

COLUMN:

CORPORATE SUPPLY CHAINS AND HUMAN RIGHTS AND ENVIRONMENTAL ISSUES

1. INTERNATIONAL TRENDS ON HUMAN RIGHTS AND ENVIRONMENTAL ISSUES

The Guiding Principles on Business and Human Rights endorsed by the U.N. Human Rights Council in 2011 states that respect for human rights is global standard of conduct and social responsibility for all business enterprises.

Business efforts to respect human rights should, needless to say, aim to prevent, mitigate and remedy adverse human rights impacts from business activities. In addition, as a result of continuing to meet their responsibility to respect human rights, business enterprises can reduce management risks that business enterprises face (such as boycotts against products and services due to human rights abuses, and downgrading in investment market) and may benefit from positive impacts in terms of business management (such as improvement of the company's brand image, more positive ratings in investment market, and improvement of relationships with business partners).

Furthermore, in recent years, mainly in Europe and the United States, laws and regulations have been introduced on the ground of human rights; and thus, businesses enterprises need to keep in mind that they are required to strengthen their efforts to respect human rights. Some of these laws and regulations include the perspectives not only of human rights, but also of environmental protection (especially in the regulations introduced by the EU and its Member states).

This column provides a summary of the recent trends in laws and regulations that have been introduced in various countries, and of Japan's efforts to in this area.

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 which are connected to Xinjiang in their supply chains about significant legal and economic risks associated with their involvement with entities engaged in human rights abuses there. 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 has imposed an import ban on products derived from forced labor under Section 307 of the Tariff Act of 1930, and the U.S. Customs and Border Protection (CBP), Department of Homeland Security has issued a "Withhold Release Order (WRO)" to withhold imports of such products.

For example, in December 2020, CBP announced the issuance of a 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 announced the issuance of a WRO on cotton and tomatoes and their downstream products produced in whole or in part in Xinjiang.

In June 2022, the "Uyghur Forced Labor Prevention Act" was fully enforced, which presumes that any products produced in whole or in part in Xinjiang or by an entity included in the list created by the U.S.

government (the “Entity List”) are the result of forced labor and in principle, 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. Under the said Act, in June 2022, the Forced Labor Enforcement Task Force, chaired by the Department of Homeland Security, published the strategy for enforcement of the Act, which also includes guidelines for importers.

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 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 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 the number of companies which satisfied the NAP requirements did not reach its target. Then, 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 and environmental due diligence. The Act was enforced in 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 and environmental 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 they become aware of substantive signs suggesting human rights abuses or violations of environmental obligations, 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, they may be excluded from the award of public contracts, in addition to being liable to fines.

(3) TRENDS IN FRANCE

In France, the Duty of Vigilance Act was enacted and entered into force in 2017 to stipulate human rights and environmental due diligence in supply chains. This Act is applicable for companies based in France that, at the end of two consecutive fiscal years, employ (i) at least 5,000 employees (including employees of direct and indirect subsidiaries located in France) or (ii) at least 10,000 employees (including employees of direct and indirect subsidiaries located in France or abroad).

Companies subject to the Act are required to (a) prepare a vigilance plan, (b) effectively implement the plan, and (c) disclose the plan and its implementation status. The “vigilance plan” is intended to include reasonable measures adequate to identify risks and to prevent severe impacts on “human rights, fundamental freedoms, health and safety of individuals and the environment”, resulting from the activities of businesses.. Breach of certain obligations is subject to a court order for performance and damages.

(4) TRENDS IN THE EU

(i) Proposal for a Directive on Corporate Sustainability Due Diligence

In Europe, although there have been moves to make human rights and environmental due diligence mandatory in some Member States, discussions to expand these moves to the entire EU have accelerated in recent years.

In February 2022, the European Commission published the “Proposal for a Directive on Corporate Sustainability Due Diligence”¹ after the publication of the European Parliament’s own proposal (March 2021). 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 revenue, 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 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 proposal for a Directive will be discussed in the European Parliament, and if adopted, each Member will be required to transpose it to a domestic law.

(ii) Other laws and regulations

In Europe, in addition to the proposal for a Directive described above, laws and regulations regarding human rights and the environment are examined and enforced.

For example, the proposal for a Regulation on batteries published by the European Commission in December 2020 was designed to make batteries sustainable throughout their life cycle and incorporated human rights and environmental due diligence requirements as one of the legal obligations². The EU has also implemented and strengthened export controls on the grounds of human rights suppression, and in September 2021, it implemented revised export control regulations including regulations on cyber surveillance systems.

In November 2021, the European Commission published the proposal for a Regulation on deforestation-free products. The proposal includes due diligence obligations to ensure that products that are placed on or exported from the EU market are deforestation-free. In September 2022, the European Commission published the proposal for a Regulation on prohibiting products made with forced labor from entering the EU market or being exported outside the EU.

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” (2020-2025) in October 2020. 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

¹ In the Explanatory Memorandum of the Proposal for a Directive, the Proposal for a Directive is positioned as an extension of EU social and environmental policies, such as the “European Green Deal” (published in 2019), and is described as a comprehensive regulation that complements other regulations covering specific sectors (the Proposal for a Regulation on batteries and the Proposal for a Regulation on products associated with deforestation and forest degradation as described below in (ii)).

² In December 2022, the Council of the European Union announced that it had reached a provisional agreement on the Proposal for a Regulation on batteries and the Proposal for a Regulation on deforestation-free products, respectively.

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, the Japanese government established the “Study Group on Guidelines for Respecting Human Rights in Supply Chains” in the Ministry of Economy, Trade and Industry in March 2022 to promote business efforts to respect human rights based on international standards, and in September 2022, published the “Guidelines on Respecting Human Rights in Responsible Supply Chains.” Based on the UN Guiding Principles, the Guidelines for Multinational Enterprises by the OECD, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the “ILO MNE Declaration”) by the ILO and other international standards, the Guidelines aim to help deepen business enterprises’ understanding and promote their efforts by explaining activities that business enterprises are requested to undertake to respect human rights, in a concrete and easy-to-understand manner, which is tailored to the actual situation of business enterprises engaging in business activities in Japan.

The Japanese government is expected to work, through international cooperation, toward the realization of an environment in which businesses can actively engage in respecting human rights under a level playing field and the predictability of measures taken by other countries is enhanced.