goods not conforming to a specific standard. However, these measures are [not comparable](#) to the U.S. Tariff Act to respond to the prevalence of forced labour among goods placed in the EU internal market.⁷

The use of a border mechanism, as part of the forced labour instrument, to withhold the release of goods made or transported in-whole or in-part with forced labour will allow Customs Authorities of EU Member States to immediately and efficiently stop products before they enter the EU single market when there is reasonable suspicion of the use of forced labour. We believe that a market prohibition tool, limited to a product-withdrawal mechanism to be implemented only once the products have already been distributed inside the EU, could potentially create unnecessary and additional resource burden for companies and Enforcement Authorities alike. Thus, the use of a market prohibition instrument built around *a combination of* a border mechanism and an intra-EU market surveillance process would, we believe, greatly enhance efficiency.

Upon blocking suspicious goods at the border, the onus should then be on the company to prove that no forced labour took place, that the product was not made or transported (wholly or partially) by the entity/in the region where forced labour was found, or to take action to remedy the situation on the ground before these products are allowed to enter the EU. See below.

We underline that border mechanisms should not be conceived or used as a trade protection tool. The objective of border controls must be to *incentivise positive outcomes in producing countries for actual or potential victims of forced labour.*

F. Definitions and criteria for identification

For the identification of forced labour, the instrument should be based on the [ILO forced labour indicators](#) (abuse of vulnerability, restriction of movement, withholding of wages, deception, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, debt bondage, abusive working and living conditions, excessive overtime), including the “[Hard to see, harder to count](#)

⁷ See also Vanpeperstraete, B. (2021). *Towards an EU import ban on forced labour and modern slavery-February*
https://www.annacavazzini.eu/wp-content/uploads/Towards_an_EU_import_ban_on_forced_labour_and_modern_slavery_February.pdf

– [Survey guidelines to estimate forced labour of adults and children](#)”, which present an operational definition of what constitutes forced labour, and indicators with which to identify it.

In [guidance](#) on the ILO forced labour indicators, the ILO notes that “The presence of a single indicator in a given situation may in some cases imply the existence of forced labour [*for example, physical and sexual violence*]. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case” (italics, authors’ own addition). Per the ILO “Hard to see – Harder to count” survey guidelines, referenced above, where there is at least one indicator of involuntariness and one indicator of penalty (or menace of penalty), and at least one of these indicators is strong (i.e., both indicators do not have to be strong), then forced labour is identified.

For further official sources of information on products at risk of being made with forced labour, information on the risk of slavery/forced labour incidences can be triangulated from publicly available sources, such as the Global Slavery Index, the US Department of State Trafficking in Persons Report, the US Department of Labor Report on Goods produced with Forced and Child Labor, the International Trade Union Confederation Index on Human Rights, and media and NGO reports. These reports, combined, will provide a helpful indicator of whether a specific product has been linked to forced labour, or whether products from a particular region/industry/type of business model may be particularly high risk.

G. Evidentiary standards

In the USA, the evidentiary standard requested for the opening of an enquiry is that there must be *reasonable, but not conclusive*, suspicion of the use of forced labour. However, the evidence required will vary based on the type of import control, the industry, country of origin, and other factors. This low threshold is in line with the nature of forced labour, notably, the severity (a human right violation *erga omnes* according to the ICJ) and the fact that victims, or entities supporting them (CSOs or trade unions) may experience difficulties to obtain or share conclusive evidence due to their own circumstances within their company. See also above about the use of ILO indicators to identify forced labour.

Once a determination has been made that forced labour produced goods have been identified, we believe that the burden of proof should shift to the relevant importers, to provide evidence refuting the indicators of forced labour, refuting that the good is not made or transported (wholly or partially) by the entity where indicators of forced labour were found, or that remediation took place and indicators of forced labour are no longer present. Evidence to prove an absence of forced labour, where applicable, must be based on ILO standards and must involve verification/independent monitoring by trade unions and civil society. The use of audits or certification schemes must not and cannot be relied on as sufficient evidence. Petitioners should be able to provide proposals for this evidence.

In terms of sourcing, companies suspected of sourcing forced labour goods, or goods made with inputs produced/transported with forced labour, which are attempting to contend this, must be able to present evidence on the origin of materials within the suspected product and that they have verified that suppliers at all tiers are providing factual information about sourcing – see section I.

H. Launching investigations

We foresee three pathways for launching an investigation:

1. Upon an initiative of the Enforcement Authorities (Ex-officio) based on a risk-based assessment of either the origin or the types of goods. This will require adequate resources

and capacity in Member States' Enforcement and Customs Authorities to undertake investigations, for example through the creation of dedicated forced labour divisions. However, the risk mapping (which sectors and which geographies) can be supported through EU coordination. The EU should therefore consider developing a list similar to the US Department of Labor (see above) to support Enforcement Authorities and especially customs authorities to focus enforcement efforts.

2. Upon a petition/complaint being launched by affected stakeholders or their representatives. Workers, communities or their representative groups (trade unions or other credible representatives, and CSOs/NGOs) should have the right to make complaints through a formalised procedure to Enforcement Authorities regarding the existence of forced labour in the value chain of products intended/destined for the EU market. Stakeholders who alert Enforcement Authorities should be able to do so anonymously should they wish, and have their identity protected. Workers, communities, NGOs and trade unions should be able to request confidentiality of (part of) the material shared with Enforcement Authorities, in order to protect the identity of any concerned workers/stakeholders fully and effectively from the context in question.
3. Upon the sharing of information from international partner: we believe that countries with similar instruments (the USA, Canada, and, expected, Mexico) and the EU should share evidence standards and align procedures. Once other jurisdictions have made a determination of forced labour (e.g., if the US CBP issues a WRO), the EU and or National Authorities should automatically investigate products/importers covered by the determination by authorities from third countries, in order to identify the import of potentially tainted products to the EU market and consider the need to introduce parallel market prohibition measures. As such, this would prevent “forced-labour leakage” and mutually reinforce the efficiency of each individual mechanism. This would drive systemic change and avoid the creation of loopholes that can allow specific countries or regions to become safe havens for forced labour products.

In addition, a coordination system should be created at EU level to support Enforcement Authorities in Member States and coordinate actions across Member States.

I. Disclosure of supply chains and EU customs data

As the Commission has noted “it is necessary to understand the value chain of a product to identify and address forced labour risks and impacts.”⁸ Therefore, one of the essential elements for an efficient forced labour instrument (both inside and outside the EU) is to be able to situate specific entities or regions where a determination of forced labour has been made within global supply chains.

The primary way to achieve this is to require companies to map and publicly disclose suppliers, sub-suppliers and business partners in their whole value chains. Unless mapping and disclosure of supply chains is ensured, the presence of entities implicated in forced labour within an EU company's value chain will likely be more difficult to identify for enforcement and accountability purposes.

Notably, under the Uyghur Forced Labour Prevention Act, companies importing products into the USA seeking to contend their imports are not within the purview of the law, on the basis that such goods are sourced completely from outside the Uyghur Region, will be [requested](#) to provide detailed supply chain tracing information, such as a “detailed description of supply chain including imported merchandise and components thereof, including all stages of mining, production, or manufacture.”

⁸ In the European Commission's Call for Evidence.

Those supply chains should also be publicly disclosed in order to assist SMEs to conduct due diligence, by comparing their suppliers against the information provided by larger companies sourcing from the same suppliers. Further, we recommend that the EU Enforcement and Customs Authorities use adequate technologies, such as the isotope testing which verify the origin of raw materials in products.

Furthermore, to facilitate the identification and monitoring of the importation of products made from forced labour, it is crucial to ensure improved public access to Customs data. This is why the European Commission should amend the Union Customs Code to clarify that customs data is not confidential and should 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.

J. Disclosure of determinations of forced labour by authorities

The results of investigations and the rationale for decisions to issue a market prohibition should be disclosed publicly, while protecting the anonymity of affected workers/stakeholders. The disclosure of this information, together with the disclosure of supply chain and customs data, as described above, will facilitate effective monitoring and investigations, and thus increase the incentive for companies to prevent forced labour.

A public list of entities which are or have been subject to a market prohibition measure on products should be created. Such a list should be updated to include any new allegations/abuses against the same entity/relating to the same market prohibition, as well as to be transparent about defined criteria for lifting prohibitions. Enforcement Authorities should also publicly disclose details of the enforcement of prohibitions – i.e., all cases where products have been withheld, including the name of the importer/ producer, supplier, manufacturer, and vessel. This should provide details as to whether a company is seeking to contend the detention of its product, and the results of any subsequent investigation. As such, there will be transparency as to when companies have both successfully and unsuccessfully contended a prohibition of its products.

Additional sanctions, including civil penalties, should be foreseen in the case of attempted (repeated) circumvention of a specific product prohibition decision, or in the case of a lack of cooperation with Enforcement Authorities, including a failure to provide needed documents to assess the situation.

K. Complementarity with other EU legislation and policy

In addition to the introduction of the forced labour instrument and the CSDDD, the EU should introduce or strengthen the following as complementary to address the root causes of forced labour:

- Supportive development policies to governments in producer countries to guarantee, protect and fulfil their international human rights obligations to implement decent labour conditions and address the root causes of forced (and child) labour. For example, development policies focused on an enabling environment to strengthen and remove barriers to freedom of expression and association, access to education, discrimination, and increased recognition of land rights. Government budget support should also be directed to improve the implementation, monitoring and enforcement of human rights and environmental and good governance standards, for example, funding for labour and environmental inspectorates.
- EU human rights protection, monitoring and enforcement in EU trade policy, including free trade agreements (FTAs), investment protection agreements (IPAs), Economic Partnership

Agreements (EPAs) and the review of the Generalised Scheme of Preferences (GSP) including GSP+ and Everything But Arms (EBAs). Trade policy should be used to support producer government countries to ratify and implement labour rights protections, and to ensure that enforcement, access to remedy and justice is introduced in third countries. Workers, their credible representatives, and affected communities must be consulted in the negotiation, enforcement and review of unilateral, bilateral or multilateral trade and investment agreements.

- A set of accompanying measures to support human rights defenders, trade unions, civil society, small and medium enterprises, smallholders and local communities, including through capacity strengthening and funding to support communities and workers to address the root causes of abuses, to better understand and claim their rights. In addition, it is essential to ensure that all affected stakeholders should be protected from retaliation when engaging with companies, and to support access to justice for victims of corporate abuses.
- The EU, as a global player, should work to ensure a globally aligned approach on border controls on forced labour goods. This will serve to mitigate the risk of “dumping of goods,” whereby importers can simply import goods made with forced labour onto selected markets that have failed to introduce stringent measures, and thereby failing to address the overall objective to remedy and prevent forced labour in third contexts. This is particularly a risk given that under the US Tariff Act and the US Uyghur Forced Labor Prevent Act, companies may, upon seizure of their imports, choose to redirect shipments to other markets instead of trying to prove that the suspicions are unfounded.
- Strengthen existing domestic EU legislation and policy:
 - o The EU should also implement a more comprehensive policy approach to upholding employment standards and preventing labour exploitation within the EU based on its existing legal framework. The enforcement strategy should recognise the continuum between labour abuses, such as a failure to pay statutory minimum or collectively agreed wages, which can develop into more severe forms of exploitation including forced labour, for example due to debt accumulation heightening vulnerability to deception and abuse. The EU has set important standards regarding employment, as well as rights of migrant workers and trafficked persons specifically, but significant gaps remain, both in terms of legal clarity and practical implementation on national level. Crucially, there needs to be a separation between labour enforcement and immigration controls, both by ending the practice of joint operations between police and labour inspectors in which immigration enforcement is carried out, and practices of reporting or using labour inspection data to pursue immigration enforcement. This is coherent with EU law and social objectives. EU employment law applies to all workers, regardless of immigration status. The EU Employers Sanctions Directive, which has specific provisions on labour rights for undocumented workers, includes the right to effective complaints mechanisms and legal procedures. However, in practice, it is extremely difficult for undocumented workers to exercise their rights and access remedy for violations. Safeguards and protections for migrant workers should be clarified and strengthened through further EU action in this area.
 - o Migrant workers are one of the most at risk groups and the EU should take steps to reduce their vulnerability to exploitation and forced labour. These measures should

include ensuring that migrant workers are (realistically) able to change their employer on the same work permit (in particular through the revision of the Single Permit Directive); access transitional or bridging permits for workers with labour disputes and that those migrants can seek remedies and are not themselves penalised due to their irregular immigration status, as above. These developments should also be reflected through further regulating the work of recruitment agencies.

For any questions or comments, please contact Helene de Rengerve, Senior EU Adviser in the Business and Human Rights Team, Anti-Slavery International euadviser@antislavery.org and Ben Vanpeperstraete, Senior Legal Adviser, ECCHR vanpeperstraete@ecchr.eu