How far can the EU's forced-labor import ban help restore fair trade?

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The EU's regulation to outlaw products that use forced labor looks increasingly like another tool to tackle economic trade distortions affecting European industry. While not naming China, its main aim is to block products from the Xinjiang region there, and while there are important differences that might make it less effective than the US's equivalent law, robust enforcement could help the EU regain ground lost to unfairly cheap Chinese imports.

As the EU struggles with a flood of cheap imports, overwhelmingly from China, its forthcoming ban on imports of goods made with forced labor might be another tool to protect its own pressured manufacturing industries.

The human-rights violation of forced labor is now widely seen also as a trade inequity: In June, US President Donald Trump rocket-propelled the issue by proposing sweeping punitive tariffs on 60 economies for failing to prohibit forced labor imports, claiming it artificially reduces prices and burdens American producers (see here).

Trump's threat was so widely aimed that it was largely seen as just the latest avenue for him to push his global tariffs agenda. But it will surely have caught the eye of policymakers in Brussels as the EU urgently seeks new ways to tackle trade distortions, especially those from China.

The communist country's state-backed overcapacity deepens worries in Brussels that existing tools are no longer sufficient for systemic threats across entire supply chains (see here).

It is thus relevant to ask: will the Forced Labor Regulation — scheduled to apply fully from December 2027 — aid the EU's efforts to curb unfair trade?

Under the FLR, all goods made with forced labor are forbidden from being placed on or exported to the EU market (see here). If the European Commission suspects certain imports carry a risk of forced labor, it will from Dec. 14 next year be able to open investigations and order disposal of the goods if forced labor is confirmed.

Though it doesn't mention China specifically, its main aim is to block products from Xinjiang, China's largest region, where evidence of state-imposed forced labor abounds.

With a wide scope covering all sectors, the FLR is potentially impactful, and even more so given Xinjiang's weight in global production. Expert estimates suggest that in 2021-22, the region produced around a tenth of the world's annual output of polyvinyl chloride, a fifth of its cotton, and 70 percent of its solar modules.

— Industry expectations —

The EU's solar industry has long waited for the regulation, having seen Europe flooded by Chinese photovoltaic panels; they account for 89 percent of all the solar panels installed in the EU in 2022, according to Eurostat data (see here).

"We have high expectations for this legislation," Jens Holm, policy director at the European Solar Manufacturing Council, an industry association, told MLex. "It would be a very big competitive advantage for our members."

The commission's keenly awaited next move will be the release of a database listing high-risk products and regions, which will set the FLR's initial focus. The regulator has been working with a contractor to develop it and ensure the reliability of its information due to its sensitivity, MLex understands.

The database could provide a good foundation for enforcement, according to Nicolò Cusimano, an export control specialist in the tax department of law firm Bird & Bird.

"We expect the enforcement approach to be strong, yet targeted," Mayer Brown senior lawyer Dylan Geraets and senior associate Irina Antoshevska said in an email to MLex.

Though the database's publication is delayed — it was initially scheduled for June 14 — it will still be published well ahead of the FLR's full application, MLex understands.

— Enforcement methods: EU vs US —

In the US, the more targeted Uyghur Forced Labor Prevention Act, or UFLPA, entered into force in 2022. Since then, more than 24,300 shipments linked to China's Xinjiang region have been detained by the US Customs and Border Protection, valued at nearly $1 billion.

But the core elements that make that act powerful are lacking in the EU ban, experts say.

These include the "rebuttable presumption," meaning that US customs agencies presume specific designated goods to be made with forced labor, and bar them entry unless the companies involved can demonstrate otherwise. This is the inverse of the EU ban, which puts the burden of proof on investigating authorities.

The EU's risk database will also be different from the US "entity list." The database has a recommendatory character and won't name specific companies, according to Jan Švec, a researcher at the Institute of International Relations Prague. The US list has so far grown to 187 banned entities.

Other challenges include the FLR's potentially high evidentiary threshold for enforcement, Švec says, and staffing and budget constraints at the commission (see here).

But the EU import ban might nevertheless prove a useful tool to "fight dumping and to strengthen the resilience of the EU supply chain," Cusimano said. A surge in supply-chain monitoring activity was observed after the US banned goods from Xinjiang.

Though the FLR doesn't require mandatory due diligence, Geraets and Antoshevska say it adds a new layer to EU due-diligence regulations focused on environmental and human rights, such as the Corporate Sustainability Due Diligence Directive, or CS3D, set to apply in 2029.

— Supply-chain resilience —

The EU has "long been a driving force behind discussions on the relationship between trade and social rights," Hervé Jouanjean, a former EU trade chief and currently a senior trade expert at law firm Cassidy Levy Kent, told MLex.

The FLR's value-based approach fits into the EU's broader discussion on de-risking its supply chains and fostering ties with like-minded partners, gaining momentum amid growing geo-economic tensions.

But the regulation's trade dimension cannot be ignored. Forced labor in Xinjiang goes hand-in-hand with massive subsidies and environmentally destructive production models, resulting in an unfair competition for international companies, according to a 2022 report by researchers Laura Murphy, Jim Vallette and Nyrola Elimä.

To date, the EU regulator's trade defense measures are still product-specific and lack macroeconomic impact, Thomas Grjebine, an economist at CEPII — the French Centre for Research and Expertise on the World Economy — told MLex.

As the EU fashions stronger trade tools, Jouanjean wonders how effectively non-market subsidies can be tackled. "An economy must operate in a sound manner, on a sound foundation," he said. Forced labor — a "form of subsidy" that reduces production costs by exploiting people — must be "roundly condemned."

Whether the EU's rules can translate that principle into economic rebalancing will be the bigger test. By shutting out products made with forced labor from the European market, the FLR could do more than police supply chains and test whether the EU can harness its values to create a meaningful trade advantage.

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