

Access to remedy and forced labour ‘import bans’: Recommendations for U.S. Customs and Border Protection

Introduction

The Remedy Project¹ has recently published a report on the effect of enforcement actions in respect of goods made with, or using, forced labour under s.307 of the Tariff Act 1930 (commonly referred to as ‘import bans’). Specifically, the report considers the effectiveness of enforcement actions under s.307 of the Tariff Act as a tool to secure access to remedies for workers in conditions of forced labour and other affected rights holders.

The report considers nine case studies of companies or industries that have been subject to actual or threatened import bans under the United States Tariff Act of 1930 – covering eight industries, and seven jurisdictions. These case studies have been developed through a combination of primary field research with over 50 workers around the world in companies and industries affected by import bans, as well as interviews with civil society groups, field investigations, and desk-based research.

The report seeks to identify what remediation measures companies² have undertaken in response to s.307 enforcement actions, and the extent to which those responses resulted in the provision of remedies to workers and other affected rights holders. The report also seeks to identify the factors which contribute to, or undermine, the effectiveness of import bans as a tool to secure the provision of remedies to workers and other affected rights holders.

This briefing draws on the report’s key findings to offer recommendations for U.S. Customs and Border Protection (**CBP**) as to how it can improve its investigation, enforcement, and modification/revocation processes under s.307 of the Tariff Act. These recommendations are offered with a view to enhancing the effectiveness of the Tariff Act as a tool to support the provision of remedies to workers and other rights holders in conditions of forced labour.

1 The Remedy Project is a social enterprise that works to improve access to remedies for workers in international value chains. For more information about our organisation and our work, please visit www.remedyproject.co

2 The report focuses on forced labour in the private economy rather than state-imposed forced labour.

1. Publish more detailed guidelines on the remediation of forced labour indicators – with a greater focus on the provision of remedies to workers and affected rights holders

The report finds that enforcement actions under s.307 of the Tariff Act have, in many cases, led to the provision of significant remedies to workers and affected rights holders.

Among other things, the report finds that in response to actual or threatened enforcement actions under the Tariff Act, companies in the rubber glove and palm oil industries in Malaysia have committed to repay over USD 115.4 million in recruitment fees to nearly 82,000 migrant workers,³ new corporate sustainability initiatives such as the Responsible Glove Alliance have been launched, worker grievance mechanisms have been strengthened, and recruitment, corporate governance, and sustainability policies have been reformed.

CBP enforcement actions have led to the criminal prosecution of perpetrators of forced labour, and driven legal and policy reform. In Taiwan, import bans helped spur the adoption of an official Action Plan for Fisheries and Human Rights – which includes a USD 100 increase in the monthly minimum wage for distant water fishing workers.⁴ In Thailand, in response to a threatened import ban, the Royal Thai Government has committed to end the manufacture of fishing nets using prison labour.⁵ In Malaysia, the Government has introduced several reforms to labour laws and policies following a series of import bans against glove makers and palm oil companies – including improved protections for migrant workers, and the creation of a new forced labour criminal offence.⁶

More broadly, the report finds that CBP enforcement actions are driving enormous changes in the way that companies approach forced labour in their supply chains, and have helped elevate forced labour into a boardroom-level issue.

Despite these significant achievements, the report also finds that (beyond the reimbursement of recruitment fees) few other forms of remedies have been provided directly to workers in response to import bans. Moreover, interviews with workers show that companies' promises of remediation do not always translate into meaningful improvements in workers' living and working conditions. The report also identified at least one instance in which a WRO appears to have been modified despite a lack of clear evidence (from public sources and worker interviews) that any remedies were provided to workers and affected rights holders at all.

Recommendation: CBP could strengthen the linkages between the remediation (i.e., the removal) of indicators of forced labour, and the provision of remedies to workers and other affected rights holders.

3 See paragraph 2.12 in the report.

4 Council of Agriculture (May 2022) [Action Plan for Fisheries and Human Rights](#)

5 Department of Corrections (1 March 2021) [Corrections reforms prisoners' labour according to human rights standards](#)

6 Employment (Amendment) Act 2023. While it is not possible to directly attribute all of these reforms to the impact of import bans – import bans may have catalysed the more rapid adoption of these reforms.

1. Publish more detailed guidelines on the remediation of forced labour indicators – with a greater focus on the provision of remedies to workers and affected rights holders

Specifically, CPB could support more effective remediation efforts by publishing more detailed guidance on the remediation of forced labour as part of the WRO/Finding modification or revocation process. Ideally, this guidance should:

- Specify the evidential standard applied by CBP when assessing whether indicators of forced labour have been remediated (i.e., removed). In particular, CBP should specify if it requires companies to demonstrate that they have established mechanisms to identify and minimise the risk of forced labour in their operations, or if they must demonstrate that there is no longer any forced labour.⁷
- Require companies to demonstrate, as a precondition to the modification or withdrawal of a WRO or finding, that they have:
 - provided (not just promised) adequate remedies to workers and other affected rights holders;
 - meaningfully engaged with workers and other affected rights holders, workers' credible representatives, trade unions and/or other relevant civil society groups in the design, development, and implementation of the company's remediation efforts; and
 - been open and transparent in relation to the remediation process (e.g., through meaningful stakeholder engagement, and the publication of audit reports and corrective action plans).
- Clarify how CBP will assess the remediation of forced labour indicators in industries or geographies where there are widespread and systemic risks of forced labour that may be beyond the control of one individual company. If CBP will apply a different standard in these contexts, CBP should specify what standard it will apply, and under what circumstances.



⁷ Compare, e.g., the language used in CBP's press release on CBP 3 June 2020 ([CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi](#)) where CBP refers to a company's "efforts to minimize the risks of forced labor from its supply chain", and its statement on 3 February 2023 CBP ([CBP Modifies Finding on Sime Darby Berhad in Malaysia](#)), where it refers to evidence that the company concerned "no longer produces...products using forced labour" (emphasis added).

2. Improve proactive engagement and consultation with stakeholders, including workers, workers' credible representatives, trade unions, and civil society

The report identifies that effective communication between CBP and a wider range of stakeholders – including workers, workers' credible representatives, trade unions, and civil society – can strengthen the effectiveness of import bans as a tool to provide remedies for workers and affected rights holders.

However, the report identifies that CBP could do more to proactively engage with workers, workers' credible representatives, trade unions, or other civil society organisations during the WRO modification and revocation process.⁸

Such proactive engagement is critical as workers, workers' credible representatives, trade unions, and other civil society stakeholders are often better placed to identify potential indicators of forced labour than companies and their advisors. Engaging with these stakeholders is therefore likely to result in CBP having access to a more balanced and representative range of information – compared to relying primarily on submissions from companies.

We commend CBP for being open to receiving information from third parties at any time regarding actual or potential forced labour. But in many cases, stakeholders – including workers, workers' credible representatives, trade unions, and civil society organisations – will be unaware that a company is under investigation under s.307 of the Tariff Act. Hence, they might not proactively share information about that company with CBP. Moreover, these groups might not know how to share information with CBP, or may not be able to for practical reasons (e.g., due to safety and security concerns, or fear of reprisals). Proactive outreach and engagement by CBP with these groups can help overcome these barriers that may otherwise prevent them from sharing information with CBP.

Recommendation: CBP should proactively seek information from a broad range of stakeholders – especially workers and workers' credible representatives, trade unions, or civil society – and not just companies.

Such engagement should occur throughout the enforcement process but especially when CBP is assessing whether to take enforcement action, and when considering a petition for modification or revocation.



⁸ That is not to say that such engagement does not occur, but rather, that this engagement is typically initiated by those external stakeholders, and CBP does not proactively reach out to engage with these stakeholders.

3. Reduce the reliance on company-commissioned social audits during CBP's decision-making processes

Social audits can play a role in supporting companies to identify, prevent, mitigate, and remedy forced labour risks in their value chains. However extensive research has shown that company-commissioned social audits have limited usefulness in effectively identifying forced labour, and can, in fact, increase human rights risks.⁹ There have been multiple instances of companies having received clean bills of health from social audits, only for these companies to be subject to import bans under the Tariff Act shortly afterwards due to the presence of forced labour in their value chain.¹⁰

Despite this, the report finds that social audits remain the primary form of evidence used by companies when petitioning CBP for the modification or revocation of WROs or Findings. Given the inherent limitations of social audits, CBP should discourage reliance on social audits as the primary form of evidence used by companies. Social audits should form just one of many data points considered alongside other information that should be given equal – if not greater – weighting. This should include direct worker testimony and submissions from workers' credible representatives, trade unions, and other civil society organisations.

Recommendation: CBP should require companies to provide diverse sources of evidence of the remediation of forced labour indicators beyond company-commissioned commercial social audit reports. This may include, for example, direct evidence and testimony from workers or their credible representatives, or reports from civil society organisations or trade unions.

Where a company does rely on social audit evidence, CBP should offer guidance as to how CBP will assess the credibility and independence of that audit. This may include guidance on the selection of an independent and impartial auditor, requirements in relation to the transparency and disclosure of the audit methodology and findings, and the need for the auditor to provide evidence of meaningful engagement with workers and other affected rights holders and their credible representatives, and other civil society stakeholders as part of the audit process.



9 See, e.g., Human Rights Watch (November 2022) *Obsessed with Audit Tools, Missing the Goal*; European Center for Constitutional and Human Rights, Brot für die Welt, MISEREOR (2021) *Human rights fitness of the auditing and certification industry?*; Transparentem (2021) *Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform*; Clean Clothes Campaign (2019) *Fig Leaf for Fashion. How social auditing protects brands and fails workers*; SOMO (2022) *A piece, not a proxy: The European Commission's dangerous overreliance on industry schemes, multi-stakeholder initiatives, and third-party auditing in the Corporate Sustainability Due Diligence Directive*

10 See, e.g., The Edge Markets (2 November 2020) *Top Glove downgraded from A to D in social compliance audit — report*; Reuters (19 May 2021) *'Slavery' found at a Malaysian glove factory. Why didn't the auditor see it?*; Human Rights Watch (November 2022) *Obsessed with Audit Tools, Missing the Goal*

4. Consider more flexible enforcement options where necessary to prevent or mitigate potential adverse impacts for workers and other affected rights holders

Enforcement actions under the Tariff Act are powerful tools that can, in the best cases, lead to the effective provision of remedies for workers and affected rights holders, as well as legal, operational, and policy level reforms to address and prevent future forced labour risks. However, they also carry the potential to have adverse economic consequences for workers and other rights holders in affected companies and industries.

While these risks are real, they should not be overstated. In general, the report did not identify any significant instances of job losses or other economic consequences arising for workers among the case studies considered. The report identified two instances in which WROs imposed under s.307 of the Tariff Act had the potential to cause adverse impacts for workers in the affected companies – but CBP was able to swiftly modify both WROs, following interventions by civil society groups and trade unions, and prevent serious harm from materialising.

Nonetheless, to reduce the potential for adverse impacts for workers, CBP should consider employing a more flexible range of enforcement options under s.307 of the Tariff Act. For example, in 2020 International Rights Advocates and the Corporate Accountability Lab submitted a Petition to CBP calling for an import ban of cocoa products from Cote D'Ivoire. In the Petition, the petitioners called on CBP to compel US cocoa importers to submit satisfactory evidence that shipments of cocoa imported by them were not made with or using forced child labour within 180 days.¹¹

According to Anti-Slavery International, such an approach "*compels urgent remedy and corrective actions, while alleviating the risk of potential negative consequences of immediately issued import controls on workers. It would also contribute to creating a level playing field – for example, imposing controls on specific entities and companies that fail to provide remedy and introduce corrective action within the grace period, while allowing imports from entities and companies that introduce credible corrective measures and ensure the provision of remedy. This would therefore secure the sustainability of jobs and livelihoods for affected workers.*"

This is not to say that CBP's current approach to enforcement is not appropriate, and in many instances a 'without notice' imposition of an import ban may be warranted. However, having greater flexibility in the range options available to CBP can help to alleviate concerns over the potential adverse impacts of import bans on workers and rights holders, without blunting the effectiveness of the tool.

Crucially, CBP should only adopt more flexible enforcement options when necessary to protect workers and other rights holders. In making this decision, CBP should have regard to any submissions received from workers, workers' credible representatives, or trade unions.

Recommendation: When necessary to protect workers and other rights holders from potential adverse consequences, CBP should consider a more flexible approach to the enforcement of s.307 of the Tariff Act.

11 Corporate Accountability Lab (14 February 2020) [CAL and IR Advocates Challenge Importation of Cocoa Produced with Forced Child Labour](#)