



THE  
REMEDY  
PROJECT

THE FREEDOM FUND

**Putting things right:**

**Remediation  
of forced labour  
under the Tariff  
Act 1930**

**Summary of Key Findings and Recommendations**

28 APRIL 2023

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# Disclaimer

This report does not seek to identify, nor does it allege, the existence of forced labour or other legal or human rights violations by any company or individual. Nor does it seek to verify, corroborate, or support the conclusions reached by US Customs and Border Protection in any case. Nothing in this report is legal advice.

The views expressed in this report are those of the authors and do not necessarily reflect those of the Freedom Fund, and/or any other contributor to this report.



# 1. Introduction

- 1.1 The Remedy Project, with the support of the Freedom Fund, has conducted a global study to understand the relationship between ‘import bans’ under the US Tariff Act of 1930 on goods made using forced labour, and the provision of remedies to workers and other rights holders in conditions of forced labour. This briefing summarises the key findings and recommendations from that study. The full study report (the **Report**) can be accessed [here](#).
- 1.2 The US Tariff Act of 1930<sup>1</sup> (the **Tariff Act**) empowers US Customs and Border Protection (**CBP**) to impose an ‘import ban’<sup>2</sup> on goods made wholly or in part by forced labour<sup>3</sup>. Import bans under the Tariff Act are among the strongest legal tools currently available to hold companies accountable for forced labour in their supply chains. They have the potential to impose direct economic costs on those who exploit forced labour, and to disrupt value chains that profit from exploitation. An import ban can place significant commercial pressure on companies to address forced labour in their supply chains or risk losing access to the valuable US export market.
- 1.3 Import bans can also have a powerful deterrent effect. Given the significant commercial ramifications of an import ban, forced labour and human rights risks have been elevated to a boardroom level issue in many industries. The threat or risk of an import ban can drive companies and industries to proactively seek to identify indicators in their supply chains, and implement systemic-level responses to address them.
- 1.4 Forced labour import bans have thus driven significant changes in corporate and government behaviour in recent years. What is less clear, though, is the connection between import bans and the provision of remedies to people in conditions of forced labour. Import bans are often viewed as a punitive measure, rather than a tool to support the provision of remedies to workers and other rights holders in conditions of forced labour. Indeed, the Tariff Act itself does not mention the term ‘remedy’ or ‘remediation’, but this does not mean that import bans under the Tariff Act cannot, or do not, lead to the provision of remedies.
- 1.5 Looking through the lens of nine different case studies, the Report seeks to better understand the extent to which import bans under the Tariff Act 1930 have led to the provision of remedies to workers and other rights holders in conditions of forced labour. The Report examines the forms of remedies provided, their impact on workers and rights holders, and identifies factors that support or undermine the effectiveness of import bans as tools to secure remedies for workers and other rights holders in conditions of forced labour.

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1 19 USC Ch.4

2 This report uses the commonly used term ‘import ban’ to describe the enforcement mechanism under s.307 of the Tariff Act 1930. An ‘import ban’ is a form of quantitative restriction which prohibits goods of a specific origin or type from entering a market. See: European Parliament (2022) [Trade-related policy options of a ban on forced labour products](#), page 10, and World Trade Organization, [Quantitative Restrictions](#)

3 Under the Tariff Act, forced labour is defined “as work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily”, and includes forced or indentured child labour. See: 19 CFR § 12.42(f)

# 1. Introduction

## Explainer: The Tariff Act 'Import Ban' Mechanism

s.307 of the Tariff Act states that: "*All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited...*"<sup>4</sup>

CBP is the US Federal Agency designated to enforce this provision.<sup>5</sup> CBP can exercise its power acting on its own initiative, or in response to information contained in a petition submitted by a third party (a **Petition**).<sup>6</sup>

There is a two-stage enforcement mechanism under the Tariff Act. At the first stage, CBP will decide to launch an investigation either on its own initiative or in response to a Petition. Following that investigation, if CBP finds information which *reasonably indicates* that goods falling within s.307 of the Tariff Act are being, or are likely being, imported to the US, CBP will issue a 'withhold release order' in respect of those goods (**WRO**). A WRO, as its name suggests, prevents goods covered by the order that are in US ports from being *released* into the US.<sup>7</sup> In other words, a WRO prevents goods from entering the US market through US port facilities. Importers of the goods can, however, still re-export those goods out of US ports to other destinations.<sup>8</sup>

At the second stage, if CBP later determines that the goods in question **are** subject to s.307, CBP will – with the approval of the Secretary of the Treasury – publish a finding to that effect (a **Finding**).<sup>9</sup> Goods covered by the Finding will be denied entry into any US ports, their importation to the US will be prohibited, and any such goods in US ports may be seized and forfeited.<sup>10</sup> In most cases, CBP does not issue a Finding. As of February 2023, there are 53 active WROs but only nine Findings.<sup>11</sup>

CBP also has the power to impose civil penalties (e.g., fines) on importers who enter or introduce (or attempt to do so) goods into the US market contrary to law – which would include in contravention of a WRO or Finding. As of December 2022, CBP has only issued one such fine against an importer for importing goods covered by a WRO or Finding.<sup>12</sup>

4 19 USC 4 §1307

5 19 CFR § 12.42

6 19 CFR § 12.42(a) and (b)

7 19 CFR § 12.42(e)

8 19 CFR § 12.42(e)

9 19 CFR § 12.42(f)

10 19 CFR § 12.42(f); 19 CFR § 12.42(f)

11 CBP, [Withhold Release Orders and Findings List](#)

12 CBP (13 August 2022) [CBP Collects \\$575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor](#)

# 1. Introduction

## 'Access to remedy' vs 'Remediation'

### What is 'remedy' or 'access to remedy'?

Under the UN Guiding Principles on Business and Human Rights (**UNGPs**) 'remedy' refers to the provision of substantive remedies to people whose human rights have been violated to help make good that harm. It refers to both: "(a) processes of providing remedy for an adverse human rights impact, and (b) the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of different forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition".<sup>13</sup>

### 'Remediation' under the Tariff Act 1930

'Remediation' is also a term used by CBP in the context of making decisions about whether to 'lift' an import ban under s.307 of the Tariff Act.<sup>14</sup> Used in this context, it has a different meaning to the UNGP definition above.

Modification and revocation are two ways in which CBP can 'lift' a WRO or Finding. 'Modification' is the partial or total *suspension* of enforcement of a WRO or Finding,<sup>15</sup> while 'Revocation' is the *total removal* of a WRO or Finding.<sup>16</sup>

In its guidance documents, CBP states that it "*will not modify or revoke [a WRO] unless all forced labour indicators are remediated.*"<sup>17</sup> However, these guidance documents do not specifically define 'Remediation'. The term 'Remediation' is also not used in the Tariff Act or its accompanying Federal Regulations. In practice, CBP uses the term 'Remediation' to describe the process of *removing indicators* of forced labour (specifically, the 11 ILO Indicators of Forced Labour), rather than the *provision of remedies* to affected rights holders. Although the two concepts are similar, they are not identical.

To distinguish between these two concepts, the term 'remedy' is used to denote the UNGP definition above, while the term '**Remediation**' refers to CBP's concept of remediation (i.e., the removal of ILO indicators of forced labour).

13 United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7

14 See: CBP (March 2021) *Factsheet: WRO Modification/Revocation Process Overview*; CBP (October 2021) *How are WRO and/or finding modifications and revocations processed?*

15 CBP (March 2021) *Factsheet: WRO Modification/Revocation Process Overview*; CBP (October 2021) *How are WRO and/or finding modifications and revocations processed?*; ILO (1 October 2012) *ILO Indicators of Forced Labour*

16 CBP (March 2021) *Factsheet: WRO Modification/Revocation Process Overview*; CBP (October 2021) *How are WRO and/or finding modifications and revocations processed?*

17 CBP (March 2021) *Factsheet: WRO Modification/Revocation Process Overview*

## 2. Methodology

2.1 The Report examines the relationship between import bans under the Tariff Act, and the provision of remedies to workers and other affected rights holders. It considers:

- (a) How has the concept of 'remediation' been understood and applied under the Tariff Act?
- (b) Where a company is subject to an import ban, what measures have the company and other actors taken in response to the ban to address forced labour issues?
- (c) To what extent have those measures led to the provision of remedies for workers in conditions of forced labour and other affected rights holders? What remedies were provided, and what was their effect?
- (d) What factors support or undermine the effectiveness of import bans as a tool to provide remedies to workers in conditions of forced labour and other affected rights holders?

2.2 The Report considers these issues through the lens of nine case studies of instances where a company has sought to lift a forced labour import ban imposed under the Tariff Act. These case studies have been developed through interviews with 53 workers in companies and industries directly affected by import bans, as well as trade unions, civil society groups, and independent experts from around the world, supplemented by field investigations and desk-based research.

### Summary of Case Studies

Jurisdiction	Industry	Subject entity(ies) or industry(ies)
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda (" <b>Bonechar</b> ")
India	Garments	Natchi Apparels (P) Ltd.
Malaysia	Palm oil	FGV Holdings Bhd
Malaysia	Palm oil	Sime Darby Plantation Bhd
Malaysia	Disposable gloves	Top Glove Corporation Bhd
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi
Nepal	Carpets, hand-knotted wool products	Kumar Carpet Pvt., Singhe Carpet Pvt., Ltd., Norsang Carpet Industries Pvt., Ltd., Annapurna Carpet, Everest Carpet, Valley Carpet, and K.K. Carpet Industries Kathmandu
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd Dechapanich Fishing Net Factory Ltd.

### 3. Summary of Key Findings

#### A. How has the concept of 'Remediation' been understood and applied under the Tariff Act mechanism?

In the context of the Tariff Act, 'Remediation' refers to the removal of indicators of forced labour, rather than the provision of substantive remedies to people in conditions of forced labour

- 3.1 CBP uses the term 'Remediation' when it makes decisions about whether to lift or alter a WRO or Finding.<sup>18</sup> A WRO or Finding can be 'lifted' in one of two ways:
- (a) 'Modification' is the partial or total suspension of enforcement of a WRO or Finding. For example, a WRO may be modified to exclude certain companies or products from its scope.<sup>19</sup>
  - (b) 'Revocation' is the total removal of a WRO or Finding, based on determination by CBP that the actor or entity subject to the WRO or Finding was not engaged in forced labour.<sup>20</sup>
- 3.2 In its guidance documents, CBP states that it "*will not modify or revoke [a WRO] unless all forced labour indicators are remediated.*"<sup>21</sup> However, these guidance documents do not specifically define 'Remediation'. The term 'Remediation' is also not used in the Tariff Act or its accompanying Federal Regulations.
- 3.3 In practice, CBP uses the term 'Remediation' to describe the process of *removing indicators of forced labour* (specifically, the 11 ILO Indicators of Forced Labour), rather than the *provision of remedies* to affected rights holders. Although the two concepts are similar, they are not identical.
- 3.4 For example, in many case studies examined in the Report, debt bondage (e.g., arising from the payment of recruitment fees by migrant workers) was a key indicator of forced labour identified by CBP. In response, some companies reimbursed migrant workers' recruitment fees to 'Remediate' (i.e., remove) this indicator of forced labour. The reimbursement of recruitment fees can help 'Remediate' (i.e., remove) indicators for forced labour by removing workers from potential situations of debt bondage. However, the *reimbursement* of recruitment fees – while a very significant step – is not the same as offering *compensation* to workers who had been subjected to forced labour through debt bondage.<sup>22</sup>

18 See: CBP (March 2021) [Factsheet: WRO Modification/Revocation Process Overview](#); CBP (October 2021) [How are WRO and/or finding modifications and revocations processed?](#)

19 Ibid.

20 Ibid.

21 CBP (March 2021) [Factsheet: WRO Modification/Revocation Process Overview](#)

22 In some cases, migrant workers interviewed for the Report reported that the recruitment fee reimbursement payment they received was slightly more than the actual recruitment fee that they paid. This surplus may be considered to have some compensatory value for workers, but it is not the same as a payment that is specifically intended to compensate workers for having been subjected to conditions of forced labour.

### 3. Summary of Key Findings

3.5 Further, the Remediation of indicators of forced labour does not always lead to the provision of remedies to individuals. For example, in 2020, CBP modified a WRO imposed in respect of two tobacco companies in Malawi based on an evaluation of each company's "*social compliance programs and efforts to minimise the risks of forced labor from its supply chain*."<sup>23</sup> However, according to tobacco workers interviewed for the Report, no remedies were provided to workers in response to the import ban.

#### **It is not always clear what evidentiary standard CBP applies to decide that indicators of forced labour have been sufficiently Remediated**

3.6 CBP appears to have adopted different standards in different cases to decide whether a company has sufficiently Remediated (i.e., removed) indicators of forced labour.

3.7 In a press release on 3 February 2023, CBP stated that it "*does not modify Withhold Release Orders or Findings until the agency has evidence demonstrating that the subject merchandise is no longer produced, manufactured, or mined using forced labor*."<sup>24</sup> However, it does not always appear to apply this standard.

3.8 Most notably, in November 2019, CBP imposed an import ban on tobacco from Malawi "*due to concerns that the tobacco is being produced using forced labor and child labor*."<sup>25</sup> In June and August 2020, CBP modified the import ban in respect of two of Malawi's largest tobacco leaf buying companies, based on their "*efforts to identify and minimize the risks of forced labor*" – which CBP said "*sufficiently support[ed]*" both companies' claims that tobacco from their farms was not produced using forced labour.<sup>26</sup>

3.9 CBP's decisions to modify the import ban in respect of tobacco from Malawi therefore appears to adopt a different standard to that used in other cases. In the case of Malawi, CBP appears to have adopted a risk-based approach – requiring only that the companies demonstrate "*efforts to identify and minimize the risks of forced labor*" (emphasis added).<sup>27</sup> This appears to be different from the standard adopted by CBP in other cases, where it has required companies to demonstrate "*that the subject merchandise is no longer produced, manufactured, or mined, using forced labor*" (emphasis added).<sup>28</sup>

23 CBP (3 June 2020) [CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi](#)

24 CBP (3 February 2023) [CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia](#)

25 CBP (1 August 2020) [CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi](#)

26 CBP (3 June 2020) [CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi](#)

27 CBP (3 February 2023) [CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia](#)

28 CBP (3 February 2023) [CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia](#)



### 3. Summary of Key Findings

#### **B. Where a company is subject to an import ban, what measures have the company and other actors taken in response to the ban to address forced labour issues?**

Import bans have, in some cases, led to substantial legal, policy, and operational level reforms to address forced labour in supply chains

- 3.10 Import bans under the Tariff Act have had a wide-reaching impact, and they have often been a catalyst to prompt rapid changes in industries that have been resistant to reform.
- 3.11 In response to actual or threatened import bans, 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,<sup>29</sup> 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.



29 The method of calculating this figure is explained in more detail in the Report.

### 3. Summary of Key Findings

#### Reported commitments of palm oil and glove manufacturing companies in Malaysia to repay recruitment fees paid by migrant workers

Company	Reimbursements Made / Committed (Approximate)	Approximate number of eligible workers
Sime Darby <sup>30</sup>	MYR 82 million (USD 18.2 million)	34,000
Top Glove <sup>31</sup>	MYR 150 million (USD 33.3 million)	13,000
Kossan Group <sup>32</sup>	MYR 54 million (USD 11.2 million)	5,500
Hartalega <sup>33</sup>	MYR 41 million (USD 9.1 million)	Undisclosed
Supermax <sup>34</sup>	MYR 23 million (USD 5.1 million)	1,750
Brightway <sup>35</sup>	MYR 38 million (USD 8.4 million)	2,719
WRP <sup>36</sup>	MYR 21.4 million (USD 4.7 million)	1,600
FGV <sup>37</sup>	MYR 111.64 million (USD 24.9 million)	23,333 + former workers
<b>Total</b>	<b>MYR 521 million (USD 115.4 million)</b>	<b>81,902</b>

3.12 CBP enforcement actions have also given rise to legal actions. In response to import bans follow-on civil lawsuits have been brought in the US and UK against companies alleged to have profited from, or sourced products from companies subject to import bans.<sup>38</sup> In Taiwan, an import ban has prompted the prosecution of alleged perpetrators of trafficking and forced labour aboard the fishing vessel *Da Wang*, and the owners of the vessel had their license revoked.<sup>39</sup>

30 Sime Darby Plantation Bhd (15 February 2022) [Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations](#); Sime Darby Plantation Bhd (21 April 2022) [Annual Integrated Report 2021](#), page 148; Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 41

31 Top Glove [Continuous Improvement Report](#)

32 Kossan Group (10 June 2021) [Kossan Group Remediation Program](#); The Diplomat (14 September 2021) [Debt Bondage Payouts Flow to Workers in Malaysia's Glove Industry](#)

33 Hartalega Holdings Bhd (8 June 2021) [Hartalega Completes Remediation of Recruitment Fees Totalling RM 41 million](#)

34 The Diplomat (14 September 2021) [Debt Bondage Payouts Flow to Workers in Malaysia's Glove Industry](#)

35 Reuters (19 May 2021) [An audit gave the all-clear. Others alleged slavery](#)

36 FMT (8 July 2020) [Glovemaker WRP to reimburse recruitment fee paid by workers](#)

37 FGV (27 February 2023) [FGV's FY2022 Financial Performance Charts New Record Since Listing](#)

38 For example, in 2021 CBP imposed a WRO on Malaysian glovemaking Brightway Group over alleged forced labour at the company. In 2022, a civil lawsuit was filed in the United States under the Trafficking Victims Protection Reauthorization Act against health and safety equipment company Ansell and personal care company Kimberly-Clark over the companies' alleged ties to Brightway. See: Ansell (11 August 2022) [TVPR Lawsuit Against Ansell](#); International Rights Advocates, [Cases: Kimberly Clark and Ansell](#)

39 Kaohsiung District Prosecutors' Office (17 May 2022) [Kaohsiung District Prosecutors' Office Charged 9 People for Exploiting and Abusing Foreign Crew on A Longline Fishing Boat, "Da Wang", Against Human Trafficking Prevention Act](#)

### 3. Summary of Key Findings

- 3.13 Import bans have also driven legal and policy changes. In Taiwan, import bans helped spur the adoption of an official Action Plan for Fisheries and Human Rights – which includes a US\$ 100 increase in the monthly minimum wage for distant water fishing workers.<sup>40</sup>
- 3.14 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<sup>41</sup> – offering an example of how the creative and targeted use of CBP Petitions against private companies can be an effective tool to address state-imposed forced labour in certain cases.
- 3.15 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.<sup>42</sup> 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.
- 3.16 More broadly, stakeholders report that that CBP enforcement actions are driving changes in the way that companies approach forced labour in their supply chains – even in companies that are not directly affected by import bans: *“import bans are driving enormous changes in social compliance because of the huge commercial implications...What was acceptable as standard practice, even four years ago, is no longer good practice.”*<sup>43</sup>
- 3.17 In some cases, import bans have also elevated forced labour in supply chains to a board-level issue that is taken seriously by senior-level management. For example, in response to a WRO, Malaysian palm oil company Sime Darby Plantation's Board level Sustainability Committee oversaw the Remediation of forced labour, increasing the frequency of its meetings to fortnightly, and introduced new internal ESG scorecard to track and measure its performance on the resolution of labour issues.<sup>44</sup>
- 3.18 In other cases, import bans did not have an observable direct impact in terms of improving working conditions, changing company policies and practices, or driving legal and policy reform. This was notable in the cases of Malawi and Nepal – where stakeholders generally did not report that import bans had been a major driver of changes in working conditions, company practices, or the national legal and policy landscape to address forced labour.<sup>45</sup>

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

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

42 Employment (Amendment) Act 2023

43 Interview with Jen Jahnke, Associate Director, Impactt Limited

44 Sime Darby Plantation (15 February 2022) [Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations](#); Sime Darby Plantation Bhd (21 March 2022) [Update session: Ban \(Finding\) issued by the United States Customs and Border Protection on Sime Darby Plantation](#), page 24; Sime Darby Plantation (15 February 2022) [Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations](#)

45 This does not mean that there have been no such reforms or improvements. Rather, there was no clear evidence that any such reforms and improvements were directly attributable to the impact of an import ban.

### 3. Summary of Key Findings

#### C. To what extent have those measures have led to the provision of remedies for people in conditions of forced labour and other affected people? What remedies were provided, and what was their effect?

Import bans have resulted in the provision of significant remedies to people in conditions of forced labour – including commitments by companies to repay USD 115.4 million in recruitment fees to nearly 82,000 migrant workers in Malaysia. But beyond the reimbursement of recruitment fees, few other forms of direct remedies have been provided

- 3.19 The Report sought to identify the different forms of remedy that were provided to workers and affected rights holders in response to import bans. The table below maps the different remedies<sup>46</sup> identified in each of the case studies examined.
- 3.20 The table highlights instances where there was evidence indicating that a given remedy had been provided to workers and other affected rights holders. The table does not indicate whether those remedies were effective or adequate from the perspective of recipients, as this was not possible to verify in every case.
- 3.21 Multiple sources of information were used to compile the table below. Where possible, the primary source of evidence was interviews with affected workers and rights holders themselves. This was supplemented by secondary sources – including audit reports, company announcements and publications, and independent media coverage. The table below uses colours to distinguish information reported by different sources.
- (a) Items in green are remedies that workers and rights holders who were interviewed reported that they had received.
  - (b) Items in yellow are remedies that companies or governments reported that they provided (e.g., in press releases, publications and audit reports), but could not be corroborated by worker interviews. This may be because worker interviews could not be conducted, or because interviewees were not able to comment on whether the remedy was provided (e.g., because they no longer worked in the company or industry in question at the time the remedy was reported to have been provided).
  - (c) Items in orange are remedies that companies or governments reported that they provided, but that workers interviewed for the Report *did not* confirm had been provided to them. In other words, there was a discrepancy between the remedies that companies or governments reported having provided, and the remedies that workers reported that they had received.

<sup>46</sup> The list of remedies is derived from the forms of remedy that were observed to have been provided in the different case studies, as well as the OHCHR interpretive guide to the UNGPs. See: United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7

### 3. Summary of Key Findings

#### Summary of Remediation Undertaken in Response to Import Bans

**Green:** Remediation self-reported, and corroborated by worker interviews conducted for the Report

**Blue:** Remediation self-reported, and not corroborated by worker interviews conducted for the Report

**Yellow:** Remediation self-reported, and worker interviews not able to be conducted for the Report

Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study <sup>47</sup>	Malaysia Rubber Gloves (Top Glove)*	Malawi Tobacco	Nepal Carpets (Annapurna Carpet)*	Malaysia Palm Oil (Sime Darby)	Malaysia Palm Oil (FGV Holdings)	Distant water fishing (the <i>Da Wang</i> )	Thailand Fishing Nets

Apology							
Compensation/damages	Yellow						
Rehabilitation							
Recruitment fee reimbursement	Yellow			Green	Yellow		
Guarantee of non-repetition							
Improved living & working conditions	Yellow		Yellow	Green	Blue	*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment/employment policies	Yellow		Yellow	Blue	Blue	*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Legal accountability for perpetrators						Green	
Improved grievance channels	Yellow		Yellow	Green	Blue		

\*Worker interviews not conducted for the purpose of this report

47 Two case studies – Natchi Apparel and Bonechar – have not been included in the table. In both these cases, the WRO in question was modified by CBP after receiving evidence that there was in fact no forced labour in the companies’ respective operations, and hence no remediation was undertaken.

### 3. Summary of Key Findings

3.22 As summarised in the table above:

- (a) In one case, the Report did not identify clear evidence that Remediation had been undertaken, or that remedies had been provided to individual rights holders in response to the import ban.<sup>48</sup>
- (b) In four cases, there was evidence that Remediation had been undertaken by the companies in question remove indicators of forced labour in response to an import ban. This included through improving company policies and governance systems, investing in improved worker accommodation. But there was no clear evidence that remedies had been provided to individual rights holders as part of those efforts.<sup>49</sup>
- (c) In two cases, there was evidence that Remediation had been undertaken by the relevant companies to remove indicators of forced labour in response to an import ban, and that remedies had been provided to individual rights holders as part of that process.<sup>50</sup> In both cases, individual remedies were provided in the form of the reimbursement of recruitment fees. Additionally, in one of these cases, individual remedies were offered in the form of compensation for workers who had been in conditions of forced labour.<sup>51</sup>

3.23 Apart from the reimbursement of recruitment fees to migrant workers in Malaysia, few other forms of direct remedies have been provided to affected rights holders. For example, the Report identified only one instance in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour.

3.24 In many cases, companies have responded to import bans by introducing changes to their management, human rights, recruitment, and employment policies and practices. These policy changes can constitute a form of forward-looking, prospective, remedy – in that they can help ensure that workers in future will not experience similar forms of harm. For example, companies have reportedly introduced reforms to their recruitment and employment policies and practices (five out of seven case studies), and strengthened worker grievance mechanisms (four out of seven case studies).

3.25 However, promised policy reforms did not always translate into improved living and working conditions in the experience of workers interviewed for the Report. In at least three case studies, there was a discrepancy identified between the remedies that companies reported that they had provided, and the experiences of workers interviewed for the Report.

**In the case studies examined, import bans did not generally result in job losses or other adverse economic impacts for workers**

48 Tobacco, Malawi

49 Palm oil, Malaysia (FGV Holdings), carpets, Nepal (Annapurna Carpet), distant water fishing (the *Da Wang*), Thailand, fishing nets

50 Malaysia, palm oil (Sime Darby), Malaysia, rubber gloves (Top Glove). In some cases, migrant workers interviewed for this report reported that the recruitment fee reimbursement payment they received was slightly more than the actual recruitment fee that they paid. This surplus may be considered to have some compensatory value for workers, but it is not the same as a payment that is specifically intended to compensate workers for having been subjected to conditions of forced labour.

51 Malaysia, rubber gloves (Top Glove)

### 3. Summary of Key Findings

- 3.26 Observers have noted that import bans can have the potential to cause economic harm to workers in affected companies and industries (e.g., due to reduced orders or factory closures). Import bans may also encourage international companies to disengage or divest from companies or industries that carry a high risk of forced labour, instead of working to address the root causes of forced labour in that industry or company.<sup>52</sup> These risks did not materialise in the case studies examined in the Report.
- 3.27 Among the case studies examined, the Report did not find evidence of substantial job losses, wage reductions, or other adverse impacts for workers arising from import bans. Indeed, in some cases, import bans did not appear to lead to direct reductions in turnover or profit in the affected companies at all (though these companies did experience other adverse commercial and reputational impacts). This was especially the case among larger companies.<sup>53</sup>
- 3.28 In two case studies (Natchi Apparels in India, and Bonechar in Brazil), import bans did give rise to a risk of potential job losses in the affected companies. However, in both cases, the import bans were quickly modified and lifted before those potential adverse impacts could materialise. For example, in the case of Natchi Apparels, CBP modified its WRO in just under six weeks after civil society groups and trade unions raised concerns that the WRO might threaten the successful implementation of the Dindigul Agreement – a landmark enforceable brand agreement designed to address gender and caste-based violence and harassment at the company.
- 3.29 The potential for adverse consequences does not mean that import bans should not be used as a tool to combat forced labour. Nor does it mean that the evidential threshold to impose an import ban should be raised. However, the potential for adverse effects to arise highlights the need for consultations with workers, rights holders, and their credible representatives<sup>54</sup> as part of the decision-making process before imposing import bans.<sup>55</sup>



- 52 Anti-Slavery International (June 2021) *Anti-Slavery International and European Center for Constitutional and Human Rights' position on import controls to address forced labour in supply chains*, page 4; Corporate Accountability Lab (August 2020) *Using the Master's Tools to Dismantle the Master's House: 307 Petitions as a Human Rights Tool*
- 53 It is possible that the companies' revenues or profits may have been higher but for the import ban – but this was not possible to quantify this within the scope of this study. It was also not possible to assess, within the scope of this study, why there was no reduction in turnover or profits. For example, the affected companies may have been able to find alternative export destinations for their products outside of the United States. In other cases, companies experienced significant increases in sales as a result of the COVID-19 pandemic (e.g., rubber glove makers) which may have offset the effects of the import ban.
- 54 Who can be considered credible representatives of workers will on the circumstances. They may include trade unions, but in some contexts workers (and especially migrant workers) may be prevented from forming or leading trade unions. In those circumstances, other forms of credible worker representation may be appropriate.
- 55 Anti-Slavery International (June 2021) *Anti-Slavery International and European Center for Constitutional and Human Rights' position on import controls to address forced labour in supply chains*

### 3. Summary of Key Findings

#### D. What factors have contributed to, or undermined, the successful use of import bans as a tool to provide remedies to people in conditions of forced labour and other affected people?

Proactive engagement between CBP and all relevant stakeholders – especially workers and their credible representatives, trade unions, civil society, and independent third-party advisers can contribute to the effective provision of remedies to affected rights holders

- 3.30 Overall, the case studies considered in the Report suggest that companies are more likely to demonstrate they have effectively Remediated indicators of forced labour where the company has the support of civil society or independent third-party advisers. In particular, where a petition for modification or revocation of an import ban is submitted by a civil society group or trade union or has the support of these groups, CBP was likely to respond quickly to modify or lift the ban.
- 3.31 Proactive engagement between civil society and CBP can also help ensure that CBP is informed as to what measures should be implemented by a company to effectively address forced labour in its operations – including what specific remedies should be provided to affected rights holders. In some cases, Petitioners to CBP have listed the remedies that they expect companies to provide. In other cases, civil society groups have written to CBP to comment on the adequacy of corrective actions implemented by companies in response to import bans. Both forms of engagement can help offer CBP valuable information to help it to evaluate whether a company has sufficiently Remediated indicators of forced labour – including the extent to which adequate remedies have been provided to individuals. This, in turn, is likely to improve the quality of the remedies provided by companies.

**The focus on the *removal of indicators of forced labour* rather than the *provision of remedies to individuals* hinders the effectiveness of the Tariff Act as a tool to support access to remedy for people in conditions of forced labour**

- 3.32 When deciding whether to modify or revoke a WRO or Finding, CBP is primarily concerned with whether all 11 ILO indicators of forced labour have been removed or are no longer present in a company's operations. The provision of adequate remedies to workers and affected rights holders is part of the assessment of whether the indicators of forced labour have been effectively removed, but it is not CBP's primary consideration.
- 3.33 CBP's focus on the removal of indicators of forced labour, rather than the provision of remedies to individual workers, may affect the way that companies respond to import bans. As noted in the table above, company responses to import bans have tended to focus on systems and policy-level changes. Where remedies have been provided to individuals, these have tended to be limited to the reimbursement of recruitment fees. The Report identified only one case in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour.



### 3. Summary of Key Findings

3.34 As observed by one stakeholder: *"The weakness of the Tariff Act is that there is no specific remedy provision...the absence of an indicator of forced labour does not equate to the provision of remedy to workers. We want to see the provision of back wages, compensation, systems to prevent future abuses, access to grievance mechanisms, capacity building, ensuring freedom of association – those are the kinds of measures we need to see."*<sup>56</sup>

**Company Remediation efforts in response to import bans are typically designed from the top-down, using a risk-driven audit/compliance approach, and with limited stakeholder engagement – especially with workers and their credible representatives, trade unions, and civil society. This hinders the ability of company Remediation efforts to create systemic-level changes, and provide improved access to remedies for workers and other affected rights holders**

- 3.35 In many of the case studies examined in the Report, companies responded to import bans in a similar way.<sup>57</sup> The company first engaged a social auditor or external advisor to conduct a baseline evaluation of the company's labour practices and identify indicators of forced labour. In consultation with its advisers, the company would then develop a corrective action plan to address the identified indicators of forced labour. Upon completion of the corrective action plan, the company would conduct a further audit to verify the implementation of the corrective action plan. The company would then submit the audit report to CBP to support the company's petition to modify or revoke the import ban.
- 3.36 This trend is, in part, likely driven by CBP's guidance for companies – which suggests that company petitions to modify or revoke an import ban should be supported by an audit report.<sup>58</sup> The familiarity of companies with this compliance-driven social auditing approach is also likely to contribute to this practice.
- 3.37 The Report finds that companies generally do not meaningfully involve workers, trade unions or credible worker representatives, civil society, and other stakeholders when designing corrective action plans in response to import bans. According to stakeholders, corrective action plans developed in response to import bans are typically designed by companies and their advisers, rather than in consultation with workers and other affected stakeholders. In some cases, companies have formed independent committees to advise them on their response to import bans. While the formation of these committees is a welcome and progressive measure, such committees have generally not included workers, trade unions, or other credible worker representatives.<sup>59</sup>
- 3.38 In Malaysia, some companies consulted with workers to check the amount of recruitment fees paid by them, and to confirm that they have received reimbursements of recruitment fees as promised. However, the Report did not identify any instances in which companies had directly engaged in initial consultations with workers to seek their views on the types of remedies that workers would like to receive in the first place.

56 Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

57 This basic pattern of behaviour can be observed, e.g., in the case studies of Malaysia's rubber glove and palm oil industries.

58 CBP (March 2021) [Factsheet: WRO Modification/Revocation Process Overview](#)

59 Reuters (14 July 2021) [Experts quit Sime Darby Plantation panel over transparency concerns](#); FMT (14 July 2021) [Experts quit Sime Darby Plantation's human rights panel](#); The Business Times (15 July 2021) [Malaysia's Sime Darby Plantation scraps rights panel after resignations](#); Thomson Reuters Foundation (14 March 2021) [NGO exits Sime Darby Plantation rights panel over company's lawsuit](#) (Archived)

### 3. Summary of Key Findings

#### **Companies and CBP continue to rely heavily on social audits as the primary form of evidence used to demonstrate Remediation has been undertaken**

- 3.39 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.<sup>60</sup> There have been multiple instances in companies received clean bills of health from social audits, only for the company to receive an import ban under the Tariff Act shortly afterwards due to the presence of forced labour in its value chain.<sup>61</sup>
- 3.40 Many of the companies considered in the Report underwent regular social audits, or were certified by sustainability bodies before they received import bans. In some cases, these social audits identified forced labour risks before the import ban was imposed. In other cases however, they did not.
- 3.41 Despite the mixed track record of social auditing, CBP's guidance calls on companies to submit audit reports to verify that indicators of forced labour have been Remediated.<sup>62</sup> CBP's guidance thus potentially incentivizes companies to develop Remediation programs and corrective action plans that are based around social audits – as was evident in many of the case studies considered. This, in turn, risks perpetuating the top-down approach to Remediation described above.
- 3.42 The emphasis on social audits also risks excluding other forms of engagement with workers and their credible representatives, trade unions, civil society, and other stakeholders to demonstrate that indicators of forced labour have been Remediated. For example, through multi-stakeholder processes, enforceable brand agreements, or worker-led remediation programs.
- 3.43 That said, there are signs that CBP is prepared to adopt a more flexible approach. For example, CBP has lifted import bans based on evidence submitted by civil society groups – rather than company-commissioned commercial social audits. This was evident in the Natchi Apparels and the Annapurna Carpet cases. In these cases, CBP lifted the import bans on these companies based on evidence submitted by civil society organisations and trade unions – including worker interviews and inspection reports. These cases therefore offer alternative models to the company-commissioned commercial social audit as the main form of evidence used to demonstrate the Remediation of forced labour indicators.

#### **There is a lack of transparency and effective communication around Remediation. This hinders the ability of civil society to hold companies accountable and ensure that effective access to remedies is provided**

60 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*

61 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*

62 CBP (March 2021) *Factsheet: WRO Modification/Revocation Process Overview*

### 3. Summary of Key Findings

- 3.44 Stakeholders report that CBP has made efforts in recent years to improve its level of communication, openness, and transparency. However, the Remediation process remains largely opaque. For example, beyond brief press releases, CBP does not publicise the detailed and specific reasons for its decisions to modify or revoke WROs and Findings.
- 3.45 Moreover, CBP does not require companies disclose what actions they have taken to Remediate indicators of forced labour in response to a WRO or Finding, or to publish their audit reports and other documents evidencing the Remediation of forced labour. While some companies have taken positive steps by making findings of their audit reports and corrective action plans public, many have not.
- 3.46 This lack of transparency from companies and CBP hinders the ability of civil society to effectively monitor the adequacy of companies' Remediation efforts. It also hinders civil society's ability to hold CBP to account for its decisions to modify or revoke WROs and Findings.
- 3.47 Companies could also benefit from greater transparency from CBP. According to stakeholders, companies are often not informed by CBP when an import ban is imposed on them, and CBP does not provide companies with detailed and specific reasons why it has decided to take enforcement action.<sup>63</sup> While larger companies are likely to be aware of CBP's enforcement decisions, smaller and medium-sized companies may not. If a company is not aware that it is subject to an import ban, then it is unlikely to take any action to Remediate indicators of forced labour. This may therefore delay the provision of remedies to affected rights holders until such time as the company has notice of the import ban.



63 Specifically, companies reported that while CBP discloses the indicators of forced labour it identified, CBP does not disclose the basis for the identification of those indicators. For example, CBP might state that it identified indicators of debt bondage in a company's operations, but might not say specifically how that debt bondage manifests, or in what sites or locations the indicators of debt bondage were found to be present.

## 4. Summary of Key Recommendations

### For workers, workers' credible representatives, trade unions, and civil society

- 4.1 For workers, workers' credible representatives, trade unions, and civil society groups, the following steps can be taken to use the Tariff Act mechanism more effectively to secure access to remedies for people in conditions of forced labour.

#### **Meaningfully consult with workers and rights holders when considering whether submit a petition CBP for an import ban**

- 4.2 Meaningful consultation with workers and their credible representatives before submitting a Petition to CBP is essential to ensure that requesting the potential import ban is aligned with the interests of workers and other rights holders. Prior consultation with workers and their credible representatives is also important to identify what remedies rights holders would like to see provided to them as part of the remediation of forced labour.

#### **CBP Petitions should include specific recommendations on remedies that should be provided to workers and other affected rights holders**

- 4.3 Petitions for import bans should, where possible, include recommendations for the company concerned about what steps it should take to Remediate the indicators of forced labour identified in the Petition.<sup>64</sup> This Remediation should include the provision of remedies to affected workers and rights holders.
- 4.4 Consistent with the UNGPs, these remedies may include the provision of financial compensation, the reimbursement of recruitment fees and expenses (where relevant), physical or psychological rehabilitation, apologies, guarantees of non-repetition, and legal accountability for perpetrators of harm. These remedies should be developed in consultation with workers and their credible representatives and other rights holders to ensure that the proposed remedies address workers' and rights holders' needs and concerns, and can help to make good the harms they have experienced.
- 4.5 Including specific recommendations on Remediation in the Petition can help guide CBP in its subsequent engagement with the company, and help it to assess the adequacy of the company's corrective action plan. It is especially important to highlight to CBP what remedies workers and rights holders want to see provided to them. This is because CBP is unlikely to have in-depth knowledge and expertise of every company, industry, or geography in the same way that workers and rights holders themselves will have. Workers and rights holders themselves are therefore the best placed to assess what remedies should be provided to them, to make them whole for harms suffered as a result of being subjected to forced labour.

#### **Proactively engage with CBP during the remediation process**

64 If the Petition relates to an entire industry, rather than an individual company, the Petition should specify what Remediation should be undertaken by individual companies to demonstrate that their products are not made with, or using, forced labour. For detailed guidance on how to draft a Petition to CBP, see: Human Trafficking Legal Center (2020) *Importing Freedom: Using the US Tariff Act to Combat Forced Labour in Supply Chains*

## 4. Summary of Key Recommendations

- 4.6 Where a company takes steps to Remediate indicators of forced labour in response to an import ban, workers and their credible representatives, trade unions, civil society organisations, and other stakeholders should critically assess those efforts and communicate their assessment to CBP.
- 4.7 Where possible, these assessments should be developed in consultation with workers, workers' credible representatives, trade unions to understand workers' views on the adequacy of the remedies (if any) that have been promised or provided by the company.
- 4.8 If such an assessment is not possible (e.g., because a company is not sufficiently transparent about its remediation efforts, access to workers is not possible, or the company is unwilling to meaningfully engage with workers, their credible representatives, trade unions, or civil society), this lack of transparency and disclosure should be raised with CBP.

### For CBP

- 4.9 The focus of the Report is on the provision of remedies within the context of the Tariff Act import ban mechanism, and not CBP's internal mechanisms and processes. However, the Report has identified certain areas where CBP's approach could be improved to ensure better outcomes for people in conditions of forced labour and other stakeholders – whilst recognising that the provision of remedy is not within CBP's specific mandate, nor is it the specific purpose of the Tariff Act mechanism.

### **Publish more detailed guidance on the Remediation of forced labour indicators – with a greater emphasis on the provision of remedies to workers and other affected rights holders**

- 4.10 CBP should publish more detailed guidance on the Remediation of forced labour indicators as part of the modification or revocation process. Such guidance should (among other things):
- 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.<sup>65</sup>
  - 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

65 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).

## 4. Summary of Key Recommendations

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- 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.

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

- 4.11 Social audit reports provided by companies should form just one of many data points considered by CBP. When deciding whether to modify or revoke a WRO or Finding, CBP should consider diverse information sources that should be given equal – if not greater – weight than social audit reports. Such information may include direct worker testimony and submissions from workers' credible representatives, trade unions, and other civil society organisations.
- 4.12 Specifically, when considering petitions by companies to modify or revoke WROs or Findings, CBP should:
- Require companies to provide diverse sources of evidence of the Remediation of forced labour indicators (i.e., not just 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.
  - Offer guidance for companies as to how CBP will assess the credibility and independence of social audit reports. This may include, for example, 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 evidence of meaningful engagement with workers and other affected rights holders and their credible representatives, and other civil society stakeholders during the audit process.

### **Improve stakeholder engagement and communication**

- 4.13 When CBP imposes a WRO or Finding on a company, it should notify that company. CBP should also provide the company with its detailed and specific reasons why it has taken enforcement action. This should include not only a list of the indicators of forced labour identified by CBP, but also the specific factors that give rise to that indicator (in a way that protects the confidentiality of sources).
- 4.14 CBP should also broaden and increase its proactive engagement with stakeholders during the Remediation process. Specifically, when CBP is considering an application by a company to modify or revoke an import ban, CBP should proactively engage with workers, trade unions, workers' credible representatives, and other civil society groups to seek their views on the adequacy of the company's Remediation efforts.

### **Consider more flexible enforcement options when necessary to prevent or mitigate potential adverse impacts for workers and other affected rights holders**

## 4. Summary of Key Recommendations

- 4.15 It may be beneficial for CBP to have a more flexible range of options for the enforcement of import bans. Greater flexibility in enforcement options can help to avoid or mitigate potential adverse consequences for workers and other rights holders that may potentially arise from the immediate imposition of import bans. 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.<sup>66</sup>
- 4.16 Adopting 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.
- 4.17 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 from workers, workers' credible representatives, or trade unions.

### For governments in jurisdictions affected by import bans

#### **Support the Remediation of forced labour in response to import bans by addressing the root causes of forced labour**

- 4.18 Governments in jurisdictions that are affected by import bans should consider the extent to which they can contribute to company efforts to by implementing legal and policy reforms to address the root causes of forced labour, as well as by investigating and holding companies under their jurisdiction legally accountable for forced labour and other human rights abuses in their operations.
- 4.19 Beyond the human rights imperative, there are economic incentives for governments to support corporate efforts to identify and address the root causes of forced labour in supply chains. By taking action to address the root causes of forced labour, governments can help protect key export industries against the risk of future import bans – in turn helping to protect jobs and the economy. Such reforms might include:
- Ensuring that forced labour is effectively criminalised under domestic law, and that the legal definition of forced labour is aligned with the 1930 ILO Forced Labour Convention.
  - Guaranteeing equal rights for migrant and non-migrant workers – including with respect to freedom of association, collective bargaining, wages, and working conditions.
  - Adequately resourcing labour inspectorates, and ensuring the effective enforcement of labour laws, policies, and regulations.

66 Corporate Accountability Lab (14 February 2020) *CAL and IR Advocates Challenge Importation of Cocoa Produced with Forced Child Labour*

## 4. Summary of Key Recommendations

- Ensuring that labour and migration policies for migrant workers have safeguards to mitigate the risk of forced labour, trafficking, and exploitation (e.g., a prohibition on the charging of recruitment fees, requirements for the provision of written employment contracts in a language the worker understands, prohibiting passport and document retention by employers, and allowing workers to freely change employers).
- Ensuring that workers and migrant workers have access to effective grievance mechanisms (including state-based, non-state based, judicial, and non-judicial systems).

### For the Private Sector

#### **Meaningfully engage with workers and civil society in the design, development, and implementation of Remediation processes**

- 4.20 In order for companies' efforts at Remediation to be effective workers and their credible representatives, trade unions, civil society, and other stakeholders need to be meaningfully engaged and involved at all stages of the process. Companies should therefore ensure the workers and their credible representatives, trade unions, civil society, and other relevant stakeholders are meaningfully consulted in the design, development, implementation, and monitoring of remediation processes.
- 4.21 Multi-stakeholder initiatives such as the Dindigul Agreement offer an example of how a creative approach can be implemented to address deeply entrenched and complex issues that are compounded by socio-economic factors, such as gender and caste-based discrimination, and in a way that is directly responsive to the needs and wishes of workers. They also offer an example of a multi-tiered approach to addressing human rights issues in a company's supply chain – through a combination of corporate governance changes, training and capacity building, guarantees of freedom of association, and improved access to grievance mechanisms.

#### **Adopt a rights-based, not a compliance-based, approach to remediation**

- 4.22 Companies would benefit in the long run by moving away from a risk and compliance-driven mindset, and adopting a human rights-based approach to Remediation that places workers at the centre of a company's approach. In other words, companies should seek to identify and understand the harms caused to rights holders, the causes of such harm, how those affected can be made whole, and the measures needed to guarantee the non-repetition of that harm.
- 4.23 Such an approach is more likely to yield a holistic and long-lasting solution. This, in turn, is likely to substantially reduce future forced labour risks. Companies that choose to adopt a 'tick box' or compliance-driven approach to remedy may find that they have failed to properly identify and address the root causes of forced labour – leaving them exposed to future enforcement action.

#### **Engage upstream companies in the remediation process**

- 4.24 International companies, buyers, and brands should be supportive of Remediation efforts undertaken by their suppliers. If a supplier to an international company receives an import ban, the international company should avoid immediately 'cutting and running' – especially if the supplier is willing to undertake Remediation. Instead, the international company should seek to use its leverage and offer its resources to help the supplier with its Remediation efforts.



## 4. Summary of Key Recommendations

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- 4.25 If a buyer does decide to terminate its relationship with a supplier because of an import ban, the buyer should ensure that it disengages responsibly and in a way that minimises the potential adverse effects for workers and rights holders.

### For the European Commission

- 4.26 In September 2022, the European Commission published its proposal for a regulation (the **Proposed Regulation**) to prohibit products made with forced labour on the European Union (**EU**) market.<sup>67</sup> While the Proposed Regulation is not directly modelled on the Tariff Act, the findings of the Report are of direct relevance to EU policymakers as they develop the Proposed Regulation.
- 4.27 A comprehensive set of recommendations for the Proposed Recommendations is available here. But in summary, the Proposed Regulation should:
- A. Ensure that competent authorities engage in meaningful consultations with stakeholders, including workers, trade unions, and civil society during the decision-making process – not just economic operators
  - B. Reduce the reliance on company-commissioned ‘social audits’ as the primary form of evidence relied on by competent authorities
  - C. Not offer any form of ‘safe harbour’ for companies solely on the basis of the apparent adequacy of their due diligence processes
  - D. Ensure that access to remedies (as defined in the UN Guiding Principles on Business and Human Rights) for workers and other affected rights holders have been provided as a condition to the removal of enforcement measures
  - E. Not focus solely on economic operators that are the ‘closest’ to forced labour, but should prioritise investigations based on the extent to which economic operators have caused, contributed to, or profited from, forced labour

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67 European Commission (2022) COM(2022) 453 [\*Proposal for a regulation on prohibiting products made with forced labour on the Union market\*](#)