



**Literature Review:
Forced Labour Import Bans**

By Temisan Fanou*

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*Temisan Fanou, BA (Hons), LLB, MA candidate, School of Labour Studies, McMaster University. See www.gflc.ca.

Forced labour import bans are legislatively mandated and government-enforced measures that prevent foreign-made goods from entering a country if forced labour is suspected to have been used in their production (Pietropaoli et al., 2021). They have been characterized as a form of hard regulation that can remedy the endemic labour abuses that voluntary standards and soft international law have failed to sufficiently address (LaFianza, 2022). This paper reviews the academic literature on forced labour import bans and identifies key themes. Very few countries have imposed such bans and even fewer have enforced them with any severity. Consequently, there is limited evidence on their impact or effectiveness in reducing forced labour in supply chains and the literature in this area is sparse.

Evidence on the impact of current import bans: United States and Canada

At present, only the United States (U.S.) and Canada have forced labour import bans in place.¹ The U.S. ban, which is implemented primarily through section 307 of the Tariff Act (1930), was not seriously enforced by Customs and Border Protection (CBP) until 2016.² The analysis of the effectiveness of enforcement under section 307 in the literature is mixed. The case of Top Glove, a Malaysia-based producer of personal protective equipment (PPE), is widely cited as an example of the positive impact of the U.S. import ban (LaFianza, 2022; Bengtson, 2021; Pietropaoli et al., 2021; Brudney, 2020). In July 2020, CBP issued a withhold release order (WRO) for imports manufactured by Top Glove in Malaysia due to forced labour concerns. By April 2021, Top Glove had taken a number of steps to address the problem, including reimbursing approximately \$36 million (U.S.) to around 13,000 current and former workers who had paid recruitment fees to secure their jobs, and in September 2021, the ban was lifted. According to Bengtson (2021), the import ban on Top Glove achieved what decades of voluntary CSR efforts by the global medical sector and actions by Malaysia's labour inspectorate could not, and he argues that it was effective because it hurt the company's revenues (Bengtson, 2021). In this sense, "the US model has proven its effectiveness" (LaFianza, 2022, p. 22). For other researchers, the extensive media coverage, NGO advocacy, and government interest in the situation of workers in Malaysia's medical gloves industry during this period makes it difficult to draw a clear causal link between the import ban and Top Glove's response (Pietropaoli et al., 2021; Johnstone, 2022). The CBP's decision in late 2021 to issue WROs for imports from two other Malaysian glove manufacturers also raised doubts about initial claims that the Top Glove case would have long-term and industry-wide impacts (Pietropaoli et al., 2021).

The literature also draws attention to the arbitrary nature in which the U.S. import ban is enforced, with WROs ostensibly serving as political instruments and protectionist trade measures rather than human rights tools (Shehadi & van der Merwe, 2021; Bengtson, 2021). For example, while only 3.9% of the goods listed on the U.S. Department of Labour's List of Goods Produced by Child or Forced Labor are produced in China, 57% of WROs issued since 2015 have been directed at Chinese producers (Shehadi & van der Merwe, 2021). Schwarz et al. (2022) note that the politicization of import bans reduces their credibility and thus a clear decision-making framework for imposing and lifting restrictions is essential for effective implementation. Other shortcomings of section 307 include its narrow interpretation by the CBP (Plouffe-Malette and Brisson 2019), the lack of transparency (Plouffe-Malette & Brisson, 2019; Bengtson, 2021) and of any requirement for companies to undertake remediation (Pietropaoli et al., 2021), and the limited resources allocated to enforcement (Plouffe-Malette & Brisson, 2019).

The U.S. has also enacted laws which create a presumption of forced labour in the production of goods sourced from North Korea and Xinjiang, China. The 2017 Countering America's Adversaries through Sanctions Act (CAATSA) and the 2021 Uyghur Forced Labor Prevention Act (UFLPA) impose a reverse onus on importers who must prove that goods sourced from these regions were not produced with forced labour. The evidence on the effectiveness of the UFLPA "appears mixed, at best, so far" (Cockayne, 2022). The Chinese government has reportedly moved to ratify the two key ILO forced labour Conventions and claims that its vocational training centre system has been shut down. However, there is no evidence that

¹ Several countries are currently considering enacting import bans including the EU, Australia, UK, and Mexico.

² Section 307 of the Tariff Act contained an exception for goods that were not produced in sufficient quantities in the U.S. to meet the country's consumptive demands. This 'consumptive' demand loophole clause was repealed in 2016 by the Trade Facilitation and Trade Enforcement Act.

forced labour has ended or reduced in Xinjiang or that past forced labour has been remedied. Moreover, workers in Xinjiang are arguably more vulnerable to exploitation and abuse, as the government has made it harder to access and reliably audit worksites, and workers faced increased risks for speaking out (Cockayne, 2022).

Canada's forced labour import ban came into force in July 2020 and there appears to be no academic analysis to-date of its impact. However, news reports indicate that the Canadian Border Services Agency (CBSA) has seized only one shipment since July 2020, and the goods were ultimately allowed into the country after the company submitted satisfactory documentation (Chase, 2022a). In contrast, the U.S. intercepted approximately 1,400 shipments in the 2020-2021 period alone (Chase, 2022a). Trade experts argue that the Canadian government is not making the investments in enforcement and intelligence gathering that are necessary for the import ban to be effective (Chase, 2022b).

Factors affecting the effectiveness of import bans

In Top Glove and similar cases, the CBP worked closely with suppliers subject to import bans, provided feedback to adjust manufacturing and labour practices, and required them to undertake worker-focused remediation (Brudney, 2020; Nissen, 2022). This shows that "import restrictions alone are insufficient and ineffective to eliminate forced labour" and must be "backed up by collaborative cross-border efforts" (Nissen, 2022, p.378). However, since remediation is not required under existing laws in the U.S. or Canada, enforcement agencies have wide discretion on whether to engage in these collaborative efforts. Further, even where remediation takes place, the financial responsibility is often borne by local suppliers rather than foreign importers. For example, in the Top Glove case, foreign buyers of the company's products did not contribute to the reimbursements that were paid to migrant employees (Bengsten, 2021). Some scholars have argued that, to ensure remediation of forced labour abuses, enforcement agencies must impose financial penalties on importers which can be used to fund remedial projects to assist affected workers (LaFianza, 2022; Bengsten, 2021).

The impact of import bans can also vary based on the market share affected by the ban (Pietropaoli et al., 2021; Schwarz et al., 2022). For example, the UFLPA has had a significant impact in the cotton sector – sales of Xinjiang cotton fell by 41% between 2021 and 2022 –, reflecting the dominant position of the U.S. and other western countries as key buyers of China's clothing exports (Taplin, 2022; Cockayne, 2022). In contrast, imports of tomatoes and polysilicon (used to make solar panels) from Xinjiang have been only minimally affected, likely because China produces 80% of the world's polysilicon (as compared to 25% of global cotton) and western countries are not among its major buyers (Taplin, 2022; Cockayne, 2022). Shehadi and van der Merwe (2021) note further that the U.S. import ban would have a bigger impact on working conditions abroad if enforced in areas of significant trade leverage. For instance, 99.7% of Mexican tomato exports are destined for the U.S., and thus businesses would likely be quick to act to remedy issues of forced labour if WROs were imposed in this sector (Shehadi & van der Merwe, 2021).

Another important consideration is the ease with which a forced labour import ban can be circumvented. Garments from North Korea are reportedly exported to the international market through China, evading US and EU import bans on North Korean textiles (Ryngaert, 2020). Similarly, there are concerns that the UFLPA will lead firms to switch to suppliers in Vietnam that source covertly from Xinjiang factories (Papier & Tang, 2022). Moreover, under the U.S. and Canadian bans, importers whose shipments are blocked at the border can re-export the shipment to a destination without such import controls (Pietropaoli, I. et al., 2021). In fact, media investigations indicate that some shipments from companies that are blacklisted by the U.S. end up in Canada where enforcement is weaker (Blackwell, 2021). This "substitution" effect has also been recognized as a weakness of the proposed EU ban on forced labour goods (Jacob et al., 2022, p.29). In this context, import bans are likely to be more effective when coordinated by several countries together (Pietropaoli et al., 2021; Schwarz et al., 2022). However, state-sponsored forced labour may be less reactive even to coordinated import bans, given the lack of market dynamics (Jacob et al., 2022).

There is a widespread recognition that forced labour import controls can have "unintended" or "undesirable" consequences that worsen conditions for workers, such as where companies respond by

pulling out of the affected country or region entirely (Ryngaert, 2020; Anti-Slavery International 2021; Jacob et al., 2022, p.29; LaFianza, 2022, p.25; Schwarz et al., 2022) or where workers in affected sectors move to other dangerous sectors such as the construction industry (Nissen, 2022). One concrete example mentioned in the literature concerns Hong Kong-based clothing manufacturer Esquel, which reportedly lost revenue due to restrictions on its Xinjiang-related shipments and was consequently forced to close two factories in Mauritius, eliminating 7,000 jobs (Papier & Tang, 2022). Import bans may also inadvertently lead to increased forced labour in sectors that are not affected by the restrictions (Rauscher & Willert, 2020). To reduce such risks, import bans should be carefully designed and governments should conduct impact-based assessments (including consultations with affected stakeholders) prior to their imposition (Anti-Slavery International 2021; Schwarz et al., 2022). In addition, bans should be accompanied by efforts that push companies to make changes that benefit workers (Brudney, 2020), and restrictions should only be sustained “as long as more cooperative measures are not feasible” (Nissen, 2022, p.378).

Researchers also recognize that import bans do not fix the problem of firms’ lack of knowledge about labour violations in their complex supply chains (Papier & Tang, 2022). Jacob et al. (2022) note that the informational requirements for the effective implementation of import bans are substantial, including knowledge about the affected product, its origin, and the use of forced labour in its production process. Consequently, the existence of effective traceability mechanisms has been cited as an important factor that impacts the effectiveness of import bans (Pietropaoli et al., 2021; Schwarz et al., 2022). LaFianza (2022) suggests that governments imposing import bans should provide more support to companies to help them conduct proper supply chain due diligence, while Schwarz et al. (2022) propose bridging this knowledge gap through increased multilateral intelligence sharing in this area and providing funding to civil society organizations to monitor and investigate trends and risks.

There is some indication that import restrictions that are directed towards governments (rather than importing corporations) can be effective; for example, when the EU threatened to prohibit Thai fishery exports to EU countries due to concerns about illegal, unreported, and unregulated (IUU) fishing, the Thai government took prompt actions against IUU fishing and successfully reduced the number of human trafficking and forced labour cases in the fishing industry (Wongrak et al., 2021). On the other hand, the EU’s withdrawal of GSP+ trade preferences from Myanmar in 1997 due to reports of forced labour did not lead to any progress towards the abolition of forced labour in Myanmar during the 10-year period following withdrawal (and in fact trade with Myanmar increased two-fold during this period) (Zhou & Cuyvers, 2011).

Finally, import bans may be more effective when enforced in coordination with other regulatory instruments to address forced labour such as mandatory human rights due diligence (mHRDD) legislation, which imposes a legally binding obligation on businesses to take care to ensure that their business and business relations do not cause human rights violations and to make efforts to mitigate any harms caused (Pietropaoli et al., 2021; Amnesty International 2021; LaFianza, 2022; Jacob et al., 2022). Amnesty International and the European Center for Constitutional and Human Rights (2021) argue that import bans cannot independently address the root causes of forced labour but are “appropriate for when human rights due diligence efforts on the ground, to address forced labour, are impossible (as in cases of state-imposed forced labour), or as an enforcement option to compel companies [...] to undertake meaningful preventative and remedial actions on forced labour where current actions are insufficient, unlikely to produce results or wholly lacking”.

Other considerations

Like mHRDD laws, forced labour import bans “retain an element of corporate self-regulation” which is intended to be counter-balanced by the existence of tangible repercussions for non-compliance, cohesive standards applied across companies, and clear government oversight (LaFianza, 2022, p. 7). However, the enforcement of import bans on forced labour goods is resource-intensive (Ryngaert, 2020) and governments with existing bans are not dedicating the required resources for robust enforcement. A similar situation is likely to play out in the European Union, where the enforcement of any proposed import restrictions will likely vary widely across member states, based on their capacities and political will (Pronczuk, 2022; Jacob et al., 2022; Schwarz et al., 2022). Further, the import ban model is a reactive approach and does little to prevent the occurrence of forced labour. For example, it is not sufficient for

companies to respond to an import ban by reimbursing recruitment fees paid by migrant workers, if there is no effective monitoring of the recruitment process to ensure that fees are not imposed on workers going forward (Bengsten, 2021). Collaborative cross-border efforts are essential to disrupt the underlying root causes of forced labour (Jacob et al., 2022).

There are also important questions about what forced labour import bans are meant to achieve. Schwarz et al. (2022) note that import restrictions “provide an important moral signal that can help maintain the EU’s international reputation on human rights issues”, which seems to suggest that ineffective bans may still accomplish other political goals (p. 16). Cockayne (2022) argues that, even where such bans work, they “work primarily to reduce Western consumers’ and importers’ contribution to Xinjiang forced labour – not to end it per se.” Western investors can still continue to invest in and profit from the production and sale of goods that are made with forced labour and sold into other markets where bans are not in force. They also arguably cross-subsidize forced labour by buying (at a premium) slavery-free goods made by the same firms that use forced labour to make other goods (Cockayne, 2022). In this sense, import bans of forced labour, even when well designed and strictly enforced, may have a very limited impact on working conditions in affected countries.

Appendix – Literature Search Strategy

This literature review was compiled based on searches conducted in October 2022 of the English-language academic and grey literature on forced labour import bans. The terms “import ban” and “forced labour” were searched in eight academic search engines and databases (EBSCOhost, IDEAS, Social Sciences Citation Index, JSTOR, ProQuest, Scholar’s Portal, Nexis Uni, and Google Scholar). In addition, I conducted a general Google search for these terms and reviewed some additional sources recommended by Dr. Judy Fudge. The results of these searches were scanned to identify those which considered or touched on the impact or effectiveness of forced labour import bans. All relevant items are included in the list of references below.

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