

# THE GLOBAL TRADE LAW JOURNAL

Volume 1, Number 6

November–December 2024

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# What Is in Your Supply Chain?

Patrick Späth, Jakob Tybus, and Tim Bartels\*

*In this article, the authors explain that the European Union is intensifying pressure on companies to ensure that their supply chains are free of human rights violations and are aligned with certain environmental standards.*

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There recently have been some historic events when it comes to supply chain due diligence obligations for EU and non-EU companies that operate in the European Union.

Going forward, companies will not only be required to identify and address adverse human rights and certain adverse environmental impacts in their supply chain, but they will also be prohibited from dealing with products on the EU market that are made with forced labor.

The path for these new environmental, social, and governance (ESG) requirements was paved when the European Parliament voted to pass the Corporate Sustainability Due Diligence Directive (CS3D)<sup>1</sup> and the Regulation on prohibiting products made with forced labor on the Union market (Forced Labor Regulation).<sup>2</sup>

## How Does It Work?

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The CS3D primarily aims to reduce and mitigate the negative impacts that business activities may have on the environment and human rights. For this purpose, the Directive will require mostly large EU and non-EU companies meeting certain employee and financial thresholds to comply with various due diligence obligations alongside the requirement to implement and execute designated environmental protection plans.

The Forced Labor Regulation aims to remove any financial incentives for using forced labor at any stage of a company's supply chain by prohibiting affected companies from placing and making available on and exporting from the EU market any product manufactured using forced labor.

Overall, the two pieces of legislation will further impact companies that sell their products in or from the European Union.

Companies will have to take a closer look at human rights, environmental, and climate-related aspects of their products and supply chains.

## **Non-EU Companies Beware**

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Both pieces of legislation will not only impact EU but also non-EU companies:

- CS3D encompasses non-EU companies provided they generate a net turnover of at least €450 million in the European Union.
- The Forced Labor Regulation prohibits products made with forced labor from entering the EU market regardless of the domicile of the importing company.
- Even if a non-EU company is not in scope of the CS3D or itself does not import products to the European Union, it may still be subject to the indirect effects as a supplier of in-scope companies. Suppliers should expect to be confronted with inquiries from affected companies who are trying to map and address forced labor risks in their value chains or who are, more broadly, implementing CS3D measures vis-à-vis their suppliers.

## **How Is the New Legislation Intertwined?**

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While both regimes ultimately focus on ensuring that supply chains reaching into the European Union are free of human rights violations, they each use distinct yet complementary approaches to advance this goal.

- CS3D imposes human rights and environmental due diligence (HREDD) obligations on companies, while the Forced Labor regime prohibits certain products from entering the EU market but does not require affected companies to take action to address the alleged forced labor.
- While the Forced Labor Regulation is an additional tool to exert pressure on companies whose CS3D due diligence efforts have not succeeded in fully combatting forced labor, CS3D aims at forcing companies to look closer at potential



forced labor issues to exclude the need for import restrictions from the outset.

Ultimately, fulfillment of CS3D obligations will help companies gain a deeper understanding of their supply chains and related forced labor issues thereby facilitating measures to prevent or remedy import restrictions imposed under the Forced Labor Regulation.

## What About the Environment and Greenhouse Gas Emissions?

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CS3D goes beyond a purely human rights–focused approach by not only including certain adverse environmental impacts to be tackled with due diligence but by also requiring companies to adopt and put into effect a transition plan for climate change mitigation to limit global warming.

## Enforcement

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Both regimes will give competent supervisory authorities far-reaching powers to impose penalties and intervene. Dedicated rights granted to stakeholders to litigate against companies failing to meet their HREDD obligations will lead to new litigation and reputational risks. A striking example in this regard are the provisions of the CS3D increasing the risk of civil tort liability in stark contrast to the approach of the German Supply Chain Due Diligence Act.

## Timeline

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On May 24, 2024, the CS3D was finally formally adopted by the Council. With the Directive’s publication in the *Official Journal of the European Union* on July 5, 2024, the legislative procedure at EU level is concluded. The Forced Labor Regulation still awaits the Council’s final approval, which is expected soon.

The CS3D will have to be transposed into the national laws of the member states within two years after its publication. The Forced Labor Regulation, on the other hand, must be directly applied by the member states within three years after coming into force.

## What Should Companies Do?

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Both regimes fit in a broader legislative picture where due diligence measures must be increased when it comes to supply chains. Companies should adjust their risk management:

- Companies are well advised to take a holistic approach and examine how these new requirements will affect their processes and structures.
- Companies should also take into account other existing ESG regimes such as the new rules on conflict materials<sup>3</sup> or on deforestation-free products.<sup>4</sup>
- Companies involved in long-term projects and product manufacturing processes should map the potential risks arising from forced labor or from supply chains containing environmental or other human rights impairments and address these risks in due time.

## Notes

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1. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L\\_202401760](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401760).

2. European Parliament legislative resolution of April 23, 2024, on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labor on the Union market (COM (2022) 0453—C9-0307/2022—2022/0269 (COD)), adopted text, [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0309\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0309_EN.pdf).

3. See Regulation (EU) 2017/821 of the European Parliament and of the Council of May 17, 2017, laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A02017R0821-20201119>.

4. Regulation (EU) 2023/1115 of the European Parliament and of the Council of May 31, 2023, on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461>.