

COLUMN:

CORPORATE SUPPLY CHAINS AND HUMAN RIGHTS AND ENVIRONMENTAL ISSUES

1. INTERNATIONAL TRENDS ON HUMAN RIGHTS AND ENVIRONMENTAL ISSUES

Since the unanimous endorsement of the Guiding Principles on Business and Human Rights by the U.N. Human Rights Council in 2011, international calls for business enterprises to respect human rights have accelerated. The Guiding Principles states that respect for human rights is global standard of conduct and social responsibility for all business enterprises.

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, business enterprises need 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 the laws and regulations that have been introduced in various countries and of Japan's efforts in this area, and analyzes how these relate to international agreements.

2. TRENDS IN EACH COUNTRY REGARDING LAWS AND REGULATIONS

(1) TRENDS IN THE U.S.

The U.S. government has imposed an import ban on products derived from forced labor based on Section 307 of the Tariff Act of 1930, and the U.S. Customs and Border Protection (CBP), Department of Homeland Security has issued "Withhold Release Orders (WROs)" 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 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.

Furthermore, in June 2022, the Uyghur Forced Labor Prevention Act (UFLPA) was enforced. The UFLPA 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 and prohibits the import of such products. To avoid such import bans, importers need to prove that they are not relying on forced labor in any part of their supply chains. Under the UFLPA, in June 2022, the Forced Labor Enforcement Task Force, chaired by the Department of Homeland Security, published the "strategy for enforcement" of the UFLPA, which also includes guidelines for importers. In February 2023, additional guideline for applicability review, which includes FAQs regarding UFLPA and best practices of importers for applicability review, was issued. Furthermore, in September 2023, an annex

to the Xinjiang Supply Chain Business Advisory was also issued, requiring companies to continue to conduct appropriate human rights due diligence in accordance with the strategy for enforcement.

The strategy for enforcement published in conjunction with the enforcement of the UFLPA initially identified apparel, cotton and cotton products, silica-based products including polysilicon, and tomatoes and downstream products as high-priority law enforcement sectors, and with the revision in July 2024, polyvinyl chloride, aluminum and seafood were added¹. In addition, the Entity List which identifies entities subject to import bans under the UFLPA has been updated from time to time since the UFLPA was enforced, and 144 entities were listed at the time of writing of this Report. With the expansion of priority sectors and the Entity List, the number of enforcements is indeed increasing. According to the information available, at the time of writing of this Report, in the database on the enforcement of the UFLPA released by CBP in March 2023, 15,539 imports have already been suspended, of which 8,633 have been banned and 5,558 imports have been allowed based on the UFLPA².

On the other hand, 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 by including 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. Subsequently, an investigation by the German government found that the number of companies which satisfied the NAP requirements were low. This led to the enactment of the Act on Corporate Due Diligence Obligations in Supply Chains (the “Act”) in June 2021, obliging companies above a certain size to conduct human rights and environmental due diligence. The Act was enforced in January 2023.

The 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, at the time of enforcement, and 1,000 or more employees 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, the enterprise should undertake a risk analysis and take appropriate preventive measures. 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, in addition to being liable to fines, they may be excluded from the award of public contracts.

(3) TRENDS IN FRANCE

In France, the Duty of Vigilance Act (the “Vigilance Act”) was enacted and entered into force in 2017 to stipulate human rights and environmental due diligence in supply chains. The Vigilance Act is

¹ In the revision of the enforcement strategy in August 2023, red dates and other agricultural products, vinyl products, aluminum, steel, lead-acid and lithium-ion batteries, copper, electronics, and tires and other automobile components were listed as items subject to enhanced monitoring as a result of identification by NGOs.

² Based on information as of March 1, 2025. Of the suspended imports, 1,348 imports have not yet been decided whether to grant or deny permission after suspension.

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 Vigilance Act are required to (a) prepare a vigilance plan and effectively implement the plan and (b) disclose the plan and its implementation status in annual reports. The “vigilance plan” is intended to include reasonable measures to identify risks and prevent severe violation of “human rights, fundamental freedoms, health and safety of individuals and the environment.” The Vigilance Act provides for a court order for performance and damages as civil enforcement, and in certain cases, human rights organizations and environmental organizations are entitled to file a lawsuit against companies. In fact, since the enforcement of the Vigilance Act, more than ten lawsuits have already been filed against companies by human rights organizations and environmental organizations.

(4) TRENDS IN THE EU

(i) Directive on Corporate Sustainability Due Diligence

In Europe, adding to the moves to make human rights and environmental due diligence mandatory in some member states such as Germany and France as mentioned above, moves to extend similar laws and regulations to the entire EU have accelerated. On July 25, 2024, the Directive on Corporate Sustainability Due Diligence (EU Directive 2024/1760) (the “Directive”) entered into force.

This Directive obliges EU companies with more than 1,000 employees and net worldwide turnover of more than EUR 450 million, as well as non-EU companies with net turnover of EUR 450 million in the EU, to conduct due diligence on human rights and the environment. Companies to which the Directive applies are required to (a) integrate due diligence into corporate policies, (b) identify, assess and prioritize actual or potential adverse impacts on human rights and the environment, (c) prevent and mitigate potential adverse impacts, (d) terminate actual adverse impacts, (e) establish and maintain notification mechanism and complaint procedures, (f) monitor the effectiveness of due diligence policies and measures, and (g) publicly communicate on due diligence.

With respect to measures for violations, the Directive requires EU member states to establish administrative penalties for violations in their domestic laws, and to ensure civil liability for companies that violate their obligations and cause damage.

Based on the Directive, each member state is required to enact national legislation by July 2026, and the application of the Directive will gradually commence from July 2027, depending on the size of companies.

On February 26, 2025, the European Commission published omnibus proposals intended to simplify regulations related to sustainability, including this Directive. The omnibus proposals propose simplifying the due diligence obligations and postponing the commencement of the application pursuant to the Directive. The omnibus proposals will be deliberated by the EU Council and the European Parliament.

(ii) Other laws and regulations

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

For example, the EU has also implemented and strengthened export controls on the grounds of human rights suppression. In September 2021, it implemented the revised export control regulations (EU Regulation 2021/821) which includes control over cyber surveillance systems.

In addition, in December 2024, the Regulation on prohibiting products made with forced labor from

entering the EU market or being exported outside the EU (EU Regulation 2024/3015) (the “Regulation”) came into effect. The Regulation prohibits companies from placing products derived from forced labor on the market (distribution) within the EU and from exporting such products from the EU. If, as a result of the investigation by EU authorities, it is found that products derived from forced labor have been placed or made available on the market within the EU or exported from the EU, the authorities will issue orders prohibiting the placing and making available on the market and export of such products, as well as orders for the withdrawal or disposal of the products. The Regulation will come into effect in December 2027.

The regulation concerning batteries and waste batteries (EU Regulation 2023/1542) (the “Battery Regulation”), which came into effect in August 2023, aims to make the entire life cycle of batteries sustainable. For example, the Battery Regulation includes obligations on business operators of a certain size or larger to undertake due diligence regarding social and environmental risks associated with batteries, where the business operators are required to develop and implement policies to address risks in its supply chain regarding climate change, environmental pollution and violation of workers’ rights etc. In addition, the business operators need to undergo third-party verification of all activities, processes and systems to fulfill their due diligence obligations. These due diligence obligations are scheduled to take effect in August 2025, and guidelines regarding the due diligence obligations were to be published by February 2025. However, at the time of writing of this Report, the guidelines have not yet been published, and the details of the obligations remain unclear. The business operators will also be required to fulfil certain obligations such as to display the battery capacity, the content of hazardous substances, and the amount of greenhouse gas emissions over the entire life cycle of batteries using a QR code.

The regulation on deforestation-free products (EU Regulation 2023/1115) (“EUDR”), which came into effect in June 2023, requires business operators to conduct due diligence to ensure that cattle, cocoa, coffee, oil palm, rubber, soya and wood, and their derivative products will not be imported into or sold in the EU market unless they are deforestation-free in the production process. Deforestation risk of each country will be classified as “high risk,” “low risk” or “standard risk”, and obligations imposed on business operators with respect to the risk assessment etc. will vary depending on the risk classification of the producing country. Although EUDR was scheduled to take effect in December 2024, a revision to EUDR was enacted in December 2024, and the commencement of the application was postponed to December 2025.

Furthermore, the regulation on packaging and packaging waste (EU Regulation 2025/40) (the “Packaging Regulation”) came into effect in February 2025. The Packaging Regulation requires the reuse and recycling of bottles, cans, PET bottles, plastic materials, transport packaging and other containers and packaging used in the EU market, and provides for the reduction of packaging and packaging waste and the restriction of specific plastic packaging forms. The Packaging Regulation is expected to have a significant impact on a wide range of industries that utilize packaging materials such as the food and beverage industry and manufacturing industry, and attention should be paid to future operation.

(5) LAWS AND REGULATIONS IN OTHER COUNTRIES

In addition to the above, various countries have enacted and have enforced laws requiring companies to conduct due diligence or make public statements that they do not engage in human rights violations, as well as regulations restricting the import of products derived from forced labor. For example, the UK’s Modern Slavery Act 2015 requires profit-making organizations and companies with annual turnover exceeding a certain threshold to make public statements that they do not engage in slave labor or human trafficking. Australia’s Modern Slavery Act 2018 also requires companies with a certain level of annual turnover to investigate the existence of modern slavery in their supply chain and business activities, and

to report annually on risk assessment methods and mitigation measures. In Norway, the Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions enacted in 2022 requires companies to conduct due diligence on human rights and decent work, and to explain and disclose the details of their efforts, and to respond to requests for information disclosure. Furthermore, in Canada, in July 2020, when the United States-Mexico-Canada Agreement (USMCA) took effect, a provision that prohibit the import of products produced through forced labor was introduced in its domestic law. In January 2024, Canada enacted a law requiring government agencies and companies that meet certain conditions to report to the federal government the measures taken to assess and manage the risk of forced labor and child labor in their supply chains. Canada has also added products derived from child labor to the list of prohibited imports in January 2024. Mexico has also introduced regulations prohibiting the import of products produced through forced labor (including child labor) since May 2023, in line with the USMCA.

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. Subsequently, from September to October 2021, the Ministry of Economy, Trade and Industry of Japan and the Ministry of Foreign Affairs of Japan jointly conducted a questionnaire survey on the status of human rights initiatives in the supply chains of Japanese companies. This survey revealed that the efforts of Japanese companies still need improvement, and 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 survey result, in March 2022, the “Study Group on Guidelines for Respecting Human Rights in Supply Chains” was established at the Ministry of Economy, Trade and Industry (METI) to further promote business efforts to respect human rights based on international standards, and in September 2022, the Japanese government published the “Guidelines on Respecting Human Rights in Responsible Supply Chains” (the “Guidelines”).

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 explains the activities that business enterprises are requested to undertake to respect human rights, in a concrete and easy-to-understand manner, in accordance with the actual situation of business enterprises engaging in business activities in Japan. With the object to help deepening the understanding of and promoting the efforts by business enterprises, the Guidelines call on all business enterprises conducting business activities in Japan to make every effort to implement human rights initiatives. Furthermore, in April 2023, taking into account the concerns of business enterprises on how to implement concrete measures, METI prepared and published the “Practical Reference Materials for Respecting Human Rights in Supply Chains” which helps business enterprises that have not fully implemented efforts for respecting human rights, advance their efforts in accordance with the Guidelines.

4. RELATION TO INTERNATIONAL AGREEMENTS

Respect for human rights and preservation of the global environment are now global standards of conduct, and further efforts are expected from business enterprises. In this regard, as outlined above, the international trend of expanding and strengthening laws and regulations on human rights and the environment is expected to continue.

On the other hand, it should be noted that laws and regulations on international corporate activities of this kind inevitably have an impact on international trade and investment (often a limiting and withering effect). In the GATT and WTO regimes, this issue has been discussed in relation to the principles of free

trade (see GATT Article I, Article II, Article III, Article XI:1, etc.) and the exceptions based on regulatory authority of each country (see each item of GATT Article XX, etc.), and has sometimes been challenged as a dispute.

With respect to the above-mentioned laws and regulations of each country, if trade in products is directly restricted, it may be inconsistent with GATT Article XI:1. In addition, if the laws and regulations are designed and operated in a manner that substantially prejudice the competitive conditions of products from countries other than those imposing regulations, it may be inconsistent with the most-favored-nation treatment obligation (GATT Article I) and the national treatment obligation (GATT Article III) (in this regard, many countries have in fact expressed concern about the current trend.).

Furthermore, regulations restricting imports of products due to specific human rights and environmental risks may fall under the “technical regulations” (Annex 1.1 of the TBT Agreement), in which trade restrictions more than necessary to fulfill a legitimate objective are prohibited (Article 2.2 of the TBT Agreement). According to the previous DS cases, the “technical regulations” refers to mandatory regulations that are applied to product characteristics of identifiable product groups (Appellate Body Report in *EC – Asbestos*, etc.). Regulations requiring the provision of information on human rights and environmental risk assessment through data carriers such as QR codes displayed on products themselves (such as the Battery Regulation) are likely to fall under this category. Even if there is no labeling requirement, if it has an effect that enforces a specific production method or location, it may be interpreted as regulations on product characteristics that fall under the “technical regulations.”

On the other hand, countries imposing regulations would argue that the regulations are justified for the purpose of respecting human rights and protecting the environment. For example, they would argue against the GATT inconsistency allegations on grounds that the regulations are “necessary to protect public morals” (GATT Article XX (a)), “necessary to protect human, animal or plant life or health” (GATT Article XX (b)) or “relating to the conservation of exhaustible natural resources” (GATT Article XX (g)) etc. However, in light of the trend of precedent cases that strictly interpret the applicability of chapeau and each item of GATT Article XX, it is natural to assume that easy trade restrictions and preferential treatment of domestic products in the name of “human rights” and “environment” are not permissible under international agreements.

Japan should make efforts to contribute to international efforts to respect human rights and protect the environment, and closely following the trend of laws and regulations in each country. Further, it should actively participate in efforts through international organizations to establish appropriate international disciplines in order to avoid international economic activities of Japanese companies being unduly hindered or discriminated.