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Approaches to combatting modern slavery in supply chains

Jacqueline Hicks
Institute of Development Studies
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Questions

- *How effective are government interventions to encourage businesses to combat modern slavery in their supply chains?*
- *How effective are voluntary business initiatives in combatting modern slavery in their supply chains?*

Contents

1. Summary

This review finds that generalisations about the effectiveness of different business or government approaches to tackling modern slavery in supply chains are not currently possible. There is no consistency in how international parent companies deal with the use of forced labour by their suppliers – one company's definition of an 'audit' may be very different from another's. There is a large body of evidence highlighting examples of ineffective business approaches to the issue, and some evidence of individual best practice. The international and national laws and regulations that seek to standardise and enforce better business practices tend to be judged on their intermediate objectives, such as their design or the number of company disclosure reports elicited, rather than any actual impact on workers. Beyond the design of business or government initiatives, the key test of their effectiveness is in their implementation, which is a long-term process that will be felt differently in various contexts around the world.

The purpose of this rapid review is to lay out some of the general approaches used by both business and government to tackle 'modern slavery' in international business supply chains, and locate evidence of their effectiveness. The definition of modern slavery used in this report focuses on forced labour and extreme forms of labour exploitation.

A brief overview of the current situation is that:

International institutions have been encouraging large international businesses to tackle modern slavery by offering guidelines on how to investigate the issue in their supply chains ('due diligence') over the past decade or so. Some large **international businesses** have been using these guidelines, but their implementation, how it is checked and by whom ('auditing') is highly variable. **National governments** are increasingly mandating businesses through national legislation to report on what they do ('disclosure legislation'). More recently, governments have begun imposing a legal duty of care on parent companies which means they can be held responsible for what their subsidiaries do (in 'mandatory due diligence' legislation).

Key findings are:

- **There is no consistency in how international companies currently implement the due diligence guidelines**, or other voluntary procedures such as certification, human rights assessments or auditing. It is therefore not possible to judge each method as a category, but only to look at individual examples of good or bad practice. Large scale surveys and interviews with buyers, suppliers and auditors describe many elements of ineffective due diligence and auditing practices.
- **The design of national disclosure legislation is generally judged to be flawed. There is medium compliance in terms of quantity of company reports and low compliance in terms of quality.** The literature reports many weaknesses in the design of disclosure legislation. While it has been found to generally increase the number of disclosure reports, these are of variable quality, and there is continuing lack of compliance reported in the UK (20%) and US (40%).
- **There is some evidence that mandatory due diligence legislation in the US has had some positive effects in specific contexts** - the use of child labour in mines in the Congo. The 2017 French law – the first to impose a legal duty of care on parent

companies for their suppliers – has not so far been well enough implemented to judge its effectiveness.

- **There are some individual examples of gains made against modern slavery by using trade mechanisms**. Threats to withdraw preferential tariffs have been used by the US to encourage their trading partners to tackle forced labour on their home soil, and the EU has threatened import bans in some cases. US Customs authorities have also seized some imports in relation to the use of forced labour, but sporadically and inconsistently, leading to claims of trade protectionism and politicisation. Some individual examples of effectiveness were found where companies have either suffered a fall in market value, or made reparations to workers as a result of a US Customs action. Specific forced labour clauses are only just beginning to be inserted into Free Trade Agreements.

Definitions count: The definition of 'modern slavery' has implications for the measures used to tackle it. Some scholars critique the way international institutions use the term. They say it assumes it is possible to cut an easy line around victims of modern slavery and those stuck in more minor forms of labour exploitation (LeBaron, 2020a), and implies it is a randomly occurring phenomenon enacted by a few 'bad apples' or 'unscrupulous employers' (ILO 2012, in LeBaron 2018). If the continuities between exploitative labour practices and forced labour are recognised, then tackling modern slavery becomes a much broader task of dealing with labour standards in the wider global economy (Strauss, 2013; Bunting & Quirk, 2017). However, this view conflicts with others who say modern slavery needs a special approach because of its illegality (Crane et al., 2019; Stevenson & Cole, 2018).

Evidence Base: Overall, the evidence on forced labour and modern slavery is recognised as being "dangerously thin and riddled with bias" (LeBaron, 2018, p.1). It is difficult to research directly because of its illegality, the involvement of powerful interests, and the potential to further endanger highly vulnerable workers. Nevertheless, there is a very large number of articles and reports written on the issue, particularly from the last five years. The main sources used in this review came from both grey literature and academic literature.

Gender, context and theory of change: Almost all of the literature reviewed for this report mentioned the role of gender in modern slavery. It is recognised that the catch-all term 'modern slavery' differs across settings and population groups (adults vs children, male vs females), and that "any theory of change therefore needs to be specific to the particular manifestation of modern slavery that is being addressed, based on a detailed understanding of the dynamics of each illicit labour market in the specific context" (ICAI, 2020). Some scholars caution that without a contextual approach to the implementation of anti-slavery initiatives, harm can be caused to the people they are supposed to protect (in LeBaron, 2018, p.3).

2. Context of approaches

The International Labour Organisation estimates that out of the 24.9 million people trapped in forced labour around the world, 16 million are exploited in the private sector (ILO, 2017), linked to the supply chains of the international businesses.

This rapid review focuses on ways governments can encourage businesses to combat modern slavery in their supply chains. This relatively top-down approach sits within a larger universe of other possible actions including:

Community initiatives: Programmes to support community organisation and local action, such as those undertaken by the Freedom Fund. Evaluations of one Freedom Fund programme found that from 2015 to 2018 the prevalence of households in bonded labour in 1,100 target villages fell steeply, on average, from 56% to 11%, equivalent to 125,000 fewer individuals in bonded labour (Freedom Fund, 2019).

Worker-driven social responsibility initiatives: These are aimed at "changing conditions that cause forced labour to manifest in global supply chains" (LeBaron, 2020a). They include supply chain collective bargaining where worker representatives negotiate with upstream buyers to produce a legally-binding agreement between unions and brands. The key example is the 'Bangladesh Accord' which covers the garment industry (Dias-Abey, 2019; Lebaron, 2020b, p.171).

Strategic cross-border litigation: These are court proceedings to establish responsibility on the part of one company for wrongdoing committed by another company. They require substantial support to connect local and global lawyers and NGOs. A recent landmark case in the Canadian Supreme Court ruled that a claim for alleged forced labour at an Eritrean mine could proceed against a Canadian parent company (Nevsun Resources Ltd. v. Araya, 2020) (The Freedom Fund, 2021). These cases establish precedent for holding parent companies legally responsible for the actions of their suppliers.

An overall critique of the literature on encouraging businesses to combat modern slavery in their supply chains is that it focuses too much on the specific design of audit regimes "as a technical, neutral, and benign tool of supply chain governance" (Lebaron et al, 2017). And that from a developing country perspective, a focus on forced labour is effectively a "tango at the margins" of an unequal global economic system (Kotiswaran, 2019).

3. International law and guidelines

Almost all countries are already legally obliged to criminalise modern slavery under international law

The principle that no one shall be held in slavery is embedded in international human rights law, including the 1948 Universal Declaration of Human Rights (BHRRC, 2017). Schwarz & Allain (2020) list five core "international instruments" specific to modern slavery. They become legal obligations once they have been ratified (agreed by national parliaments). In total, 185 States (96%) have international obligations to criminalise forced labour as a result of being party to either the 1930 Forced Labour Convention or the 1966 International Covenant on Civil and Political Rights (ICCPR) (Schwarz & Allain, 2020, p.16).

Many states have also signed up to 'soft law' international guidelines aimed specifically at modern slavery in supply chains

Table 1 below details some of the most cited international guidelines in the literature.

Table 1: Selected International guidelines on modern slavery in supply chains

Name	Details
UN Guiding Principles on Business and Human Rights (UNGPs) (2011).	Neither legally binding, nor voluntary as there is no 'signing up' to the UNGPs needed in order for their expectations to apply. They apply to all businesses of all sizes, across all industries, in all geographies, including financial institutions, as well as their corporate clients and the companies they invest in (directly or through financial intermediaries). No singular body charged with enforcing their expectations or 'adjudicating' whether businesses and other organizations have met their expectations. Increasingly incorporated into domestic laws.
UN Sustainable Development Goals (SDGs) (2015).	SDG 5.21 – trafficking and exploitation of women and girls. SDG 8.72 - forced labour, child labour, modern slavery and human trafficking. SDG 16.23 - trafficking of children.
'MNE Declaration': The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, amended 2017).	A summary of how the principles contained in the ILO Conventions and Recommendations apply to the operations of companies. It is "non-binding", but universally applicable to all member states of the ILO and all enterprises.
The ILO Forced Labour (Supplementary Measures) Recommendation (2014).	Aimed at both multi-national and national companies. Encourages governments to develop national policies to ensure that companies address the risk of forced labour being used in their operations or in operations to which they are directly linked (for example, by their suppliers).

Sources: Kovick & Davis (2019); BHRRC (2017); Hofmann et al (2018)

The effectiveness of these international guidelines depends in part on their absorption into state legislation

One way of measuring the effectiveness of these international initiatives is the degree to which they are reflected in domestic national legislation and action plans. After a comprehensive review of domestic legislation around the world, Schwarz & Allain (2020, p.11) find that "112 States (58%) appear not to have put in place penal provisions for the punishment of forced labour," and "94 States (49%) appear not to have criminal legislation prohibiting slavery or the slave trade."

There has been a steady increase in national legislation imposing mandatory requirements onto companies to disclose information about labour issues in their supply chains, as detailed further in the next section. One study found 55 new pieces of such legislation since 2009 (Phillips et al., 2018).

The effectiveness of these guidelines can also be judged on their implementation through donor-funded country assistance projects

However, evidence of a direct impact from these projects on workers is not straight forward. In a review of 150 evaluations of donor projects to combat trafficking, Bryant and Landman (2020) found that most were inconclusive on the question of impact. ICAI (2020) finds that "definitional problems, the hidden nature of the modern slavery phenomenon and difficulties in measurement make it very difficult in practice to assess the impact of any intervention on the incidence of modern slavery."

4. Voluntary business practices

Global companies with long international supply chains have their own internal mechanisms to manage business risk. In recent years, companies have been responding to international guidelines, such as those detailed in Section 3 above, to add human rights concerns to their private supply chain governance mechanisms.

These have been voluntary activities, responding to NGO and societal pressure (Lund-Thomsen & Lindgreen, 2014). However, as Section 5 below shows, they have in recent years started to become more mandatory as national legislation is written and more tightly enforced. LeBaron & Rühmkorf (2019) describe the absorption of voluntary corporate social responsibility (CSR) programmes into national legislation as a "hybrid" form of global supply chain governance. Even if they are written into national legislation, it may just mean that such voluntary standards are endorsed without strengthening legally binding standards.

Some of the approaches that businesses take to supply chain transparency and accountability are listed in Table 2 below. These approaches are used across the economy in sectors ranging from manufacturing to extractive industries. The financial sector also has some relatively new voluntary initiatives and codes of conduct, such as the Liechtenstein Initiative for Finance Against Slavery and Trafficking (the 'FAST Initiative'). Some international guidelines specific to the finance sector are the UN Principles for Responsible Investment, the OECD's guidance for institutional investors and the UNEP Financial Initiative's Principles for Responsible Banking. Otherwise, businesses operating in the financial sector are subject to the same guidelines and legislation as other types of business, depending on the jurisdiction (Kovick & Davis, 2019, Cockayne, 2021).

Table 2: Selected business approaches to modern slavery in supply chains

Practice	Approach
Due diligence	A process that requires companies to not only report potential forced labour risks, but also demonstrate that they are taking measures to 'prevent, mitigate and account for how they address their actual and potential adverse impacts'. E.g., the six-step framework in the OECD Guidance on Due Diligence for Responsible Business Conduct recommends not only responsible business conduct and identification of impact, but also preventing adverse impacts, tracking implementation and results, communicating how impacts are addressed, and cooperating in mediation.
Audits **'compliance audits'** **'ethical audits'** **'social audits'**	The monitoring and verification of a company's conformance with adopted standards. May be in collaboration with non-governmental organisations (NGOs) or private audit firms commissioned by the company. Audit requirements are increasingly absorbed into national legislation.
Certification	Assessment of corporate processes and production conditions against specific standards. May be self-assessed or by a third party. E.g. the organisation Good Weave runs a certification scheme to ensure that child labour is not used in carpets made in India.
Chain of custody **'traceability measures'**	Assessment of corporate processes and production conditions at every company with financial ownership of the respective product to establish certified chain. A traceability system records and follows the trail as products, parts, materials, and services come from suppliers and are processed and ultimately distributed as final products and services.
Human rights impact assessments (HRIAs)	Provides an overview of actual or potential human rights aspects relevant to a company's business activities both at the operations and at the supply chain level. HRIAs are frequently used to determine whether certain human rights risks can be prioritised over others.
'Employer Pays' policies	Employers commit to bearing the full costs of recruitment and placement of migrant workers. This is based on the understanding that a major cause of forced labour in global supply chains is the charging of recruitment fees to migrant workers who then find themselves in debt bondage.
Codes of conduct	Written by the buyer and distributed to their suppliers. Commonly used to manage, monitor, and control suppliers through auditing against the code.

Sources: Hofmann et al (2018); LeBaron et al (2017); Villiers (2019); trackrecordglobal (undated); Skrivankova (2017); Smit et al (2020); IHRB, (2017).

Actual implementation of each approach is so varied as to make it impossible to evaluate their effectiveness as a category

For example, there is variation in how far down the supply chain companies attempt due diligence, partly due to the wide variety in types of supply chain (Smit et al, 2020). Companies may report that they have conducted a "human rights impact assessment (HRIA)", but for one company this means a comprehensive up- and down-stream assessment in each jurisdiction that it operates in. For another company, this means an internal workshop where employees were asked to identify their own salient human rights issues (Smit et al, 2020). Similarly, audits may be

undertaken internally, by NGO's or by a private audit firm following different methodologies (Smit et al, 2020).

There is a large literature highlighting weaknesses in business approaches to combatting modern slavery

The literature found during the course of this rapid review mostly measured the effectiveness of these approaches by interviewing company employees and through observation of the internal procedures that make up the business approaches detailed in Table 2 above.

Based on a survey (n=31), interviews (n=52) with buyers, suppliers, shippers, auditors, and government officials in China, and interviews (n=38) with auditors and their consumer goods company clients in large North American cities and in London, LeBaron et al (2017, p.967) conclude that "the audit regime is mediating but failing to resolve the tensions of unsustainable production practices within the global consumer goods supply chain." Listing some of the specific weaknesses in the audit process, the authors describe the most significant barrier to effectiveness to be the "disproportionate power and control that companies yield over the pathway, timing, and implementation of audits" (p.968). They add that, "although auditors are often portrayed as independent, in reality brands give them strict instructions about when, where, and how to audit" (p.968).

The Ethical Trade Initiative (Early, 2017, p.14) undertook a survey of 1500 overseas suppliers to UK, Denmark and Norway-based companies across multiple sectors. Amongst the many insights from the survey, they found that "while many companies require suppliers to respect their codes of conduct … and monitor suppliers' labour rights performance, their buying practices often sit at odds with these initiatives."

LeBaron (2019) critiques some elements of the audit process. For example, she explains that most private auditing mechanisms rarely, if ever, cover third-party labour intermediaries, and that the private audit firms have no powers of investigation – and cannot even require companies to open locked drawers.

Ullah et al (2021) collated a list of 273 human rights violations by 160 multi-national companies mostly from developed countries. The data is from Human Rights Watch and includes incidents of forced labour and child labour. They find that more than 90% of these 160 companies have CSR/sustainability committees, are signatories to the UN Global Compact and have reported compliance with the International Labour Organisation (ILO). They conclude that this raises questions about the effectiveness of these programmes.

It has been argued that modern slavery is a distinct problem that cannot be addressed in the same way as other human rights or environmental issues in the business supply chain. This is because it is illegal, often hidden, and involves a range of labour market intermediaries (Crane et al., 2019; Stevenson & Cole, 2018). Barrientos and Smith (2007) find that audits may have a positive impact on exploitative labour practices that are less egregious than forced labour or modern slavery.

The direct impact of these approaches on workers is described in individual examples of good practice

Know the Chain, a benchmarking NGO based in the US, gives Adidas the number one spot in its research on individual company performance on tackling modern slavery in its supply chain. It gives the company 100% in its 'Traceability and Supply Chain Transparency' category.

Some companies engage in remediation after a problem has been found in their supply chains. For example, Apple Inc has required suppliers to reimburse the type of recruitment fees that leave many migrants in debt bondage and modern slavery. Apple claims that US$28.4 million has been repaid to over 34,000 workers since the start of the programme in 2009 (IHRB, 2017, p.15).

Emberson (2019) highlights best practice in some company audits as publishing metrics against which progress can be measured. For example, the number of trainings, actions by third party auditors and critical breaches to policy.

5. Home state regulation on supply chain transparency

Just as some companies incorporate elements of the international guidelines on due diligence and auditing into their internal procedures, governments are increasingly introducing them into legislation at national level. National legislation on modern slavery ranges on a scale from stronger laws that mandate companies to develop a due diligence plan on human rights in their supply chain, to disclose this plan and to implement it. At the other end are weaker laws that merely provide statutory endorsement to existing voluntary company initiatives and reporting, with no penalty for non-compliance (LeBaron & Rühmkorf, 2019).

Table 3 below gives some examples of current legislation which requires companies to report their internal policies for dealing with forced labour.

Disclosure legislation requires some companies to report on their internal procedures with few penalties if they do not comply

Table 3: Selected examples of disclosure legislation specific to labour standards

Name and place of law, date of enactment, coverage	Form and content of disclosure requirements	Stringency of disclosure requirements
***Transparency in Supply Chains Act;* California (2012)** Firms which do business in California with worldwide annual revenues of over US$100 million.	Statement on website about the processes undertaken to tackle modern slavery in their supply chains, to include: verification, audit, certification, accountability and training.	No direct penalties for non-disclosure. Only the Attorney General can bring action for a violation of this law.
***Modern Slavery Act;* UK (2015)** Any commercial organisation that does business in the UK, with a turnover of more than GBP36 million.	Annual statement on the steps taken to ensure that modern slavery is not at any level of the supply chain. May include information on: organisational structure and supply chains, policies on slavery, due diligence processes, parts supply chains where there is risk of slavery, training, amongst others.	Does not need to guarantee a slavery free supply chain, but rather to disclose on actions taken to achieve this objective. The Secretary of State may take company to court for failure to make an annual statement and face an unlimited fine.
***State of São Paulo Legislature law number 14,946;* Brazil (2013)** All companies registered to operate in the State of São Paulo.	Information disclosed through mandatory public inspection.	Procedures in place to suspend a firm's licence to pursue the same type of economic activity, or from opening a new company, for a period of 10 years if slave labour is identified in any tier of the supply chain. Based on a system of public inspection.

Source: Adapted from Phillips et al (2018)

Phillips et al (2018, pp.5-13) provide a more detailed and comprehensive table of other disclosure laws around the world which relate to broader human rights and environmental concerns, which also include forced labour and modern slavery. These include laws in the EU (2014), India (2013), Argentina (2008), Indonesia (2010), Pakistan (2009), Finland (2011), Spain (2011), Denmark (2009), and Sweden (2007). Similar disclosure legislation has been more recently passed in Australia (2018).

These laws all have different provisions. For example, the Australian Modern Slavery Act differs from the U.K's by including government obligations to report (Smit et al, 2020) and obliging businesses to separately detail i) the risks and ii) the actions taken to address these risks to bring greater clarity to reporting. In some jurisdictions, companies in the financial sector are also required to make such disclosures. For example, research from the Walk Free Foundation identified 91 asset managers required to report under the U.K's Modern Slavery Act (Walk Free

et al, 2021). Other laws, such as California's Transparency in Supply Chains Act, only require disclosure from companies that are registered as manufacturers or retail sellers.

Disclosure laws may increase the number of company disclosures, but no evidence was found of their impact on workers

In an overview of 11 studies all looking at the effect of mandatory corporate reporting on modern slavery, Lerigo-Stephens et al (2021, p.38) find that "the studies generally agreed on the positive impact of anti-slavery legislation" in terms of increasing "the number and quality of company disclosures."

However, Lerigo-Stephens et al (2021, p.30) further find that "the focus on regulatory frameworks and corporate compliance in [these] studies…does not provide strong evidence for the impacts of corporate reporting on individuals vulnerable to, or experiencing exploitation. Studies typically focused on changes in corporate behaviour as the mechanism for tackling modern slavery, rather than seeking to evaluate impacts for workers on the ground."

Compliance with the disclosure laws is still low in the US and UK

In 2017, the UK's National Audit Office found that "of the FTSE100 companies…20% of these companies either had not produced a statement or had a statement that did not comply with the Home Office's guidance. The Chartered Institute of Procurement and Supply found that one in three businesses covered by the Modern Slavery Act have not produced a statement." (NAO, 2017, p.26)

In the US, a 2015 Report found that the "average disclosure compliance score" under the California Act was 60%, and the average "affirmative conduct score" relating to "the extent of corporate-driven action" was 31% (Smit et al, 2020).

Highlighting weaknesses in the design of disclosure laws is also used as a measure of their effectiveness

One report notes that "both the UK and the California Act allows companies to state that they have taken no steps to address modern slavery in their supply chains." (Smit et al, 2020, p.172).

One article highlights that these laws "do not prevent the sale of goods produced with labour in violation of internationally recognised labour standards, including the presence of slavery, servitude, or forced labour" (Dias-Abey, 2019).

In the UK, one report observes that:

- the Home Office does not produce an annual list of businesses expected to comply with the legislation (NAO, 2017, p.26).
- the Home Office has the power to apply for an injunction if companies do not produce a statement or comply with its guidance, but so far it has not enforced a penalty regime for these companies (NAO, 2017, p.26)

The new ‘mandatory due diligence’ approach puts more legal responsibility and liabilities on the parent company

Mandatory due diligence legislation is a step further than disclosure laws, requiring companies to take measures to identify risks within their supply chain and specifying that those measures must be *adequate* and *effectively implemented (*Cossart *&* Chatelain, 2019). Crucially, they “establish a duty of care – a legal obligation to adhere to a standard of reasonable care, while performing any acts that could foreseeably harm human rights or the environment. Those harmed may bring civil (tort) action and claim remedy.” (Cossart et al, 2017).

France’s 2017 *Corporate Duty of Vigilance Law* was the first such national law requiring general mandatory due diligence requirements of this scope (Smit et al, 2020). The Netherlands, Germany and Switzerland have also recently introduced similar legislation, and the European Commission has announced it will introduce a legislative initiative for mandatory human rights due diligence for certain companies in 2021 (Smit et al, 2020).

There is some evidence that a similar U.S. law has had some impact on modern slavery practices

In the U.S., the Dodd-Frank Act (2010) has some similar mandatory due diligence elements with these new laws, although there are important differences including its limitation to mineral extraction in conflict zones (Smit et al, 2020, p.349).

Smit et al (2020, p.350) report that *The Enough Project* conducted field research in 2015 and 2016 in Eastern Congo with miners, traders, human rights activists, civil society leaders, and foreign industry experts, to assess impacts of the legislation. One finding was that 86% of the 193 mines assessed for conflict and child labour successfully passed.

However, compliance for the Dodd-Frank Act (2010) has been found to be low. In an analysis of 100 conflict minerals reports filed by US companies in response to the 2010 Dodd Frank Act, a report by Amnesty International and Global Witnesses (2015) found that “79 of these companies failed to meet the minimum requirements established by the law, that only 16% of them were going beyond their direct suppliers to attempt to contact those down the production chain, and that more than half of the companies sampled did not report to senior management when they identified a risk in their supply chain.”

Otherwise, the new laws on mandatory due diligence have not been in force long enough to assess their effectiveness. A 2019 Business and Human Rights report noted the lack of implementation of the French law so far (BHRRC, 2019).

A recent gold standard study to assess the legislative options recommends a mandatory due diligence approach

Based on a wealth of surveys, expert interviews, case studies, and legal research, a group of academic specialists produced a detailed and comprehensive study of almost 600 pages to weigh the legislative options to combat modern slavery in supply chains (Smit et al (2020). Commissioned by the EC, this study concludes that mandatory due diligence legislation is the best option, and has informed the EC’s position on the issue (Nicolson et al, 2020).

6. Trade-related measures

A different approach is giving Customs the authority to seize imported goods whose production may have used forced labour

The US Trade Facilitation Act (2015) allows US Customs to seize imported goods if an importer is unable to provide a certificate proving what measures were taken to ensure that the goods were not produced using forced labour (Smit et al, 2020). The law closes a loophole in section 307 of the 1930 Tariff Act which prohibited goods from entering the US made with the use of forced labor, but was rarely implemented. The implementation of this act is through 'Section 307' 'Withhold Release Orders' (WRO).

In the US, Customs have used this authority inconsistently, but it has had impacts on some accused companies

Casey et al (2021) report that between 1930 and the mid-1980s, merchandise was denied entry into the United States at least 10 times under Section 307. Between 1991 and 1995, 21 WRO's were issued all against manufacturers in China. Between 2000 and 2016, no WROs were issued. Since 2016, China has become the focus of Section 307 actions, and in January 2021 a WRO was issued against all cotton products and tomato products produced in Xinjiang related to the use of detainee or prison labour and situations of forced labour. The U.S. Customs and Border Protection Agency cites 48 active WROs as of March 2021 (CBP, 2021).

A recent discussion paper commissioned by the Greens/European Free Alliance (EFA) Group in the European Parliament (Vanpeperstraete, 2021, p.4) states that "the issuance of WRO's might not be sufficiently evidence-based, uniform and apolitical", and that there is "no requirement to remediate harm and improve working conditions of the people involved in these cases", potentially leading companies to shut down and leave workers in a worse situation.

The Walk Free Foundation (2017) notes that US$75 million was wiped off the market value of Malaysian company Pure Circle who was attempting to import "Stevia" (a form of sweetener) which was allegedly produced by forced labour in China.

Vanpeperstraete (2021) cites the 'Top Glove' case where a WRO against this Malaysian company is expected to lead the company to improve workers accommodations and repay as much as US$34 million to 10,000 workers who were forced to pay recruitment fees to obtain their jobs.

There is increasing international interest in using trade mechanisms to combat modern slavery

Vanpeperstraete (2021) lists several different ways that the EU could introduce import bans for goods produced with the use of forced labour. The options listed are: (1) EU foreign policy, i.e. the new EU Human Rights Sanctions mechanism (2) amending our Free Trade Agreements and other trade mechanisms (3) a new Internal Market instrument, and (4) a new instrument with a trade legal basis. The author summarises some of the advantages and disadvantages of each instrument based on his experience in the field (p.12).

Casey et al (2021, p.2) state that “for the first time in a U.S. free trade agreement, the U.S.-Mexico-Canada Agreement (USMCA) [2020] also commits parties to prohibit imports of goods produced by forced labor through “measures it considers appropriate,” and to establish cooperation for identifying such goods.” Implementing legislation associated with this trade agreement created a ‘Forced Labor Enforcement Task Force’ to monitor reporting requirements.

The use of trade power shows some evidence of partial effects

Both the EU and the US have used their international market and trade importance to push other countries to make policy changes on forced labour within their jurisdictions.

One example is forced labour in the fishing industry in Thailand. In 2019 the US withdrew Thailand’s access to its tariff reduction programme (Generalized System of Preferences - GSP), and the EU threatened to ban imports from the country in 2015 because of the issue. After six years of international pressure through trade instruments, the Thai government has introduced some measures, including adopting amendments to its Fisheries Law, mandatory installation of vessel monitoring systems, establishment of port-in-port-out centers and increased fines for violations. Thailand also became the first country in Asia to ratify the Work in Fishing Convention in 2019 (Cretti, 2020). However, NGO research shows that forced labour practices are still endemic in the industry (HRW, 2018).

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