

Response of the Prague Security Studies Institute to the European Commission's Call for Feedback on "Effectively Banning Products Produced, Extracted or Harvested with Forced Labor"

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The Prague Security Studies Institute (PSSI) is a non-profit public policy organization founded over twenty years ago that seeks to illuminate unconventional threats emanating from authoritarian governments that challenge Europe, the transatlantic alliance, and other partners globally – especially in the economic & financial and space domains.

PSSI welcomes and strongly supports an amended version of the Commission's proposal on "Effectively Banning Products Produced, Extracted or Harvested with Forced Labor". This policy mechanism could provide a long-overdue opportunity for the EU to demonstrate global leadership in helping end this tragic abuse of human and labor rights. It likewise has the potential to better protect the lives and well-being of millions of people by preventing shameless and longstanding profiteering from forced labor by offending companies as well as Western multinational corporations cloaked in plausible deniability while purchasing those illicit products.

The scope and effectiveness of this initiative would be greatly enhanced if expanded to also prohibit investment in forced labor companies through the purchase of their securities in the European and U.S. capital markets. Doing so would demonstrate that EU leadership will not bow to Chinese and other nations' forced labor companies. It would further show that the fees of asset managers, index providers and fund managers in Europe's capital markets are not more important than the plight of those millions of people subject to modern day slavery. *Which of these does the Commission find to be more aligned with its institutional values and commitments?*

In response to the Commission's call for feedback, PSSI wishes to register the following urgent comments:

PSSI believes that it is Chinese and other nations' offending *companies*, in addition to their *products*, that must be banned from entering, and/or doing business with, the EU. Second, we view it as unconscionable to continue to permit Chinese and other companies linked to forced labor practices to have access to, or to raise funds in, Europe's capital markets (e.g., the Frankfurt, London, Paris, Milan and other exchanges) – a reality which PSSI can empirically prove is underway today involving literally scores of *Chinese companies*.

- (a) Forced labor is unlikely to be limited to a single product or even division of a company's operations. Evidence of the use of forced labor by a company — even a single product — should be a condition for sanctioning that company as a whole, including subsidiaries, senior corporate leadership and the Board of Directors.**

(b) Identifying, tracking and banning companies – as well as their products – is appropriate, logical, effective and logistically efficient for the relevant EU authorities and importers;

The continuous evaluation and screening of products on a case-by-case basis by EU authorities will require more customs enforcement resources and a substantial increase in upstream supply chain transparency by importers. The Commission should require importers to create and maintain an auditable trail showing the absence of forced labor as a condition of importation.

The addition of an investment ban focused on companies raising capital on European exchanges to finance their forced labor activities is simple and effective in comparison. After all, these products do not manufacture themselves with forced labor. It is rather the intention of corporate managers to widen profit margins. An investment prohibition also avoids the potential discrepancies, or capability gaps, among the various national authorities. Failure to “screen out” tainted products by just one member state can allow forced labor products to enter the entire European market.

(c) Continued funding – via the purchase of their stocks and bonds – of Chinese and other corporate forced labor abusers via the European capital markets must be strictly prohibited. Moreover, it should be made illegal for the persons of EU countries to hold the securities (including bonds) of Chinese and other companies linked to forced labor. In the current proposal, banning such offending companies from accessing European capital markets is not even referenced, much less proposed to serve as a central pillar of this entire EU forced labor initiative.

Permitting such a glaring policy inconsistency would fundamentally undermine this entire EU forced labor initiative. Indeed, the consequence of ignoring or rejecting the above point would be allowing Chinese and other companies identified as employing forced labor to continue enjoying “business as usual” with the EU’s financial sector.

The EU has long overlooked the powerful source of leverage represented by capital markets sanctions to help end this vicious abuse of human rights. The continued ability of corporate forced labor abusers to attract — in China’s case — tens of billions of euros annually from millions of unwitting European retail investors is completely unacceptable. Most often this access is afforded through passive investment products containing Chinese and other publicly traded companies engaged in forced labor practices. Specifically, we are referring to Exchange-Traded Funds, mutual funds and other index funds, including bond funds.

PSSI advises the European Commission to review the precedents in the United States which make it illegal for American persons to hold the securities of Chinese companies with ties to the country’s military establishment which are embodied in Executive Order (EO) 13959 under President Trump and EO 14032 under President Biden.

PSSI intends to make available in the near-term a list of dozens of publicly traded Chinese companies associated with the use of forced labor practices, the vast majority of which are listed and/or traded on European exchanges (some in the form of “A shares” out of domestic Chinese exchanges). This upcoming Forced Labor List has been exhaustively researched and assembled under the auspices of the Coalition for a Prosperous America (CPA), a U.S. trade association that is influential in the U.S. forced labor debate.

We sincerely hope the issues delineated above are adequately and properly addressed, to ensure that the Commission’s final proposal is comprehensive, just, and effective in promoting human rights globally and ending the scourge of forced labor.