

## **COLUMN:**

# **TRENDS ON CORPORATE SUPPLY CHAINS AND HUMAN RIGHTS**

## **1. INTERNATIONAL TRENDS ON HUMAN RIGHTS**

The “Guiding Principles on Business and Human Rights” endorsed by the U.N. Human Rights Council in 2011 sets out the corporate responsibility to respect human rights along with the state duty to protect human rights and the access to remedies. In recent years, there has been a growing interest in human rights issues in the international community. If companies fail to respect human rights properly, including in their supply chains, they may face a number of risks, including boycotts, withdrawal of investments, and suspension of transactions with existing customers. Conversely, by properly respecting human rights in corporate activities, companies will be able to address adverse effects on human rights and contribute to society, and avoid factors that impede their continuous business operations. Furthermore, they will be able to enhance trust from the international community and win high regard from global investors and others.

Furthermore, in recent years, mainly in Europe and the United States, laws and regulations have been introduced considering respecting human rights, and it is necessary to keep in mind that companies are required to strengthen their efforts to respect human rights.

In this column, trends in laws and regulations introduced in various countries considering respecting human rights and Japan’s efforts to respect human rights are introduced.

## **2. TRENDS IN EACH COUNTRY REGARDING LAWS AND REGULATIONS**

### **(1) TRENDS IN THE U.S.**

In July 2021, the U.S. government issued an updated “Xinjiang Supply Chain Business Advisory,” outlining the situation of forced labor and other human rights abuses in the Xinjiang Uyghur Autonomous Region. The U.S. government also cautioned companies that if their supply chains and others are connected to Xinjiang, they must be aware of the significant legal and economic risks associated with their involvement with entities engaged in human rights abuses in Xinjiang. In addition, the Advisory reiterated that the situation of human rights abuses in Xinjiang falls under the category of genocide, and in a statement issued in the name of the Secretary of State, the U.S. government stated that it would continue to pursue accountability for human rights abuses in China in cooperation with the private sector and related countries.

The U.S. government also enforces import restrictions on products produced by forced labor. Specifically, the importation of any products derived from forced labor is prohibited by Section 307 of the Tariff Act of 1930. In December 2020, the U.S. Customs and Border Protection (CBP), Department of Homeland Security announced the issuance of the “Withhold Release Order (WRO)” on cotton and cotton products originating from the Xinjiang Production and Construction Corps (XPCC) and its affiliates as well as any products that are made in whole or in part with that cotton, such as apparel, garments, and textiles. In addition, in January 2021, CBP banned all imports of cotton and tomatoes and their downstream products produced in Xinjiang. This is the first measure that bans imports without targeting any specific companies. In December 2021, the “Uyghur Forced Labor Prevention Act” was enacted, which presumes that any products produced in whole or in part in Xinjiang or by an entity listed by the U.S. government are the result of forced labor and prohibits import of such products. To avoid import bans, importers need to prove that they are not relying on forced labor in any part of their supply chains. From January to March 2022, public comments were invited for input on the development of detailed regulations and guidelines for law enforcement (“Enforcement Strategy”). The Act will be

enforced in June 2022.

The U.S. government has also implemented and strengthened export controls on products and entities involved in human rights abuses. Specifically, since October 2019, the scope of the regulation has been expanded to include Chinese government agencies and surveillance equipment companies in the Entity List for their involvement in human rights abuses.

## (2) TRENDS IN GERMANY

Germany established the “National Action Plan for Business and Human Rights” (NAP) in 2016 to provide for the implementation of corporate human rights due diligence (identifying adverse impacts on human rights in corporate activities, preventing and mitigating such impacts, and disseminating information) and the corrective and remedial measures available to those damaged by human rights violations. At the same time, it stipulates that if the number of companies satisfying the NAP requirements is less than a certain number, legislation would be considered. Subsequently, an investigation by the German government found that few companies satisfied the NAP requirements, and in June 2021, the Act on Corporate Due Diligence Obligations in Supply Chains was enacted to oblige companies above a certain size to conduct human rights due diligence. The Act will be effective from January 2023.

This Act is applicable for enterprises based in Germany or that have branches or subsidiaries in Germany and have 3,000 or more employees in 2023 and 1,000 or more from 2024. The scope of the human rights due diligence includes the enterprises themselves and their direct suppliers. For indirect suppliers (secondary suppliers, etc.), enterprises need to ensure that a grievance mechanism is established, and if a grievance is received, risk analysis and appropriate preventive measures should be carried out. Enterprises subject to the Act are required to develop internal risk management systems, conduct risk analysis, formulate a policy statement on human rights strategy, implement preventive measures in their own operations and the operations of their direct suppliers, implement corrective and remedial measures when human rights violations are confirmed, establish a grievance mechanism, and prepare and publish reports on the results of due diligence. If enterprises fail to comply with their legal obligations, fines are imposed and enterprises are excluded from the award of public contracts.

## (3) TRENDS IN THE EU

In Europe, although there have been moves to make human rights due diligence mandatory at the Member level, discussions to expand these moves to the entire EU are gathering momentum. In March 2021, the European Parliament published its own proposal, while also requesting legislative proposals from the European Commission. In response to this request, in February 2022, the European Commission published the “Proposal for a Directive on Corporate Sustainability Due Diligence.” This Proposal for a Directive obliges large companies in the EU (including companies from third countries operating in the EU) to conduct due diligence on human rights and the environment.

Companies to which the Directive will apply are defined based on the number of employees and annual gross sales and will be required to (a) integrate due diligence into corporate policies, (b) identify actual or potential adverse impacts on human rights and the environment, (c) terminate or minimize actual adverse impacts, (d) establish and maintain complaint procedures, (e) monitor the effectiveness of due diligence policies and measures, and (f) publicly communicate on due diligence.

With respect to the measures for violations, the Proposal for a Directive requires EU Members to establish administrative penalties for violations in their domestic laws and to ensure civil liability for companies that violate their obligations and cause damage. The draft Directive will be discussed in the European Parliament, and if adopted, each Member will be required to enact domestic laws based on the

Directive within two years.

The European Commission also indicated, in a document published in conjunction with the Proposal for a Directive, that it would proceed with the preparation of a legislative procedure to effectively ban products made by forced labor from entering the EU market.

The EU has also implemented and strengthened export controls on the grounds of human rights suppression, and in September 2021, it implemented export control regulations regarding cyber surveillance systems.

### **3. EFFORTS BY THE JAPANESE GOVERNMENT**

In line with this global trend, the Japanese government developed a national action plan on “Business and Human Rights” in October 2020. This national action plan expresses expectations for business enterprises to promote introducing human rights due diligence. The Ministry of Economy, Trade and Industry is making efforts to raise awareness and promote efforts in the industrial sector by educating them and making this national action plan known. Specifically, in 2021, seminars were held for small to medium-sized enterprises through Regional Bureaus of Economy, Trade and Industry and private organizations in nine blocks nationwide, and other seminars were held, jointly with JETRO, for Japanese companies within the country and Japanese companies based in Europe, the United States, and ASEAN.

From September to October 2021, the Ministry of Economy, Trade and Industry and the Ministry of Foreign Affairs jointly conducted a questionnaire survey on the status of human rights initiatives in the supply chains of Japanese companies as part of the follow-up to the national action plan. The survey was conducted on 2,786 companies, including those listed on the First Section and the Second Section of the Tokyo Stock Exchange, and 760 companies responded. As a result of the survey, it became clear that the efforts of Japanese companies still need improvement, with only about 50% of respondents conducting human rights due diligence. In the survey, many respondents expressed requests to the government for the development of guidelines, and half of the companies that had not made progress in human rights initiatives answered that they did not know how to implement concrete measures.

In light of this situation, in March 2022, the Ministry of Economy, Trade and Industry announced that it would establish a study group and work to formulate cross-industry guidelines for respecting human rights in supply chains. The guidelines will be formulated by the summer of 2022.

In addition to the development of domestic guidelines, the Japanese government will also promote efforts to enhance the predictability of measures taken by other countries through international cooperation, with a view to creating an environment in which companies can actively engage in human rights initiatives under a level playing field. In the future, taking into account domestic and international trends such as discussions on international cooperation, the Japanese government will consider further policy responses with relevant ministries and agencies, including the possibility of formulating legislation in the future. At the same time, Japan, which possesses a variety of advanced technologies, will discuss and examine whether an export control framework can be utilized as a tool against human rights violations, and will cooperate closely with like-minded countries such as Europe and the United States that share basic values.