

Call For Evidence

Effectively banning products produced, extracted or harvested with forced labour



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

AmCham EU strongly condemns the use of forced labour, debt bonded, indentured, child, slave or involuntary labour (including prison labour) and human trafficking. We support and look forward to working closely with the EU in its efforts to combat this complex and global issue. The focus on products placed onto the EU market is an approach worth investigating as compared with an import ban, as the latter implies that forced labour is not a problem in EU Member States. Forced labour is a complex global issue that requires collaboration from businesses, governments and other civil society actors to ensure system-wide change. Any action taken by governments must be aimed at addressing the actual concern – forced labour. As such, the most effective measures are those focusing on the source – rooting out forced labour at the source and stopping the perpetrators from allowing forced labour. Moreover, for any action to be effective, not only now but also in the future, measures need to be designed in a non-discriminatory, country-agnostic and proportionate manner.

While businesses have actively put in place approaches to engage with suppliers, they cannot solely address forced labour. Government needs to play a role in supporting industry to eradicate forced labour. The state has the ultimate duty to uphold human rights and labour rights. There's no 'quick fix' to address forced labour with a marketing withdrawal mechanism or ban.

AmCham EU member companies are committed to ensuring that forced labour and human trafficking do not occur in their supply chains. Our member companies aim to work to the highest level of ethical, environmental and employee-related standards both within their own businesses and their supply chains. We strive to ensure that employees, partners and suppliers are working together to eradicate forced labour and human trafficking. As a result, many member companies have introduced human right principles and policies to address the risks of forced labour fees, contracts and resignation terms, worker rights and control systems, such as monitoring recruitment or labour agents, and interviewing foreign and migrant workers.

AmCham EU would like to put forward the following recommendations as the EU rules are being defined:

1. The EU should adopt a risk-based approach that is founded on the UN Guiding Principles on Business and Human Rights, core ILO Conventions and the OECD Guidelines for Multi-National Enterprises and Responsible Business Conduct.
2. An EU legislative instrument should seek to create a level playing field to check the growing trend of internal market fragmentation arising from the introduction of different requirements by numerous countries, which is unworkable for business. Fragmentation creates confusion for business and highly complex supply chains, and results in significant challenges to ensuring compliance, which has a negative impact on the effectiveness of combatting forced labour.
3. EU legislation should be consistent with the directives on corporate sustainability due diligence, corporate sustainability reporting and other sectoral EU laws with specific requirements such as the batteries and minerals regulations.

4. If reporting requirements are implemented, they should be consistent with those under existing laws such as the California Transparency in Supply Chain Act 2010 (SB657), the UK Modern Slavery Act 2015, the US Dodd Frank Act Section 1502 on conflict minerals and the EU responsible (conflict) minerals regulation.
5. A holistic approach should be applied that does not create a 'black/red list effect', encouraging companies to 'de-risk' and disengage (often irresponsibly) from high-risk areas. This was the case under Section 1502 of the US Dodd Frank Act. Addressing forced labour requires global action. While there have been measures addressing a country or region, truly addressing the issue requires a global approach.
6. The Commission should develop a transparent process for identifying products that are made with forced labour. The process should include a non-delegable duty for EU Member States to investigate accusations or suspicions of forced labour and it should provide accused companies an opportunity to respond and present evidence of compliance prior to enforcement. Due process will be an important pillar of an effective and fair instrument.
7. The volume of document requests ought to be reasonable in order to prevent overwhelming amounts of data processing. These requests should focus on compliance and traceability processes, rather than shipment or product-specific chain of custody.
8. Enforcement should be limited to products that EU Member States can prove, with substantial evidence, were produced with forced labour and that the targeted parties are unable to rebut with substantial evidence. EU Member States should not rely on presumptions of forced labour.
9. Proven and effective industry schemes should not only be acknowledged but also recognised under an EU regime as a means for verification (as is the case under the EU Responsible Minerals Regulation) given that they are vitally important to help companies comply with the rules and encourage them to go beyond compliance.
10. There should be strong guidance for companies and enforcement authorities to ensure harmonisation and equitable implementation across the EU. Coordination and guidance from the Commission will be key. A sectoral approach would be appropriate in order to take into account the efforts (often undertaken over several decades) of individual industries to address forced labour and human trafficking. Challenges in identifying and solving the problems are different for each sector, country, region and company, and governments need to cooperate to find the most effective approach in each situation. Partnering between governments, companies and other civil society actors is key in identifying and mitigating the problem.

Although trade policy can be a vector of engagement in the hands of governments, it might not be the most appropriate tool to identify and eliminate forced labour in global supply chains. It neither encourages nor supports efforts to remedy potential or actual forced labour issues or to use corporate leverage to change supplier behaviour. On the contrary, it might push importers to cut the relationship with the supplier when

detecting a potential issue of forced labour in the supply chain, which would have unintended negative consequences for workers and companies that are conducting legitimate business operations both inside and outside a targeted region.

Building upon the 2021 G7 Trade Ministers' Statement on Forced Labour and the recent announcement of the tripartite Trade and Labour Dialogue in the context of the last EU-US Trade and Technology Council, AmCham EU encourages the EU, the US and their G7 allies to seize this momentum to align respective regulatory regimes and address forced labour globally wherever it is found. An effective strategy to combat forced labour needs to include collaborative partnerships (such as the highly successful European Partnership for Responsible Minerals), collective action and industry initiatives including training suppliers, for example, between the Commission, the US government, the business community and civil society to engage and apply pressure in their own respective spheres of influence. AmCham EU stands ready to work with the Commission in the future EU-US Trade and Labour Dialogue, as well as in potential future joint technical cooperation projects in support of trade and labour engagement.

As with the Responsible ['Conflict'] Minerals Regulation (EU) 2017/821, AmCham EU wants to bring the extensive experience of its member companies to the table and facilitate multi-stakeholder dialogue to build an EU legal framework that is practical for companies to comply with and efficient for national authorities to enforce.