

Supply Chain Due Diligence Laws Go Orange— Netherlands Latest to Pass Legislation

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On May 14, 2019, the Dutch Senate passed a long-awaited Child Labor Due Diligence Law,¹ which places obligations on companies selling goods or services to Dutch consumers as well as companies otherwise doing business in the Netherlands to take certain steps to prevent child labor in their supply chains. The Dutch bill first passed the lower house of parliament in 2017, and makes the Netherlands the latest in a line of countries and jurisdictions who have adopted laws relating to addressing human rights concerns in the private sector.²

In the United States, these include measures on the federal and state level. Under the California Transparency in Supply Chains Act of 2010, companies with over \$100 million in gross sales who do business in California are required to disclose on their websites any efforts taken to eradicate human trafficking from their supply chains.³ On the federal level, for instance, section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of goods mined, produced or manufactured, wholly or in part, in any foreign country by forced labor, including convict labor, forced child labor and indentured labor. Regulations promulgated by Customs and Border Protection (CBP) allow for the issuance of withhold release orders, requiring detention of goods at ports of entry when CBP agents reasonably believe that an importer is attempting to enter goods made with forced labor.⁴

The United Kingdom passed the U.K. Modern Slavery Act in 2015, which is modeled in part on the California law. The Modern Slavery Act requires certain large companies doing business in the U.K. to release reports on steps taken to consider the risks associated with suspected human trafficking or forced labor in their businesses and throughout their supply chains.⁵ Australia passed a similar Modern Slavery Act at the end of November 2018.⁶ France also passed the so-called “Vigilance Law” in 2017,⁷ which requires large French companies to establish an annual “vigilance plan,” including measures intended to prevent violations of human rights in their own activities as well as in those of their subsidiaries and throughout their supply chains. Under the French law, companies that fail to publish or fail to follow their plans may be required to compensate those who have suffered as a result of a company’s noncompliance. Canada is also considering a bill similar to the U.K. and Australian

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laws, but which would also block imports to Canada of goods manufactured or produced by forced or child labor.⁸

In short, the Dutch law requires companies doing business in the Netherlands or those who provide goods or services to Dutch consumers—including only through online means, if there is explicit targeting of the Dutch market—to assess their supply chains to identify any child labor risks and then develop diligence and action plans to address and mitigate any such risks they find. The Dutch law therefore goes beyond the other jurisdictions in the scope of its applicability. The Dutch law furthermore requires companies subject to it to look beyond direct suppliers in their assessments and plans, similar to the Australian law. Companies subject to the Dutch law must submit declarations regarding their plans and efforts, which will be publically posted.⁹

Noncompliant companies are subject to administrative fines if a complaint is lodged against them for failure to report or adhere to their own plans, a feature not present in the U.K. or Australian regimes. The ability to file such a complaint is open to a broad range of actors, allowing any stakeholder with concrete evidence that a company's goods or services were produced with child labor to submit such a complaint. The law's effective date is yet to be determined, but will not be before January 1, 2020.¹⁰ With Canada's parliamentary debate, and reports that the German government is preparing a draft law regarding German companies and supply chain due diligence with regard to human rights,¹¹ this type of legislation is becoming increasingly common across major global economic jurisdictions, and companies should closely examine whether they might have an obligation to report or take other actions.

1. https://www.eerstekamer.nl/nieuws/20190514/initiatiefvoorstel_zorgplicht (link in Dutch).\

2. The legislation is now awaiting Royal Decree before becoming law, but this is seen as a largely perfunctory step for legislation passed by both houses, though some specifics are yet to be set out through administrative order.

3. <https://oag.ca.gov/SB657>

4. <https://www.cbp.gov/trade/programs-administration/forced-labor>

5. <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

6. <https://www.legislation.gov.au/Details/C2018A00153>

7. <http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf> (link in French).

8. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-423/first-reading>

9. <https://www.business-humanrights.org/en/netherlands-parliament-adopts-child-labour-due-diligence-law-for-companies-senate-approval-pending>

10. https://www.eerstekamer.nl/wetsvoorstel/34506_initiatiefvoorstel_kuiken (link in Dutch).

11. <https://www.business-humanrights.org/en/german-development-ministry-drafts-law-on-mandatory-human-rights-due-diligence-for-german-companies>

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