

Drivers of Forced Labour Import Bans

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Earlier this year, the European Parliament [approved](#) a new regulation which will enable the EU to prohibit the sale, import and export of goods made using forced labour. This is part of a recent move from voluntary to mandatory measures to address forced labour in global supply chains. While the US has banned the importation of goods made with forced labour since 1930, section 307 of the US Tariff Act was rarely applied until 2016. More recently, in 2022, the US put in place the [Uyghur Forced Labour Prevention Act](#) (UFPLA) which prohibits the importation of goods mined, produced, or manufactured wholly or in part in Xinjiang or by an entity on the [UFLPA Entity List](#) under the rebuttable presumption that they are made with forced labour. Other countries have also recently developed forced labour import restrictions such as Canada and Mexico as part of the 2020 North American trade agreement. In this blog post, [Aleydis](#) analyses from a comparative perspective, the background factors that led to the adoption of these recent forced labour import ban regulations. She concludes by stressing that import restrictions can usefully complement transparency and due diligence laws if adopted in the spirit of international cooperation. This blog ends with a briefing by [Sofia](#) on an upcoming Modern Slavery Policy and Evidence Centre (MS PEC) research project which explores the effectiveness of forced labour import bans in addressing modern slavery in global value chains.

A Trans-Atlantic Comparison

The elimination of forced or compulsory labour - work or service that is not offered voluntarily under the menace of a penalty - is a [fundamental labour right](#) for all 187 International Labour Organization (ILO) Member States. In 2015, the international community committed to eradicating forced labour by 2030 in the [United Nations \(UN\) Sustainable Development Goal 8.7](#).

Recent forced labour import ban regulations in Mexico, Canada, and the European Union (EU) follow the blueprint of Section 307 of the United States (US) Tariff Act of 1930. While Mexico and Canada were required to do so by the US in an unprecedented development in transnational labour governance, the EU did not need such a nudge in the current heightened geopoliticized and geo-economized climate.

'Modern slavery' laws

Forced labour is understood to be [a form of modern slavery](#). Laws with the words 'modern slavery' in the title were adopted in [Australia](#), [California](#), and [the United Kingdom](#) around the time of the endorsement of [the Guiding Principles on Business and Human Rights](#) by the UN Human Rights Council in 2011. Such laws are merely a transparency tool. They contain [little requirements](#) to audit the provided information or undertake action. While they were touted to be [highly innovative by](#) their creators and supporters, the US Department of Labor has published a list of goods produced by forced (and child) labour since the Trafficking Victims Protection Reauthorization Act of 2005.

What is more, a much more substantial provision was already introduced in Section 307 of the US Tariff Act of 1930. This provision prohibits imports of products of forced labour in the US. This act is older than any kind of other global value chain (GVC) [regulation \(still in use\) with extraterritorial reach](#) to reduce corporate human rights violations. Yet, there was not a single enforcement case banning products from forced labour under Section 307 between 2001 and 2015. One reason was that Section 307 permitted imports of certain forced labour-produced goods if they were not produced in the US 'in such quantities' to meet the consumptive demands'. Following [the repeal of this clause](#) under the Obama Administration in 2016, the Trump Administration pressured Customs and Border Protection to enforce section 307 more stringently, particularly concerning Chinese imports, as part of its 'America First' agenda. This trend continued under Biden, signalling a [bipartisan 'unicorn'](#) in American politics.

As a result, import bans have been slammed as [a form of 'politiking'](#). They deprive the state that is home to the targeted business of a comparative advantage in the global marketplace. To mitigate such effects import bans should ideally only be imposed [as a measure of last resort](#), and lifted as soon as less restrictive measures are available. They should also always be accompanied by [other complementary measures](#) - such as educational and skills training and technology transfer - to mitigate undesirable effects. These conditions follow from the concept of ['international cooperation'](#), set out in Article 2(1) International Covenant on Economic,

Social and Cultural Rights. While there is little research on the implementation of import bans, it is clear that China has been [disproportionally targeted](#) by the US. In addition, most products of forced labour withheld or seized in the US are also [produced](#) by the US.

Alliances with Mexico and Canada

Trade relations have become more [geopoliticized](#) and [geo-economized](#) in recent years. This implies that trade is 'influenced by [geography](#)', like proximity. Yet, it also concerns 'ideological' proximity or 'like-mindedness'. Subtle is the 'discursive construction of an issue as a geopolitical problem' to forge power alliances - emanating from competition or spilling over from security concerns - and beat rivals. The higher the number of sanctioning countries, the more certainty that import restrictions are not circumvented, the more information is available, and the greater the economic pain targeted corporations will face if they defy import bans. Allies accept this to maintain their ties with sanctioning countries. The US managed to impose its goals on close allies [Canada](#) and [Mexico](#), by negotiating an innovative social clause in the Canada-US-Mexico Agreement of 2020. [Article 23:6:1 of this agreement](#) requires the State Parties to prohibit the importation of goods into their respective territories from other sources produced in whole or in part by forced or compulsory labour. This legal ploy focusing on GVCs is unprecedented but echoes pronouncements in the aborted Transatlantic Trade and Investment Partnership between the US and the EU.

The EU echoes transatlantic developments

The EU is less 'close' to the US than to Canada and Mexico. Yet, the EU [will soon adopt](#) its own import ban on products of forced labour. This unilateral regulation undeniably fits in the Commission's [new 'assertive' ambitions](#) and 'unilateral turn', after years of [stalling](#) import restrictions on products of forced labour. The Commission quickly geopoliticized and geo-economized under [Ursula von der Leyen](#), showing concern for both the retreat of multilateralism by the US and the continued rise of China. While there is certainly an acceleration in the EU's ambitions, it also needs to be recognized that the EU has previously mirrored regulatory US developments in the field of 'human rights and business' when they fitted the EU's strategic agenda. Notably, I [demonstrated](#) in my monograph that the EU has drawn much inspiration from both sections 1502 and 1504 Dodd-Frank Act (2010).

If international cooperation is duly taken into account, the emerging trans-Atlantic import ban regulations can be part of regulation that protects against human rights violations in [GVCs](#). Laws requiring (pre-existing) due diligence and/or transparency (such as the above-mentioned 'modern slavery' laws) allow companies to mitigate the risks that come from import regulation. No doubt, the increased enforcement and creation of import ban regulations will shake up the regulatory landscape relating to forced labour and, more generally, human rights in global value chains.

Effectiveness

In July 2020 and amidst the COVID-19 pandemic, the US Customs and Border Protection (CBP) issued a Withhold Release Order (WRO) against the world's largest rubber glove producers in Malaysia for the use of forced labour. This case is commonly cited as evidence of effectiveness of forced labour import bans as it resulted in millions of dollars being refunded to foreign workers who had paid recruitment fees. But how effective are these instruments in addressing modern slavery, not only in the short but also the long term? How effective are they not only at avoiding products made with forced labour from entering a market, but also at preventing modern slavery practices in the first place by changing businesses' and governments' behaviour in third countries? And how does this ultimately reduce the prevalence of forced labour in global value chains?

A [policy brief](#) commissioned by the MS PEC explored these questions in 2021. It found that forced labour import bans can lead to businesses changing corporate practices and that the market share of an import ban may influence its effectiveness. However, it highlighted that there was limited robust evidence on their effectiveness. Now, [Dr Sofia Gonzalez de Aguinaga](#) is analysing the latest evidence to better understand when and under which conditions forced labour import bans work and for whom. This analysis will also include an exploration of the development and implementation to date of these instruments, their interaction with other regulatory measures in related policy areas, and the actual and potential unintended consequences for workers and vulnerable people, especially in the Global South.

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