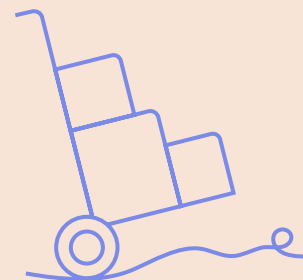


Policy brief:

Effectiveness of forced labour import bans



Authors: Irene Pietropaoli, Owain Johnstone, Alex Balch

Modern Slavery PEC Policy Brief 2021-3

Overview

This Modern Slavery PEC Policy Brief is the first in a series of Policy Briefs to assess the evidence base on the effectiveness of different regulatory interventions to address modern slavery in global supply chains, a key research priority for the Modern Slavery PEC, as set out in our [Strategy](#).

This Brief focuses on the effectiveness of **forced labour import bans**.

There is ongoing interest from governments and Parliaments globally about the role of import bans in addressing forced labour in global value chains. The US has recently revised and begun to actively implement longstanding legislation on forced labour import bans – particularly amid reports of widespread forced labour and other human rights abuses affecting Uyghurs and other Turkic- and Muslim-majority groups in Xinjiang, China, but not confined to that context.¹ There is, however, limited reference to relevant evidence in these debates, particularly on the effectiveness of import ban as measures intended to address forced labour.

Key findings

- Forced labour import bans are actions, provided for by legislation and enforced by government authorities, that stop goods produced abroad at the port of entry on grounds of suspected forced labour having been involved in their production. The principal example currently in operation, and for which there is some evidence about its effectiveness, is in the US, which has largely been enforced since 2016.
- There is limited evidence on the effectiveness of import bans at reducing forced labour taking place in supply chains, as there has been very little robust research on this topic. Import bans are likely to be resource-intensive tools to implement and manage. Several factors are likely to influence their effectiveness, such as the market share the import ban affects. Some evidence suggests import bans can lead to businesses changing corporate practices in the short-term, but their long-term effectiveness is unclear.
- There is especially limited evidence about the potential wider consequences that forced labour import bans may have, such as on geopolitical tensions. From discussion in the available literature, it seems likely that the broader the scope of an import ban, i.e. the less targeted it is, the more likely it is to have unintended consequences.
- The drivers of forced labour in supply chains are complex and any single regulatory intervention, such as an import ban, is unlikely on its own to be effective at reducing forced labour in a sustainable way, meaning import bans should be carefully considered alongside other regulatory and non-regulatory levers. Further research on import bans is needed to establish how and in what ways they are most effective.

1. The UK Foreign Secretary has summarised key findings from the available evidence: '[Human rights violations in Xinjiang and the government's response: Foreign Secretary's statement](#)' (GOV.UK, 12 January 2021). Among the most widely cited reports are: Zenz, A. (2020) Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton (Newlines Institute), Xu, V., Cave, D., Leibold, J., Munro, K. & Ruser, N. (2020) Uyghurs for Sale (Australian Strategic Policy Institute) and Lehr, A. (2021) Addressing Forced Labor in the Xinjiang Uyghur Autonomous Region (Centre for Strategic & International Studies).

Methodology

This Policy Brief is based on a rapid assessment of academic literature, as well as reports and other material produced by NGOs, governments, international organisations and the media. The evidence was gathered through a thorough search for relevant materials using multiple databases, tailored to the review questions, and should not be regarded as a systematic review of all available evidence. We have rated the evidence quality according to the system in Box 1.

Box 1: Evidence quality assessment – description of ratings

Green

There is a well-established body of evidence on this issue; the overall landscape and evidence gaps are well understood; evidence is grounded in rigorous and peer reviewed research

Amber

There are some rigorous and peer reviewed research studies on this issue; evidence base is growing but there remain gaps in understanding

Red

There are no or very few rigorous research studies on this issue; evidence base is anecdotal; data sources are very limited

Discussion

A. What evidence is there about forced labour import bans and their implementation in practice?

Forced labour import bans are actions, provided for by legislation and enforced by government authorities, that stop goods produced abroad at the port of entry on grounds of forced labour allegations. There is limited evidence about the nature of forced labour import bans and how they have been implemented in practice, including their effectiveness in achieving their objectives.

Evidence quality:

Red

Although several jurisdictions are considering or have recently introduced such import bans, the principal example currently in operation, and for which there is some evidence about its effectiveness, is in the US, which has largely been enforced since 2016. Canada has had legislation in place since July 2020 as part of the Canada–United States–Mexico Agreement Implementation Act, but there is little publicly available data on its implementation as yet. Annex 1 is a comparison of recent developments across key jurisdictions and Annex 2 contains detailed analysis of the implementation of the US legislation.

However, the available literature on import bans does illustrate the key questions that policymakers and legislators need to consider when introducing them:

- **What should the scope of forced labour import ban legislation be?** Legislation introducing an import ban may respond directly to specific concerns around forced labour – such as the recent Australian private senator’s Bill that proposed to ban the import of goods produced by Uyghur forced labour in China.² Alternatively, an import ban law may restrict the import of any goods produced in whole or in part with forced labour, wherever they are produced. The scope of import ban legislation may affect whether a ban could be challenged under global trade rules. A ban that targeted goods made with forced labour from a particular country or region may be more open to challenge than one that targeted all goods made with forced labour whatever their origin.³
- **What goods should be the target of the ban?** The potential target goods of import bans can be thought of on a spectrum from the more specific to the more general. A highly targeted import ban might restrict imports linked to an individual or to a single company. A more general instrument may target a particular set of products, or all products from a particular region. Flexible import ban instruments, such as the US example, allow both specific and general bans to be introduced at the discretion of the enforcing authority.
- **What should be the evidential threshold for introducing a ban?** What quantity and quality of evidence is required to justify the introduction of an import ban? Should anyone be able to submit evidence and request that a ban is introduced? [The US legislation permits any person](#) who believes that merchandise produced with forced labour may be being imported to report that to US Customs and Border Protection (CPB; the implementing agency) for investigation.⁴
- **How can bans be effectively challenged?** Is there a means for individuals, organisations or even governments targeted by a ban to appeal the restrictions? What is required for them to do so? There have been concerns by businesses regarding the feasibility of appealing a ban similar to that which can be imposed under the existing US legislation (see Box 2). It can be challenging to verify or to contradict allegations of forced labour in cases where there is limited visibility of (especially informal) supply chains and/or restrictions on access by independent auditors (as in the case of the Xinjiang region).
- **Should remedial action be required?** Additionally, there is the question of whether the enforcing authority should require specific remedial action by the company affected in order to make good any forced labour harm that has occurred (as the US CBP has done in some cases).
- **Roles, responsibilities and resources:** which authority decides on the introduction or lifting of bans, monitors their implementation and enforces them when required? Assessing the evidence for a ban, monitoring the implementation of a ban once introduced, and enforcing any breaches can be both time- and resource-intensive. The US approach mitigates this challenge to some extent by permitting anyone to report allegations of goods tainted by forced labour and thus spreading the burden of monitoring potential risks. However, a designated authority would still need to assess reports to consider whether the evidential threshold has been met and make a decision – this can require considerable intelligence capability. The practical challenge of deciding whether to seize a particular consignment of goods will vary depending on the scope of the ban, e.g. does the ban target goods produced or imported by a single company or a wider category such as all goods from a particular country or region?

2. Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020. See also the report on the Bill by the Foreign Affairs, Defence and Trade Legislation Committee in June 2021. The Committee concluded that they supported its objectives but proposed an alternative approach involving the introduction of a global ban on the import to Australia of any goods produced by forced labour, no matter their origin.

3. See: Cockayne, J. (2021) [‘Customs Amendment \(Banning Goods Produced by Uyghur Forced Labour Bill 2020\)’](#) Submission 30.

4. <https://www.cbp.gov/trade/programs-administration/forced-labor>

Box 2: Business responses

The [US Congress](#) is considering legislation that would introduce a presumption of forced labour in connection with any goods produced in Xinjiang, China.⁵ Importing businesses would have to prove that products manufactured in whole or in part in that region were free of forced labour. The Bill has reportedly been the target of [lobbying by companies](#) with supply chain links to Xinjiang, allegedly including Apple, Coca-Cola and Nike.⁶ Concerns relate to disclosure requirements, the opacity of many supply chains in China and restricted auditor access to the Xinjiang region.

There is already a [Withhold Release Order](#) (WRO) (no. 43) that covers all cotton and cotton products, and tomatoes and tomato products, produced in the Xinjiang Region.⁷ (See below for an explanation of WROs.) A previous WRO (no. 42) covering goods produced by the Xinjiang Production and Construction Corporation (XPCC) is already being enforced, as in a recent case where [a shipment of goods being imported by Uniqlo was seized](#).⁸ Uniqlo tried and failed to prove that the goods should be released, providing evidence that the cotton used did not originate in Xinjiang (or in China). US Customs and Border Protection found that insufficient evidence was provided to demonstrate that the XPCC had not been involved in the manufacture of the goods.

Import bans viewed in a wider regulatory context

Although there is limited evidence about the implementation of forced labour import bans, which are a relatively new instrument, they do not represent an entirely new approach. Import bans should be seen within the context of related regulatory tools such as existing sanctions regimes.

In 2012, the US adopted the Magnitsky Act imposing sanctions on individuals associated with human rights violations – expanded in 2016 with the adoption of the Global Magnitsky Human Rights Accountability Act. In December 2020, the Council of the European Union [adopted](#) a Magnitsky-style framework, which establishes [a global human rights sanctions regime](#).⁹ It provides the EU with a legal framework to target natural and legal persons, entities and bodies responsible for, involved in or associated with serious human rights violations (including slavery), regardless of where these might have occurred. In July 2020, the UK also introduced the Global Human Rights Sanctions Regulations 2020 made under the Sanctions and Anti-Money Laundering Act 2018. Under these instruments, sanctions typically consist of (for example) travel bans or asset freezes. The [list of financial sanctions targets](#) in the UK includes forced labour allegations against several entities.¹⁰

Compared to import bans, the effectiveness of more conventional economic sanctions has received wider attention, particularly in the United States. For example, a [publication by the Center for a New American Security](#)¹¹ concluded that the consensus in academic literature is that conventional trade sanctions result in some meaningful behavioural change in the targeted country in about 40% of cases but narrower bans on the sale of luxury goods and sectoral sanctions have a lower success rate at about 20%.

5. H.R.6210 – Uyghur Forced Labor Prevention Act, 116th Congress (2019–2020)

6. Swanson, A. (2020) 'Nike and Coca-Cola Lobby Against Xinjiang Forced Labor Bill' (New York Times)

7. <https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions>

8. Helfenbein, R. (2021) 'Xinjiang Concern Causes U.S. Customs To Bar A UNIQLO Shipment, Frightening Fashion Ave' (Forbes)

9. Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 4101, 7.12.2020

10. 'The UK sanctions list' ([GOV.UK](#), 6 July 2020)

11. Peksen, D. (2019) 'When Do Economic Sanctions Work Best? Five Key Conditions Associated with Successful Sanctions Outcomes', CNAS

B. What does the evidence show about the effectiveness of import bans at reducing forced labour taking place in supply chains?

There is limited evidence on the effectiveness of import bans at reducing forced labour taking place in supply chains, with little robust research on this topic. A number of factors are likely to influence their effectiveness, such as the market share the import ban affects. Some evidence suggests import bans can lead to businesses changing corporate practices in the short-term but there is little evidence of their longer-term impact.

Evidence quality:

Amber

The effectiveness of import bans can be measured against a number of criteria:

- Reduction in the actual incidence of forced labour among workers directly within the scope of the ban
- The type and extent of remediation provided for any workers within the scope of the ban, e.g. repayment of recruitment fees or reimbursement of unpaid wages
- Positive changes in corporate policies and practices both within and beyond the scope of the ban, e.g. more robust due diligence by businesses that may be caught by the ban or improved approaches to supply chain traceability to provide evidence both in support of and against bans and to avoid future risks
- Positive changes to respect for labour standards beyond the scope of the ban, e.g. where one business in a particular sector or country is caught by a ban, others in the sector may improve their labour standards to avoid being subject to a ban themselves and/or the relevant national government may take steps to enforce more stringent labour standards in order to protect its exports

Each of these criteria of effectiveness can be examined both in the short- and the long-term. It is not clear how sustainable the impacts of an import ban may be in the longer-term (see Box 3). Import bans may have wider consequences, discussed in part C.

[A study commissioned by members of the European Parliament](#) argued that for companies subject to a CBP import ban, regaining access to the lucrative US market provides a significant incentive to remedy the situation on the ground.¹² Import bans may also have a preventive effect as other companies (in the same sector or region) may take steps to address forced labour to avoid being subject to a ban themselves.

Some academic articles discuss the value of import bans in the context of wider questions about the raising of labour standards. For example, [a 2018 journal article](#)¹³ examined the changes to the US Tariff Act that led to the increased use of import bans. It concluded that there is little evidence these changes are likely to make a positive difference from the perspective of workers and trade unions in exporting countries.

12. Vanpeperstraete, B. (2021) 'Towards an EU import ban on forced labour and modern slavery' (Discussion paper commissioned by the Greens/EFA group in the European Parliament)

13. Tsogas, G. (2018) 'Transnational labor regulation, reification, and commodification: A critical review', *Labor and Society*. 2018; 21: 517-532

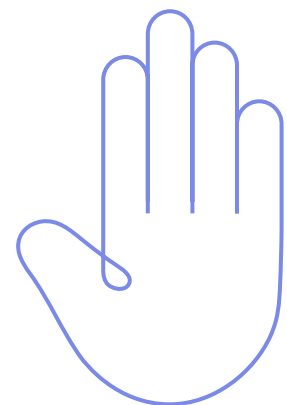
Box 3: Sustainability of import ban impacts

Import ban enforcement in the US **has been praised** at least in one case as leading quickly to remedy for workers, but there is no clear evidence about its lasting consequences.¹⁴

In July 2020 US Customs and Border Protection issued a **Withhold Release Order** (WRO) against two subsidiaries of Top Glove in Malaysia, the world's largest rubber glove company.¹⁵ CBP issued the WRO based on reasonable belief that the two subsidiaries were using debt bondage to produce rubber gloves, thereby restricting the companies' access to the US market. The import ban remained active even as the Covid-19 pandemic significantly increased demand for gloves for medical use. The speed with which Top Glove and its subsidiaries attempted to remediate the harm the workers had suffered was notable. In early August 2020, just two weeks after the WRO had been issued, Top Glove agreed to refund foreign workers who had paid recruitment fees to agents (as much as \$34 million to be paid to 10,000 workers) and to improve workers' accommodation.¹⁶ It is possible that the quick action was related to the large amount of sales Top Glove was at risk of losing – shipments from the two subsidiaries constituted 12.5% of the group's total sales.¹⁷ In fact Top Glove's North America sales volume **declined by 68%** in the third quarter of 2020, which was attributed by the company to the import ban.¹⁸

The extent and speed of Top Glove's response to the WRO **was considered** evidence of how import bans can be effective as a rights-promoting tool to protect workers and prevent reoccurrence of forced labour.¹⁹ In March 2021, however, the CBP issued **a formal finding** that there was evidence of forced labour use in the production of disposable gloves by Top Glove.²⁰ (WROs **are issued** based on reasonable, but not conclusive, information. Formal findings are issued based on conclusive information.)²¹ This case suggests that import bans may have a short-term impact on business action, particularly when they may result in significant potential losses. However, there is still limited evidence on their longer-term impact.

There is more scholarship in related areas of research such as the effectiveness of labour standards in trade agreements. For example, a 2017 **journal article**²² on labour standards in international trade agreements concluded that there are limited results in terms of effectiveness but it may be too early to tell as most of the labour provisions in trade agreements have only recently been established.



14. Corporate Accountability Lab (2020) 'Using the master's tools to dismantle the master's house: 307 petitions as a human rights tool'

15. Lee, L. (2020) 'Amid virus crisis, U.S. bars imports of Malaysia's Top Glove over labour issues' (Reuters)

16. Choy, N. (2020) 'Top Glove to pay RM136m in remediation fees to migrant workers' (The Business Times)

17. Lim, J. (2020), 'Top Glove: Two subsidiaries under detention order account for 12.5% of total sales' (The Edge Markets)

18. 'US import ban bursts Top Glove bubble' (Financial Times, 16 June 2021)

19. Corporate Accountability Lab (n 15)

20. 'CBP Issues Forced Labor Finding on Top Glove Corporation Bhd.' (US Customs and Border Protection, 29 March 2021)

21. <https://www.cbp.gov/trade/programs-administration/forced-labor/frequently-asked-questions>

22. Orbie, J., and Van Roozendaal, G. (2017) 'Labour Standards and Trade: In Search of Impact and Alternative Instruments' Politics and Governance, 2017, Volume 5, Issue 4, Pages 1-5

C. What does the evidence say about any wider consequences of import bans?

There is especially limited evidence about the potential wider consequences that import bans may have, such as their implications for geopolitical tensions. From discussion in the available literature, it seems likely that the broader the scope of an import ban, i.e. the less targeted it is, the more likely it is to have unintended consequences.

Evidence quality:

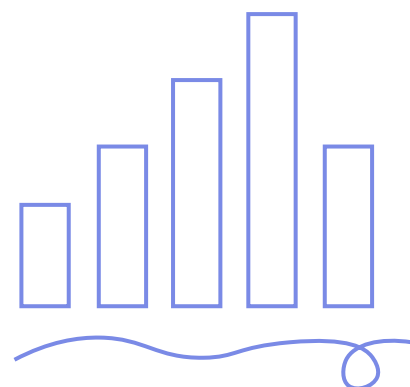
Red

The use of import bans, particularly at the general end of the spectrum, may have consequences beyond their immediate impacts. For example, they may be introduced in a context of geopolitical tensions such as the US restrictions on the import of goods produced in the Xinjiang region of China, which may in some circumstances prompt counter-measures by affected states.

Of the 15 WROs issued by the CBP in 2020, nine were linked to rights violations against the Uyghur population in China.²³ In March 2021, it was [reported](#) in the media that Nike and H&M are facing a backlash in China over statements related to forced labour in Xinjiang.²⁴ While it is unclear whether this backlash was linked directly to the WROs, the Chinese government [has imposed](#) a wide range of sanctions on foreign individuals and entities that are explicitly in response to sanctions imposed on or in relation to Xinjiang.²⁵

Import bans – particularly if targeted more widely – can be a ‘blunt approach’.²⁶ If an import ban covers an entire region or sector, it will affect all exporting businesses regardless of whether or not they use forced labour. It may also reduce export profits and thereby drive down wages. It is possible that there is a risk that import bans may be counterproductive: reduced wages may then contribute to an elevated risk of forced labour, though there is no specific evidence that import bans increase the risk of forced labour.

It is unclear whether import bans may be subject to challenge under global trade rules, but [this was a contentious issue](#) in the creation of the World Trade Organisation (WTO) and thus a claim that a ban violates WTO obligations may lead to a possible dispute.²⁷



23. A full list of [Withhold Release Orders and Findings](#)

24. Standaert, M. (2021) 'Nike and H&M face backlash in China over Xinjiang statements' (The Guardian)

25. 'US and Canada hit back at China's 'baseless' sanctions as Xinjiang row deepens' (The Guardian, 28 March 2021)

26. Cockayne, J. (2021) (n 4) para 2.4

27. Doenkens, J. (2008) The World Trade Organization and Import Bans in Response to Violations of Fundamental Labour Rights – School of Human Rights Research 30, Intersentia

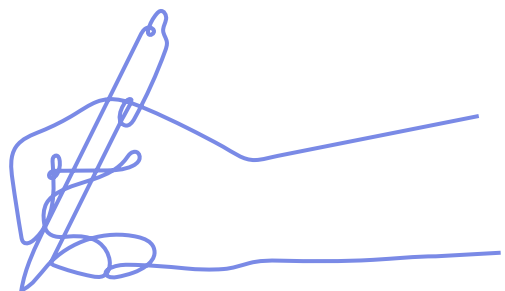
Box 4: What factors are likely to make import bans more effective?

Although there is limited evidence as to how effective import bans have been in practice, there has been some discussion of what factors make import bans more likely to be effective, such as by Professor James Cockayne in his submission to the Australian Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020.²⁸ Factors may include whether targeted import bans are coordinated by several countries together and whether they are implemented alongside the use of other regulatory instruments (e.g. trade or investment instruments). Each factor can affect the impact that an import ban may have on its target, e.g. by increasing the percentage of market share that a business loses as a result of becoming subject to an import ban.

Import bans may also have positive consequences beyond their direct scope. For example, businesses in a sector or geography that is affected by an import ban may attempt to improve their labour standards to avoid being subject to a ban themselves. Importing businesses may enhance their due diligence to avoid being affected by potential bans. Although, as mentioned above, scholars of international labour standards remain sceptical, it is possible that governments may pro-actively seek to improve labour standards to mitigate risk if there is sufficient coordination among importing states over the targets of import bans.

Summary

Forced labour import bans are one of a number of different regulatory interventions available to address forced labour in supply chains. The limited evidence base on import bans suggests that they are likely to be complex and resource-intensive tools to implement and manage. While there is some evidence that import bans can be effective at driving businesses to change corporate practices to reduce forced labour risks, their long-term effectiveness is unclear due to the lack of robust research on this topic, and import bans can have wider, potentially negative consequences. The drivers of forced labour in supply chains are diverse and any single regulatory intervention, such as an import ban, is unlikely on its own to be effective at reducing forced labour in a sustainable way. Further research on import bans is needed to establish how and in what ways they are most effective. The Modern Slavery PEC will continue to assess the evidence and publish Policy Briefs on other measures, regulatory and nonregulatory, that aim to address forced labour in supply chains, to provide policymakers and legislators with evidence on the effectiveness of the range of levers available.



28. Cockayne, J. (2021) (n 4)

MODERN SLAVERY & HUMAN RIGHTS

POLICY &
EVIDENCE
CENTRE

Led by the Bingham Centre

The Modern Slavery and Human Rights Policy and Evidence Centre was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to overcome it. With high quality research at its heart, the Centre brings together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to collaborate on solving this global challenge.

The Centre is a consortium of six academic organisations led by the Bingham Centre for the Rule of Law and is funded by the Art and Humanities Research Council on behalf of UK Research and Innovation (UKRI).

We would like to thank a number of stakeholders for helpful comments on drafts of this policy brief. In particular, thanks are due to Professor James Cockayne for his insightful contributions. Any errors remain those of the authors.

Our partners:



The Modern Slavery and Human Rights Policy and Evidence Centre is funded and actively supported by the Arts and Humanities Research Council (AHRC), part of UK Research and Innovation (UKRI), from the Strategic Priorities Fund.

Modern Slavery and Human Rights Policy and Evidence Centre
c/o British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London, WC1B 5JP

A company limited by guarantee
Registered in England No. 615025
Registered Charity No. 209425

office@modernslaverypec.org

www.modernslaverypec.org