

# European Commission Proposes Ban on Forced Labor Products in EU

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On September 14, 2022, the European Commission (EC) issued a proposal that would ban products made with forced labor across EU markets.<sup>[1]</sup> The proposed ban would apply both to imports and exports and includes plans for removing or destroying products made with forced labor already present in EU markets and not already in the hands of end-users.

The proposal must be approved through the EU regulatory process, can be subject to revisions, and, if adopted, would likely not enter into force until 2025 or 2026.

Products for which forced labor was used “at any stage of their production, manufacture, harvest, and extraction, including working or processing related to the products” would be subject to the proposal. The ban is applicable to “all products, of any type, including their components.”

The proposed ban does not single out any one country of origin. Instead, the ban is neutrally applied to forced labor products from all countries, industries, and companies – purportedly to comply with World Trade Organization’s (WTO) rules concerning non-discrimination against WTO Member States.

In contrast, the Uyghur Forced Labor Prevention Act (UFLPA) signed into U.S. law by President Biden in December 2021 created a rebuttable presumption that forced labor was used to manufacture products specifically from the Xinjiang Province of the People’s Republic of China, where 80% of the world’s cotton and 45% of the world’s polysilicon are sourced among other high-value goods like critical minerals. Unlike the U.S. law, which places the burden on

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exporters from Xinjiang to prove that their products are not made with forced labor, the proposed EU ban directs each Member State to enforce the ban through an investigatory process by a designated “competent authority” and the respective customs authority within that state.

### **Investigation and Enforcement**

The proposed EU ban on forced labor products does not envision a central EU mechanism for enforcement. Instead, under the proposed ban, if there is a “substantiated concern” that a product imported, exported, or domestically produced in a EU Member State is made with the forced labor, that State’s competent authority will conduct an investigation.

Such a concern can be triggered in several ways including: submissions from persons or associations; a newly-created non-exhaustive database of forced labor risks in specific geographic areas prepared, verified, and regularly updated by experts; and a shared EU information network recording past cases of non-compliance and including identifying information specific to banned products and supply chains previously found to be tainted by forced labor. The database and shared information network are two of the primary ways the proposal attempts to coordinate efforts among Member States.

The proposed ban does require Member States to focus their efforts on the highest-impact areas, taking into account the size and economic resources of the economic operators, the amount of product, and the scale of alleged forced labor.

If an investigation occurs, the competent authority will issue questionnaires and examine available evidence, including: information from other Member States, submissions from third parties, information gathered from inspections in Member States or third-countries (with the consent of the operator and the relevant government), and information concerning the examined company’s due diligence efforts in relation to forced labor issues. If verification is not permitted, and the operators or their governments do not respond to requests for information, the proposed ban does allow competent authorities to make a decision based on “facts available.”

If an investigation concludes that a product was made with forced labor, the competent authority can ban the product from being imported into the EU, sold on the EU market, or exported from the EU. If the product is already in the EU market, it can be withdrawn and/or disposed of at the expense of the operator.

### **Implementation and Timeline**

The proposal states that decisions by a competent authority in one Member State will be recognized and enforced by competent authorities in other Member States “in so far as they relate to the same products with the same identification and from the same supply chain for which forced labor has been found.” This level of coordination between the competent authorities of various Member States may prove challenging given both the uneven interests and import patterns of Member States as well as their varying infrastructure, ability to investigate or substantiate allegations, and inconsistent methods of record keeping.

The proposed ban will now be debated by the European Parliament and the Council of the European Union. The regulation will take effect two years after the text is finalized which may be as soon as next year. Thus, the EU's proposed ban on products made with forced labor may be in place by late 2025 or early 2026.

### **Impact on Businesses**

The EU's ban is likely to have a significant effect on supply chains, even before its full implementation. American companies are already looking to alternative supply chains in order to reduce their exposure to forced labor and other controversial practices in China and elsewhere. However, those alternative supply chains are often difficult to find, constrained by the regulatory environment in third-country markets, lack of adequate capacity, and lack of adequate substitutability in terms of quality. The same difficulties will be faced by EU firms and will likely increase as more countries shift towards seeking alternative supply chains. American and EU firms should be prepared for a prolonged period of supply chain transitions.

For more information about the EU's proposed ban on forced labor products, please contact one of the attorneys listed on the alert.

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[1] See European Commission, Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labor on the Union market, (Sept. 14, 2022) 2022/0269 (COD) ("proposed ban") available at [https://single-market-economy.ec.europa.eu/system/files/2022-09/COM-2022-453\\_en.pdf](https://single-market-economy.ec.europa.eu/system/files/2022-09/COM-2022-453_en.pdf).