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A complex network of thin, light blue lines connecting various points, resembling a molecular structure or a data network, is positioned on the left side of the page. The background is a light blue gradient that transitions into a solid dark blue at the top and bottom.

## **COMBATING FORCED LABOUR ISSUES IN GLOBAL SUPPLY CHAINS**

# The Problem

**In 2021, 27.6 million people were estimated to be engaged in forced labour across the globe.<sup>1</sup> 62% of such forced labour exploitation was in the private sector.<sup>1</sup> To combat forced labour, several countries are now banning the import and sale of products produced through forced labour in their markets.<sup>1</sup>**

The elimination of forced labour has remained one of the most complex challenges for governments, labour organisations and the international community. Today, all forms of forced labour are universally outlawed and condemned as one of the worst forms of human rights violations. However, chattel slavery, bonded labour and human trafficking continue to exist. Certain groups, such as women, racial minorities, migrants, and children, are especially vulnerable to forced labour.<sup>2</sup>

Countries continue to respond to the menace of forced labour employing varying legal and policy tools. These tools include imposing trade sanctions on goods manufactured through forced labour.

However, the problem with such unilateral measures is two-fold: one, there is a threat of forced labour measures being used as protectionist trade tools given the gaps in forced labour data; and two, companies with diversified supply chain systems must not only comply and meet the regulatory standards required by the country imposing trade sanctions, but must also ensure that their supply chain partners also meet those standards.

This is easier said than done. The elementary challenge is that if companies want to maintain their position in the global market, they are expected to understand, comply, and initiate business with companies which comply with forced labour thresholds in different export destinations. The more complex issues include the identification of subtler forms of forced labour, control over third-party contractors, and the lack of legal enforcement of labour laws in various countries.

Economic Laws Practice has analysed important forced labour regulations in key export destinations for India and their impact on Indian exports and relevant stakeholders. This primer attempts to identify ways in which businesses can mitigate economic harms resulting from trade sanctions against goods produced through forced labour.

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<sup>1</sup> The present primer provides details of measures adopted by different countries to combat forced labour in the supply chains

<sup>2</sup> International Labour Organization, "Forced labour, modern slavery and human trafficking" available at <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> last accessed December 12, 2022

# What is forced labour?

Forced labour is defined as “[a]ll work or service which is exacted from any person under the threat of penalty and for which the person has not offered himself or herself voluntarily.”

## Exceptions:

- Compulsory military service
- Normal civic obligations
- Compulsory labour as a consequence of a conviction in a court of law (for example, prison labour)
- Cases of emergency
- Minor communal services

**International Labour Organization (“ILO”) Forced Labour Convention, 1930 (No. 29)**

Forced labour is all work performed by a person without their free and informed consent.

Such work may include debt bondage, slave-like practices, and human trafficking. The definition of forced labour also encompasses restrictions on workers’ freedom of movement by withholding identity documents, sexual or physical violence, and intimidation. However, compulsory education/vocational training<sup>3</sup> as part of employment or poor working conditions<sup>4</sup> may not qualify as forced labour.

The ILO has identified certain indicators of forced labour to assist front-line criminal law enforcement officials in identifying situations of forced labour.<sup>5</sup> There exists no straight-jacket formula to identify forced labour conditions. However, the indicators identified by ILO (see below) cover the possible elements of a forced labour situation. In some cases, the presence of only one of these indicators is sufficient to imply the existence of forced labour.

### Work or Service

- All economic activity (including the informal sector)  
Example: domestic work, construction, agriculture, manufacturing

### Menace of any penalty

- Penalties to compel someone to work  
Example: Debt bondage and intimidation

### Involuntari-ness

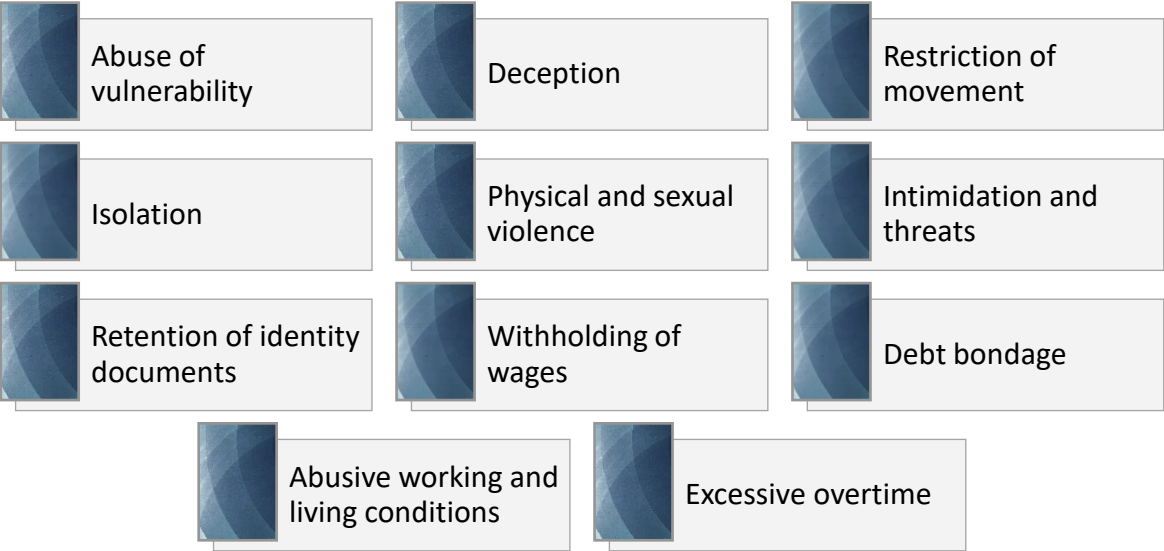
- Lack of free and informed consent coupled with the freedom to leave at any time  
Example: Child labour, debt bondage, restriction on movement

<sup>3</sup> International Labour Organization, “Giving globalization a human face: International Labour Conference 101<sup>st</sup> Session 2012” available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_174846.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf) last accessed December 6, 2022

<sup>4</sup> International Labour Organization, “Giving globalization a human face: International Labour Conference 101<sup>st</sup> Session 2012” available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_174846.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf) last accessed December 6, 2022

<sup>5</sup> International Labour Organization, “ILO Indicators of Forced Labour” available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf) last accessed December 6, 2022

These indicators are as follows:



# How are countries tackling forced labour in global supply chains?

180 countries, including India, have ratified the ILO Forced Labour Convention 1930 (No. 29) ("**Forced Labour Convention**"). The Forced Labour Convention mandates its members to declare the illegal exaction of forced or compulsory labour punishable as a penal offence.<sup>6</sup> Further, 178 countries which have ratified the Abolition of Forced Labour Convention, 1957 (No. 105) are forbidden from using forced labour as (a) a means of political coercion or education or as a punishment for holding or expressing contrarian political/social/economic views, (b) a method for using labour for economic development, (c) form of labour discipline, (d) punishment for participation in strikes, and (e) means of racial, social, national or religious discrimination.<sup>7</sup>

The Protocol of 2014 to the Forced Labour Convention, 1930 emphasised on the role of international cooperation in eradicating forced labour.<sup>8</sup> Accordingly, in the last decade, there has been a global shift in addressing forced labour concerns domestically and eradicating labour exploitation from global supply chains. Countries across the globe have adopted legal instruments to ensure the protection of domestic workers from forced labour, as well as condemnation of manufacturing practices which use forced labour. Notably, almost all countries rely on the ILO definition of forced labour for the purposes of introducing laws addressing issues concerning forced labour.

## The United States of America (US)

The US law prohibits and criminalizes forced labour, slavery, involuntary servitude, sex trafficking and peonage.<sup>9</sup> Additionally, the importation of goods manufactured by the convict, forced, indentured or child labour is also prohibited.<sup>10</sup> The law allows the US Customs and Border Protection ("**CBP**") to withhold certain imported products at US borders if it has "reasonable" evidence indicating forced labour in the production of the imported goods.<sup>11</sup> If the CBP definitively finds the involvement of forced labour in the production of the detained merchandise, it may seize and forfeit the imported goods. Importers may submit evidence demonstrating that the merchandise was not produced using forced labour.<sup>12</sup>

Notably, the United States presumes all goods manufactured in the Xinjiang Uyghur Autonomous Region of the People's Republic of China is produced through forced labour. Accordingly, the importation of any goods from the Xinjiang Uyghur Autonomous Region is prohibited in the United States.<sup>13</sup> In order to import from the region, importers are required

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<sup>6</sup> ILO Forced Labour Convention 1930 (No. 29), Article 25

<sup>7</sup> Abolition of Forced Labour Convention, 1957 (No. 105), Article 1

<sup>8</sup> Protocol of 2014 to the Forced Labour Convention, 1930, Article 5

<sup>9</sup> Thirteenth Amendment to the United States Constitution; Trafficking Victims Protection Act of 2000

<sup>10</sup> Section 307 of the Tariff Act of 1930

<sup>11</sup> Section 307 of the Tariff Act of 1930

<sup>12</sup> Section 307 of the Tariff Act of 1930

<sup>13</sup> Uyghur Forced Labor Prevention Act

to submit evidence demonstrating that the merchandise was not produced using forced labour.<sup>14</sup>

Until 2015, the importation of goods produced through forced labour was allowed to meet the ‘consumptive demands’ of the United States. However, since the omission of such an exception,<sup>15</sup> actions against imports of goods produced through forced labour have become more frequent.<sup>16</sup>

Notably, the US government is also empowered by law to monitor human trafficking in countries outside the United States.<sup>17</sup> Accordingly, every year, the United States publishes the “Trafficking in Persons Report” and classifies countries into ‘tiers’ on the basis of their progress with regard to human trafficking.<sup>18</sup> The United States also publishes a ‘List of Goods Produced by Forced or Child Labour’.<sup>19</sup>

The US measures have been criticised for not banning the consumption of domestically produced goods, which may include forced labour in their manufacturing processes. The measures only target imports entering the country. It may also be observed that while prison labour is constitutionally permitted in the United States<sup>20</sup>, trade measures prohibit the importation of prison goods. Such discrepancies in US law make a case for a possible violation of the WTO principles of non-discrimination.

### **The European Union (the EU)**

On September 14, 2022, the European Commission proposed a set of regulations prohibiting products made with forced labour in the domestic market (“**Proposed Regulation**”).<sup>21</sup> The Proposed Regulation would prohibit natural and legal entities from placing products made with forced labour on the EU market.<sup>22</sup> Such prohibition would extend to all products, irrespective of whether they are imported or produced in the EU or are exported from the EU.<sup>23</sup>

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<sup>14</sup> Section 307 of the Tariff Act of 1930

<sup>15</sup> Trade Facilitation and Trade Enforcement Act of 2015

<sup>16</sup> U.S. Customs and Border Protection, “Withhold Release Orders and Findings List” available at <<https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>> last accessed December 6, 2022

<sup>17</sup> Trafficking Victims Protection Act of 2000

<sup>18</sup> Trafficking Victims Protection Act of 2000

<sup>19</sup> U.S. Department of Labour’s Bureau of International Labour Affairs, “2022 List of Goods Produced By Child Labour Or Forced Labour” available at < [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf) > last accessed December 6, 2022

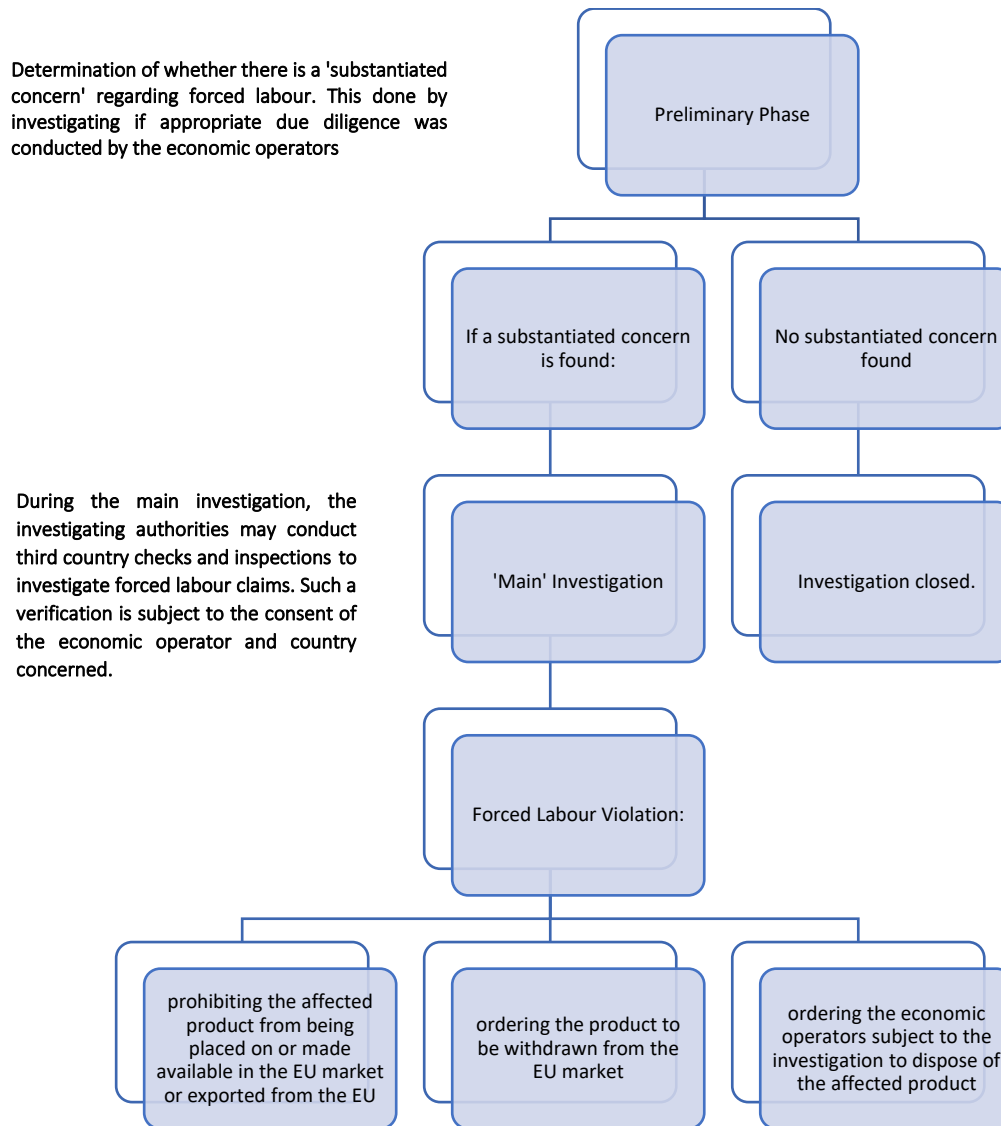
<sup>20</sup> Thirteenth Amendment to the United States Constitution

<sup>21</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

<sup>22</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

<sup>23</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

The Proposed Regulation requires the creation of investigative authorities by each of its Member States, which would be responsible for adopting enforcement decisions based on their investigations.<sup>24</sup> Broadly, the investigation would be a two-phase process<sup>25</sup>:



Unlike the United States, the Proposed Regulation does not create any rebuttable presumption from goods being imported from a specific 'high-risk' region. The Proposed Regulation would apply to all products from all countries. However, the EU would maintain a database of 'high-risk areas', which may be relied upon by investigating authorities during the preliminary phase of the investigations.<sup>26</sup>

<sup>24</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

<sup>25</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

<sup>26</sup> Proposal for a regulation of the European Parliament of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM(2022)453

## Canada

The import of goods produced through forced labour<sup>27</sup> and certain prison goods<sup>28</sup> is prohibited in Canada. The Canadian Border Services Agency (“**CBSA**”) may detain imported goods that are suspected of having been produced with forced labour.<sup>29</sup> Like the United States, the importer of the goods may provide documentary evidence to establish that no forced labour has been used in the production of imported goods.<sup>30</sup>

## United Kingdom

The United Kingdom requires large businesses to disclose a ‘Slavery and Human Trafficking Statement.’<sup>31</sup> The statement must include the steps companies have taken to ensure that slavery or trafficking has not taken place in any of their supply chains or in their own business.<sup>32</sup>

Further, a bill to prohibit importing products made by forced labour in the Xinjiang Uyghur Autonomous Region has been introduced.<sup>33</sup> The proposed legislation requires all companies importing products from the Xinjiang region to the United Kingdom to provide evidence to establish that manufacturing such products does not involve forced labour. Separately, the United Kingdom prohibits importing goods produced in foreign prisons.<sup>34</sup>

Country/Region	Xinjiang Autonomous Region Specific Law	Uyghur Law on Domestic marketing of forced goods	Investigation Process
<b>USA</b>	Yes	No	Evidence to be produced by Importer after goods are withheld.
<b>EU (As proposed)</b>	No	Yes	Investigation to be held before prohibiting the product from entering European market.
<b>Canada</b>	No	No	Evidence to be produced by Importer after goods are withheld.
<b>UK</b>	Proposed	No	Reports required to be published.

<sup>27</sup> Canada Border Services Agency, “Memorandum D9-1-6” available at <<https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>> last accessed December 6, 2022

<sup>28</sup> Canada Border Services Agency, “Memorandum D9-1-6” available at <<https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>> last accessed December 6, 2022

<sup>29</sup> Canada Border Services Agency, “Memorandum D9-1-6” available at <<https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>> last accessed December 6, 2022

<sup>30</sup> Canada Border Services Agency, “Memorandum D9-1-6” available at <<https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>> last accessed December 6, 2022

<sup>31</sup> Modern Slavery Act, 2015

<sup>32</sup> Modern Slavery Act, 2015

<sup>33</sup> Import of Products of Forced Labour from Xinjiang (Prohibition) Bill, Originated in the House of Commons, Session 2021-22 available at <<https://bills.parliament.uk/bills/3151>> last accessed December 6, 2022

<sup>34</sup> Foreign Prison-Made Goods Act 1897



# How do Forced Labour Regulations Impact Indian Businesses?

Forced and bonded labour is prohibited in India and is punishable by law.<sup>35</sup> However, despite stringent laws, according to the Global Slavery Index 2018 Report, there are 8 million people living in ‘modern slavery in India.’<sup>36</sup>

According to the list published by the US Department of Labour in 2022, India has engaged in manufacturing 26 products through forced or child labour.<sup>37</sup> These products include products which are of particular export interest to India. An analysis India’s export performance concerning key products is as follows<sup>38</sup>:

HS Code	Commodity	2021-22 (Exports in USD Million)	Top Export Destinations
52	Cotton	10,787	Bangladesh, China PR, Vietnam
1006	Rice	9,671	Iran, Saudi Arabia, Bangladesh
42	Leather Articles	2,538	USA, Germany, UK
64	Footwear, Gaiters and the like; Parts of such Articles	2,510	USA, Germany, UK
57	Carpets and other floor coverings	2,232	USA, Germany, UK
7103	Precious and Semi-Precious Stones	829	Hong Kong, USA, Thailand
902	Tea	684	Iran, UAE, Russia
33074100	Agarbatti and other incense sticks	150	USA, UK, UAE
8301	Locks	124	USA, UK, Germany
50	Silk	116	UAE, China, USA

The products identified by the US government constitute 7% of India’s total export value. Any sanctions from India’s trading partners on the import of the said products is likely to cause significant damage to India’s trade.

<sup>35</sup> The Constitution of India, Article 23; Bonded Labour System (Abolition) Act, 1976

<sup>36</sup> <https://www.globallslaveryindex.org/resources/downloads/>

<sup>37</sup> U.S. Department of Labour’s Bureau of International Labour Affairs, “2022 List of Goods Produced By Child Labour Or Forced Labour” September 2022, available at < <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods> > last accessed January 23, 2023

<sup>38</sup> “Global Slavery Index 2018” available at < <https://www.globallslaveryindex.org/resources/downloads/> > last accessed December 6, 2022

# How can businesses avoid forced labour in their supply chains?

It is a misconception that forced labour is prevalent only in unorganised sectors. Large organisations such as Coca Cola, Nestle, Adidas, and Puma, among many others, have found forced labour in their supply chains.<sup>39</sup> More recently, the US government mandated that all shipments of garments from an Indian company, Natchi Apparel Pvt. Ltd. ("Natchi"), a supplier to popular 'fast' fashion brands such as H&M, be detained at all United States' ports of entry.<sup>40</sup> The measure was revoked once the company provided evidence of the elimination of such forced labour from its manufacturing processes.<sup>41</sup> However, the initiation of the action itself shows that global intolerance of forced labour in supply chains is imminent.

## How can companies identify existing forced labour risks in their supply chains?

Companies may consider undertaking necessary steps to identify and address problems of forced labour in their supply chains. For instance, companies may undertake a comprehensive due diligence of their existing business practices including, at the very least, the following steps:

- Companies may examine their current labour practices and review their labour/human resource policies and contracts with workers. In doing so, they can seek assistance from legal experts adept with international labour conventions and labour laws of other jurisdictions to ensure that such documents are compliant with (i) domestic law, (ii) international labour standards, and (iii) laws and requirements of key export destinations.
- Companies must also engage and coordinate with relevant stakeholders such as senior managers, workers, human resources team. Workers should also be made aware of their rights and obligations under their existing contracts with the hiring companies.
- In order to ensure that businesses' value chains are free of forced labour, companies must also review their contracts with all their business partners. A thorough diligence of their human resource/labour policies may also be conducted to the extent possible. Prompt corrective measures and legal action must be taken by companies wherever required. This may include the initiation of investigations against managers, change in policies, amendment to existing contracts, or perhaps even shifting the sourcing of certain goods and services to a more ethical business partner.

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<sup>39</sup> Oliver Balch, "Mars, Nestle and Hershey to face child slavery lawsuit in US" (February 12, 2021) available at <<https://www.theguardian.com/global-development/2021/feb/12/mars-nestle-and-hershey-to-face-landmark-child-slavery-lawsuit-in-us>> last accessed November 24, 2022; Philip Oltermann, "Xinjiang cotton found in Adidas, Puma and Hugo Boss tops, researchers say" (May 5, 2022) available at <<https://www.theguardian.com/world/2022/may/05/xinjiang-cotton-found-adidas-puma-hugo-boss-tops-researchers-claim-uyghur>> last accessed November 24, 2022.

<sup>40</sup> Withhold Release Orders and Findings List, U.S. Customs and Border Protection, available at <<https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>> last accessed August 16, 2022.

<sup>41</sup> U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd." (September 9, 2022) available at <<https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd>> last accessed November 24, 2022.

## How can companies avoid forced labour risks in the future?

Companies should exercise caution while formulating their business choices including human resource policies, hiring terms and conditions, and sourcing agreements to ensure that its business practices are free from forced labour.

Labour Policy compliant with International Standards: Businesses must pay close attention to their working conditions. Businesses may hire legal experts to draft a clear and transparent policy, compliant with not only domestic labour laws, but also with international labour instruments such as ILO and United Nations conventions and make it available to all workers. Such a policy should also include monitoring mechanisms, such as regular labour compliance audits. If an investigation concerning forced labour is initiated against a company in a foreign jurisdiction, independent audit reports may also act as evidence in favour of the company. Businesses must also perform a background check of the agencies which provide contract labour to ensure that such agencies are not engaging in practices amounting to forced labour.

Due Diligence: Businesses must conduct thorough diligence of their supply chains to ensure that none of their suppliers and vendors engages in forced labour. Before entering into any agreement concerning the supply and purchase of goods or services, businesses must ensure that the opposite party has a detailed labour policy and conducts regular labour compliance audits. Such due diligence exercises must focus on risks of forced labour and human rights violations and be performed by independent audit firms.

Agreements with Business Partners: All agreements concerning the supply and purchase of goods or services must contain strict requirements for responsible labour conduct in accordance with the international labour framework and have suitable provisions to hedge risks of non-compliance by the business partners.

Stakeholder Engagement and Education: Businesses must engage with their labour force and relevant stakeholders. This will not only allow businesses to ensure that any coercive action against any of their workers is brought to the attention of the persons concerned at the earliest but also to create a framework of accountability in companies. Training sessions and seminars must also be conducted for their own workers and senior managers, and if possible, for the workforce of their business partners, to educate them of acceptable labour practices.



## How Coca-Cola helped its workforce ‘Open Happiness’

The Coca-Cola Company (**Coca-Cola**) initiated a global process to ensure that there was no forced labor or violation of human rights across the value chain consisting of independent bottlers, suppliers, vendors etc. They took the following steps to ensure the same:

- Coca Cola has adopted (i) an extensive Human Rights Policy, (ii) Supplier Guiding Principles, and (iii) Principles for Sustainable Agriculture. The Human Rights Policy is available in 22 languages and is aligned with international human rights standards. The Supplier Guiding Principles, which are aligned with the Human Rights Policy, contain workplace practices which must be followed by Coca-Cola’s supplier and system partners. The Supplier Guiding Principles are included in all contractual agreements with Coca-Cola’s suppliers. The Principles for Sustainable Agriculture not only contain the company’s commitment to sustainable agriculture, but also include human and workplace rights principles.
- Coca-Cola has established a Global Human Rights (“**GHR**”) function with the company. The GHR function oversees the implementation of the policies and human rights governance. The GHR function also identifies and mitigates human rights risks in Coca-Cola’s supply chain through effective due diligence tools. Coca-Cola also conducts human rights training sessions for its workforce, suppliers and bottlers worldwide.
- Coca-Cola actively engages with affected stakeholders in transparent and inclusive manner. It also maintains accountability of how the stakeholder engagement resulted in a certain decision or activity.
- Coca-Cola utilizes independent third-party audits in the company facilities as well as through the value chain and publication of such reports, wherever possible. If a company, supplier or bottler partner fails to uphold any of the audit requirements, Coca-Cola requires the implementation of corrective actions within an agreed time frame. A corrective action plan is required to include a ‘root cause’ analysis.
- Coca-Cola actively participates in seminars, panel discussions and is a signatory and strong supporter for UN Declaration of Human Rights and other international instruments.

**The Coca-Cola Company: Human Rights Overview 2022**

# The Solution

## Global cooperation and immaculate compliance

Forced labour is a global problem and can only be eradicated through international cooperation in order to build credible and sustainable businesses. Governments, companies, labour organizations and other stakeholders must focus on engaging across borders. While progress on this front is evident, the world is a long way from achieving freedom for all workers. The issue of forced labour, among other pressing issues, should define the way business is conducted globally.

Economic Laws Practice has been assisting companies understand compliance requirements, and how the entire value chain can be made aware of the “do’s and don’ts” to avoid the rigors of non-compliances.

To sum up, following are the steps to be undertaken to assess the preparedness of the evolving global changes being made to access the markets:

Understanding the international standards contained in ILO and UN conventions, as well as the regulations being applied by the US, the EU and other exporting markets;

Assessment of the company's labour practices and the adoption of corrective measures to be taken to be compliant;

Due diligence through the supply chain and ensuring that contractors, vendors and other business partners adhere to the correct labour standards;

Adoption of a detailed labour policy compliant with international standards of fair labour practices;

Ensuring current and future agreements contain clauses relating to the fair treatment of labour;

Conduct training sessions for the workforce to educate them of the labour compliance requirements of the company;

Engagement with the workforce and other relevant stakeholders; and

Development of a regular reporting mechanism of to the Management and Key Personnel.

*We trust you will find this an interesting read. For any queries or comments, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:*

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