
Call for Evidence

Effectively banning products produced, extracted or harvested with forced labour

Statement by the German Industry Association SPECTARIS

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Statement

SPECTARIS is the German industry association for optics, photonics, analytical and medical technologies, representing more than 400 mainly small and medium-sized companies. With a global supply network as well as a high export ratio of more than 65 per cent the SPECTARIS member companies are an essential contributor to tackling future challenges (for example, demographic change, climate change and global health). They also drive innovations in key technologies such as the photonics, optical technologies or in the life science sector and are essential suppliers and contributors to other industries.

We appreciate the opportunity to provide feedback regarding the EU Commission's call for evidence for effectively banning products produced, extracted or harvested with forced labour. Although forced labour is universally condemned, the elimination of forced labour from supply chains remains an important challenge for many governments around the world in the 21st century. SPECTARIS and its members generally welcome the initiative by the EU Commission to prohibit the import of goods resulting from forced labour through a new regulation. We also support uniform regulations for all EU members, as the issue of forced labour should be addressed on EU level, in order to create a level-playing field for all companies operating within and importing into the different EU member states.

Due to the globalised business environment the SPECTARIS industries operate in, our member companies have already gained experience with import prohibitions introduced by other countries such as the United States. The United States have in the past years issued so called Withhold Release Orders which are aimed at either companies or products where the U.S. Custom and Border Protection as responsible authority has determined allegations of forced labour in supply chains through their investigations. Additionally, from June 21st 2022 the new Uyghur Forced Labour Prevention Act (UFLPA) will extend the scope of the previous Withhold Release Orders, as it establishes a rebuttable presumption that the importation of any goods, parts, components, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China, produced by certain minority groups, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such items are not entitled to entry to the United States.¹

Based on our industries' previous experience with already existing forced labour import regulations, we would like to highlight a few areas, where practical challenges lie when providing evidence that products are not made with forced labour and where the EU Commission, the responsible EU's director general as well as the member states' respective custom authorities would need to align their activities and provide further support and clarifications for EU importers:

Practical challenges for gathering and providing evidence

The main question when introducing a legislation to ban the import of products made with forced labour is how exactly the evidence is to be provided that products are not made with the help of forced labour.

The European Commission would need to define exact criteria what EU companies would be expected to do to comply with the new regulation. Criteria for suitable compliance assessments during the onboarding of new suppliers, the intervals for compliance checks and the monitoring criteria of suppliers would need to be defined. The EU Commission

¹ U.S. Customs and Border Protection: <https://www.cbp.gov/trade/forced-labor/UFLPA>

would also need to keep in mind that especially SMEs cannot conduct an on-site visit to every supplier they use. There should be a possibility to conduct desktop reviews for SMEs or when current travel restrictions do not allow for on-site visits. In general, large bureaucratic hurdles should be avoided, which are more of a hindrance than a help.

In practice, a new law such as the one now being discussed by the European Commission will primarily lead to new certifications and paper work being created, which will then be filled out "truthfully" by the suppliers. As the import ban would affect all importing companies and therefore also SMEs, it would not be feasible to conduct suppliers' visits on site. In the best case, local audit companies would therefore be commissioned to visit critical suppliers (turnover or quality) on site in their respective countries of residence, since a visit from Europe is currently often not possible anyway due to the current circumstances and the travel restrictions. Experience has shown that even these local audit service providers are occasionally presented with a "Potemkin village".

Since the costs of a serious audit are considerable, it makes it much more difficult and expensive or even impossible for small companies to procure from the "best" supplier and to specifically verify each supplier. Even for medium-sized companies with a local presence in sourcing countries such as China, this results in unattractive restrictions, as can currently be seen with delivery problems and cost increases. At the same time, switching suppliers or procuring from other regions is not that easy, as certain components are currently not manufactured in the quality or the amount needed in other regions or are even only manufactured in certain countries.

Additionally, it needs to be noted that a lot of the purchasing is conducted through a central purchasing organisation. These purchasing organisations often do not disclose details of origins where they source their components or certain parts from or just disclose a bare minimum of information. This is often due to fear that their customers would order directly from the supplier but often data protection reasons are also cited as reasons for not disclosing more information. This makes it difficult for the European customer to verify the exact origin of each component they procure centrally and assess potential forced labour issues.

List-based and risk-oriented approach

In order to allow especially small and medium-sized companies without local representatives in sourcing countries to access the risks of forced labour in a better way, it would be more effective, if the Commission would explicitly name companies and/or regions with which no trade (import and export) is allowed and issue specific import bans for certain companies or products, because forced labour, modern slavery, child labour or other violations have been proven.

The recognition of companies that do not comply with regulations could be achieved with an active promotion of whistle blowers from these countries and a well-funded appeal body. Most efficient would be a central registry with a simple interface (preferably also with automated access) where blocked companies can be easily found with indication of the reason for listing (dual use, slavery, cybersecurity, environmental...). For the listing, a multi-stage procedure would be useful, e.g., observation, warning, blocking, so that European companies have time to adjust their supplier network. Such a registry would simplify things, especially for small companies, and would also have a much greater effect than the current "paper war" many companies face, where everyone is left to their own devices and every confirmation is circulated dozens and hundreds of times.

Especially SMEs would also benefit from an open and transparent communication by EU authorities about their findings of violations, as it would help them to access potential forced labour in their respective supply chains.

Before introducing the Uyghur Forced Labour Prevention Act, the United States have adopted a similar approach and named certain products such as cotton or tomatoes or companies such as Hoshine as high-risks and introduced respective import bans so called Withhold Release Orders for these products. At the same time, the U.S. CBP communicates openly about their findings² on their homepage which allows everybody to access the information. SPECTARIS would welcome it, if the EU would use a similar approach to communicate about their findings.

Align custom procedures

As the respective custom authorities of the EU member states would enforce the import ban, the EU Commission would need to clearly define which documents importers need to present prove that products are free of forced labour in order to avoid delays in the processing of shipments. There also needs to be a possibility to upload these documents prior to the shipment and to obtain facilitation such as a general license or the status of a “trustworthy importer”, so that the documents do not need to be produced for each shipment, especially when shipments occur in regular intervals with long-standing suppliers and the same goods.

Regular outreach activities and additional support measures for EU businesses

The United States authorities conduct regular outreach activities through webinars³ or through the publication of business advisories⁴ to highlight the heightened risks for businesses with supply chain and investment links to certain countries, given the entities complicit in forced labour and other human rights abuses there. These business advisories and webinars have been a very helpful source for companies to discover potential risks in once supply chain, to update their knowledge and to mitigate these risks.

Based on these experiences, we would therefore ask the Commission to not place the sole responsibilities to access the risks of forced labour in their supply chains on companies but rather to support businesses by publishing business advisories for certain critical regions and to conduct regular update webinars for companies to inform about new developments and findings of violations.

SPECTARIS is the German Industry Association for Optics, Photonics, Analytical and Medicinal Technologies. The association SPECTARIS represents 450 mainly small and medium sized German companies. The represented industries achieved a total turnover of around 78 billion euros in 2021 and employed around 331,0000 people. Our members are very export oriented with an average of two thirds of their products being exported.

² U.S. Customs and Border Protection: <https://www.cbp.gov/trade/forced-labor>

³ U.S. Customs and Border Protection: <https://www.cbp.gov/trade/forced-labor>

⁴ E.g., U.S. State Department: Xinjiang Business Advisory, <https://www.state.gov/xinjiang-supply-chain-business-advisory/>