



November 27<sup>th</sup>, 2023

*To all members of the working Party on competitiveness and growth*

Subject: Securing a General Approach on the Forced Labour Regulation

Dear Madam, Dear Sir,

We are writing on behalf of the undersigned civil society organisations and trade unions to urge the Council to speed up negotiations to adopt a General Approach on the proposed EU Forced Labour Regulation (FLR) in line with the core elements outlined below.

As you are aware, on October 16, 2023, the European Parliament's lead committees, the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on International Trade (INTA) adopted, with an overwhelming majority, their position on the proposed Regulation.<sup>1</sup> They also decided, according to article 71 of the European Parliament's Rules of procedure, to enter immediately into negotiations with the Council and the Commission on the basis of this adopted position. .

To maximise opportunities for the legislation to be approved before the end of the mandate of the current European Parliament and European Commission, it is now of utmost importance that, during the Spanish Presidency, also the Council agrees on a General Approach.

On the content of the Council's General Approach, we strongly request that the following central elements be included.

1. **An evidentiary regime adapted to forced labour.** Both the European Commission and European Parliament have proposed the requirement of a high level of evidence to initiate an investigation ("substantiated concern" or "well-founded reason"). The level of proof required to initiate an investigation should be lowered, taking into consideration the barriers to provide evidence experienced by victims of forced labour, who may not have access to all relevant documentation that may be required during proceedings. Making even the opening of such an investigation contingent

<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2023-0306\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0306_EN.html)

on such a high level of proof would effectively turn the European Single Market into a safe haven for products tainted by forced labour. It is important to note that the evidentiary threshold required to initiate an investigation under the EU proposal appears higher than that required to launch an investigation under the US instrument, and in fact corresponds with the first level of sanctioning under the US instrument (i.e., a Withhold Release Order (WRO) that serves as an import restriction by US customs authorities). In the US, for example, the Customs and Border Protection (CBP) authorities allow anyone to file complaints when they have *reasons to believe* that the goods are made in conditions of forced labour and CBP produces a checklist for complainants outlining the nature of supporting documents that could be provided.

Under the US instrument, if the authorities determine following an investigation there is "reasonable but not conclusive" evidence of forced labour, then they can issue an import restriction (WRO). A Finding of forced labour, which carries additional penalties, is only issued when there is conclusive evidence of forced labour.

Within the Commission's proposal, the level of proof required for *sanctions* (proof that article 3 has been violated) thus also needs more careful reconsideration to ensure it is commensurate with the nature of sanction. Currently, the EC proposal foresees just one threshold of proof, that is, conclusive evidence, for any type of sanction, ranging from import restrictions to disposal of goods.

2. **State-imposed forced labour:** In cases of state-imposed forced labour, the Commission's proposal did not outline any adequate investigative or enforcement mechanism, making it impractical and difficult to investigate and ascertain such cases. We therefore support the considerable improvements proposed by the Parliament, which would empower the Commission to identify geographic areas and economic sectors where there is high risk of state-imposed forced labour and would shift the burden of proof to show they are not placing products made with forced labour on economic operators sourcing from these areas and sectors.<sup>2</sup>
3. **One-stop shop EU-wide complaints mechanism:** The Commission's proposal put forward a highly decentralised investigation and enforcement system based on 27 national authorities. Such a mechanism would be particularly difficult to access and navigate for victims or survivors of forced labour and those assisting them, who have no easy way to know to which of the authorities of the 27 member states they should send their complaint or submit information. A single-window complaint mechanism operated by the European Commission, as proposed by the European Parliament, would therefore be a practical solution that would greatly benefit the victims and legal representatives/organisations assisting them.<sup>3</sup>
4. **Remediation:** The goal of any such regulation should be remediation for workers who have experienced forced labour. We strongly support the relevant amendments made by the European Parliament to the Commission's proposal, including adding a new definition of remediation, consistently seeking information about remediation throughout the investigation, and requiring proof of such remediation as a condition for withdrawing a product ban requested by an economic operator.<sup>4</sup>

We thank you for your consideration of this important matter and stand ready to discuss the proposed EU Forced Labour Regulation and the concerns raised in this letter.

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<sup>2</sup> [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), Article 11(1b), Article 11, Article 5(2)(da), Article 6(2a).

<sup>3</sup> [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), amendments to Article 10.

<sup>4</sup> [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), Article 2(ba), Article 4(3), Article 5(3), Article 6(6).

Signatories:

Anti-Slavery International

Clean Clothes Campaign - European Coalition, CCC - European Coalition

Cotton Campaign Coalition

Environmental Justice Foundation, EJF

European Center for Constitutional and Human Rights, ECCHR

European Coalition for Corporate Justice, ECCJ

European Trade Union Confederation, ETUC

Fair Trade Advocacy Office, FTAO

Fairtrade International, FI

Fashion Revolution

Fundación Libera contra la Trata de Personas y la Esclavitud en todas sus Formas, Libera

Human Rights Watch, HRW

industriAll European Trade Union, industriAll Europe

International Federation for Human Rights, FIDH

La Strada International, LSI

Social Awareness and Voluntary Education, SAVE

Terre des Hommes International Federation, TdHIF

World Uyghur Congress, WUC