

How Import Bans Affect Access to Remedy for Individuals Affected by Forced Labour

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Abstract

Import bans are increasingly used to prevent the import and sale of goods produced by forced labour and modern slavery. The threat or use of these import bans has driven significant changes in corporate and government behaviour in recent years. What is less well understood is the connection between import bans and the provision of remedies to people in conditions of forced labour. This article examines the connection between import bans and access to remedy, through the lens of the US Tariff Act of 1930. The article draws lessons from nine case studies across geographies and sectors.

Keywords: access to remedy, business and human rights, forced labour, modern slavery, import ban

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1. Introduction¹

Import bans, which prohibit products from a particular company or country, are increasingly being used to prevent the sale of goods produced by forced labour and modern slavery.² Import bans are among the strongest legal tools currently available to hold companies

¹ This article is based on an earlier report released by The Remedy Project. For more detailed information on each case study, see the full report by The Remedy Project, accessible [here](#). The article and corresponding report do not seek to identify, nor do they 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 article should be construed as legal advice.

² This article uses the commonly used term “import ban” to describe the US Tariff Act mechanism of 1930. An “import ban” is a form of quantitative restriction which prohibits goods of a specific origin or type from entering a market. See: Cécile Jacob et al., “Trade-Related Policy Options of a Ban on Forced Labour Products” (European

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 valuable export markets such as the United States and Canada. Import bans have also given rise to follow-on civil lawsuits against upstream companies who have been associated with suppliers that are subject to import bans.³ They 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 of exploitation in their supply chains and implement systemic-level responses to address them.

The threat or use of forced labour import bans has thus driven significant changes in corporate and government behaviour in recent years. What is less well understood 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 for the provision of remedies to affected people. As other jurisdictions, including the European Union, plan to introduce their own trade-based mechanisms to combat forced labour, it is important to consider the potential for import bans as a tool to secure remedies for people in conditions of forced labour.

In short, this article seeks to understand the extent to which corporate responses to import bans have led to access to remedies for people in conditions of forced labour and other affected rights-holders.⁴ More broadly, this article considers the potential for import bans to be leveraged as a tool to secure access to remedies for people in conditions of forced labour. The article specifically examines these aspects through the lens of the US Tariff Act of 1930 (the Tariff Act).⁵ This study analyses nine case studies of instances where a company has sought to lift a forced labour import ban imposed under the Tariff Act – to understand what was done to seek the lifting of the ban, and the extent to which that process led to the provision of remedies for affected people. These case studies cover industries ranging from agriculture, to manufacturing, to distant water fishing, and are drawn from companies across Southeast Asia, Central Asia, East Asia, Southern Africa, and South America.

Parliament, November 25, 2022), accessed April 28, 2023, [https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA\(2022\)702570](https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA(2022)702570); “Market Access: Quantitative Restrictions,” World Trade Organization, accessed April 28, 2023, https://www.wto.org/english/tratop_e/markacc_e/qr_e.htm.

³ See, e.g., Ansell Ltd., “TVpra Lawsuit against Ansell,” Press release, August 11, 2022, <https://www.ansell.com/hk/en/about-us/media-center/press-releases/tppra-lawsuit-response>.

⁴ This study focuses on import bans imposed on companies in the private sector, as opposed to import bans in respect of state-imposed forced labour.

⁵ 19 US Code Ch.4, Tariff Act of 1930.

Key Concepts

Remedy and Remediation

This article adopts the UN Guiding Principles on Business and Human Rights (UNGPs) definition of ‘remedy’. ‘Remedy’, as defined in the UNGPs, refers to the provision of substantive remedies to people whose human rights have been violated. According to the UNGPs:

*“Remediation or remedy refer 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.”*⁶

“Remedy” as defined in the UNGPs is not the same as the concept of “remediation” as understood and applied by US Customs and Border Protection (CBP). As explained more fully below, CBP effectively equates “remediation” with the removal of the presence of any International Labour Organization (ILO) indicators of forced labour.⁷ Unless otherwise stated in this article, the term “remedy” therefore refers to the UNGP definition above. The term “remediation” refers to CBP’s concept of remediation (i.e., the removal of ILO indicators of forced labour).

Stakeholders and Rights-Holders

In line with the UNGPs, a stakeholder is any individual who may affect or be affected by a business’ operations, products, or services.⁸ This broad grouping includes rights-holders, the individuals who may experience human rights impacts due to business activities.

⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (OHCHR, 2012), 7, https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf.

⁷ ILO Forced Labour Indicators, accessible at https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 7.

US Tariff Act of 1930

Section 307 of The Tariff Act empowers US Customs and Border Protection (CBP) to impose an import ban on goods made “wholly or in part by forced labour, convict labour, or indentured labour” (including forced or indentured child labour).⁹

Withhold Release Order (WRO)

As part of a two-stage enforcement mechanism under the Tariff Act, 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 issues a ‘withhold release order’ in respect of these goods. As the name suggests, a WRO prevents goods covered by the order that are in US ports from being released into the US.¹⁰

Methodology

This article analyses the link between tariff bans and remedy of the ILO indicators of forced labour for affected rights-holders. The research was conducted through the development and analysis of nine in-depth case studies, focusing on instances where a company has sought to lift (i.e., modify or revoke) an import ban imposed under the Tariff Act.

These case studies were selected based on a review of all CBP Findings and WROs which have been modified or revoked as of December 2022. These Findings and WROs were then further analysed to identify information indicating that some proactive action was undertaken to secure the modification or revocation of the WRO. Additional case studies were selected based on the list of active CBP Findings and WROs which have not been modified or revoked, but where there was publicly available information indicating that efforts had been undertaken in response to WRO or Finding to address forced labour issues identified by CBP.

At the suggestion of stakeholders, one case study (fishing nets in Thailand) was selected even though no WRO or Finding was imposed in this case. This case study was selected as a point of contrast as it involved an instance of actions being taken to address alleged state-imposed forced labour following the threat of a WRO.

The case studies have been developed through a combination of desk-based research (current as of February 2023), stakeholder interviews, and interviews with 53 workers in companies directly affected by those import bans. Each case study examines different jurisdictions, industries, cultures, and labour and migration dynamics. As such, it was not possible to apply the exact same methodology in each case study. A list of stakeholders interviewed is set out in Annex 1. Given the highly sensitive subject matter of this study, there was, in some cases, limited available open-source information. In other cases, substantially more information was available in the public domain. The level of detail and specificity able to be provided in each case study therefore varies accordingly.

⁹ 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 non-performance and for which the worker does not offer himself voluntarily.” The term includes forced or indentured child labour. See: 19 CFR § 12.42(f).

¹⁰ 19 CFR § 12.42(f).

Workers were interviewed in their own language and each interviewee offered their informed consent to participate. Interviews were conducted in-person individually or in focus groups, depending on the preference of the interviewees. Children (i.e., people below the age of 18) did not form part of focus groups and were not interviewed for the purposes of this report. All record and notes of the interviews and focus group discussions were fully anonymised and no personally identifying information about any interviewee was recorded, retained or shared with The Remedy Project. Interview participants were selected by the researchers and were not nominated or selected by the employers. The interviews with workers were focused on qualitative questions relating to workers' experiences of remediation or changes following a WRO or Finding. The responses recorded are not necessarily indicative of the experiences of workers as a whole.

As part of safety and ethics, fully informed consent to participate was obtained from all focus group participants and interviewees. Participants were explained in a language they understood: (a) the nature and purpose of the interview/focus group; (b) how information that is provided during the interview/focus group will be used; (c) the risks (if any) associated with participating in the interview/focus group; (d) the measures that will be taken to protect the anonymity of the information provided by the interview/ focus group participants; (e) that the participant is free not to take part in the interview/focus group, and that there will be no adverse consequences or repercussions from the researchers towards anyone who decides not to participate; (f) that the informed consent to participate may be withdrawn at any time.

A WRO or Finding can be 'lifted' by means of modification and revocation. CBP states that a WRO or Finding may be modified or suspended from enforcement where the entity subject to the WRO demonstrates to CBP that it has 'remediated' all 11 indicators of forced labour.¹¹ As per CBP, a WRO may be 'revoked' in respect of an entity if CBP determines that the entity in question was not engaged in forced labour.¹² Once a petitioner submits information to CBP seeking the modification or revocation of a WRO, the petitioner and CBP will engage with each other. The guidance from CBP further states that "CBP will not modify or revoke [a WRO] unless all forced labour indicators are remediated."¹³ It is also worth noting that CBP does not generally publicise what remediation was undertaken by the company to secure the modification or revocation.¹⁴ It can therefore be difficult, based on public information alone, to determine what CBP considers adequate remediation to be, in practice.

¹¹ CBP (March 2021) Factsheet: WRO Modification/Revocation Process Overview; ILO Indicators of Forced Labour (1 October 2012)

¹² CBP (October 2021) [How are WRO and/or finding modifications and revocations processed?](#)

¹³ Ibid

¹⁴ See example, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-certain-tobacco-imports-premium>

Figure 1: Geography of case studies

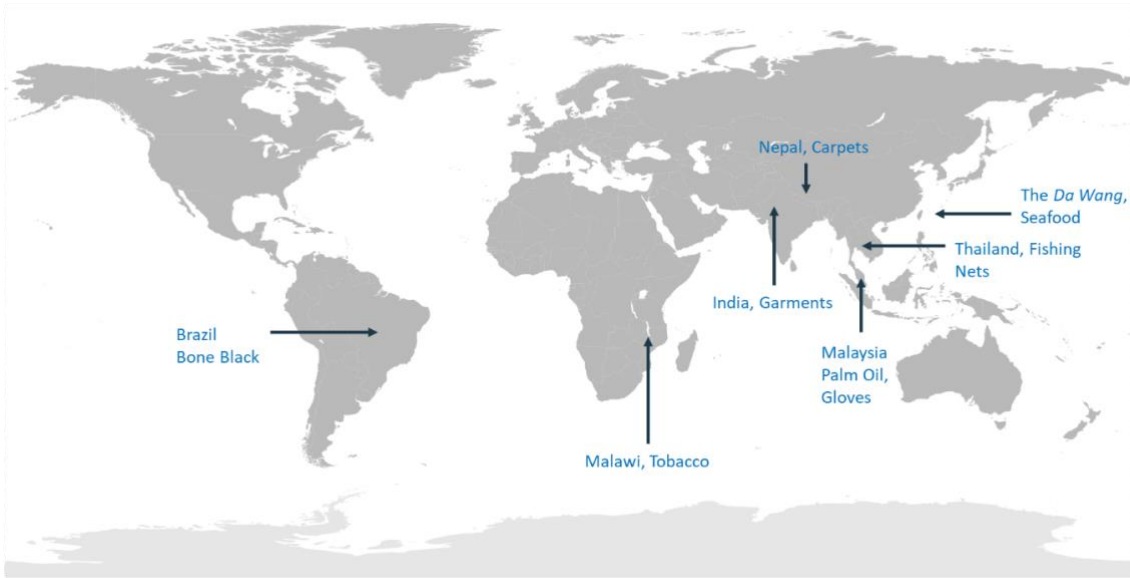


Table 1: Cases analysed in this study

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda (“ Bonechar ”)	WRO issued on 30 September 2019. ¹⁵ WRO modified on 4 December 2020. ¹⁶
India	Garments	Natchi Apparels (P) Ltd.	WRO issued on 29 July 2022. ¹⁷ WRO modified on 7 September 2022. ¹⁸

¹⁵ U.S. Customs and Border Protection, “CBP Issues Detention Orders against Companies Suspected of Using Forced Labor,” 1, 2019, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

¹⁶ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechere Carvão Ativado Do Brasil Ltda,” December 7, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-bone-black-bonechar-carv>.

¹⁷ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.,” September 7, 2022, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd>.

¹⁸ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.”

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Malaysia	Palm oil	FGV Holdings Bhd	WRO issued on 30 September 2020. ¹⁹
Malaysia	Palm oil	Sime Darby Plantation Bhd	WRO issued on 30 December 2020. ²⁰ Finding issued on 28 January 2022. ²¹ Finding modified on 3 February 2023. ²²
Malaysia	Disposable gloves	Top Glove Corporation Bhd	WRO issued on 15 July 2020. ²³ Finding issued on 23 March 2021. ²⁴ Finding modified on 10 September 2021. ²⁵
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	WRO issued on 1 November 2019 in respect of tobacco produced in Malawi and products containing tobacco

¹⁹ U.S. Customs and Border Protection, “CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia,” September 30, 2020, accessed April 28, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>.

²⁰ U.S. Customs and Border Protection, “CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia,” December 30, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-palm-oil-produced-forced-labor>.

²¹ U.S. Customs and Border Protection, “Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307,” Federal Register, January 28, 2022, accessed April 28, 2023, <https://www.federalregister.gov/documents/2022/01/28/2022-01779/notice-of-finding-that-certain-palm-oil-and-derivative-products-made-wholly-or-in-part-with-palm-oil>.

²² U.S. Customs and Border Protection, “CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia,” February 3, 2023, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-finding-sime-darby-plantation-berhad-malaysia>.

²³ U.S. Customs and Border Protection, “CBP Modifies Forced Labor Finding on Top Glove Corporation BHD.,” September 9, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-forced-labor-finding-top-glove-corporation-bhd>.

²⁴ U.S. Customs and Border Protection, “Notice of Finding That Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States,” Federal Register, March 29, 2021, accessed April 28, 2023, <https://www.govinfo.gov/content/pkg/FR-2021-03-29/pdf/2021-06393.pdf>.

²⁵ U.S. Customs and Border Protection, “Determination That Maintenance of Finding of March 29, 2021, Pertaining to Certain Disposable Gloves Produced in Malaysia, Is No Longer Necessary,” Federal Register, September 10, 2021, accessed April 28, 2023, <https://www.federalregister.gov/documents/2021/09/10/2021-19535/determination-that-maintenance-of-finding-of-march-29-2021-pertaining-to-certain-disposable-gloves>.

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
			produced in Malawi. ²⁶ WRO modified in respect of Alliance One International LLC on 3 June 2020. ²⁷ WRO modified in respect of Limbe Leaf Tobacco Company Ltd. on 31 July 2020. ²⁸ WRO modified in respect of Premium Tobacco Malawi Limited on 21 May 2021. ²⁹
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	WRO issued 21 July 1998. ³⁰ WRO modified in respect of Norsang Carpet Industries Pvt., Ltd., Everest Carpet, and K.K. Carpet Industries on 6 October 1998. WRO modified in respect of Annapurna Carpet on 23 July 2021. ³¹

²⁶ U.S. Customs and Border Protection, “CBP Issues Withhold Release Order on Tobacco from Malawi,” November 1, 2019, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-tobacco-malawi>.

²⁷ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi,” June 3, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-tobacco-malawi>.

²⁸ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi,” August 1, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-tobacco-imports-limbe-leaf>.

²⁹ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Certain Tobacco Imports from Premium Tobacco Malawi Limited,” May 24, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-certain-tobacco-imports-premium>.

³⁰ U.S. Customs and Border Protection, “Withhold Release Orders and Findings List,” June 21, 2023, accessed July 13, 2023, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

³¹ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal,” July 26, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-carpets-and-hand-knotted>.

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>	WRO issued 18 August 2020. ³² Finding issued 28 January 2022. ³³
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd Dechapanich Fishing Net Factory Ltd.	Petition submitted to CBP on 22 February 2022. ³⁴

2. Remediation via US Import Bans

The US Tariff Act of 1930

Section 307 (s.307) of the Tariff Act states:

“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...”³⁵

CBP can exercise its power acting on its own initiative or in response to information contained in a petition submitted by a third party.³⁶

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

³² U.S. Customs and Border Protection, “CBP Issues Detention Order on Seafood Harvested with Forced Labor,” August 18, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor-0>.

³³ U.S. Customs and Border Protection, “Notice of Finding That Certain Seafood Harvested by the Taiwanese Da Wang Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307,” Federal Register, January 28, 2022, accessed April 28, 2023, <https://www.federalregister.gov/documents/2022/01/28/2022-01778/notice-of-finding-that-certain-seafood-harvested-by-the-taiwanese-da-wang-fishing-vessel-with-the>.

³⁴ International Labor Rights Forum, “Organizations Urge U.S. to Block Imports of Fishing Nets from Thai Companies over Evidence of Forced Prison Labor,” Press release, February 22, 2022, <https://laborrights.org/Organizations-urge-US-block-imports-of-fishing-nets-from-Thailand-over-evidence-forced-labor>.

³⁵ 19 USC 4 §1307

³⁶ 19 CFR § 12.42(a) and (b)

issue a WRO in respect of those goods. Importers of the goods can, however, still re-export those goods out of US ports to other destinations.³⁷

At the second stage, if CBP 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.³⁸ 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.³⁹ In most cases, CBP does not issue a Finding. As of February 2023, there are 53 active WROs but only nine Findings.⁴⁰

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 the 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.⁴¹

Remediation Through the US Tariff Act

The Tariff Act makes no reference to the provision of remedies or access to remedy for people in conditions of forced labour. This does not mean that import bans under the Tariff Act cannot, or do not, lead to the provision of remedies. However, the connection between them is not well understood or articulated.

Modification and revocation are the two means by which a WRO or Finding can be “lifted.” CBP states that a WRO or Finding may be modified (suspended from enforcement) where the entity subject to the WRO demonstrates to CBP that it has “remediated” all 11 ILO indicators of forced labour, listed below. According to CBP, a WRO or Finding may be “revoked” in respect of an entity if CBP determines that the entity in question was not engaged in forced labour.⁴² CBP’s guidance further states that “CBP will not modify or revoke [a WRO]

³⁷ 19 CFR § 12.42(e)

³⁸ 19 CFR § 12.42(f)

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

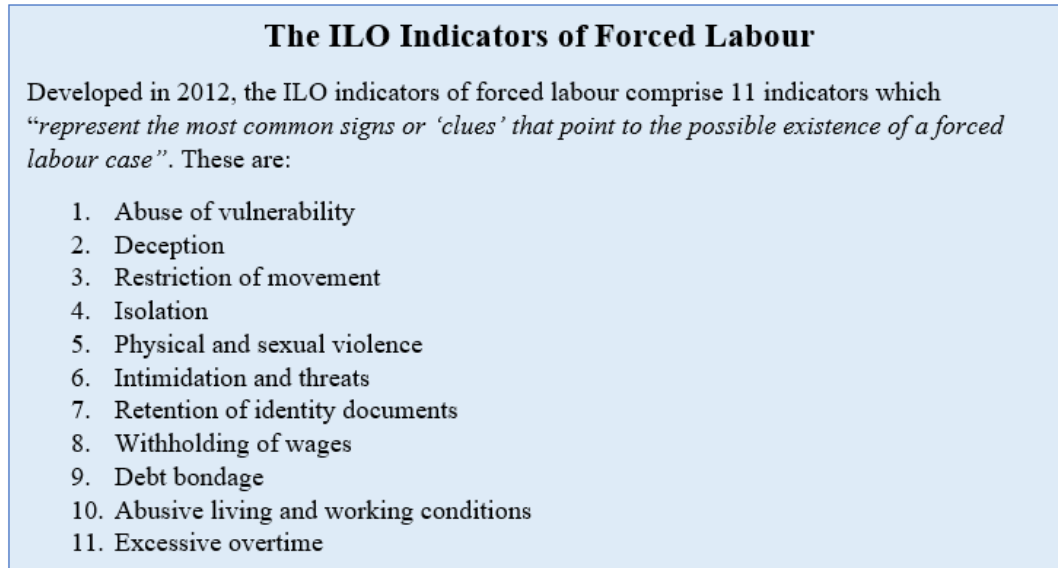
⁴⁰ U.S. Customs and Border Protection, “Withhold Release Orders and Findings List.”

⁴¹ U.S. Customs and Border Protection, “CBP Collects \$575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor,” August 13, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>.

⁴² U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview,” March 2021, accessed April 28, 2023, https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/Final_Modification%20Revocation%20Process%5B5%5D.pdf; U.S. Customs and Border Protection, “How Are WRO and/or Finding Modifications and Revocations Processed?,” October 2021, accessed April 28, 2023, https://www.cbp.gov/sites/default/files/assets/documents/2021-Oct/Slicksheet_Forc%20Labor%20How%20are%20WRO%20Finding%20Modifications%20or%20Revocations%20Processed%20508%20Compliant_0.pdf; International Labour Organization, “ILO Indicators of Forced Labour” (International Labour Organization, October 1, 2012), accessed April 28, 2023, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.

unless all forced labour indicators are remediated.”⁴³ Companies requesting modification/revocation of a WRO or Finding need to submit evidence to CBP that all ILO indicators of forced labour have been remediated. Notably, CBP does not explicitly require evidence of the provision of remedies to individuals.⁴⁴

Figure 2: ILO indicators of forced labour⁴⁵



Companies and CBP may obtain such evidence of remediation by engaging with stakeholders. CBP’s engagement with stakeholders (e.g., petitioning civil society organisations, and workers or rights-holders) varies depending on the stage of the enforcement process. In some cases, CBP expects independent third-party verification of remediation (e.g., through audits or worker interviews).⁴⁶ Civil society groups have been pushing CBP to avoid relying heavily on audit reports, since third-party audits have often failed to identify forced labour in companies which later received WROs.⁴⁷

Where a WRO or Finding is modified or revoked based on such evidence, CBP does not generally publicise what remediation was undertaken by the company to secure the modification or revocation. CBP may issue press releases briefly giving reasons for the modification or revocation, but they do not usually include CBP’s detailed reasoning and generally do not

⁴³ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

⁴⁴ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

⁴⁵ Ibid

⁴⁶ Interview with Martina Vandeberg and Anasuya Syam, Human Trafficking Legal Center

⁴⁷ Interview with Martina Vandeberg and Anasuya Syam, Human Trafficking Legal Center

describe what remediation was undertaken.⁴⁸ It can therefore be difficult, based on public information alone, to determine what CBP considers adequate remediation to be in practice. CBP's jurisdiction focuses on the import and entry of goods and people into the United States. In other words, its jurisdiction "starts and ends at the border."⁴⁹ In this context, remediation becomes a factual determination of whether all forced labour indicators previously identified by CBP are no longer present, rather than a rights-based assessment of whether victims have been made whole and harms made good.⁵⁰

That said, stakeholders report that: "CBP has not modified very many trade enforcement actions. Press reports regarding the conditions at impacted worksites suggest only credible remediation and verification will justify a trade enforcement modification. As a result, this has become one of the most powerful levers to bring about credible remedy for workers."⁵¹

3. Findings from Case Studies⁵²

By analysing the case studies, The Remedy Project found the following:

1. 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.

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.

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 below, 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 study identified only one case in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. For example, in 2020, CBP modified a WRO imposed in respect of two tobacco

⁴⁸ See, e.g., U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Certain Tobacco Imports from Premium Tobacco Malawi Limited."

⁴⁹ Interview with Jen Jahnke, Impactt Limited; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵⁰ Interview with Jen Jahnke, Impactt Limited; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵¹ As shared in an Interview with Jen Jahnke, Impactt Limited upon reflection of press releases issued by CBP in regard to modification of trade enforcement actions; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵² For detailed description and analysis of each case study, see the full report by The Remedy Project [here](#).

companies in Malawi based on an evaluation of each company’s “social compliance programs and efforts to minimise the risks of forced labour from its supply chain.”⁵³ According to tobacco workers interviewed for this study, no remedies were provided to workers in response to the import ban.

2. Import bans have resulted in the provision of significant remedies to people in conditions of forced labour. But beyond the reimbursement of recruitment fees, few other forms of direct remedies have been provided.

The study sought to identify the different forms of remedy that were provided to workers and affected rights-holders in response to import bans and the requirement to address removal of forced labour indicators. Table 2 below maps the different remedies identified in each of the case studies examined.⁵⁴

⁵³ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi.”

⁵⁴ 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), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 7.

Table 2: Summary of remediation undertaken in response to import bans⁵⁵

Green: Remediation self-reported, and corroborated by worker interviews conducted for this report	Orange: Remediation self-reported, and not corroborated by worker interviews conducted for this report			Yellow: Remediation self-reported, and worker interviews not able to be conducted for this report			
Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study ⁵⁵	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 Da Wang)	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	Orange	*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment / employment policies	Yellow		Yellow	Orange	Orange	*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	Orange		

*Worker interviews not conducted for the purposes of this study

⁵⁵ 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.

In two cases, the import ban was modified after CBP determined that the companies in question were not engaged in forced labour.⁵⁶ Hence, no remediation was undertaken. Out of the remaining seven case studies:

- In one case, this study did not identify clear evidence that any form of remediation had been undertaken or that remedies had been provided to individual rights-holders in response to the import ban.⁵⁷
- In four cases, there was evidence that remediation had been undertaken by the companies in question to 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.⁵⁸
- 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.⁵⁹ 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.⁶⁰

Apart from the reimbursement of recruitment fees to migrant workers in Malaysia, few other forms of direct remedy have been provided to affected rights-holders. For example, this study identified only one instance in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. The Remedy Project was unable to verify whether any such payments were indeed made by the company.

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 forward-looking prevention, and thus a form of guarantee of non-repetition, since 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).

However, promised policy reforms did not always translate into improved living and working conditions in the experience of workers interviewed for this study. In at least three of the seven

⁵⁶ Bonechar and Natchi Apparel

⁵⁷ Tobacco, Malawi

⁵⁸ Palm oil, Malaysia (FGV Holdings), carpets, Nepal (Annapurna Carpet), distant water fishing (the *Da Wang*), Thailand, fishing nets

⁵⁹ Malaysia, palm oil (Sime Darby), Malaysia, rubber gloves (Top Glove). In some cases, migrant workers interviewed for this study 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.

⁶⁰ Malaysia, rubber gloves (Top Glove)

case studies, there was a discrepancy identified between the remedies that companies reported that they had provided, and the experiences of workers interviewed.

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

Despite the limitations discussed above, import bans under the Tariff Act have had a wide-reaching impact. They have often been a catalyst to prompt rapid changes in industries that have been resistant to reform. In response to actual or threatened CBP enforcement actions, 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, 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.⁶¹

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.⁶² 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.⁶³

Furthermore, import bans have 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 USD 100 increase in the monthly minimum wage for distant water fishing workers.⁶⁴ 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 – 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.⁶⁵ 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

⁶¹ See paragraphs 6.35, **Error! Reference source not found.** and **Error! Reference source not found.** below

⁶² For example, in 2021 CBP imposed a WRO on Malaysian glovemaker 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 Ltd., "TVPRA Lawsuit against Ansell."; International Rights Advocates, "Cases: Kimberly Clark and Ansell," August 20, 2022, accessed April 28, 2023, <https://www.internationalrightsadvocates.org/cases/kimberly-clark-ansell>.

⁶³ Kaohsiung District Prosecutors' Office, "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," May 17, 2022, accessed April 28, 2023, <https://www.ksc.moj.gov.tw/296352/296356/296398/960001/post>.

⁶⁴ Council of Agriculture, "Action Plan for Fisheries and Human Rights," Executive Yuan, May 6, 2022, accessed April 28, 2023, <https://english.ey.gov.tw/News3/9E5540D592A5FECD/89bbc610-49c2-4080-85f9-6d2cb98bec96>.

⁶⁵ Department of Corrections (1 March 2021) *Corrections reforms prisoners' labour according to human rights standards*

the creation of a new forced labour criminal offence.⁶⁶ 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.

More broadly, stakeholders report 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.”⁶⁷

In some cases, import bans have also elevated forced labour in supply chains to a board-level issue that is taken seriously by the most senior-level management. For example, in response to a WRO, Malaysian palm oil company Sime Darby Plantation (SDP) established a Board Sustainability Committee in July 2021 to monitor and oversee the remediation of forced labour and introduced a new internal ESG scorecard to track and measure its performance on the resolution of labour issues.⁶⁸ Notably, Sime Darby also appointed an independent Expert Stakeholder Human Rights Assessment Commission to advise it on human rights issues in its Malaysian operations. In its announcement, SDP noted the appointment of the Commission was a direct response to the WRO.⁶⁹

In other cases, import bans did not have an observable direct impact in terms of improving working conditions, changing company policies and practices, or legal and policy reform. This was notable in the case of Malawi and Nepal, where stakeholders did not report that import bans had been a driver of changes in working conditions, company practices, or the national legal and policy landscape to address forced labour.

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

Where import bans are imposed, there is a risk that workers may lose their jobs or have their wages reduced as a result of the adverse economic impact of the import ban on the affected company or industry (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.⁷⁰ These risks did not materialise in the case studies examined in this article.

⁶⁶ Employment (Amendment) Act 2023

⁶⁷ Interview with Jen Jahnke, Associate Director, Impactt Limited

⁶⁸ Sime Darby Plantation, “Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations,” Press release, February 15, 2022, <https://sime-darby-plantation.com/sime-darby-plantation-institutes-sweeping-changes-in-governance-and-operations/>

⁶⁹ Sime Darby Plantation Bhd (1 March 2021) <https://sime-darby-plantation.com/sime-darby-plantation-establishes-expert-stakeholder-human-rights-assessment-commission/>

⁷⁰ Anti-Slavery International and European Center for Constitutional and Human Rights, “Anti-Slavery International and European Center for Constitutional and Human Rights’ Position on Import Controls to Address Forced Labour in Supply Chains,” Anti-Slavery International, June 2021, accessed April 28, 2023, <https://www.antislavery.org/wp->

Among the case studies examined, this study 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 (though these companies did experience other adverse commercial and reputational impacts). This was especially the case among larger companies.⁷¹

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.

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. As one stakeholder commented: “Forced labour is a severe human rights violation, so the broad discretion of CBP, the limited procedural options for companies, and the low evidentiary threshold are all legitimate and warranted.”⁷²

However, the potential for adverse effects highlights the need for meaningful consultations with workers, rights-holders, and their credible representatives⁷³ as part of the decision-making process before imposing import bans.⁷⁴

5. Companies and CBP continue to rely heavily on social audits as the primary form of evidence used to demonstrate remediation has been undertaken, despite their deep flaws.

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

[content/uploads/2021/06/Anti-Slavery-International-ECCHR-Import-Controls-Position-Paper-1.pdf](https://www.ecchr.eu/Content/uploads/2021/06/Anti-Slavery-International-ECCHR-Import-Controls-Position-Paper-1.pdf), 4; Allie Brudney, “Using the Master’s Tools to Dismantle the Master’s House: 307 Petitions as a Human Rights Tool,” Corporate Accountability Lab (blog), August 31, 2020, accessed April 28, 2023, <https://corpaccountabilitylab.org/calblog/2020/8/28/using-the-masters-tools-to-dismantle-the-masters-house-307-petitions-as-a-human-rights-tool>.

⁷¹ It is possible that the companies’ revenues or profits may have been higher but for the import ban – but it 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.

⁷² Interview with Ben Vanpeperstraete, Senior Legal Adviser, European Center for Constitutional and Human Rights (ECCHR)

⁷³ Who can be considered credible representatives of workers will depend 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.

⁷⁴ Anti-Slavery International and European Center for Constitutional and Human Rights, “Anti-Slavery International and European Center for Constitutional and Human Rights’ Position on Import Controls to Address Forced Labour in Supply Chains.”

labour, and can, in fact, increase human rights risks.⁷⁵ There have been multiple instances of companies having received clean bills of health from social audits, only for these companies to receive import bans under the Tariff Act shortly afterwards due to the presence of forced labour in their value chains.⁷⁶

Many of the companies considered in the study 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. For example, Malaysian glove maker Top Glove received an “A” rating following a social audit of its factory just eight months before the company was subjected to a WRO.⁷⁷ Following the WRO, the audit was reviewed, and the company’s rating was downgraded from an “A” to a “D” “due to a lack of supporting evidence for the conclusions indicated in the audit report.”⁷⁸

Despite the mixed track record of social auditing, CBP’s guidance calls on companies to submit audit reports to verify that forced labour has been remediated.⁷⁹ 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.

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.

⁷⁵ See, e.g., Aruna Kashyap, “Obsessed with Audit Tools, Missing the Goal,” Human Rights Watch, November 15, 2022, accessed April 28, 2023, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>; European Center for Constitutional and Human Rights, *Brot für die Welt*, and MISEREOR, “Human Rights Fitness of the Auditing and Certification Industry?” (European Center for Constitutional and Human Rights, 2021), https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_BfW_MIS_AUDITS_EN.pdf; Transparentem, “Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform” (Transparentem, 2020), <https://transparentem.org/wp-content/uploads/2021/09/Hidden-Harm-Audit-Deception-in-Apparel-Supply-Chains-and-the-Urgent-Case-for-Reform.pdf>; Clean Clothes Campaign, “Fig Leaf for Fashion. How Social Auditing Protects Brands and Fails Workers,” Clean Clothes Campaign, September 17, 2019, <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf/view>; Joseph Wilde-Ramsing and Gabriele Quijano, “A Piece, Not a Proxy,” SOMO, November 25, 2022, accessed April 29, 2023, <https://www.somo.nl/a-piece-not-a-proxy/>.

⁷⁶ See, e.g., Tan Siew Mung, “Top Glove Downgraded from A to D in Social Compliance Audit — Report,” The Edge Malaysia, November 2, 2020, accessed April 28, 2023, <https://theedgemaalaysia.com/article/top-glove-downgraded-d-social-compliance-audit-%E2%80%94-report>; A. Ananthalakshmi, Liz Lee, and Mei Mei Chu, “Insight: ‘Slavery’ Found at a Malaysian Glove Factory. Why Didn’t the Auditor See It?,” Reuters, May 19, 2021, <https://www.reuters.com/world/asia-pacific/an-audit-gave-all-clear-others-alleged-slavery-2021-05-19/>; Kashyap, “Obsessed with Audit Tools, Missing the Goal.”

⁷⁷ Top Glove, “Top Glove Sets Record Straight on Allegations Made in Video by Chanel 4 News, UK,” Press release, June 18, 2020, <https://www.topglove.com/single-press-release-en?id=109&title=top-glove-sets-record-straight-on-allegations-made-in-video-by-channel-4-news-uk>.

⁷⁸ Siew Mung, “Top Glove Downgraded from A to D in Social Compliance Audit — Report.”

⁷⁹ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

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 (in India) and the Annapurna Carpet (in Nepal) 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.

6. 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.

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. Similarly, beyond brief press releases, CBP does not publicise the detailed and specific reasons for its decisions to modify or revoke WROs and Findings.

Moreover, CBP does not require companies to 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 do not.

This lack of transparency from companies and CBP hinders the ability of civil society to effectively monitor the adequacy of companies' remediation and remedy efforts. It also hinders civil society's ability to hold CBP to account for its decisions to modify or revoke WROs and Findings.

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.⁸⁰ 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.⁸¹ This may therefore delay the provision of remedies to affected rights-holders until such time as the company has notice of the import ban.

⁸⁰ 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 manifested.

⁸¹ Ibid

Recommendations

The US Tariff Act demonstrates that import bans can be key drivers of corporate action, particularly with regards to removing the ILO indicators of forced labour.⁸² Additionally, they have led to significant legal, policy, and operational-level reforms. Import bans are broadly driving changes in how companies approach forced labour in their supply chains, even among businesses that haven't been subject to an WRO. Companies realize that they may be penalized if forced labour is found; as a result, they are making proactive changes in social compliance to avoid commercial implications. Even so, there are cases (such as Malawi and Nepal) where import bans did not have observable direct impact on working conditions or legal reforms.

Even so, the link between import bans and workers' access to remedy (in line with the UNGPs) is haphazard. In several cases, WROs prompted companies to repay recruitment fees to migrant workers. Some companies reported that they improved working conditions and grievance channels, but these were largely not corroborated by worker interviews (except in one case). This study identified only one instance in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. In at least three case studies, there was a discrepancy between the remedies that companies reported that they had provided and the experiences of workers interviewed.

These findings suggest that actions can be taken to strengthen the connection between import bans and workers' access to remedy.⁸³

For the Private Sector

1. Meaningfully engage with workers and civil society in the design, development, and implementation of remediation processes.
2. Adopt a rights-based, not a compliance-based, approach to remediation. 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. 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.
3. International companies, buyers, and brands should be engaged in the remediation process. 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.

⁸² Ibid

⁸³ For elaboration on these recommendations, see the full report by The Remedy Project [here](#)

For CBP

1. 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. In doing so, require companies to demonstrate (as a precondition to the modification or withdrawal of a WRO or Finding), that they have:
 - a. Provided (not just promised) adequate remedies to workers and other affected rights-holders;
 - b. 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
 - c. 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).
2. Reduce the reliance on company-commissioned social audits during CBP’s decision-making processes. 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.
3. Improve stakeholder engagement and communication. When CBP imposes a WRO or Finding on a company, it should notify that company. 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.
4. Consider more flexible enforcement options when necessary to prevent or mitigate potential adverse impacts for workers and other affected rights-holders.

For the European Commission and Other Authorities Considering an Import Ban

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.⁸⁴ When doing so, the EU should consider the following:

1. Ensure effective consultation with stakeholders, including workers, workers’ credible representatives, trade unions, and civil society, throughout the decision-making process.
2. Reduce the reliance on social audits as the primary form of evidence relied on by Competent Authorities in the decision-making process.

⁸⁴ European Commission, “COM(2022) 453 - Proposal for a Regulation on Prohibiting Products Made with Forced Labour on the Union Market | Internal Market, Industry, Entrepreneurship and SMEs,” Internal Market, Industry, Entrepreneurship and SMEs, September 14, 2022, accessed April 28, 2023, https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en.

3. Avoid offering “safe harbour” for Economic Operators based on due diligence alone. Due diligence in the form of company-commissioned social audits is not a reliable tool for effectively identifying the presence of forced labour. Economic Operators should therefore not be offered any form of safe harbour based on self-reports about the effectiveness of their own due diligence mechanisms – especially where this stands in contrast to evidence from workers, workers’ credible representatives, trade unions, and other civil society organisations that indicate the presence of forced labour.
4. Ensure that access to remedies (as defined in the UNGPs) is provided to workers and other rights-holders, as a precondition to the removal of measures against Economic Operators.
5. Prioritise investigations based on the extent to which Economic Operators have caused, contributed to, or profited from, forced labour. While recognising that direct responsibility must first lie with the Economic Operators that subject their workers to conditions of forced labour, companies should not escape accountability simply because they are not the “closest” to forced labour. Exploitation in global value chains is often driven by international companies’ purchasing and sourcing practices, as well as poor governance, due diligence, and oversight, as much as it is by the conduct of their overseas suppliers.

For Governments in Jurisdictions Affected by Import Bans

1. Support the remediation of forced labour in response to import bans by addressing the root causes of forced labour. Such reforms might include:
 - a. 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;
 - b. Guaranteeing equal rights for migrant and non-migrant workers, including with respect to freedom of association, collective bargaining, wages, and working conditions;
 - c. Adequately resourcing labour inspectorates and ensuring the effective enforcement of labour laws, policies, and regulations;
 - d. 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); and
 - e. Ensuring that workers and migrant workers have access to effective grievance mechanisms (including state-based, non-state based, judicial, and non-judicial systems).

For Workers, Workers’ Credible Representatives, Trade Unions, and Civil Society

1. Consult with workers and rights-holders when considering whether to petition CBP for an import ban.

2. Petitions to CBP should include specific recommendations on remedies that should be provided to workers and other affected rights-holders. 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.
3. Proactively engage with CBP during the remediation process. 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.

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19 US Code Ch.4, Tariff Act of 1930.

Annex 1: List of Stakeholders Interviewed⁸⁵

Name	Organisation
Allie Brudney	Corporate Accountability Lab
Allison Gill	Global Labor Justice-International Labor Rights Forum
Kimberly Rogovin	Global Labor Justice-International Labor Rights Forum
Johanna Lee	Global Labor Justice-International Labor Rights Forum
Allison Lee	Yilan Migrant Fishermans' Union
Andrea Giorgetta	International Federation for Human Rights
Andy Shen	United Nations University's Centre for Policy Research, Finance Against Slavery and Trafficking Project
Loria Mae Heywood	United Nations University's Centre for Policy Research, Finance Against Slavery and Trafficking Project
Ben Vanpeperstraete	European Center for Constitutional and Human Rights
Charlene Lorenze	European Center for Constitutional and Human Rights
Dr. Irene Pietropaoli	Modern Slavery Policy Evidence Centre
Jen Jahnke	Impactt Limited
Martina Vandenberg	Human Trafficking Legal Center
Anasuya Syam	Human Trafficking Legal Center
Nandita Shivakumar	Asia Floor Wage Alliance
Nina Smith	GoodWeave
Samjhana Pradhan	GoodWeave
Oliver Holland	Leigh Day
Professor Justine Nolan	University of New South Wales, Sydney
Savitri Restrepo	ELEVATE
Ruhi Mukherji	ELEVATE
Catherine Cheung	ELEVATE
Kumar Bhattarai	CWIN Nepal
Krishna Subedi	Child Development Society
Benu Maya Gurung	Alliance Against Trafficking in Women and Children in Nepal
Kiran Thapa	Nepal GoodWeave Foundation
Shanta Rana	Kin Nepal
Manju Gurung	Pourakhi Nepal
Thulsi Narayanasamy	Workers' Rights Consortium

⁸⁵ An additional ten stakeholders were interviewed on an anonymous basis.

Yuton Lee	Greenpeace East Asia
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Annex 2: Worker and Rights-Holder Interviews⁸⁶

Case Study	Interviewees	Location	Women	Men
Brazil, bone black	Bonechar employees	Paraná, Brazil	-	2
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Northern Region, Malawi	4	6
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Central Region, Malawi	3	7
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Southern Region, Malawi	3	7
Malawi, tobacco	Contract farmers	Northern, Central, and Southern Regions (one per region), Malawi	-	3
Malaysia, palm oil	Indonesian migrant plantation workers (FGV/Felda plantations)	Johor State, Malaysia	-	6
Malaysia, palm oil	Indonesian migrant plantation workers (FGV/Felda plantations)	Pahang, Malaysia	-	1
Malaysia, palm oil	Nepalese and Indian migrant plantation workers (SDP)	Selangor State, Malaysia	-	6
Thailand, fishing nets	Former prisoners	Southern Thailand	-	3
Taiwan, distant water fishing	Former crew members of the Da Wang	Taiwan	-	2

⁸⁶ Specific location not disclosed to protect confidentiality of interviewees. Workers were interviewed in their own language and each interviewee offered their informed consent to participate. Interviews were conducted in-person individually or in focus groups, depending on the preference of the interviewees. No personally identifying information about any interviewee was recorded or retained. Interview participants were selected by the researchers, and were not nominated or selected by their employers.

Annex 3: Full List of Tables and Figures

Figure 1: Geography of case studies

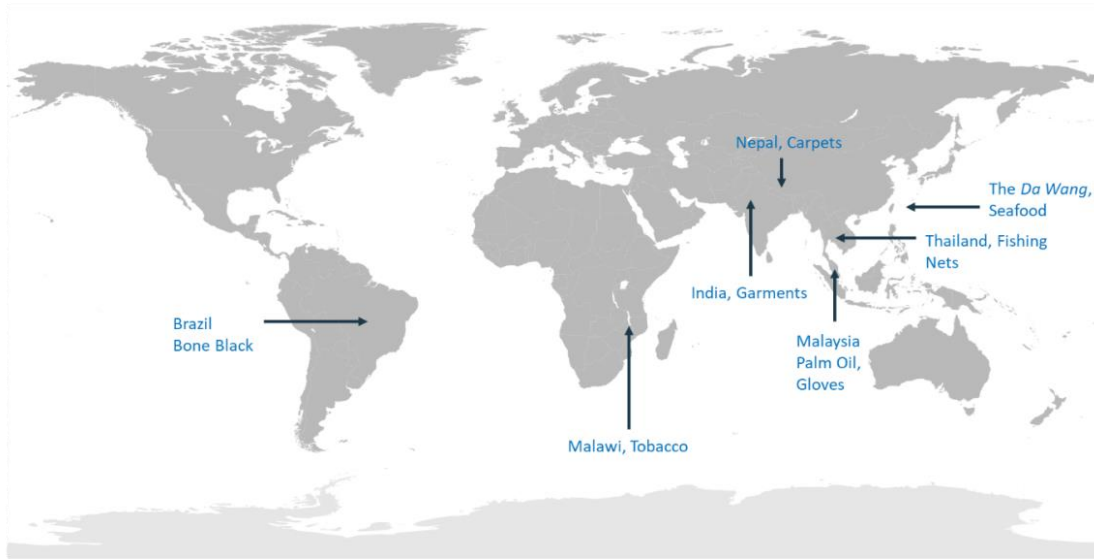


Table 1: Cases analysed in this study

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda (“ Bonechar ”)	WRO issued on 30 September 2019. ⁸⁷ WRO modified on 4 December 2020. ⁸⁸
India	Garments	Natchi Apparels (P) Ltd.	WRO issued on 29 July 2022. ⁸⁹ WRO modified on 7 September 2022. ⁹⁰
Malaysia	Palm oil	FGV Holdings Bhd	WRO issued on 30 September 2020. ⁹¹
Malaysia	Palm oil	Sime Darby Plantation Bhd	WRO issued on 30 December 2020. ⁹² Finding issued on 28 January 2022. ⁹³

⁸⁷ CBP (1 October 2019) *CBP Issues Detention Orders against Companies Suspected of Using Forced Labor*

⁸⁸ CBP (7 December 2020) *CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechar Carvão Ativado do Brasil Ltda*

⁸⁹ CBP (7 September 2022) *CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.*

⁹⁰ CBP (7 September 2022) *CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.*

⁹¹ CBP (30 September 2020) *CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia*

⁹² CBP (30 December 2020) *CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia*

⁹³ CBP (28 January 2022) *Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307, 87 FR 4635*

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
			Finding modified on 3 February 2023. ⁹⁴
Malaysia	Disposable gloves	Top Glove Corporation Bhd	WRO issued on 15 July 2020. ⁹⁵ Finding issued on 23 March 2021. ⁹⁶ Finding modified on 10 September 2021. ⁹⁷
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	WRO issued on 1 November 2019 in respect of tobacco produced in Malawi and products containing tobacco produced in Malawi. ⁹⁸ WRO modified in respect of Alliance One International LLC on 3 June 2020. ⁹⁹ WRO modified in respect of Limbe Leaf Tobacco Company Ltd. on 31 July 2020. ¹⁰⁰ WRO modified in respect of Premium Tobacco Malawi Limited on 21 May 2021. ¹⁰¹
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	WRO issued 21 July 1998. ¹⁰² WRO modified in respect of Norsang Carpet Industries Pvt., Ltd., Everest Carpet, and K.K. Carpet Industries on 6 October 1998. ¹⁰³ WRO modified in respect of Annapurna Carpet on 23 July 2021. ¹⁰⁴

⁹⁴ CBP (3 February 2023) *CBP Modifies Finding on Sime Darby Berhad in Malaysia*

⁹⁵ CBP (9 September 2021) *CBP Modifies Forced Labor Finding on Top Glove Corporation Bhd.*

⁹⁶ CBP (29 March 2021) *Notice of Finding that Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely to Be, Imported to the United States*, 86 FR 16380

⁹⁷ CBP (19 September 2021) *Determination That Maintenance of Finding of March 29, 2021, Pertaining to Certain Disposable Gloves Produced in Malaysia, Is No Longer Necessary*, 86 FR 50725

⁹⁸ CBP (1 November 2019) *CBP Issues Withhold Release Order on Tobacco from Malawi*

⁹⁹ CBP (3 June 2020) *CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi*

¹⁰⁰ CBP (1 August 2020) *CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi*

¹⁰¹ CBP (24 May 2021) *CBP modifies Withhold Release Order on certain tobacco imports from Premium Tobacco Malawi Limited*

¹⁰² CBP, *Withhold Release Orders and Findings List*

¹⁰³ CBP (26 July 2021) *CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal*

¹⁰⁴ CBP (26 July 2021) *CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal*

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
		Industries Kathmandu	
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>	WRO issued 18 August 2020. ¹⁰⁵ Finding issued 28 January 2022. ¹⁰⁶
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd Dechapanich Fishing Net Factory Ltd.	Petition submitted to CBP on 22 February 2022. ¹⁰⁷

Figure 2: ILO indicators of forced labour

The ILO Indicators of Forced Labour

Developed in 2012, the ILO indicators of forced labour comprise 11 indicators which “represent the most common signs or ‘clues’ that point to the possible existence of a forced labour case”. These are:

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive living and working conditions
11. Excessive overtime

¹⁰⁵ CBP (18 August 2020) *CBP Issues Detention Order on Seafood Harvested with Forced Labor*

¹⁰⁶ CBP (28 January 2022) *Notice of Finding That Certain Seafood Harvested by the Taiwanese Da Wang Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. i307*, 87 FR 4634

¹⁰⁷ Global Labor Justice-International Labour Rights Forum (22 February 2022) *Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor*

Table 2: Summary of remediation undertaken in response to import bans¹⁰⁸

	Green: Remediation self-reported, and corroborated by worker interviews conducted for this report			Orange: Remediation self-reported, and not corroborated by worker interviews conducted for this report		Yellow: Remediation self-reported, and worker interviews not able to be conducted for this report	
Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study ⁵⁸	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 Da Wang)	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	Orange	*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment / employment policies	Yellow		Yellow	Orange	Orange	*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	Orange		

*Worker interviews not conducted for the purposes of this study

¹⁰⁸ 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.