



THE  
REMEDY  
PROJECT

THE FREEDOM FUND

**Putting things right:**

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

28 APRIL 2023

# Acknowledgements

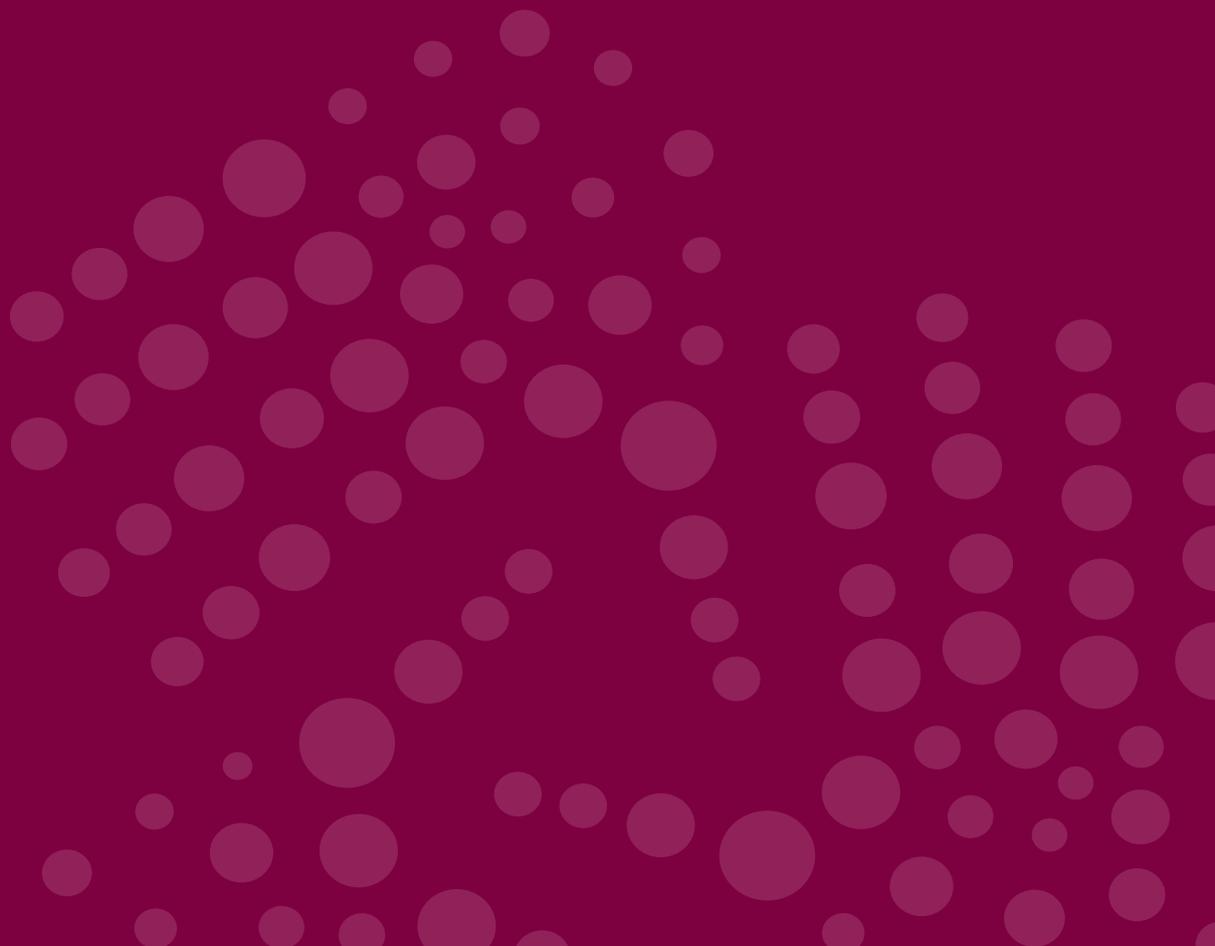
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# Disclaimer

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

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



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# 1. Introduction

- 1.1 The US Tariff Act of 1930<sup>1</sup> (**the Tariff Act**) empowers US Customs and Border Protection (**CBP**) to impose an 'import ban'<sup>2</sup> on goods made wholly or in part by forced labour, convict labour, or indentured labour (including forced or indentured child labour).<sup>3</sup>
- 1.2 Import bans under the Tariff Act are among the strongest legal tools currently available to hold companies accountable for forced labour in their supply chains. They have the potential to impose direct economic costs on those who exploit forced labour, and to disrupt value chains that profit from exploitation. An import ban can place significant commercial pressure on companies to address forced labour in their supply chains or risk losing access to the valuable US export market. 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.<sup>4</sup> 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 in their supply chains, and implement systemic-level responses to address them.
- 1.3 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. This is reflected in the Tariff Act itself, which 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.



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- 1 19 USC Ch.4
- 2 This report uses the commonly-used term 'import ban' to describe the Tariff Act mechanism. An 'import ban' is a form of quantitative restriction which prohibits goods of a specific origin or type from entering a market. See: European Parliament (2022) [Trade-related policy options of a ban on forced labour products](#), page 10, and World Trade Organization, [Quantitative Restrictions](#)  
As explained in more detail below, the Tariff Act 'import ban' mechanism is a two-stage process. At the first stage, CBP issues a 'Withhold Release Order' (WRO). Goods that are subject to a WRO cannot be released from any US ports into the US. However, the importation of those goods to the US is not prohibited. At the second stage, CBP makes a 'Finding'. Among other things, goods covered by a Finding cannot be imported to the United States. It is therefore only at the second stage that a ban on imports is imposed. However, for simplicity, the entire Tariff Act mechanism is referred to as an 'import ban' mechanism in this report, as both WROs and Findings have the effect of preventing specified goods from entering the US market.
- 3 Under the Tariff Act, "forced labour" is defined "as work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily", and includes forced or indentured child labour. See: 19 CFR § 12.42(f)
- 4 See, e.g., Ansell (11 August 2022) [TVPRAs Lawsuit Against Ansell](#)

# 1. Introduction

## What is 'remedy'?

This report 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 to help make good that harm. 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".<sup>5</sup>*

As will be discussed later, 'remedy', as defined in the UNGPs is not the same as the concept of 'remediation' as understood and applied by CBP. As explained more fully in section 5 below, CBP effectively equates 'Remediation' with the removal of the presence of any ILO indicators of forced labour. Unless otherwise stated in this report, the term 'remedy' therefore refers to the UNGP definition above. While the term 'Remediation' refers to CBP's concept of remediation (i.e., the removal of ILO indicators of forced labour).

- 1.4 This report looks at the relationship between the process of 'Remediation' (i.e., the removal) of the ILO indicators of forced labour in response to import bans under the Tariff Act, and the provision of remedies to people in conditions of forced labour, workers, and other affected people. It considers:
- i. How has the concept of 'remediation' been understood and applied under the Tariff Act import ban mechanism?
  - ii. Where a company is subject to an import ban, what measures have the company and other actors taken in response to the ban to address forced labour issues?
  - iii. To what extent have those measures led to the provision of remedies for people in conditions of forced labour and other affected people? What remedies were provided, and what was their effect?
  - iv. What factors have contributed to, or undermined, the successful use of import bans as a tool to provide remedies to people in conditions of forced labour and other affected people?

<sup>5</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7

# 1. Introduction

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- 1.5 In short, this report seeks to understand the extent to which corporate<sup>6</sup> responses to import bans imposed under the Tariff Act have led to access to remedies for people in conditions of forced labour and other affected rights holders. More broadly, this report considers the potential for import bans to be leveraged as a tool to secure access to remedies for people in conditions of forced labour.
- 1.6 This report considers these issues through the lens of nine in-depth 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 South East Asia, Central Asia, East Asia, Southern Africa, and South America. The case studies have been developed through a combination of desk-based research, stakeholder interviews, as well as interviews with 53 workers in companies directly affected by those import bans. The methodology used, and its limitations, is detailed more fully in section 4 below.
- 1.7 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. It is hoped that the findings and recommendations of this report will serve as a guide for policymakers to help realise the potential of import ban mechanisms (operating in tandem with other mechanisms, such as mandatory human rights due diligence legislation) as a tool to provide access to remedies, and not just as an accountability mechanism. For civil society, this report offers recommendations on how to more effectively utilise import ban mechanisms to support the provision of remedies for people in conditions of forced labour. For the private sector, this report offers guidance on how to leverage learnings from the enforcement of the Tariff Act to improve company efforts to provide access to remedies for workers and other rights holders, and to prepare for future import ban regimes (e.g., as currently contemplated by the EU).
- 1.8 For the avoidance of doubt, this report does not seek to identify existence of alleged forced labour or other legal or human rights violations in any of the case studies or companies examined. Nor does it seek to verify, corroborate, or support the conclusions reached by CBP in any case. Rather, the focus of this report is on the response which followed the CBP action in question, and the extent to which workers and other rights holders have secured remedies through those responses. Nothing in this report should be construed as legal advice.
- 1.9 This report is based on publicly available information as of February 2023.

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7 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.

# 1. Introduction

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

s.307 of the Tariff Act states that:

*"All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited..."*<sup>7</sup>

CBP is the US Federal Agency designated to enforce this provision.<sup>8</sup> CBP can exercise its power acting on its own initiative, or in response to information contained in a petition submitted by a third party (**a Petition**).<sup>9</sup>

There is a two-stage enforcement mechanism under the Tariff Act. At the first stage, CBP will decide to launch an investigation either on its own initiative or in response to a Petition. Following that investigation, if CBP finds information which reasonably indicates that goods falling within s.307 of the Tariff Act are being, or are likely being, imported to the US, CBP will issue a 'withhold release order' (**WRO**) in respect of those goods. A WRO, as its name suggests, prevents goods covered by the order that are in US ports from being released into the US.<sup>10</sup> In other words, a WRO prevents goods from entering the US market through US port facilities. Importers of the goods can, however, still re-export those goods out of US ports to other destinations.<sup>11</sup>

At the second stage, if CBP later determines that the goods in question are subject to s.307, CBP will – with the approval of the Secretary of the Treasury – publish a finding to that effect (**a Finding**).<sup>12</sup> Goods covered by the Finding will be denied entry into any US ports, their importation to the US will be prohibited, and any such goods in US ports may be seized and forfeited. In most cases, CBP does not issue a Finding.<sup>13</sup> As of February 2023, there are 53 active WROs but only nine Findings.<sup>14</sup>

CBP also has the power to impose civil penalties (e.g., fines) on importers who enter or introduce (or attempt to do so) goods into the US market contrary to law – which would include 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.<sup>15</sup>

7 19 USC 4 §1307

8 9 CFR § 12.42

9 19 CFR § 12.42(a) and (b)

10 19 CFR § 12.42(e)

11 19 CFR § 12.42(e)

12 19 CFR § 12.42(f)

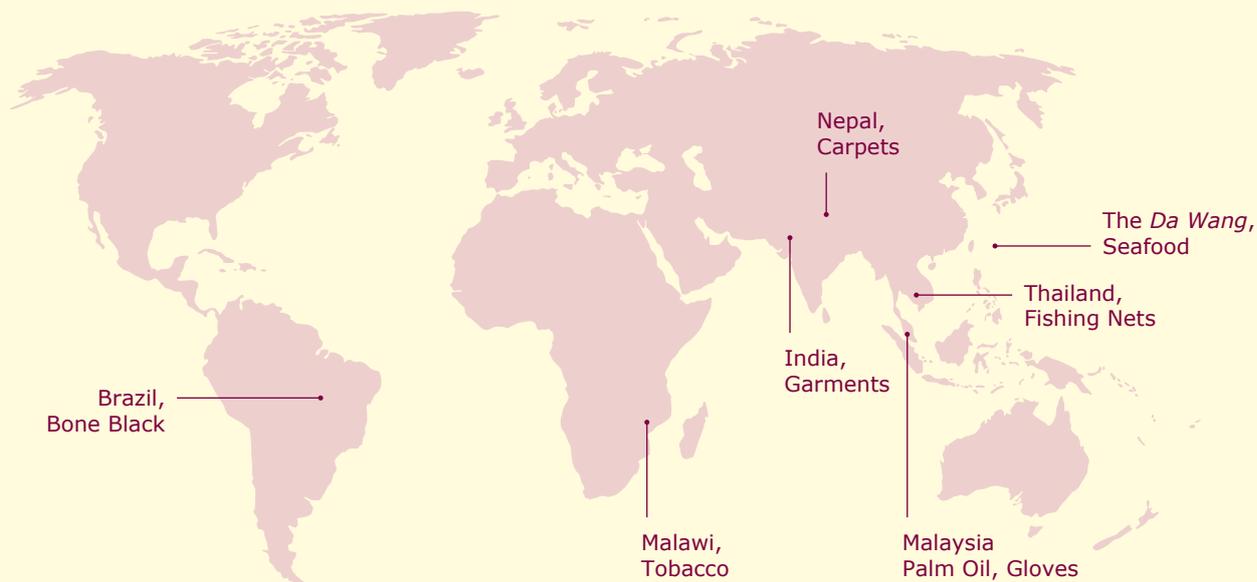
13 19 CFR § 12.42(f); 19 CFR § 12.42(f)

14 CBP, *Withhold Release Orders and Findings List*

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

# 1. Introduction

## Overview of Case Studies



Jurisdiction	Industry	Subject entity(ies) or industry(ies)	Enforcement action initiated in response to Petition or on CBP's own initiative	Status of enforcement action
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda (" <b>Bonechar</b> ")	Petition from NGO	WRO issued on 30 September 2019. <sup>16</sup> WRO modified on 4 December 2020. <sup>17</sup>
India	Garments	Natchi Apparels (P) Ltd.	Unknown	WRO issued on 29 July 2022. <sup>18</sup> WRO modified on 7 September 2022. <sup>19</sup>

<sup>16</sup> CBP (1 October 2019) [CBP Issues Detention Orders against Companies Suspected of Using Forced Labor](#)

<sup>17</sup> CBP (7 December 2020) [CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechar Carvão Ativado do Brasil Ltd.](#)

<sup>18</sup> CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

<sup>19</sup> CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

# 1. Introduction

Jurisdiction	Industry	Subject entity(ies) or industry(ies)	Enforcement action initiated in response to Petition or on CBP's own initiative	Status of enforcement action
Malaysia	Palm oil	FGV Holdings Bhd	Petitions from NGO and from an NGO coalition (multiple)	WRO issued on 30 September 2020. <sup>20</sup>
Malaysia	Palm oil	Sime Darby Plantation Bhd	Petition from NGO	WRO issued on 30 December 2020. <sup>21</sup> Finding issued on 28 January 2022. <sup>22</sup> Finding modified on 3 February 2023. <sup>23</sup>
Malaysia	Disposable gloves	Top Glove Corporation Bhd	Unknown	WRO issued on 15 July 2020. <sup>24</sup> Finding issued on 23 March 2021. <sup>25</sup> Finding modified on 10 September 2021. <sup>26</sup>
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	Unknown	WRO issued on 1 November 2019 in respect of tobacco produced in Malaw and products containing tobacco produced in Malawi. <sup>27</sup> WRO modified in respect of Alliance One International LLC on 3 June 2020. <sup>28</sup> WRO modified in respect of Limbe Leaf Tobacco Company Ltd. on 31 July 2020. <sup>29</sup>

- 20 CBP (30 September 2020) [CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia](#)
- 21 CBP (30 December 2020) [CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia](#)
- 22 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
- 23 CBP (3 February 2023) [CBP Modifies Finding on Sime Darby Berhad in Malaysia](#)
- 24 CBP (9 September 2021) [CBP Modifies Forced Labor Finding on Top Glove Corporation Bhd.](#)
- 25 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
- 26 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
- 27 CBP (1 November 2019) [CBP Issues Withhold Release Order on Tobacco from Malawi](#)
- 28 CBP (3 June 2020) [CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi](#)
- 29 CBP (1 August 2020) [CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi](#)

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Jurisdiction	Industry	Subject entity(ies) or industry(ies)	Enforcement action initiated in response to Petition or on CBP's own initiative	Status of enforcement action
				WRO modified in respect of Premium Tobacco Malawi Limited on 21 May 2021. <sup>30</sup>
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	Unknown	WRO issued 21 July 1998. <sup>31</sup>  WRO modified in respect of Norsang Carpet Industries Pvt., Ltd., Everest Carpet, and K.K. Carpet Industries on 6 October 1998. <sup>32</sup>  WRO modified in respect of Annapurna Carpet on 23 July 2021. <sup>33</sup>
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>	Unknown	WRO issued 18 August 2020. <sup>34</sup>  Finding issued 28 January 2022. <sup>35</sup>
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd  Dechapanich Fishing Net Factory Ltd.	Petition from an NGO coalition	Petition submitted to CBP on 22 February 2022. <sup>36</sup>

30 CBP (24 May 2021) [CBP modifies Withhold Release Order on certain tobacco imports from Premium Tobacco Malawi Limited](#)

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

32 CBP (26 July 2021) [CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal](#)

33 CBP (26 July 2021) [CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal](#)

34 CBP (18 August 2020) [CBP Issues Detention Order on Seafood Harvested with Forced Labor](#)

35 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. §307, 87 FR 4634](#)

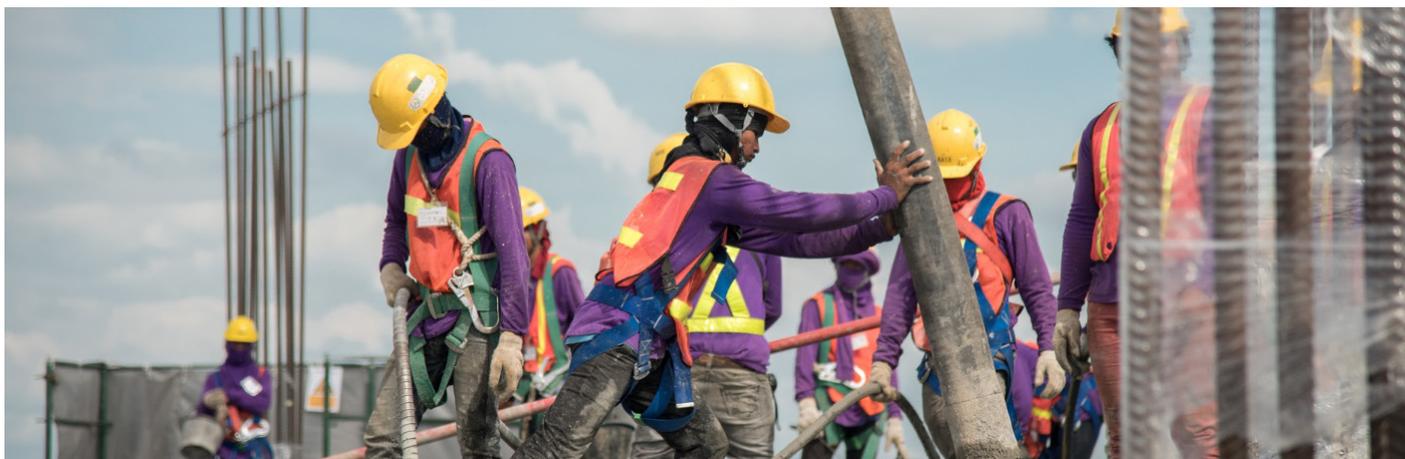
36 Global Labor Justice-International Labour Rights Forum (22 February 2022) [Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor](#)

## 2. Summary of Key Findings

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

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

- 2.1 CBP uses the term 'Remediation' when it makes decisions about whether to 'modify' or 'revoke' a WRO or Finding.<sup>37</sup> Modification and revocation are two ways in which CBP can 'lift' a WRO or Finding.
- i. 'Modification' is the partial or total suspension of enforcement of a WRO or Finding. For example, a WRO may be modified to exclude certain companies, or certain products, from its scope.<sup>38</sup>
  - ii. 'Revocation' is the total removal of a WRO or Finding, based on a determination by CBP that the actor or entity subject to the WRO or Finding was not engaged in forced labour.<sup>39</sup>
- 2.2 In its guidance documents, CBP states that it "*will not modify or revoke [a WRO] unless all forced labour indicators are remediated.*"<sup>40</sup> However, these guidance documents do not specifically define 'Remediation'. The term 'Remediation' is also not used in the Tariff Act or its accompanying Federal Regulations.
- 2.3 In practice, CBP uses the term 'Remediation' to describe the process of *removing indicators* of forced labour (specifically, the 11 ILO Indicators of Forced Labour), rather than the *provision of remedies* to affected rights holders. Although the two concepts are similar, they are not identical.



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

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

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

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

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

## 2. Summary of Key Findings

- 2.4 For example, in many case studies examined in this report, debt bondage (e.g., arising from the payment of recruitment fees by migrant workers) was a key indicator of forced labour identified by CBP. In response, some companies reimbursed migrant workers' recruitment fees to 'Remediate' (i.e., remove) this indicator of forced labour. The reimbursement of recruitment fees can help 'Remediate' (i.e., remove) indicators for forced labour by removing workers from potential situations of debt bondage. However, the *reimbursement* of recruitment fees – while a very significant step – is not the same as offering *compensation* to workers who had been subjected to forced labour through debt bondage.<sup>41</sup>
- 2.5 Further, the Remediation of indicators of forced labour does not always lead to the provision of remedies to individuals. For example, in 2020, CBP modified a WRO imposed in respect of two tobacco companies in Malawi based on an evaluation of each company's "*social compliance programs and efforts to minimise the risks of forced labor from its supply chain.*"<sup>42</sup> According to tobacco workers interviewed for this report, no remedies were provided to workers in response to the import ban.
- 2.6 According to interviews with stakeholders, CBP's focus on Remediation through the removal of indicators of forced labour, rather than the provision of remedies to individuals, is largely due to CBP's mandate and jurisdiction. The Tariff Act and its accompanying Federal Regulations make no reference to remediation. CBP's legal mandate therefore does not expressly include ensuring that workers in overseas supply chains are provided with remedies where their rights are violated. CBP's mandate is to ensure that goods made with or using forced labour do not enter the US market. This, in part, is a result of the original underlying objective of s.307 of the Tariff Act – which was to protect US commercial interests from having to compete with imported products made with or using forced labour. To that end, it is concerned with identifying whether indicators of forced labour are, or are not, present in a given product supply chain.

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

- 2.7 As noted above, it appears that CBP will consider forced labour to have been 'Remediated' if it is satisfied that none of the 11 ILO indicators of forced labour are present in a company's operations. However, CBP appears to have adopted different standards in different cases to decide whether there has been sufficient Remediation of forced labour indicators.
- 2.8 In a press release on 3 February 2023, CBP stated that it "*does not modify Withhold Release Orders or Findings until the agency has evidence demonstrating that the subject merchandise is no longer produced, manufactured, or mined using forced labor.*"<sup>43</sup> However, it does not always appear to apply this standard.

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

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

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

## 2. Summary of Key Findings

2.9 In November 2019, CBP imposed an import ban on tobacco from Malawi “*due to concerns that the tobacco is being produced using forced labor and child labor*”.<sup>44</sup> In June and August 2020, CBP lifted the import ban in respect of two of Malawi’s largest tobacco leaf buying companies, based on their “*efforts to identify and minimize the risks of forced labor*”, which CBP said “*sufficiently support[ed]*” both companies’ claims that tobacco from their farms was not produced using forced labour.<sup>45</sup>

2.10 CBP’s decision to modify the import bans in respect of tobacco from Malawi therefore appears to adopt a different standard to that used in other cases. In the case of Malawi, CBP appears to have adopted a risk-based approach – requiring only that the companies demonstrate “*efforts to identify and minimize the risks of forced labor*” (emphasis added).<sup>46</sup> This is different from the standard adopted by CBP in other cases, where it has required companies to demonstrate “*that the subject merchandise is no longer produced, manufactured, or mined, using forced labor*” (emphasis added).<sup>47</sup> While the risk-based approach applied in the Malawi case is not necessarily inappropriate, it is not clear why an apparently different standard was applied in this case.



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

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

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

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

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

## 2. Summary of Key Findings

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

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

- 2.11 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.
- 2.12 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,<sup>48</sup> new corporate sustainability initiatives such as the Responsible Glove Alliance have been launched, worker grievance mechanisms have been strengthened, and recruitment, corporate governance, and sustainability policies have been reformed.
- 2.13 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 banks.<sup>49</sup> In Taiwan, an import ban has prompted the prosecution of alleged perpetrators of trafficking and forced labour aboard the fishing vessel *Da Wang*, and the owners of the vessel had their license revoked.<sup>50</sup>
- 2.14 Import bans have also driven legal and policy changes. In Taiwan, import bans helped spur the adoption of an official Action Plan for Fisheries and Human Rights – which includes a USD 100 increase in the monthly minimum wage for distant water fishing workers.<sup>51</sup>
- 2.15 In Thailand, in response to a threatened import ban, the Royal Thai Government has committed to end the manufacture of fishing nets using prison labour<sup>52</sup> – offering an example of how the creative and targeted use of CBP Petitions against private companies can be an effective tool to address state-imposed forced labour in certain cases.
- 2.16 In Malaysia, the Government has introduced several reforms to labour laws and policies following a series of import bans against glove makers and palm oil companies – including improved protections for migrant workers, and the creation of a new forced labour criminal offence.<sup>53</sup> While it is not possible to directly attribute all of these reforms to the impact of import bans – import bans may have catalysed the more rapid adoption of these reforms.

48 See paragraphs 6.35, 6.72 and 7.16 below

49 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 (11 August 2022) [TVPRO Lawsuit Against Ansell](#) ; International Rights Advocates, [Cases: Kimberly Clark and Ansell](#)

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

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

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

53 Employment (Amendment) Act 2023

## 2. Summary of Key Findings

- 2.17 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.”*<sup>54</sup>
- 2.18 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's Board level Sustainability Committee oversaw the Remediation of forced labour, increasing the frequency of its meetings to fortnightly, and introduced a new internal ESG scorecard to track and measure its performance on the resolution of labour issues.<sup>55</sup>
- 2.19 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.



54 Interview with Jen Jahnke, Associate Director, Impactt Limited

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

## 2. Summary of Key Findings

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

Import bans have resulted in the provision of significant remedies to people in conditions of forced labour – including commitments by companies to repay USD 115.4 million in recruitment fees to nearly 82,000 migrant workers in Malaysia.<sup>56</sup> But beyond the reimbursement of recruitment fees, few other forms of direct remedies have been provided

- 2.20 The Report sought to identify the different forms of remedy that were provided to workers and affected rights holders in response to import bans. The table below maps the different remedies<sup>57</sup> identified in each of the case studies examined.
- 2.21 The table highlights instances where there was evidence indicating that a given remedy had been provided to workers and other affected rights holders. The table does not indicate whether those remedies were effective or adequate from the perspective of recipients, as this was not possible to verify in every case.
- 2.22 Multiple sources of information were used to compile the table below. Where possible, the primary source of evidence was interviews with affected workers and rights holders themselves. This was supplemented by secondary sources – including audit reports, company announcements and publications, and independent media coverage. The table below uses colours to distinguish information reported by different sources.
- i. Items in green are remedies that workers and rights holders who were interviewed reported that they had received.
  - ii. Items in yellow are remedies that companies or governments reported that they provided (e.g., in press releases, publications and audit reports), but could not be corroborated by worker interviews. This may be because worker interviews could not be conducted, or because interviewees were not able to comment on whether the remedy was provided (e.g., because they no longer worked in the company or industry in question at the time the remedy was reported to have been provided).
  - iii. Items in orange are remedies that companies or governments reported that they provided, but that workers interviewed for the Report did not confirm had been provided to them. In other words, there was a discrepancy between the remedies that companies or governments reported having provided, and the remedies that workers reported they had received.

<sup>56</sup> See paragraphs 6.35, and 7.16 below

<sup>57</sup> The list of remedies is derived from the forms of remedy that were observed to have been provided in the different case studies, as well as the OHCHR interpretive guide to the UNGPs. See: United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7

## 2. Summary of Key Findings

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

Green: Remediation self-reported, and corroborated by worker interviews conducted for this report	Blue: 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
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Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study <sup>58</sup>	Malaysia Rubber Gloves (Top Glove)*	Malawi Tobacco	Nepal Carpets (Annapurna Carpet)*	Malaysia Palm Oil (Sime Darby)	Malaysia Palm Oil (FGV Holdings)	Distant water fishing (the <i>Da Wang</i> )	Thailand Fishing Nets

	Malaysia Rubber Gloves (Top Glove)*	Malawi Tobacco	Nepal Carpets (Annapurna Carpet)*	Malaysia Palm Oil (Sime Darby)	Malaysia Palm Oil (FGV Holdings)	Distant water fishing (the <i>Da Wang</i> )	Thailand Fishing Nets
Apology							
Compensation/damages							
Rehabilitation							
Recruitment fee reimbursement							
Guarantee of non-repetition							
Improved living & working conditions						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment/employment policies						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Legal accountability for perpetrators							
Improved grievance channels							

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

58 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.

## 2. Summary of Key Findings

2.23 As summarised in the table above, among the nine case studies considered in this report:

- i. In two cases, the import ban was modified after CBP determined that the companies in question were not engaged in forced labour.<sup>59</sup> Hence, no Remediation was undertaken.
- ii. Out of the remaining seven case studies:
  - A. In one case, this report did not identify clear evidence that Remediation had been undertaken, or that remedies had been provided to individual rights holders in response to the import ban.<sup>60</sup>
  - B. 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 improving company policies and governance systems, investing in improved worker accommodation. But there was no clear evidence that remedies had been provided to individual rights holders as part of those efforts.<sup>61</sup>
  - C. In two cases, there was evidence that Remediation had been undertaken by the relevant companies to remove indicators of forced labour in response to an import ban, and that remedies had been provided to individual rights holders as part of that process.<sup>62</sup> In both cases, individual remedies were provided in the form of the reimbursement of recruitment fees. Additionally, in one of these cases, individual remedies were offered in the form of compensation for workers who had been in conditions of forced labour.<sup>63</sup>

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

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

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59 Bonechar and Natchi Apparel

60 Tobacco, Malawi

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

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

63 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

## 2. Summary of Key Findings

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

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

2.27 Observers have noted that import bans can have the potential to cause economic harm to workers in affected companies and industries. 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.<sup>64</sup> These risks did not materialise in the case studies examined in this report.

2.28 Among the case studies examined, this report did not find evidence of substantial job losses, wage reductions, or other adverse impacts for workers arising from import bans. Indeed, in some cases, import bans did not appear to lead to direct reductions in turnover or profit in the affected companies (though these companies did experience other adverse commercial and reputational impacts). This was especially the case among larger companies.<sup>65</sup>

2.29 In two case studies (Natchi Apparels in India, and Bonechar in Brazil), import bans did give rise to a risk of potential job losses in the affected companies. However, in both cases, the import bans were quickly modified and lifted before those potential adverse impacts could materialise. For example, in the case of Natchi Apparels, CBP modified its WRO in just under six weeks after civil society groups and trade unions raised concerns that the WRO might threaten the successful implementation of the Dindigul Agreement – a landmark enforceable brand agreement designed to address gender and caste-based violence and harassment at the company.

2.30 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.*”<sup>66</sup> However, the potential adverse effects to arise highlights the need for consultations with workers, rights holders, and their credible representatives<sup>67</sup> as part of the decision making process before imposing import bans.<sup>68</sup>

64 Anti-Slavery International (June 2021) [Anti-Slavery International and European Center for Constitutional and Human Rights’ position on import controls to address forced labour in supply chains](#), page 4; Corporate Accountability Lab (August 2020) [Using the Master’s Tools to Dismantle the Master’s House: 307 Petitions as a Human Rights Tool](#)

65 It is possible that the companies’ revenues or profits may have been higher but for the import ban – but this was not possible to quantify this within the scope of this study. It was also not possible to assess, within the scope of this study, why there was no reduction in turnover or profits. For example, the affected companies may have been able to find alternative export destinations for their products outside of the United States. In other cases, companies experienced significant increases in sales as a result of the COVID-19 pandemic (e.g., rubber glove makers) which may have offset the effects of the import ban.

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

67 Who can be considered credible representatives of workers will on the circumstances. They may include trade unions, but in some contexts workers (and especially migrant workers) may be prevented from forming or leading trade unions. In those circumstances, other forms of credible worker representation may be appropriate.

68 Anti-Slavery International (June 2021) [Anti-Slavery International and European Center for Constitutional and Human Rights’ position on import controls to address forced labour in supply chains](#)

## 2. Summary of Key Findings

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

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

- 2.31 In six of the nine case studies examined, CBP modified or revoked its import ban.
- i. In two of these cases (Annapurna Carpet and Natchi Apparels) the company's petition for the modification of the WRO was supported by civil society groups. In each of these cases, the WRO was modified relatively quickly. The WRO in respect of Annapurna Carpet was modified within eight months of the company's petition for modification, while the WRO in respect of Natchi Apparels was modified within six weeks after it was imposed.
  - ii. In two cases (Bonechar and Top Glove) the WRO was modified by CBP after receiving verification, in the form of an independent third-party audit report commissioned by the subject companies, that all indicators of forced labour identified by CBP had been Remediated (i.e., were no longer present or had been removed).
  - iii. In one case (tobacco, Malawi) there was no publicly available evidence to suggest that the modification of the WRO was supported by civil society groups, or by independent third-party audit reports.
- 2.32 Overall, the case studies suggest that companies are more likely to demonstrate they have effectively Remediated indicators of forced labour where the company has the support of civil society or independent third-party advisors.



## 2. Summary of Key Findings

2.33 Proactive engagement between civil society and CBP can also help ensure that CBP is informed as to what measures should be implemented by a company to effectively address forced labour in its operations – including what specific remedies should be provided to affected rights holders. In some cases, Petitions to CBP have listed the remedies that they expect companies to provide. In other cases, civil society groups have written to CBP to comment on the adequacy of corrective actions implemented by companies in response to import bans. Both forms of engagement can help offer CBP valuable information to help it to evaluate whether a company has sufficiently Remediated indicators of forced labour – including the extent to which adequate remedies have been provided to individuals. This, in turn, is likely to improve the quality of the remedies provided by companies.

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

2.34 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.

2.35 CBP's focus on the removal of indicators of forced labour, rather than the provision of remedies to individual workers, may affect the way that companies respond to import bans. As noted in the table above, company responses to import bans have tended to focus on systems and policy-level changes. Where remedies have been provided to individuals, these have tended to be limited to the reimbursement of recruitment fees. The Report identified only one case in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour.

2.36 As observed by one stakeholder: *"The weakness of the Tariff Act is that there is no specific remedy provision...the absence of an indicator of forced labour does not equate to the provision of remedy to workers. We want to see the provision of back wages, compensation, systems to prevent future abuses, access to grievance mechanisms, capacity building, ensuring freedom of association – those are the kinds of measures we need to see."*<sup>69</sup>

2.37 According to another civil society stakeholder: *"Remedy needs to capture not just the removal of forced labour, but compensation for victims for time spent under conditions of forced labour, and a plan to guarantee non-repetition. That is a broader mandate than what we have seen in the US...we would advocate for a broader mandate for remedy, offering a 'bouquet of options'."*<sup>70</sup>

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

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

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

## 2. Summary of Key Findings

- 2.38 In many of the case studies examined in this report, companies responded to import bans in a similar way.<sup>71</sup> The company first engaged a social auditor or external advisor to conduct a baseline evaluation of the company's labour practices and identify indicators of forced labour. In consultation with its advisers, the company would then develop a corrective action plan to address the identified indicators of forced labour. Upon completion of the corrective action plan, the company would conduct a further audit to verify the implementation of the corrective action plan. The company would then submit the audit report to CBP to support the company's petition to modify or revoke the import ban.
- 2.39 This trend is, in part, likely driven by CBP's guidance for companies – which suggests that company petitions to modify or revoke an import ban should be supported by an audit report.<sup>72</sup> The familiarity of companies with this compliance-driven social auditing approach is also likely to contribute to this practice.
- 2.40 Further, companies generally do not meaningfully involve workers, trade unions or credible worker representatives, civil society, and other stakeholders when designing corrective action plans in response to import bans. According to stakeholders, corrective action plans developed in response to import bans are typically designed by companies and their advisers, rather than in consultation with workers and other affected stakeholders. In some cases, companies have formed independent committees to advise them on their response to import bans. While the formation of these committees is a welcome and progressive measure, such committees have generally not included workers, trade unions, or other credible worker representatives.<sup>73</sup>
- 2.41 In Malaysia, some companies consulted with workers to check the amount of recruitment fees paid by them, and to confirm that they have received reimbursements of recruitment fees as promised. However, this report did not identify any instances in which companies had directly engaged with workers to seek their views on the types of remedies that workers would like to receive.

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



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

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

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

## 2. Summary of Key Findings

- 2.42 Social audits can play a role in supporting companies to identify, prevent, mitigate, and remedy forced labour risks in their value chains. However extensive research has shown that company-commissioned social audits have limited usefulness in effectively identifying forced labour, and can, in fact, increase human rights risks.<sup>74</sup> There have been multiple instances 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.<sup>75</sup>
- 2.43 Many of the companies considered in the Report underwent regular social audits, or were certified by sustainability bodies before they received import bans. In some cases, these social audits identified forced labour risks before the import ban was imposed. In other cases however, they did not. 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. Following the WRO,<sup>76</sup> 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."<sup>77</sup>
- 2.44 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.<sup>78</sup> CBP's guidance thus potentially incentivizes companies to develop Remediation programs and corrective action plans that are based around social audits – as was evident in many of the case studies considered. This, in turn, risks perpetuating the top-down approach to Remediation described above.
- 2.45 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.
- 2.46 That said, there are signs that CBP is prepared to adopt a more flexible approach. For example, CBP has lifted import bans based on evidence submitted by civil society groups – rather than company-commissioned commercial social audits. This was evident in the Natchi Apparels and the Annapurna Carpet cases. In these cases, CBP lifted the import bans on these companies based on evidence submitted by civil society organisations and trade unions – including worker interviews and inspection reports. These cases therefore offer alternative models to the company-commissioned commercial social audit as the main form of evidence used to demonstrate the Remediation of forced labour indicators.

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

74 See, e.g., Human Rights Watch (November 2022) *Obsessed with Audit Tools, Missing the Goal*; European Center for Constitutional and Human Rights, Brot für die Welt, MISEREOR (2021) *Human rights fitness of the auditing and certification industry?*; Transparentem (2021) *Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform*; Clean Clothes Campaign (2019) *Fig Leaf for Fashion. How social auditing protects brands and fails workers*; SOMO (2022) *A piece, not a proxy: The European Commission's dangerous overreliance on industry schemes, multi-stakeholder initiatives, and third-party auditing in the Corporate Sustainability Due Diligence Directive*

75 See, e.g., The Edge Markets (2 November 2020) *Top Glove downgraded from A to D in social compliance audit — report*; Reuters (19 May 2021) *'Slavery' found at a Malaysian glove factory. Why didn't the auditor see it?*; Human Rights Watch (November 2022) *Obsessed with Audit Tools, Missing the Goal*

76 Top Glove (18 June 2020) *Top Glove sets record straight on allegations made in video by Chanel 4 News, UK*

77 The Edge Markets (2 November 2020) *Top Glove downgraded from A to D in social compliance audit — report*

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

## 2. Summary of Key Findings

- 2.47 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.
- 2.48 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.
- 2.49 This lack of transparency from companies and CBP hinders the ability of civil society to effectively monitor the adequacy of companies' Remediation efforts. It also hinders civil society's ability to hold CBP to account for its decisions to modify or revoke WROs and Findings.
- 2.50 Companies could also benefit from greater transparency from CBP. According to stakeholders, companies are often not informed by CBP when an import ban is imposed on them, and CBP does not provide companies with detailed and specific reasons why it has decided to take enforcement action.<sup>79</sup> While larger companies are likely to be aware of CBP's enforcement decisions, smaller and medium-sized companies may not. If a company is not aware that it is subject to an import ban, then it is unlikely to take any action to Remediate indicators of forced labour. This may therefore delay the provision of remedies to affected rights holders until such time as the company has notice of the import ban.



<sup>79</sup> 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.

### 3. Summary of Key Recommendations

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

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

##### **Consult with workers and rights holders when considering whether to petition CBP for an import ban**

3.2 Based on publicly available information, in at least five of the nine case studies examined in this report, a WRO was imposed by CBP in response to a Petition or information submitted to CBP by a civil society organisation (or coalition of civil society organisations).<sup>80</sup> In most of these cases, civil society groups engaged with workers and their credible representatives to consider if an import ban would serve the best interests of workers before submitting a Petition for an import ban to CBP.

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

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

3.4 Petitions for import bans should, where possible, include recommendations for the company concerned about what steps it should take to Remediate the indicators of forced labour identified in the Petition.<sup>81</sup> This Remediation should include the provision of remedies to affected workers and rights holders.

3.5 Consistent with the UNGPs, these remedies may include the provision of financial compensation, the reimbursement of recruitment fees and expenses (where relevant), physical or psychological rehabilitation, apologies, guarantees of non-repetition, and legal accountability for perpetrators of harm. These remedies should be developed in consultation with workers and their credible representatives and other rights holders to ensure that the proposed remedies address workers' and rights holders' needs and concerns, and can help to make good the harms they have experienced.

80 Namely, Malaysian palm oil, Thai fishing nets, the *Da Wang*, and Brazilian bone char. In the remaining four cases, no civil society groups could be identified, based on publicly available information, as having submitted a Petition or information to CBP.

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

### 3. Summary of Key Recommendations

3.6 Including specific recommendations on Remediation in the Petition can help guide CBP in its subsequent engagement with the company, and help it to assess the adequacy of the company's corrective action plan. It is especially important to highlight to CBP what remedies workers and rights holders want to see provided to them. This is because CBP is unlikely to have in-depth knowledge and expertise of every company, industry, or geography in the same way that workers and rights holders themselves will have. Workers and rights holders themselves are therefore the best placed to assess what remedies should be provided to them, to make them whole following harms suffered as a result of being subjected to forced labour.

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

3.7 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.

3.8 Where possible, these assessments should be developed in consultation with workers, workers' credible representatives, trade unions to understand workers' views on the adequacy of the remedies (if any) that have been promised or provided by the company.

3.9 If such an assessment is not possible (e.g., because a company is not sufficiently transparent about its remediation efforts, access to workers is not possible, or the company is unwilling to meaningfully engage with workers, their credible representatives, trade unions, or civil society), this lack of transparency and disclosure should be raised with CBP.

#### **For CBP**

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

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

3.11 CBP should publish more detailed guidance on the Remediation of forced labour indicators as part of the modification or revocation process. Such guidance should (among other things):

- Specify the evidential standard applied by CBP when assessing whether indicators of forced labour have been remediated (i.e., removed). In particular, CBP should specify if it requires companies to demonstrate that they have established mechanisms to identify and minimise the risk of forced labour in their operations, or if they must demonstrate that there is no longer any forced labour.<sup>82</sup>

82 Compare, e.g., the language used in CBP's press release on CBP 3 June 2020 ([CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi](#)) where CBP refers to a company's "efforts to minimize the risks of forced labor from its supply chain", and its statement on 3 February 2023 CBP ([CBP Modifies Finding on Sime Darby Berhad in Malaysia](#)), where it refers to evidence that the company concerned "no longer produces...products using forced labour" (emphasis added).

### 3. Summary of Key Recommendations

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- Require companies to demonstrate (as a precondition to the modification or withdrawal of a WRO or Finding), that they have:
  - provided (not just promised) adequate remedies to workers and other affected rights holders;
  - meaningfully engaged with workers and other affected rights holders, workers' credible representatives, trade unions and/or other relevant civil society groups in the design, development, and implementation of the company's remediation efforts; and
  - been open and transparent in relation to the remediation process (e.g., through meaningful stakeholder engagement, and the publication of audit reports and corrective action plans).
- Clarify how CBP will assess the Remediation of forced labour indicators in industries or geographies where there are widespread and systemic risks of forced labour that may be beyond the control of one individual company. If CBP will apply a different standard in these contexts, CBP should specify what standard it will apply, and under what circumstances.

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

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

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

- 3.14 When CBP imposes a WRO or Finding on a company, it should notify that company. CBP should also provide the company with its detailed and specific reasons why it has taken enforcement action. This should include not only a list of the indicators of forced labour identified by CBP, but also the specific factors that give rise to that indicator (in a way that protects the confidentiality of sources).

### 3. Summary of Key Recommendations

- 3.15 Having this information is likely to improve the ability of companies to develop corrective action plans to Remediate indicators of forced labour identified by CBP. This, in turn, is likely to contribute to more positive outcomes for workers and other affected rights holders.
- 3.16 CBP should also broaden and increase its proactive engagement with stakeholders during the Remediation process. Specifically, when CBP is considering an application by a company to modify or revoke an import ban, CBP should proactively engage with workers, trade unions, workers' credible representatives, and other civil society groups to seek their views on the adequacy of the company's Remediation efforts.

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

- 3.17 Import bans are powerful tools that can have significant consequences – intended or otherwise. However, they are also an 'all or nothing' tool. Once imposed, an import ban be difficult to modify or revoke – though CBP has recently improved its responsiveness to quickly modify or revoke import bans in appropriate circumstances.
- 3.18 That said, it may be beneficial for CBP to have a more flexible range of options for the enforcement of import bans. Greater flexibility in enforcement options can help to avoid or mitigate potential adverse consequences for workers and other rights holders that may potentially arise from the immediate imposition of import bans. For example, in 2020 International Rights Advocates and the Corporate Accountability Lab submitted a Petition to CBP calling for an import ban of cocoa products from Cote D'Ivoire. In the Petition, the petitioners called on CBP to compel US cocoa importers to submit satisfactory evidence that shipments of cocoa imported by them were not made with or using forced child labour within 180 days.<sup>83</sup>
- 3.19 According to Anti-Slavery International, such an approach: *"compels urgent remedy and corrective actions, while alleviating the risk of potential negative consequences of immediately issued import controls on workers. It would also contribute to creating a level playing field – for example, imposing controls on specific entities and companies that fail to provide remedy and introduce corrective action within the grace period, while allowing imports from entities and companies that introduce credible corrective measures and ensure the provision of remedy. This would therefore secure the sustainability of jobs and livelihoods for affected workers."*
- 3.20 This is not to say that CBP's current approach to enforcement is not appropriate, and in many instances a 'without notice' imposition of an import ban may be warranted. However, having greater flexibility in the range options available to CBP can help to alleviate concerns over the potential adverse impacts of import bans on workers and rights holders, without blunting the effectiveness of the tool.
- 3.21 Crucially, CBP should only adopt more flexible enforcement options when necessary to protect workers and other rights holders. In making this decision, CBP should have regard to any submissions from workers, workers' credible representatives, or trade unions.

83 Corporate Accountability Lab (14 February 2020) [\*CAL and IR Advocates Challenge Importation of Cocoa Produced with Forced Child Labour\*](#)

### 3. Summary of Key Recommendations

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#### For governments in jurisdictions affected by import bans

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

- 3.22 Governments can play a key role in Remediation, even in cases involving forced labour in the private economy. Often, the root causes of forced labour lie as much in company practices, as they do in national legal and policy frameworks (e.g., relating to labour rights, labour migration, freedom of association, trafficking in persons, or forced labour). While companies can implement internal policies and practices to address certain forced labour indicators, company policies alone are often not sufficient. For example, if a company has a 'zero recruitment fees' policy, this will not necessarily prevent fees being charged to migrant workers if the charging of such fees is not prohibited by law in countries of origin and destination, or if existing prohibitions are not effectively enforced.
- 3.23 Governments in jurisdictions that are affected by import bans should therefore consider the extent to which they can contribute to efforts at Remediation by implementing legal and policy reforms to address the root causes of forced labour, as well as by investigating and holding companies under their jurisdiction legally accountable for forced labour and other human rights abuses in their operations.
- 3.24 Beyond the human rights imperative, there are economic incentives for governments to support corporate efforts to identify and address the root causes of forced labour in supply chains. By taking action to address the root causes of forced labour, governments can help protect key export industries against the risk of future import bans – in turn helping to protect jobs and the economy. Such reforms might include:
- Ensuring that forced labour is effectively criminalised under domestic law, and that the legal definition of forced labour is aligned with the 1930 ILO Forced Labour Convention.
  - Guaranteeing equal rights for migrant and non-migrant workers – including with respect to freedom of association, collective bargaining, wages, and working conditions.
  - Adequately resourcing labour inspectorates, and ensuring the effective enforcement of labour laws, policies, and regulations.
  - Ensuring that labour and migration policies for migrant workers have safeguards to mitigate the risk of forced labour, trafficking, and exploitation (e.g., a prohibition on the charging of recruitment fees, requirements for the provision of written employment contracts in a language the worker understands, prohibiting passport and document retention by employers, and allowing workers to freely change employers).
  - Ensuring that workers and migrant workers have access to effective grievance mechanisms (including state-based, non-state based, judicial, and non-judicial systems).

#### For the Private Sector

- 3.25 In light of the findings of this report, the following recommendations are offered to private sector actors that are seeking to address forced labour risks in their supply chains.

### 3. Summary of Key Recommendations

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

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

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

- 3.28 Many companies have treated import bans under the Tariff Act as a regulatory non-compliance issue that can be addressed by bringing the company's policies and practices in line with CBP's expectations. However, such a mindset is unlikely to result in the provision of meaningful or holistic provision of remedies to workers or affected rights holders.
- 3.29 Companies would benefit in the long run by moving away from a risk and compliance-driven mentality, and adopting a human rights-based approach to Remediation that places workers at the centre of a company's response. 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.

#### **International companies, buyers, and brands, should be engaged in the Remediation process**

- 3.30 International companies, buyers, and brands should be supportive of Remediation efforts undertaken by their suppliers. If a supplier to an international company receives an import ban, the international company should avoid immediately 'cutting and running' – especially if the supplier is willing to undertake Remediation. Instead, the international company should seek to use its leverage and offer its resources to help the supplier with its Remediation efforts.
- 3.31 If a buyer does decide to terminate its relationship with a supplier because of an import ban, the buyer should ensure that it responsibly disengages in a way that minimises the potential adverse effects for workers and rights holders.

## 3. Summary of Key Recommendations

### For the European Commission

- 3.32 In September 2022, the European Commission published its proposal for a regulation (**the Proposed Regulation**) to prohibit products made with forced labour on the European Union (**EU**) market.<sup>84</sup> While the Proposed Regulation is not directly modelled on the Tariff Act, the findings of this report are of direct relevance to EU policymakers as they develop their own proposal for a mechanism to prevent goods made with forced labour from entering the single market.
- 3.33 In light of the findings of this report, The Remedy Project has developed recommendations for EU policymakers regarding the Proposed Regulation. These recommendations along with more in-depth analysis of the Proposed Regulation are set out fully in **Annex 4**, and are summarised briefly below. Unless otherwise stated, capitalised terms used below have the meaning given to them in the Proposed Regulation.

#### **Ensure effective consultation with stakeholders – including workers, workers’ credible representatives, trade unions, and civil society, throughout the decision-making process**

- 3.34 The Proposed Regulation should empower and compel Competent Authorities to proactively seek information from a broad range of stakeholders – especially workers and workers’ credible representatives, trade unions, or civil society– and not just Economic Operators. Such engagement should occur throughout the enforcement process, but especially in the preliminary phase and investigation phase.

#### **Reduce the reliance on social audits as the primary form of evidence relied on by Competent Authorities in the decision-making process**

- 3.35 The Proposed Regulation should discourage reliance on social audits as the primary form of evidence relied upon by Competent Authorities. Social audits should form just one of many data points considered by Competent Authorities. Among other things, Competent Authorities should consider direct worker testimony and submissions from workers’ credible representatives, trade unions, and other civil society organisations. These sources of information should be given at least equal – if not greater – weight than social audit reports provided by Economic Operators.

#### **Avoid offering ‘safe harbour’ for Economic Operators based on due diligence alone**

- 3.36 The Proposed Regulation provides that Competent Authorities shall not initiate an investigation where the Competent Authority considers there is “no substantiated concern” of forced labour due to, among other things, “due diligence in relation to forced labour” that “mitigates, prevents and brings to an end the risk of forced labour”.<sup>85</sup> This provision could be interpreted as offering a ‘safe harbour’ protection to Economic Operators that can show they conduct adequate due diligence in relation to forced labour.

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

85 Proposed Regulation, Article 4

### 3. Summary of Key Recommendations

- 3.37 However, 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.
- 3.38 Article 4 of the Proposed Regulation should therefore be clarified to ensure it does not offer ‘safe harbour’ to Economic Operators based on the adequacy of their due diligence mechanisms alone.

**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**

- 3.39 The Proposed Regulation provides that a Competent Authority shall withdraw a decision to impose measures against an Economic Operator if the Economic Operator has “eliminated forced labour from their operation or supply chain with respect to the products concerned.”<sup>86</sup> The high threshold adopted in the Proposed Regulation for the removal of enforcement measures is very welcomed. Adopting such a high standard can help ensure that Economic Operators undertake comprehensive and thorough remediation that addresses the root causes of exploitation and prevents future harm.
- 3.40 However, the Proposed Regulation does not clarify the basis on which the Competent Authority should decide if forced labour has been “eliminated”. In particular, it is not clear if the provision of remedies to workers and other rights holders in conditions of forced labour is part of the “elimination” of forced labour.
- 3.41 The Proposed Regulation should require Competent Authorities to consider several factors before they decide that forced labour has been “eliminated.” These should include:
- A. Has the Economic Operator provided effective remedies to workers and other rights holders in conditions of forced labour?<sup>87</sup>
  - B. Do these remedies correspond to, and address, the human rights violations experienced by workers and affected rights holders?
  - C. Do workers and other affected rights holders consider the remedies provided by the Economic Operator to be adequate?
  - D. Has the Economic Operator designed, developed, delivered these remedies in meaningful consultation with workers, workers’ credible representatives, trade unions, and other civil society organisations?
  - E. What measures has the Economic Operator taken to ensure the non-repetition of future harm?

<sup>86</sup> Proposed Regulation, Article 6

<sup>87</sup> Which should be defined in accordance with the UNGPs and guidance from OHCHR. See United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7

### 3. Summary of Key Recommendations

#### **Prioritise investigations based on the extent to which Economic Operators have caused, contributed to, or profited from, forced labour**

- 3.43 The Proposed Regulation directs competent authorities to focus their investigations on the Economic Operators “as close as possible to where the likely risk of forced labour occurs” rather than those who may hold greater economic power or leverage over the supply chain.<sup>88</sup>
- 3.44 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.
- 3.45 The Proposed Regulation should therefore allow Competent Authorities to investigate any Economic Operator, having regard to that operator’s degree of proximity to forced labour. In assessing proximity, the Competent Authority should have regard to the extent to which the Economic Operator has caused, contributed to, or profited from, forced labour in its value chain.



88 European Commission (2022) COM(2022) 453 *Proposal for a regulation on prohibiting products made with forced labour on the Union market*, Article 5(3)

## 4. Methodology

- 4.1 This report looks at the relationship between the process of 'Remediation' (i.e., the removal) of the ILO indicators of forced labour in response to import bans pursuant to s.307 of the Tariff Act,<sup>89</sup> and the provision of remedies to workers and other affected rights holders. It considers:
- i. How has the concept of 'remediation' been understood and applied under the Tariff Act import ban mechanism?
  - ii. Where a company is subject to an import ban, what measures have the company and other actors taken in response to the ban to address forced labour issues?
  - iii. To what extent have those measures led to the provision of remedies for workers and other affected rights holders? What remedies were provided, and what was their effect?
  - iv. What factors have contributed to, or undermined, the successful use of import bans as a tool to provide remedies for workers and other affected rights holders?
- 4.2 In short, this report seeks to understand the extent to which company<sup>90</sup> responses to import bans imposed under the Tariff Act have led to access to remedies for workers and other rights holders in conditions of forced labour. More broadly, this report considers the potential for import bans to be leveraged as a tool to secure access to remedies for workers and other rights holders in conditions of forced labour.

### Case Study Selection

- 4.3 These issues are examined through the lens 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.
- 4.4 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 there had been some proactive action had been 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.
- 4.5 At the suggestion of stakeholders, one case study (fishing nets in Thailand) was selected despite the fact that no WRO or Finding has been 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.
- 4.6 A total of nine case studies were selected for examination in this report, as summarised in the table above on page 9.

<sup>89</sup> Due to procedural differences in the applicable enforcement and modification and revocation mechanism, this report does not consider import bans imposed pursuant to the Uyghur Forced Labor Prevention Act.

<sup>90</sup> 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.

## 4. Methodology

### Research Questions

- 4.7 This study has been guided by the following research questions:
- i. How has the concept of 'remediation' been understood and applied under the Tariff Act import ban mechanism?
  - ii. Where a company is subject to an import ban, what measures have the company and other actors taken in response to the ban to address forced labour issues?
  - iii. To what extent have those measures have led to the provision of remedies for people in conditions of forced labour and other affected people? What remedies were provided, and what was their effect?
  - iv. What factors have contributed to, or undermined, the successful use of import bans as a tool to provide remedies to people in conditions of forced labour and other affected people?

### Methodology

- 4.8 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. In general terms, each case study was developed through a desk-based review of open-source information, combined with stakeholder interviews, and worker/rights-holder interviews where it was safe and feasible to do so.
- 4.9 A list of stakeholders interviewed is set out in **Annex 1**. A list of open-source materials reviewed is at **Annex 2**. Given the highly-sensitive subject matter of this report, 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.
- 4.10 Where possible, worker/rights-holder interviewees comprised men and women. This was not always possible due to the workforce composition the industries and geographies examined, who in many cases were mainly, or exclusively, men. An overview of the worker/rights-holder interviews conducted is at **Annex 3**.
- 4.11 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.
- 4.12 Worker interviews were focused on qualitative questions relating to workers' experiences of remediation or changes following a WRO or Finding. The small sample size of workers means that the interviewees' responses are not necessarily indicative of the experiences of workers as a whole. It should also be noted that in some cases, interviewees provided information of potential indicators of forced labour, trafficking in persons, child labour, and other human rights violations. However, the purpose of the interviews was not to conduct a robust screening or assessment of

## 5. The Remediation Process under the Tariff Act

forced labour, trafficking, or child labour. This report therefore does not, and cannot, make any findings in this regard.

- 5.1 The term 'remediation' does not appear in the Tariff Act or in its accompanying Federal Regulations. CBP uses the term 'remediation' in guidance documents on the modification or revocation of a WRO or Finding, but these guidance documents do not define what remediation means.<sup>91</sup>
- 5.2 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.<sup>92</sup> 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.<sup>93</sup> CBP's guidance further states that "CBP will not modify or revoke [a WRO] unless all forced labour indicators are remediated."<sup>94</sup>

### 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:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive living and working conditions
- Excessive overtime

- 5.3 According to CBP, 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. CBP states that the following information is beneficial in this regard:
- Evidence refuting each indicator of forced labour identified by CBP
  - Evidence that policies, procedures, and controls are in place to ensure that forced labour conditions are remediated
  - Evidence of implementation and subsequent verification by an unannounced and independent third-party auditor
  - Supply chain maps that specify locations of manufacturers, factories, farms, and processing centres<sup>95</sup>

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

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

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

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

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

## 5. The Remediation Process under the Tariff Act

5.4 Beyond these four bullet points, CBP does not publish guidance on how to remediate forced labour – though CBP does refer to the US Department of Labor’s ‘Comply Chain’ website (which includes guidance on remediation) in a Fact Sheet on the modification/revocation process.<sup>96</sup> According to CBP, once a petitioner submits information to CBP seeking the modification or revocation of a WRO or Finding, the petitioner and CBP will engage with each other. Once CBP determines all ILO indicators of forced labour have been remediated, it will modify or revoke the WRO or Finding as appropriate.<sup>97</sup>

5.5 CBP’s engagement with stakeholders (e.g., petitioning civil society organisations, companies, and workers or rights holders), varies depending on the stage of the enforcement process. According to the Human Trafficking Legal Center:

*“Although far from perfect, CBP has become more transparent about its forced labour enforcement in the past two years. CBP communicates actively with civil society petitioners throughout the forced labour investigation to either clarify allegations in the petition or supporting evidence. Sometimes, CBP also requests more information from petitioners on the forced labour situation. During investigations, to the best of our knowledge, CBP does not engage with the companies that have been accused of forced labour. CBP’s forced labour investigations are considered law enforcement sensitive.<sup>98</sup> However, once a WRO is issued, CBP may engage with the targeted company if the company wishes to have the WRO modified or revoked.”<sup>99</sup>*

5.6 According to the Human Trafficking Legal Center: *“CBP will generally not take company assertions of its remediation efforts at face value. As a condition of a WRO modification, CBP typically requires proof of forced labour remediation from the company, including proof of payments to workers and tangible improvements to living and working conditions. In some cases, the agency will expect to see independent third-party verification of the company’s remediation efforts – for example, in the form of audit reports from reputable third-party auditors, worker surveys and interviews, as well as primary documentation (e.g., company policies, regulations, standards, worker employment contracts, and even payment receipts as evidence of repayment of recruitment fees).”<sup>100</sup>* As discussed in more detail below, although CBP continues to rely on third-party audit reports, such third-party audits have often failed to identify forced labour in companies which later received WROs. Civil society groups have been pushing CBP to avoid relying heavily on audit reports as the basis of its modification/revocation decisions.<sup>101</sup>

96 US Department of Labor [Comply Chain](#)

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

98 Within the U.S. Department of Homeland Security, ‘Law enforcement sensitive’ information is a marking that may be applied to ‘For Official Use Only’ (FOUO) information. FOUO information refers to “unclassified information of a sensitive nature, not otherwise categorized by statute or regulation, the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national interest.” See: Department of Homeland Security (1 June 2005) [Safeguarding Sensitive Unclassified Information](#)

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

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

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

## 5. The Remediation Process under the Tariff Act

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- 5.7 Where a WRO or Finding is modified or revoked, 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 describe what remediation was undertaken to secure the modification or revocation.<sup>102</sup> It can therefore be difficult, based on public information alone, to determine what CBP considers adequate remediation to be, in practice.
- 5.8 Based on CBP's statements in the guidance documents above, as well as feedback from stakeholders, CBP appears to use the term 'remediation' to describe the process of removing the ILO indicators of forced labour. Unless otherwise stated, the term '**Remediation**', where used in this report, has that meaning. For example, CBP refers in guidance documents the *remediation of indicators of forced labour*, rather than the provision of remedies to individuals.<sup>103</sup> Similarly, CBP's list of information that is beneficial to demonstrate the remediation of indicators of forced labour refers to evidence "*refuting each indicator of forced labour identified by CBP*", but does not refer to evidence of the provision of remedies to individuals.<sup>104</sup>
- 5.9 According to stakeholders, when CBP assesses if a company has effectively remediated forced labour, it focuses on whether previously identified indicators of forced labour are no longer present. In other words, CBP largely equates remediation with the removal of indicators – rather than a broader, restorative process in line with the UNGP definition of remedy.<sup>105</sup>
- 5.10 According to stakeholders, CBP's public statements indicate that its approach to Remediation is largely driven by the limitations of its legal authority and its jurisdiction. 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". This is reinforced by the fact that the Tariff Act itself, and accompanying regulations, do not reference remediation.<sup>106</sup> Further, the way CBP approaches modifications of trade enforcement actions suggest its role is limited to preventing the entry of goods where indicators of forced labour are present, and permitting the entry of those goods once it is satisfied those indicators are no longer present. 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.<sup>107</sup> 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.*"<sup>108</sup>

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

103 See, e.g., CBP's fact sheet on the WRO modification/revocation process, where it states: "CBP will not modify or revoke [a WRO] unless all forced labour indicators are remediated" (emphasis added). See: CBP (March 2021) [Factsheet: WRO Modification/Revocation Process Overview](#)

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

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

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

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

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

# Case Studies

## 6. Palm Oil: Malaysia

### A. Industry overview

- 6.1 Malaysia is one of the world's largest exporters of palm oil – a key ingredient in processed and packaged food, personal care products, and biofuels.<sup>109</sup> In 2020, Malaysia accounted for 34.3% of the world's palm oil exports.<sup>110</sup> In 2021, Malaysia's palm oil exports were valued at around US\$22.7 billion.<sup>111</sup>
- 6.2 The palm oil industry is highly reliant on migrant workers. According to official statistics, 1.98 million migrant workers were employed in Malaysia as of September 2019 – representing nearly 20% of Malaysia's total work force.<sup>112</sup> However, these figures do not account for the significant number of migrant workers in irregular situations. The World Bank estimates that as many as 1.46 million migrant workers in irregular situations were residing in Malaysia in 2017.<sup>113</sup> The Malaysian Government estimates that 56% of all palm oil workers are migrant workers.<sup>114</sup> According to official data (which excludes migrant workers with irregular status), as of 2019, most migrant agricultural workers in Malaysia came from Indonesia (48%), India (16%), Bangladesh (13%), Pakistan (11%), Nepal (6%), and Myanmar (2%).
- 6.3 Migrant workers in Malaysia's palm oil sector are at risk of forced labour, trafficking, and other forms of exploitation due to a combination of overlapping factors. These include, the nature of their work (labour-intensive and low-paid), a lack of legal protections, unsafe migration pathways, remote working locations on plantations often far from oversight and support services, third-party contracting arrangements, poor living and working conditions, and unethical recruitment and employment practices.<sup>116</sup>



- 109 Malaysian Palm Oil Council, The Oil Palm, [What is Palm Oil Used For](#); The Guardian (19 February 2019) [How the world got hooked on palm oil](#)
- 110 Malaysian Palm Oil Council, [Malaysian Palm Oil Industry](#)
- 111 Malaysian Palm Oil Council, [Monthly Palm Oil Trade Statistics: 2021](#)
- 112 ILO (August 2022) [TRIANGLE in ASEAN Quarterly Briefing Note: Malaysia](#)
- 113 World Bank (28 March 2019) [Malaysia: Estimating the Number of Foreign Workers](#), page viii
- 114 Ministry of Plantation Industries and Commodities (2018) [The Employment Survey in Oil Palm Plantations Malaysia 2018](#), page 63
- 115 ILO (2020) Malaysia: [Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations](#), page 37. The figures shown here capture only migrant workers in regular situations.
- 116 ILO (2020) Malaysia: [Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations](#), page 1; ILO (2016) [Review of labour migration policy in Malaysia](#); Liberty Shared (2020) [Cruel Outcomes: How weak corporate governance and internal controls in the palm oil industry allow abuse of foreign and local workers and how ESG investment fails to recognise these issues](#); Embode (2020) [The road to worthy work and valuable labour: Consolidated key findings and strategic recommendations on migrant labour in Malaysia](#); Fair Labor Association and Consumer Goods Forum (November 2018) [Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia](#)

## 6. Palm Oil: Malaysia

In recent years, several reports have highlighted instances of forced labour and other human rights abuses in the palm oil industry.<sup>117</sup> A 2018 Malaysian Government survey estimated that approximately 14 out of every 1,000 migrant workers in the palm oil industry were in situations of forced labour.<sup>118</sup>

### B. CBP enforcement action against FGV Holdings Bhd

- 6.4 FGV Holdings Berhad (**FGV**) is a Malaysian agribusiness which is publicly listed on the Bursa Malaysia (the Malaysian stock exchange). FGV was originally established as the commercial arm of the Malaysian Federal Land Development Authority (**FELDA**) – a statutory body responsible for rural settlement, land development and poverty eradication – and FELDA owns close to 80% of the shares in FGV.<sup>119</sup> FGV is the largest oil palm seed producer in Malaysia, and has over 336,000 hectares of palm oil plantations under cultivation.<sup>120</sup> Much of this land is cultivated by smallholder farmers who were settled on plantations by FELDA to support their livelihoods.<sup>121</sup>
- 6.5 In 2015, an investigation of FGV was launched by the Roundtable on Sustainable Palm Oil (**RSPO**) – an industry sustainability body and certification standard – after reports of labour and human rights abuses on FGV plantations were published in the Washington Post and other outlets.<sup>122</sup> In November 2018, the RSPO’s Complaints Panel concluded that FGV was in breach of several provisions of the RSPO’s Principles and Criteria as, among other things, FGV’s recruitment and employment processes could be considered “acts in furtherance of trafficking in persons”.<sup>123</sup> The RSPO identified indicators of forced labour among FGV’s workforce – including contract substitution, passport retention, restrictions on workers’ freedom of movement, restrictions on workers’ freedom to contract and to resign, and poor living and working conditions. As a result, the RSPO suspended its certification of FGV’s mill at Kilang Sawit Seriting and associated supply base (plantations), and suspended its processing of the certification of FGV’s uncertified production units.<sup>125</sup>

117 ILO (2020) Malaysia: *Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations*, page 1; ILO (2016) *Review of labour migration policy in Malaysia*; Liberty Shared (2020) *Cruel Outcomes: How weak corporate governance and internal controls in the palm oil industry allow abuse of foreign and local workers and how ESG investment fails to recognise these issues*; Embode (2020) *The road to worthy work and valuable labour: Consolidated key findings and strategic recommendations on migrant labour in Malaysia*; Fair Labor Association and Consumer Goods Forum (November 2018) *Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*

118 Ministry of Plantation Industries and Commodities (2018) *The Employment Survey in Oil Palm Plantations Malaysia 2018*, page 65

119 FGV (August 2022) *FGV Annual Integrated Report 2021*, page 10

120 FGV (August 2022) *FGV Annual Integrated Report 2021*, pages 11-12; FGV (19 August 2019) *FGV’s Response to the Petition by a coalition of NGO’s submitted to the United States Customs and Border Protection*

121 RSPO (2 October 2020) *RSPO Responds to the US CBP’s Withhold Release Order for FGV Holdings*

122 See Musim Mas *Felda Global Ventures (FGV)* for a summary of the relevant events leading up to the two Petitions

123 RSPO (28 November 2018) RSPO Complaints Panel Decision Letter Re: FGV Holdings Berhad, page 1

124 RSPO (28 November 2018) RSPO Complaints Panel Decision Letter Re: FGV Holdings Berhad, page 1

125 RSPO (28 November 2018) RSPO Complaints Panel Decision Letter Re: FGV Holdings Berhad, page 19; RSPO (2 October 2020) *RSPO Responds to the US CBP’s Withhold Release Order for FGV Holdings*

## 6. Palm Oil: Malaysia

- 6.6 On 24 June 2019, US NGO Grant & Eisenhofer ESG Institute submitted a Petition to CBP pursuant to the Tariff Act calling for an import ban of palm oil products produced by FGV on the grounds that these products were produced wholly or in part by forced labour.<sup>126</sup> On 15 August 2019, a second Petition to CBP was submitted by a coalition of NGOs comprising Global Labor Justice-International Labor Rights Forum (GLJ-ILRF), Rainforest Action Network, Freedom United, and SumOfUs. Among other things, both Petitions cited reports of workers who had been trafficked from Bangladesh to Malaysia, non-payment of wages, and instances of workers being subjected to excessive working hours without rest days, isolation, restricted mobility, passport retention, threats, intimidation, and poor housing and living conditions for plantation workers.<sup>127</sup> On 17 August 2020, the coalition re-iterated their request that CBP issue a WRO in respect of FGV.<sup>128</sup>
- 6.7 Both Petitions did not specify what Remediation should be undertaken by FGV to remove the indicators of forced labour identified in the respective Petitions, and did not specify what remedies should be provided by FGV to affected rights holders.
- 6.8 On 30 September 2020, CBP issued a WRO in respect of palm oil and palm oil products made by FGV and its subsidiaries and joint ventures. The WRO was issued on the grounds that CBP considered there to be evidence reasonably indicating that:
- “forced labor indicators including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime” as well as concerns that “forced child labor is potentially being used in FGV’s palm oil production process”.*<sup>129</sup>
- 6.9 As of the date of this report, CBP has not issued a Finding in respect of FGV, and CBP has not modified or revoked the WRO.

### C. Response of FGV to import ban

- 6.10 FGV reportedly undertook several initiatives to improve its recruitment practices and working conditions before the WRO was imposed in September 2020. Many of these began in response to the RSPO’s decision in November 2018 to suspend FGV’s certification, and were still ongoing as of September 2020. It is therefore difficult in some cases to clearly attribute actions taken by FGV after September 2020 to the impact of the WRO. It should also be noted that FGV has been relatively transparent about its remediation efforts following the WRO compared to many other companies examined in this report. The following section is therefore not intended to be a comprehensive summary of all actions taken by FGV following the WRO in September 2020, but instead focuses on the FGV’s overall response to the WRO, and the key outcomes from that process.

126 Grant & Eisenhofer ESG Institute (24 June 2019) Petition to exclude all palm oil, palm kernel oil, and palm oil fractions produced in Malaysia by FGV Holdings Berhad from importation into the United States because they are produced “wholly or in part” with forced and child labour. Note that in general, Petitions to CBP are confidential – but in this instance, and in all the other Petitions cited in this report, the Petitioner chose to make the Petition publicly available.

127 Grant & Eisenhofer ESG Institute (24 June 2019) Petition to exclude all palm oil, palm kernel oil, and palm oil fractions produced in Malaysia by FGV Holdings Berhad from importation into the United States because they are produced “wholly or in part” with forced and child labour, pages 6-8; ILRF, Rainforest Action Network, SumOfUs (15 August 2015) [Petition to exclude palm oil and palm oil products manufactured “wholly or in part” by forced labor in Malaysia by FGV Holdings Berhad](#), pages 4-10

128 GLJ-ILRF (17 August 2020) [One Year later, NGOs Call On U.S. Customs and Border Protection to Block Import of Palm Oil Produced Using Forced Labor](#)

129 CBP (30 September 2020) [CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia](#)

## 6. Palm Oil: Malaysia

- 6.11 On 26 June 2019, FGV issued a response to the Petition filed by Grant & Eisenhofer ESG Institute, stating that it had taken “*numerous actions to address and resolve the concerns highlighted in the petition, several of which have already been corrected.*”<sup>130</sup> Among other things, FGV made reference to its commitments, action plan, and progress reports to rectify the findings made by the RSPO Complaints Panel in November 2018, and the company’s recently-adopted group sustainability policy. FGV’s response also noted that the company was in the process of establishing an independent advisory panel of experts in corporate governance and sustainability.<sup>131</sup>
- 6.12 On 19 August 2019, FGV issued a response to the second Petition filed by International Labor Rights Forum, Rainforest Action Network, Freedom United, and SumOfUs. FGV stated that since 2018 it had corrected “*most*” of the issues identified in the Petition, except for “*one major item*” relating to the regularisation of migrant workers with irregular status in Sabah – which it expected to complete by the end of 2019.<sup>132</sup> FGV also stated that it had ceased to use third party contractors to supply migrant workers, had revised its recruitment processes and appointed new migrant worker recruitment agencies following a vetting and tender process, developed new contractual terms for partner recruitment agencies which included protections for migrant workers’ rights, and would appoint auditors to verify its recruitment agencies’ compliance with FGV’s standards. FGV further stated that it was engaging various independent third-party audits and assessments of its labour recruitment processes and procedure, its grievance mechanisms, and to help map its risks across its third-party suppliers.<sup>133</sup>
- 6.13 On 20 November 2019, FGV joined the Fair Labor Association (**FLA**) as an affiliate. As part of its affiliation, FGV agreed to work with the FLA to develop an action plan to improve recruitment and working conditions in FGV’s supply chain by 31 March 2020, and to align its standards with the FLA’s Code within one year.<sup>134</sup>
- 6.14 Despite these statements and commitments, on 13 January 2020, the RSPO Complaints Panel decided to re-suspend its certification of FGV’s complex at Kilang Sawit Serting, and the ongoing certification process at 20 other FGV complexes. Among other things, the RSPO Complaints Panel found that FGV had failed to adequately ensure that migrant workers were not paying recruitment fees, that third party labour contractors continued to be used, that FGV was not adequately monitoring workers to ensure that pay and working conditions were in line with legal requirements, and that FGV continued to employ approximately 7,000 migrant workers in irregular situations.<sup>135</sup>

130 FGV Holdings Bhd (26 June 2019) [FGV Holdings Berhad’s Response to the Petition by Grant & Eisenhofer ESG Institute](#)

131 FGV Holdings Bhd (26 June 2019) [FGV Holdings Berhad’s Response to the Petition by Grant & Eisenhofer ESG Institute](#)

132 FGV Holdings Bhd (19 August 2019) [FGV’s Response to the Petition by a coalition of NGO’s submitted to the United States Customs and Border Protection](#)

133 FGV Holdings Bhd (19 August 2019) [FGV’s Response to the Petition by a coalition of NGO’s submitted to the United States Customs and Border Protection](#)

134 FLA (20 November 2019) [Fair Labor Association announces affiliation of FGV Holdings Berhad and Procter & Gamble Chemicals](#); FGV Holdings Bhd (30 March 2020) [Background and Summary of FGV’s Action Plan 2020](#)

135 FGV Holdings Bhd (15 January 2020) [FGV’s Response to RSPO’s Complaints Panel’s Letter dated 13th January 2020](#); RSPO (13 January 2020) [Complaints Panel letter to FGV Holdings Bhd on FGV’s non-compliance and related sanctions](#)

## 6. Palm Oil: Malaysia

- 6.15 Following the imposition of the WRO by CBP on 30 September 2020, FGV issued a statement expressing its disappointment with the WRO, and outlined the measures it had taken over the past several years to improve labour and human rights standards. These included:
- i. Strengthening recruitment procedures for migrant workers – including the establishment of ‘One Stop’ recruitment centres in Malaysia, India, and Indonesia to improve pre-departure and post-arrival orientation for migrant workers.
  - ii. Adopting new Guidelines and Procedures for the Responsible Recruitment of Migrant Workers, which committed FGV to paying recruitment costs and associated fees for migrant workers.
  - iii. A commitment to directly hiring all employees, instead of using contracted employees.
  - iv. Piloting an e-wallet cashless payment system for plantation workers.
  - v. Providing safety boxes at all of FGV’s sites for migrant workers to store their passports in, if they choose to.
  - vi. Investing over MYR350 million to upgrade and build new housing facilities for plantation workers.
  - vii. Providing medical care for migrant workers.
  - viii. Adopting a Supplier Code of Conduct – which include human rights and labour standards – for its third party suppliers.
  - ix. Joining the FLA as an affiliate and implementing its action plan to improve its labour and recruitment practices in consultation with the FLA.<sup>136</sup>
- 6.16 On 15 October 2020, FGV announced it had spoken with CBP to seek clarifications on CBP’s findings, and the steps which FGV was expected to take to secure the revocation of the WRO. According to FGV, CBP could not provide any information about the findings from its investigations, other than to state that it had identified all 11 of the ILO indicators of forced labour in FGV’s operations. According to FGV *“CBP did not disclose any further information about its findings including the nature or locations of any incidence linked to such indicators.”* However, CBP did inform FGV that it would consider a petition from FGV for the revocation of the WRO, accompanied with *“information or reports arising from audits from credible, unbiased, third-party auditing firms”*.<sup>137</sup>
- 6.17 On 3 December 2020, FGV issued a further statement re-iterating that it was *“committed to taking all necessary steps and measures towards the revocation of the WRO.”* FGV stated that it had decided to take a *“systematic approach”* to ensure the elimination of *“all practices indicative of labour exploitation”*, as well as complete upgrades to facilities and infrastructure for its workers.

136 FGV Holdings Bhd (1 October 2020) [\*FGV Responds to CBP Issues Detention Order on Palm Oil Produced with Forced Labour in Malaysia dated 30 September 2020 by United States Customs and Border Protection\*](#)

137 FGV Holdings Bhd (15 October 2020) [\*Updates on the Clarification on the U.S. Customs and Border Protection’s Withhold Release Order \(WRO\)\*](#)

138 FGV Holdings Bhd (3 December 2020) [\*FGV Updates its Steps to Address the Withhold Release Order \(WRO\) Issued by U.S. Customs and Border Protection \(CBP\)\*](#)

## 6. Palm Oil: Malaysia

- 6.18 On 9 March 2021, NGOs GLJ-ILRF, Rainforest Action Network, Freedom United, and SumOfUs wrote to CBP setting out their expectations for what actions should be undertaken by FGV to demonstrate its products were not made using forced labour.<sup>139</sup> These included (among others) providing evidence of policies and measures to respect and uphold freedom of association, aligning company policies and practices with ILO standards, providing proof of a process to assess forced labour risks in its supply chain, directly engaging workers and other key stakeholders, and adopting corrective actions in cases of forced labour – including through the establishment of a grievance mechanism to provide remedies to affected people in cases of forced labour and the repayment of worker recruitment fees.<sup>140</sup> These measures were developed by the signatory NGOs after consultation with NGOs and worker groups in Malaysia representing plantation workers.<sup>141</sup>
- 6.19 On 18 June 2021, FGV announced it would be appointing an independent auditor to assess FGV's operations against the 11 ILO indicators of forced labour, and that it would submit the audit findings, together with a Remediation plan, to CBP within eight months of the appointment of the auditor.<sup>142</sup> On 16 November 2021, FGV announced it had appointed ELEVATE – a sustainability advisory and auditing firm – to carry out that assessment.<sup>143</sup> FGV stated that it would develop and implement a Remediation plan in light of ELEVATE's assessment, following which it would submit a petition for the revocation of the WRO to CBP.<sup>144</sup>

### D. Implementation of Remediation by FGV

- 6.20 FGV appears to have acted on many of its commitments to improve its recruitment and employment practices in response to the WRO – though to varying degrees.
- 6.21 On 28 July 2022, the RSPO Complaints Panel – which expressly acknowledges the WRO as a key consideration in its decision making – reinstated its certification of FGV's complex at Kilang Sawit Seriting, but continued to suspend the process of certification of FGV's uncertified production units until it was provided with evidence that there were no systemic labour violations in FGV's operations.<sup>145</sup>
- 6.22 On 10 August 2022, the FLA published an independent external assessment of FGV's corporate governance and sustainability policies based on the FLA Principles, alignment with the FLA's Workplace Code of Conduct, and the implementation FGV's 2020 action plan to align its policies and practices with FLA's standards.<sup>146</sup> At a high level, the FLA's assessment found that 32 of the 46 commitments (69.5%) made by FGV in its 2020 action plan had been "fully implemented", while 53% of the FLA's key performance indicators for alignment with the FLA Principles were considered in "full implementation". The remaining 47% of the FLA's KPIs were assessed to be "in progress".<sup>147</sup>

139 GLJ-ILRF, Rainforest Action Network, SumOfUs, Freedom United (9 March 2021) [Letter to Hon. Alejandro Mayorkas](#)

140 GLJ-ILRF, Rainforest Action Network, SumOfUs, Freedom United (9 March 2021) [Letter to Hon. Alejandro Mayorkas](#)

141 Interview with Allison Gill, Global Labor Justice-International Labor Rights Forum

142 FGV Holdings Bhd (18 June 2021) [FGV Updates its Steps to Address the U.S. Customs and Border Protection \(CBP\)'s Withhold Release Order \(WRO\)](#)

143 FGV (16 November 2021) [FGV's Update on the U.S. Customs and Border Protection \(CBP\)'s Withhold Release Order \(WRO\)](#)

144 The Edge Markets (30 November 2021) [Site assessments of forced labour allegations to begin in 1H2022, says FGV](#)

145 RSPO Complaints Panel (28 July 2022) [Complaints Panel Directive dated 27 July 2022](#)

146 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#)

147 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), page 6

## 6. Palm Oil: Malaysia

- 6.23 Among other things the FLA found that FGV had partnered with civil society groups, UN Agencies, and external consultants to address human rights issues (while noting many of these partnerships had “yet to achieve their goals”), aligned its Group Sustainability Policy, Supplier Code of Conduct, and related policies with most of FLA’s standards (with the key exception of working hours), had made a clear commitment to achieving full traceability across its supply chain, required its suppliers and external business partners to adhere to its Supplier Code of Conduct, had undertaken training for contractors, management, and staff, on labour rights, human rights, and grievance mechanisms, engaged in internal and external audits, established multiple grievance and complaint channels for workers – including complaints boxes, helplines, and online tools.<sup>148</sup>
- 6.24 In relation to forced labour, FLA concluded that it did “not identify any non-compliances to the FLA forced labor benchmarks.” But that “some risks of forced labor were observed that need further investigation...progress to improve working conditions at the estate level remains slow, partially due to COVID-19.”<sup>149</sup> Two thirds of farms surveyed by the FLA were found to be at risk of non-compliance with the FLA’s standards on forced labour.<sup>150</sup> The FLA’s assessment identified instances of workers being subjected to physical violence, intimidation, and abuse, payments below the minimum wage, non-compliance with FLA standards on the payment of recruitment fees and related costs, excessive overtime, poor worker facilities and sanitation, worker contracts not providing basic employment rights, and up to one in four workers working 7-days per week without rest.<sup>151</sup>



- 148 FLA (10 August 2022) [Baseline Mapping Report - FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 1 pages 1, 3, 4, 6, 9, 10, 11, 12, 13, 15, 16
- 149 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), page 27; It should be noted that the forced labour benchmarks used by the FLA in its assessment of FGV did not match the 11 ILO forced labour indicators used by CBP, and that a separate assessment is being undertaken by FGV in partnership with ELEVATE to specifically assess FGV’s operations against those indicators. The indicators used by the FLA in its assessment were: (1) the nature of the job itself, (2) involuntary overtime (compensated/paid), (3) involuntary overtime (not compensated / unpaid), (4) involuntary work in hazardous conditions without protection, (5) asked to perform illicit and/or illegal activities, (6) provided with sub-standard working and/or living conditions, (7) work without wages / compensation, (8) work for another employer or party which was not agreed before (or stated in written contract), (9) prohibited to terminate work contract, and (10) none of the above. Notably, the FLA’s forced labour indicators did not expressly include indicators relating to physical and sexual violence, intimidation and threats, retention of identity documents, debt bondage, or excessive (rather than involuntary) overtime – all of which are ILO indicators of forced labour (See ILO (2012) [ILO Indicators of Forced Labour](#)). Indicators of excessive overtime, physical violence, intimidation and threats, and restrictions on workers’ movement were all identified in the FLA’s assessment report.
- 150 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), pages 24-26; FLA (10 August 2022) [Baseline Mapping Report - FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 2 page 44; Annex 2, page 19, 24
- 151 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), pages 24-26; FLA (10 August 2022) [Baseline Mapping Report - FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 1, page 8; Annex 2 pages 26, 27, and 30

## 6. Palm Oil: Malaysia

- 6.25 Migrant workers interviewed by the FLA indicated a lack of awareness among both workers and plantation staff of labour standards or labour rights. The FLA found that 23% of workers interviewed either did not understand their employment contracts, or did not understand that they had signed an employment contract.<sup>152</sup>
- 6.26 Further, the FLA's report highlighted a consistent lack of engagement with workers at all levels. Workers' feedback was not sought in relation to grievance mechanisms. Information about labour standards and rights was not posted in worksites, and where available, was often not in migrant workers' languages, internal audit mechanisms did not adequately gain information about worker perspectives, worker representative committees are not trusted by workers and are perceived as being appointed by the company, and workers generally do not trust and do not use grievance mechanisms established by FGV.<sup>153</sup>
- 6.27 As yet, FGV does not appear to have undertaken any process to provide remedies to individual workers who had been subjected to forced labour and other rights violations in the past.

### E. Impact of Remediation on workers and rights holders

- 6.28 The FLA's 2022 assessment concluded that "*There is need for estate management and the FGV plantation division...to step up the pace and operationalize the policies that FGV has created.*"<sup>154</sup> This finding was reflected in the experiences of migrant workers interviewed for this report (which, given the small sample size, is only intended to be illustrative).
- 6.29 Seven Indonesian migrant workers employed by FGV contractors were interviewed for this report. These workers had been employed by FGV contractors for a period of between one to 15 years. All but one of the workers interviewed had therefore been employed by FGV contractors before and after the imposition of the WRO in September 2020. They were therefore in a position to describe their experiences of the impact (if any) of any remediation undertaken by FGV in response to the WRO.
- 6.30 All of the interviewed workers (including one who had commenced work in 2021 – after FGV implemented its 'zero fees' policy) borrowed money to pay recruitment fees of between MYR 1,500-3,000 (USD 335-670), which they were able to repay after four to eight months of work using the 'arisan' system.<sup>155</sup> These figures are consistent with the findings from a survey of migration costs among migrant plantation workers in Malaysia conducted by the ILO in 2020.<sup>156</sup> None of the workers are aware of the 'e-wallet' payment system introduced by FGV to help workers manage their finances.<sup>157</sup>

152 FLA (10 August 2022) [Baseline Mapping Report - FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 2 page 4

153 FLA (10 August 2022) [Baseline Mapping Report - FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 1 page 9, 14, 16; Annex 2, page 13, 15; FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), page 27

154 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), page 27

155 Whereby a group of workers pool their wages each month, and then take it in turns for one worker to keep the entire sum.

156 ILO (October 2020) [Migration cost survey among Indonesian plantation workers in Malaysia](#)

157 Interview with seven Indonesian migrant workers employed by FGV contractor, Johor and Pahang, Malaysia

## 6. Palm Oil: Malaysia

- 6.31 None of the interviewed workers reported experiencing any changes (good or bad) in their living or working conditions since 2020. None of the workers reported having had their recruitment fees paid for, or reimbursed by, FGV. None of the workers reported having been asked about their recruitment fees by FGV employees or representatives.<sup>158</sup>
- 6.32 None of the workers reported having received training on their labour rights or about forced labour, and none of the workers had been asked by FGV (or anyone else) about their living or working conditions. According to one worker: *“The contractor only cares about whether we have a roof over our heads and a place to cook. As long as we show up at work, the contractor doesn’t bother getting to know us and our problems.”*<sup>159</sup>
- 6.33 Six of the seven migrant workers interviewed were not in possession of their passports – which were retained by the FGV contractor. As a result, these workers rely on the contractor to purchase daily essentials on their behalf (the costs of which are deducted from their salaries), and are afraid to visit the nearby town for fear of arrest and deportation.<sup>160</sup>
- 6.34 The dependency of migrant workers on the contractor to provide them with necessities was cited as a key reason by six workers interviewed as to why they would not raise grievances with the contractor.<sup>161</sup> That said, one worker interviewed was successfully able to resolve a grievance with a contractor in 2020 after having been underpaid for seven months. This complaint resulted in a dismissal of another staff member who had been responsible for the workers’ pay, and the reinstatement of the worker’s salary to its former level. However, he did not receive compensation for the period during which his salary was underpaid.<sup>162</sup> It is not clear if the resolution of the worker’s grievance is attributable to changes implemented by FGV in response to the WRO.

### F. Observations

- 6.35 While it is difficult to specifically attribute some of FGV’s actions to the impact of the WRO, the WRO appears to have prompted FGV to improve its recruitment and employment practices. Or, at the very least, the WRO acted as a catalyst to accelerate the implementation of reforms previously promised by FGV. Among other things, FGV joined the FLA as an associate member and is implementing a corrective action plan developed with the FLA. On 27 February 2023, FGV announced that it would be reimbursing MYR 111.64 million (USD 24.9 million) in recruitment fees paid by current and former workers employed after 27 June 2019, in line with its No Recruitment Fees Policy. MYR 81.64 million (USD 18.24 million) is to be paid to 23,333 current foreign workers across three tranches between March and September 2023, while a sinking fund of MYR 30 million (USD 6.7 million) will be used to reimburse former workers.<sup>163</sup> It has separately engaged ELEVATE to assess its operations against the ILO indicators of forced labour, and is working with ELEVATE to develop a remedial action plan to address those forced labour indicators. Throughout this process, FGV has been largely transparent – making available progress reports and audit findings via the RSPO and FGV, and has engaged with third parties including the RSPO, the FLA and ELEVATE, to address forced labour issues in its operations.

158 Interview with seven Indonesian migrant workers employed by FGV contractor, Johor and Pahang, Malaysia. Note that interviews with migrant workers for the purpose of this study took place before FGV’s announcement on 27 February 2023 that they would be reimbursing recruitment fees paid by current and former workers employed from 27 June 2019 onwards.

159 Interview with six Indonesian migrant workers employed by FGV contractor, Johor, Malaysia

160 Interview with Indonesian migrant worker employed by FGV contractor, Pahang, Malaysia

161 Interview with Indonesian migrant worker employed by FGV contractor, Pahang, Malaysia

162 Interview with Indonesian migrant worker employed by FGV contractor, Pahang, Malaysia

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

## 6. Palm Oil: Malaysia

- 6.36 While FGV has evidently taken significant steps to reform its recruitment and employment policies, practices, and procedures, there remain challenges in translating these high-level changes into systems that have impact on the ground. In the experiences of workers interviewed for this report, the significant reforms to codes, standards, and training programs developed by FGV since 2020 had not translated into improvements in their overall living and working conditions. The FLA has likewise observed the slow pace of change on the ground, and the need to operationalise policies more effectively at the plantation level.<sup>164</sup> Even the small, and non-representative sample size of FGV contractor workers interviewed for this report revealed the continued payment of recruitment fees by workers, a lack of awareness and engagement with FGV grievance mechanisms, and no clear evidence of attempts to engage with workers. Further, the FLA has reported that FGV continued to permit its workers to work up to the maximum number of overtime hours permitted under Malaysian law – up to 104 hours per week – rather than the 60 hours per month prescribed by the FLA’s standards.<sup>165</sup>
- 6.37 While recognising the value and importance of the commitments made by FGV to date, FGV’s approach has also been reflective of a top-down, audit-driven, compliance-focused approach that has not substantively engaged with workers as part of the Remediation process. Though this gap may be addressed as part of the ongoing forced labour assessment and remediation exercise being undertaken with ELEVATE.
- 6.38 With the exception of its recent commitment to repay recruitment fees to current and former workers, FGV’s Remediation efforts undertaken to date appear to have led to the provision of limited remedies to affected rights holders. The workers interviewed for this report did not improve in their living or working conditions since the WRO was imposed.
- 6.39 Separately to these issues, the FGV case also tests the assumption that the financial costs of WROs are a key pressure point to drive companies to Remediate forced labour. According to FGV’s publicly available financial statements, FGV’s revenue and profits have continued to grow since the WRO was imposed. FGV’s plantation sector profits were four times higher in 2021 compared to 2020.<sup>166</sup> In the quarter ending 30 September 2021 (exactly one year after the WRO was imposed), FGV reported a year-on-year increase in total revenue of 33%, and a year-on-year increase in profit of 47.4%. FGV’s financial statements for the year to 30 June 2022 show a year-on-year increase in profits of 98.7%.<sup>167</sup>

### G. CBP enforcement action against Sime Darby Plantation Bhd

- 6.40 Sime Darby Plantation Bhd (**SDP**) is a Malaysian palm oil company that is publicly listed on the Bursa Malaysia.<sup>168</sup> SDP claims to be the world’s largest palm oil plantation company, by area, with nearly 580,000 hectares of plantations under cultivation.<sup>169</sup> SDP employs roughly 15,800 migrant workers – mostly from Indonesia, India, Bangladesh, and Nepal.<sup>170</sup>

164 FLA (10 August 2022) [Baseline Mapping Report – FGV Holdings Berhad \(Malaysia\) 2021-2022](#), page 27

165 FLA (10 August 2022) [Baseline Mapping Report -FGV Holdings Berhad \(Malaysia\) 2021-2022 - Annexes](#), Annex 1 page 3

166 FGV Holdings Bhd (21 April 2022) [Annual Integrated Report 2021](#), page 56

167 FGV Holdings Bhd (30 August 2022) [Consolidated financial statements for the financial period ended 30 June 2022](#)

168 Sime Darby Plantation Bhd [About us](#)

169 Sime Darby Plantation Bhd (20 May 2022) [Annual Report 2021](#), page 28

170 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 36

## 6. Palm Oil: Malaysia

- 6.41 On 20 April 2020, NGO Liberty Shared filed a Petition with CBP calling for a ban on imports of palm oil and palm oil products made by SDP on the grounds that those products were produced wholly or in part by forced labour.<sup>171</sup> Among other things, the Petition highlighted the imposition of penalties on workers, sexual harassment, physical threats and abuse, wage deductions, workers receiving less than the minimum wage, debt bondage as a result of recruitment fees and related loans, and excessive overtime.<sup>172</sup> The public summary of the Petition made available by Liberty Shared did not specify what remediation should be undertaken by SDP to address the issues identified in the Petition.
- 6.42 On 23 September 2020, the RSPO published a third-party audit report of four of SDP's certified mills. The audit certified the mills as compliant with the RSPO's standards on forced labour, child labour, and workplace harassment and abuse.<sup>173</sup>
- 6.43 On 30 December 2020, CBP imposed a WRO on SDP, based on evidence reasonably indicating the presence of all 11 ILO indicators of forced labour in its operations.<sup>174</sup> On 28 January 2022, CBP issued a Finding in respect of SDP.<sup>175</sup> On 3 February 2023, CBP modified the Finding based on "satisfactory evidence that Sime Darby Plantation Berhad, its subsidiaries, and joint ventures no longer produce palm oil and its derivative products using forced labor".<sup>176</sup>



- 171 Liberty Shared (6 July 2020) Summary of Petition submitted to US Customs and Border Protection on 20 April 2020
- 172 Liberty Shared (6 July 2020) Summary of Petition submitted to US Customs and Border Protection on 20 April 2020, page 6
- 173 BSI (23 September 2020) *RSPO Principle and Criteria Public Summary Report*, pages 89-92
- 174 CBP (12 December 2020) *CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia*
- 175 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
- 176 CBP (3 February 2023) *CBO Modifies Finding on Sime Darby Berhad in Malaysia*

## 6. Palm Oil: Malaysia

### H. Response of SDP to import ban

- 6.44 On 31 December 2020, SDP issued a statement acknowledging the WRO. SDP stated that it had not received “sufficient information” from CBP’s press release to enable it to “meaningfully address the allegations that triggered the issuance of the [WRO]”, but stated that it was willing to work with CBP to address their concerns and “quickly resolve this matter”.<sup>177</sup> SDP announced that it had engaged PricewaterhouseCoopers Consulting Associates in October 2020 to assist SDP with improving worker protections, and had been engaging with stakeholders since the Petition was made public in July 2020.<sup>178</sup> SDP further stated that it would “continue to engage with Liberty Shared (LS) and other organisations to obtain information regarding the initial complaint that would enable us to take any appropriate corrective actions as required.”<sup>179</sup>
- 6.45 On the same day, the RSPO issued a statement urging CBP to share information with them that would enable the RSPO to “properly investigate this matter and report transparently on our findings.” The RSPO noted that an independent audit of SDP conducted earlier in the year “did not generate any red flags”, but that it had launched an “immediate investigation” into SDP.<sup>180</sup> As at the date of this report, the RSPO Complaints Committee has not publicly launched any formal proceedings against SDP in response to the WRO.<sup>181</sup>
- 6.46 In January 2021, Hershey announced it was engaging with its direct suppliers to confirm that they did not source products from SDP.<sup>182</sup>
- 6.47 On 11 February 2021, SDP issued a press release stating that it had already conducted internal assessments of its Malaysian operations in response to the WRO and those investigations “do not reveal any systemic issues in our operations.”<sup>183</sup>
- 6.48 On 1 March 2021, SDP appointed an independent Expert Stakeholder Human Rights Assessment Commission (the **Commission**) to advise it on human rights issues in its Malaysian operations. The Commission comprised Impactt, an ethical trade consultancy, NGO Shift, migrant worker activist Andy Hall, and the National Union of Plantation Workers. In its announcement, SDP noted the appointment of the Commission was a direct response to the WRO.<sup>184</sup> SDP further announced that Impactt would conduct an evaluation of SDP’s labour practices in Malaysia against the ILO forced labour indicators, and would subsequently develop a remediation plan in consultation with the other members of the Commission.<sup>185</sup>

177 Sime Darby Plantation Bhd (31 December 2020) [Sime Darby Plantation’s Statement in Response US CBP’s Issuance of its Withhold Release Order](#)

178 Sime Darby Plantation Bhd (31 December 2020) [Sime Darby Plantation’s Statement in Response US CBP’s Issuance of its Withhold Release Order](#)

179 Sime Darby Plantation Bhd (31 December 2020) [Sime Darby Plantation’s Statement in Response US CBP’s Issuance of its Withhold Release Order](#)

180 RSPO (31 December 2020) [RSPO statement on the US CBP’s withhold release order for Sime Darby Plantations](#)

181 RSPO [Case Tracker](#)

182 The Hershey Company (September 2022) [The Hershey Company’s Palm Oil Grievance Log](#), page 36

183 Sime Darby Plantation Bhd (11 February 2021) [Sime Darby Plantation: No Systemic Issues in Operations](#)

184 Sime Darby Plantation Bhd (1 March 2021) [Sime Darby Plantation Establishes Expert Stakeholder Human Rights Assessment Commission](#)

185 Sime Darby Plantation Bhd (4 June 2021) [Sime Darby Plantation Appoints a Human Rights Expert](#)

## 6. Palm Oil: Malaysia

- 6.49 On 11 March 2021, SDP filed a lawsuit in the United States against Liberty Shared's Managing Director, Duncan Jepson. The lawsuit was brought in response to a complaint filed by Mr Jepson with the Securities Commission of Malaysia alleging that SDP had made wrongful disclosures in its 2019 sustainability report. The lawsuit sought the disclosure of documents from Mr Jepson relating to the complaint.<sup>186</sup> In response to the lawsuit, Shift resigned from the Commission.<sup>187</sup> The lawsuit was withdrawn shortly afterwards on 16 March 2021.<sup>188</sup>
- 6.50 In July 2021, Andy Hall and Professor Justine Nolan (who had joined the Commission just six weeks earlier to replace Shift) both resigned from the Commission. Mr Hall cited a lack of transparency and information from SDP as the reason for his resignation. Professor Nolan noted that SDP's forced labour assessment had been delayed, and no timeline for completion had been provided.<sup>189</sup> Shortly after, Sime Darby dissolved the Commission.<sup>190</sup>
- 6.51 In January 2022, CBP issued a Finding in respect of SDP. Shortly after on 15 February 2022, SDP announced it had introduced "sweeping changes" to its governance and operations in response to CBP's WRO and Finding.<sup>191</sup> These are discussed below.
- 6.52 On 26 April 2022, SDP announced it had submitted a petition to CBP for the modification of the Finding. SDP's petition is not publicly available, but according to SDP, its submission included: *"...a detailed assessment of SDP's Malaysian operations mapped against each of the International Labour Organization (ILO) forced labour indicators; an in-depth description of improved governance structures and management systems; copies of policies, guidelines and standard operating procedures; details of facilities at SDP Operating Units; corresponding supporting evidence; and independent reports from third party consultants appointed by SDP to assess various aspects of its operations."*<sup>192</sup>
- 6.53 On 3 February 2023, CBP modified the Finding based on *"satisfactory evidence that Sime Darby Plantation Berhad, its subsidiaries, and joint ventures no longer produce palm oil and its derivative products using forced labor"*.<sup>193</sup>

186 Sime Darby Plantation Bhd (11 March 2021) [Sime Darby Plantation Files Application Against NGO for Withholding Vital Information That Would Assist Plantation Workers](#)

187 Reuters (16 March 2021) [Malaysia's Sime Darby Plantation drops lawsuit against activist](#)

188 Reuters (16 March 2021) [Malaysia's Sime Darby Plantation drops lawsuit against activist](#); Sime Darby Plantation Bhd (16 March 2021) [Sime Darby Plantation: Statement on Discovery Application in the United States](#)

189 Reuters (14 July 2021) [Experts quit Sime Darby Plantation panel over transparency concerns](#)

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

191 Sime Darby Plantation (15 February 2022) [Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations](#)

192 Sime Darby Plantation Bhd 26 April 2022 [United States Customs and Border Protection Document Submission](#)

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

## 6. Palm Oil: Malaysia

### I. Implementation of Remediation by Sime Darby

- 6.54 Since 2020, SDP has reportedly undertaken a wide-ranging effort to Remediate indicators of forced labour in response to the WRO. This has included reimbursing current and former migrant workers for their recruitment fees, and strengthening its recruitment processes, corporate governance policies, and grievance mechanisms.
- 6.55 In July 2021, the Board of SDP resolved to reimburse migrant workers for certain recruitment fees and costs. Following an assessment by Impactt in November 2021, SDP allocated approximately MYR 82 million (USD 18.2 million) for the reimbursement of recruitment fees for migrant workers – an amount equal to roughly 4% of SDP’s annual payroll expenses. The amounts were calculated based on the typical recruitment fees and related costs paid by migrant workers (based on nationality).<sup>194</sup>
- 6.56 Of this MYR 82 million, approximately MYR 38.55 million was allocated by SDP to reimburse recruitment fees owed to 15,078 current migrant workers. The remaining MYR 43.47 million was allocated to a sinking fund set aside to reimburse 19,565 former migrant workers who had been employed by SDP since 1 November 2018. SDP announced it would engage law firms in all countries of origin for former migrant workers to manage the disbursement of funds to former workers, and would contact former foreign workers directly and through advertisements in the media to notify them of the reimbursement scheme.<sup>195</sup> As discussed below, migrant workers interviewed for this report confirmed that they had received recruitment fee reimbursement payments from SDP in February or March 2022.
- 6.57 In August 2021, SDP implemented a revised Responsible Recruitment Procedure – with new policies on the selection of recruitment agencies, due diligence on recruitment agents who supply workers to SDP, training and support for partner recruitment agencies on ethical recruitment, a prohibition on charging recruitment fees and related costs to migrant workers, and improving contract signing procedures.<sup>196</sup>
- 6.58 SDP has also taken steps to strengthen its worker communication and grievance processes. In August 2021, SDP adopted a new Worker Helpline to sit alongside its existing Suara Kami worker helpline and whistle-blower channel. This was accompanied by briefings and training sessions to raise awareness among workers of new and existing grievance mechanisms. SDP reported that between September 2021 and January 2022, the average number of calls received by its worker helplines rose from 15 per month on average before September 2021, to 69 calls per month.<sup>197</sup> However, this may be partly due to the large number of workers seeking assistance with repatriation in response to the COVID-19 pandemic.<sup>198</sup>

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

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

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

197 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 43

198 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 44

## 6. Palm Oil: Malaysia

- 6.59 In October 2021, SDP implemented a new 'social dialogue' system for workers to promote dialogue and engagement between workers and management outside of collective bargaining arrangements. This social dialogue system involves directly elected worker representatives who are empowered to engage with management to raise worker concerns and suggest improvements.<sup>199</sup> As of March 2022, SDP reported that it had resolved 3,589 issues raised by worker representatives through the social dialogue process.<sup>200</sup>
- 6.60 During 2021, SDP also made various reforms to its wage payment practices, including improving communication around payslips, monitoring wage payments, and prohibiting excessive wage deductions.<sup>201</sup> However, SDP continued to allow its workers to work up to the maximum number of hours of overtime permitted under Malaysian law – between 104 and 130 hours per month.<sup>202</sup>
- 6.61 At the governance level, SDP established a Board Sustainability Committee in July 2021 to monitor and address the resolution of labour issues, and has established a Social Welfare and Services Department to support the implementation of worker wellbeing policies on the ground.<sup>203</sup> SDP also introduced a new internal ESG scorecard to track and measure performance on the resolution of labour issues.<sup>204</sup>

### J. Impact of Remediation on workers and rights holders

- 6.62 Unlike FGV, SDP has not published independent third-party reports or verification of its remediation efforts. However, in November 2022, the RSPO published the Findings of its independent verification assessment of SDP's operations in Malaysia – which was undertaken in response to the WRO.<sup>205</sup> The RSPO's independent verification identified several limitations in the measures implemented by SDP outlined above. Among other things, the RSPO found that:
- 6.63 *"...there are indications that [SDP's] grievance system in place does not have the full confidence of workers. The processes do not ensure predictable resolution of issues (i.e. with issues being raised repeatedly during social dialogues), or ensure sufficient accessibility...Worker feedback indicates that these communications channels are not yet credible enough to allay workers' fears of reprisals if their identities are revealed, or the fear of retaliation or dismissal if they lodge a complaint."*<sup>206</sup>

199 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 53

200 Sime Darby Plantation Bhd (21 March 2022) [Update session: Ban \(Finding\) issued by the United States Customs and Border Protection on Sime Darby Plantation](#), page 13

201 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 47

202 Sime Darby Plantation Bhd (29 April 2022) [Sustainability Report 2021](#), page 38

203 Sime Darby Plantation (15 February 2022) [Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations](#)

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

205 RSPO (14 November 2022) [RSPO Secretariat Decision Pursuant to the Findings from an Independent Verification Assessment at Sime Darby Plantation Berhad's Operations in Malaysia](#)

206 RSPO (14 November 2022) [RSPO Secretariat Decision Pursuant to the Findings from an Independent Verification Assessment at Sime Darby Plantation Berhad's Operations in Malaysia](#), page 6

## 6. Palm Oil: Malaysia

- 6.64 On indicators of trafficking and forced labour, the RSPO found that, despite SDP having a 'zero fees' recruitment policy in place since 2017, it had "*insufficiently monitored and supervised the recruitment agent/contractors undertaking recruitment on the company's behalf.*" The RSPO noted that, while SDP had taken steps to reimburse workers who had paid recruitment fees, "*the root cause of this failure to detect such transgressions has not been identified*", and the effectiveness of SDP's new Responsible Migrant Workers Recruitment Procedure "*has yet to be demonstrated.*"<sup>207</sup>
- 6.65 Six migrant plantation workers from India and Nepal employed by SDP were interviewed for this report to understand how (if at all) SDP's Remediation efforts had affected them. Given the small sample size, these interview responses are not intended to be representative of workers' experiences as a whole, but are simply illustrative. The interviewed workers had been employed by SDP for between three and 10 years. They were therefore in a position to speak about their experiences of any remediation undertaken by SDP in response to the WRO in 2020.
- 6.66 All of the workers reported improvements to their living and working conditions since 2020. The workers reported that there had been no improvements in their housing, but they had received improved access to medical care and treatment. According to the workers, before 2020, medical staff would generally refuse to issue medical certificates to workers, and would instead require sick workers to return to work. Since 2020, medical workers now proactively ask workers if they require a medical certificate, and will provide one when required.
- 6.67 The workers reported that since 2020, their working hours had generally reduced from around 12 hours per day on average, to 8 hours per day. Though some expressed disappointment that this resulted in a corresponding reduction in overtime pay.
- 6.68 All of the workers paid between 2,000 to 4,000 MYR (USD 423 to 846) in recruitment fees to work in Malaysia, which they were able to repay after two to five months' work through the 'arisan' system.<sup>208</sup> All of the workers were interviewed by their plantation manager about the amount of recruitment fees paid by them, and all of the workers were reimbursed their recruitment fees in early 2022. The reimbursement payments were paid directly to the workers' bank accounts. Reimbursement amounts were determined based on the workers' nationality, rather than the actual amounts paid by each worker. Nepalese workers received MYR 5,000 (USD 1,057) and Indian workers received MYR 4,800 (USD 1,051). All of the workers reported being satisfied with the amounts received, as the reimbursement payments generally exceeded the actual recruitment costs that each worker had paid.



207 RSPO (14 November 2022) [RSPO Secretariat Decision Pursuant to the Findings from an Independent Verification Assessment at Sime Darby Plantation Berhad's Operations in Malaysia](#), page 11

208 Whereby a group of workers pool their wages each month, and then take it in turns for one worker to keep the entire sum.

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- 6.69 None of the workers interviewed had submitted complaints to SDP's grievance channels. The workers generally preferred to resolve issues in-person with their supervisors, rather than speak to hotline staff. However, all of the workers were aware of the existence of SDP's worker hotlines, and that they provided free advice in the workers' own languages. The workers reported that while they had not personally used the hotlines, they felt reassured that the hotlines were in place, in case they had grievances which could not be resolved by direct discussion with their supervisors. A field visit to an SDP worker dormitory confirmed that advertisements for SDP's Suara Kami hotline were visibly posted in Bahasa Indonesia and workers' languages. The workers further reported that they had received information about the hotline, but had not received training about their labour rights or about forced labour.<sup>209</sup> Outside of formal grievance mechanisms, the workers reported that managers would ask workers at their daily morning roll call if workers were happy and satisfied.
- 6.70 That said, some workers reported being reluctant to use SDP's hotlines for fear of repercussions – which was reflective of similar findings made in the RSPO's independent verification report described above. One worker also reported that their supervisor had said that SDP should not hire workers from India and Nepal because they were 'troublemakers', who made too many complaints.

### K. Observations

- 6.71 The import ban prompted SDP to take significant action to Remediate indicators of forced labour in its operations. While SDP's initial response to the WRO was largely defensive (denying the existence of systemic issues), and at times hostile (through a retaliatory lawsuit against Liberty Shared, and apparent conflict with its independent external advisers), it has subsequently made significant investments in Remediation.
- 6.72 SDP's efforts at Remediation have led to the provision of remedies to individual rights holders. Most notably, SDP committed to repaying roughly MYR 82 million (USD 18.2 million) in recruitment fees to over 34,000 current and former migrant workers, and has specifically made a provision in its audited financial statements for this amount.<sup>210</sup> All of the workers interviewed for this report confirmed they had been reimbursed for their recruitment fees. During the reimbursement process, SDP engaged with independent third parties to assess the amount of fees paid by workers, and to administer an independent and audited scheme to confirm that reimbursement payments were duly made. SDP has also demonstrated a commitment to retrospectively reimburse recruitment fees paid by former workers employed since November 2018, and not just current employees.

209 It is possible that the low usage of the hotline may be correlated with the lack of training provided to workers on their rights (i.e., because if workers are not aware of their rights, they may be less likely to raise grievances). But this issue was not raised by the workers interviewed.

210 Sime Darby Plantation Bhd (21 April 2022) [Annual Integrated Report 2021](#), page 148

## 6. Palm Oil: Malaysia

- 6.73 At a broader level, workers interviewed for this report generally reported improvements to their living and working conditions since 2020, and SDP's grievance mechanisms were well socialised among workers interviewed. In contrast, the FGV contract workers interviewed reported a general lack of engagement with FGV in relation to their welfare.
- 6.74 Unlike FGV, SDP remains relatively opaque about the Remediation it has undertaken. While SDP has provided substantial information through press releases and its annual sustainability report, it has not – unlike FGV – made publicly available independent audit reports and findings relating to its Remediation process. This limits the ability of civil society to verify the Remediation undertaken by FGV and raise relevant concerns with CBP.
- 6.75 The SDP case also highlights again the weaknesses of routine social audits as a tool to identify forced labour. In November 2022, the RSPO published the Findings of its independent verification assessment of SDP's operations in Malaysia against the RSPO's Principles and Criteria – which was undertaken in response to the WRO.<sup>211</sup> Among other things, the RSPO's independent verification found "a pattern of violations of the RSPO Principles and Criteria that were not detected in prior Certification audits dating back a number of years."<sup>212</sup>
- 6.76 Like FGV, the WRO did not initially appear to have a significant direct financial impact on SDP. In 2021, SDP reported year-on-year increases in revenue of 42%, and a 98% increase in profits before interest and tax.<sup>213</sup> However, the CBP enforcement action was highlighted as SDP's most significant material risk in its 2021 annual report – indicating the importance of the import ban to the company's management.<sup>214</sup> Since CBP's Finding in January 2022, commercial pressure on SDP has been intensifying. In February 2022, ratings agency Moody's warned that the Finding could affect SDP's credit rating.<sup>215</sup> In April 2022, Cargill Inc., one of the world's largest agricultural trading companies, announced it would no longer buy palm oil and derivative products from SDP. In the same month, Italian confectionery company Ferrero instructed its suppliers to stop sourcing from SDP.<sup>216</sup> This intensifying commercial pressure may have contributed to SDP's decision to petition CBP to modify the Finding at the end of April 2022.



211 RSPO (14 November 2022) [RSPO Secretariat Decision Pursuant to the Findings from an Independent Verification Assessment at Sime Darby Plantation Berhad's Operations in Malaysia](#)

212 RSPO (14 November 2022) [RSPO Secretariat Decision Pursuant to the Findings from an Independent Verification Assessment at Sime Darby Plantation Berhad's Operations in Malaysia](#), page 2

213 Sime Darby Plantation Bhd (21 April 2022) [Annual Integrated Report 2021](#), page 10

214 Sime Darby Plantation Bhd (21 April 2022) [Annual Integrated Report 2021](#), page 38

215 New Straits Times (8 February 2022) [Forced labour issue can hurt Sime Darby Plantation's credit quality: Moody's](#)

216 Bloomberg (18 April 2022) [Cargill Suspends Palm Oil Purchases From Malaysia's Sime Darby](#); Straits Times (15 April 2022) [Ferrero to stop buying palm oil from Malaysia's Sime Darby over labour concerns](#)

## 7. Rubber Gloves: Malaysia

### A. Industry overview

- 7.1 Malaysia is the world's largest exporter of rubber gloves, accounting for over 60% of global rubber glove supply.<sup>217</sup> During the COVID-19 pandemic, demand for personal protective equipment, including rubber gloves, grew exponentially. The value of Malaysian glove exports more than doubled between 2019 and 2021.<sup>218</sup> This sudden increase in demand placed significant pressure on Malaysian rubber glove manufacturers and in turn, workers – especially migrant workers. As of 2019, migrant workers comprised roughly 61% of Malaysia's rubber glove industry workforce.<sup>219</sup>
- 7.2 Top Glove Bhd (Top Glove) is a Malaysian glove manufacturer whose shares are publicly listed on the Bursa Malaysia.<sup>220</sup> It is the world's largest manufacturer of rubber gloves – accounting for roughly 26% of global market share.<sup>221</sup> On 10 October 2019, Top Glove was admitted to the Dow Jones Sustainability Index (DJSI) Emerging Markets.<sup>222</sup>

### B. CBP enforcement action against Top Glove

- 7.3 In late 2018, reports emerged of alleged forced labour and other rights abuses at Top Glove and other Malaysian glove manufacturers.<sup>223</sup> Migrant workers described excessive working hours of up to 12 hours a day and seven days a week – with one day of rest per month, passport retention, underpayment of wages, unlawful overtime, unsafe working conditions, poor accommodation, isolation, restrictions on their movement, deceptive recruitment practices by overseas recruitment agencies, and being charged excessive recruitment fees.<sup>224</sup> Similar allegations of debt bondage and forced labour were made in a report in The Diplomat in November 2019.<sup>225</sup>
- 7.4 In April and June 2020, The Guardian and Channel 4 News reported alleged abuses at Top Glove's factories in Malaysia – including excessive working hours, unlawful salary deductions, poor accommodation and inadequate COVID-19 safety protocols.<sup>226</sup>

217 World Bank (2019) [World Integrated Trade Solution, Gloves \(401511\) exports by country in 2019](#); The Malaysian Reserve (3 August 2022) [Rubber glove demand to grow between 10%, 12% this year, MARGMA says](#)

218 The Edge Markets (3 August 2022) [MARGMA expects global glove demand to resume growth next year, after 19% drop](#)

219 48,300 out of 71,800. See ISEAS (23 March 2021) 2021/35 [Malaysia's Rubber Glove Industry – The Good, the Bad and the Ugly](#)

220 In recent years, CBP has taken action against several Malaysian glove manufacturers. This case study focuses on Top Glove as it is one of the few entities to have successfully secured a modification of a CBP Finding, and there is greater information in the public domain in respect of Top Glove's remediation efforts compared to other Malaysian glove manufacturers who have been subjected to WROs by CBP.

221 Top Glove [About Us](#)

222 Top Glove (10 October 2019) [Top Glove Garner International Acclaim for Sustainability Practices](#)

223 The Guardian (9 December 2018) [NHS rubber gloves made in Malaysian factories linked with forced labour](#); ABC News (8 December 2018) [Top Glove, Malaysian rubber gloves supplier to Ansell, accused of abusing workers' rights](#)

224 The Guardian (9 December 2018) [NHS rubber gloves made in Malaysian factories linked with forced labour](#); ABC News (8 December 2018) [Top Glove, Malaysian rubber gloves supplier to Ansell, accused of abusing workers' rights](#)

225 The Diplomat (22 November 2019) [Clean Gloves, Dirty Practices: Debt Bondage in Malaysia's Rubber Glove Industry](#)

226 The Guardian (23 April 2020) [NHS urged to avoid PPE gloves made in 'slave-like' conditions](#); Channel 4 News (16 June 2020) [Revealed: Shocking conditions in PPE factories supplying UK](#)

## 7. Rubber Gloves: Malaysia

- 7.5 On 18 June 2020, Top Glove responded to the Channel 4 report, stating that it had conducted more than 100 external audits of its factories, including audits conducted in accordance with the Sedex Members Ethical Trade Audit (**SMETA**) and the Business Social Compliance Initiative (**BSCI**) standards. Top Glove stated that the audits “reflect excellent progress in our social compliance, where concentrated efforts were made to enhance our labour practices comprehensively to meet stringent international requirements.” Top Glove stated that “in December 2019, our factory in Malaysia received an ‘A’ rating by Amfori following an international-level social audit in accordance with the Business and Social Compliance Initiative (BSCI) standards”.<sup>227</sup> Top Glove’s statement went on to refute the allegations made in the Chanel 4 report, stating that it did not pay workers below the minimum wage or make unlawful wage deductions, did not subject workers to unlawful, excessive, or forced overtime, that it had since 2019 introduced a robust ‘Zero Cost Recruitment Policy’ under which it bore all recruitment costs for migrant workers, that it did not retain workers’ passports, and that proper accommodation for workers and social distancing measures were in place at its facilities.<sup>228</sup>
- 7.6 On 13 July 2020, Top Glove issued a press release asserting that “its foreign workers are free from debt bondage since the implementation of its Zero Cost Recruitment Policy in January 2019.”<sup>229</sup>
- 7.7 On 15 July 2020, CBP imposed a WRO in respect of disposable gloves produced by Top Glove on the grounds that there was evidence indicating that the goods were made using forced labour – including debt bondage.<sup>230</sup> On 14 October 2020, separately to the WRO process, the US Department of Labor added Malaysian rubber gloves to its list of goods produced with forced labour.<sup>231</sup> On 23 March 2021, CBP issued a Finding in respect of Top Glove.<sup>232</sup> On 10 September 2021, CBP modified its Finding after determining that these goods were no longer being made using forced labour.<sup>233</sup>

### C. Response of Top Glove to import ban

- 7.8 On 16 July 2020, Top Glove issued a press release in response to the WRO, stating that it was reaching out to CBP to seek a “speedy” resolution within an estimated two weeks. Top Glove further stated that it believed the WRO may be “related to foreign labour issues, which we have already resolved, save for one more issue with regard to retrospective payment of recruitment fees by our workers to agents prior to January 2019, without our knowledge”.<sup>234</sup>

227 Top Glove (18 June 2020) [Top Glove sets record straight on allegations made in video by Chanel 4 News, UK](#)

228 Top Glove (18 June 2020) [Top Glove sets record straight on allegations made in video by Chanel 4 News, UK](#)

229 Top Glove (13 July 2020) [Top Glove ensures no debt bondage among foreign workers](#)

230 Reuters (16 July 2020) [Amid virus crisis, U.S. bars imports of Malaysia's Top Glove over labour issues](#); Holland and Knight (27 July 2020) [CBP Issues Detention Order on Top Malaysian Medical Glove Producer Over Forced Labor Concerns](#)

231 Top Glove (18 October 2020) [US Adds Malaysian Rubber Gloves onto List of Goods Produced with Forced Labour](#)

232 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

233 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

234 Top Glove (16 July 2020) [Order by US Customs and Border Protection \(CBP\) on disposable gloves manufactured by Top Glove](#)

## 7. Rubber Gloves: Malaysia

7.9 On 30 July 2020, Top Glove announced that it had engaged in discussions with CBP in relation to the WRO, and sought to arrive at "an agreement on remediation within the month of August 2020, upon which we plan to commence remediation payment (sic) immediately." Top Glove further announced it had appointed an independent consultant to advise it in connection with the matter.<sup>235</sup>

### D. Implementation of Remediation by Top Glove

7.10 On 10 August 2020, Top Glove announced it had made an initial "remediation payment" of MYR 4.4 million (USD 977,000) to reimburse migrant workers recruitment fees paid by migrant workers who joined the company before January 2019. Top Glove further stated that it expected to pay a total of MYR 53 million (USD 11.2 million) in remediation payments, subject to agreement with CBP.<sup>236</sup>

7.11 On 28 August 2020, Top Glove announced its independent consultant – Impactt – had completed an audit of Top Glove's labour practice, which included conducting virtual interviews with 1,100 migrant workers across different locations.<sup>237</sup> The audit report was submitted to CBP by Top Glove on 7 September 2020.<sup>238</sup> According to a summary of the audit findings published by Impactt in April 2021, the audit found "critical issues" relating to 10 of the 11 ILO indicators of forced labour at Top Glove's operations (the indicator of isolation was not identified). Two indicators – debt bondage and physical and sexual violence were flagged as "critical issues requiring immediate action", and four indicators – abuse of vulnerability, excessive overtime, abusive living and working conditions, and deception, were flagged as "critical issues present, but progress is being made".<sup>239</sup>

7.12 On 6 October 2020, Top Glove announced that, following Impactt's recommendations, it was increasing the amount it would set aside to reimburse migrant workers' recruitment fees to MYR 136 million (US 30.2 million), which would be paid over a 10-month period from October 2020.<sup>240</sup>

7.13 On 5 April 2021, following the Finding made by CBP in March 2021, Top Glove announced that CBP had not identified any additional forced labour issues, but had requested Top Glove carry out additional Remediation and verification work in relation to the retention of migrant workers' identity documents, and to provide remedies to migrant workers who were recruited to come to Malaysia – but did not do so due to COVID restrictions.<sup>241</sup>

235 Top Glove (30 July 2020) [Top Glove actively engaging with US CBP towards speedy resolution](#)

236 Top Glove (10 August 2020) [Top Glove commences remediation payment to migrant workers and remains committed to continue improving worker welfare](#)

237 Top Glove (28 August 2020) [Top Glove continues to make good progress towards resolution of US CBP order: verification on labour practices by independent consultant completed](#)

238 Top Glove (7 September 2020) [Top glove submits independent auditors' report to US CBP](#)

239 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 3

240 Top Glove (6 October 2020) [Top Glove affirms commitment to remediate migrant workers based on amount recommended by independent consultant](#); Top Glove Bhd (8 November 2021) [Integrated Annual Report 2021](#), page 228

241 Top Glove (5 April 2021) [Top Glove updates remediation work in relation to earlier findings in progress](#)

## 7. Rubber Gloves: Malaysia

- 7.14 On 26 April 2021, Top Glove announced it had "resolved" all ILO indicators of forced labour identified in its operations, based on an independent assessment by Impactt, and had shared that assessment with CBP.<sup>242</sup> According to a summary assessment report published by Impactt in April 2021, Top Glove's remediation following the WRO has included the following:
- i. Investigated cases of migrant workers whose documents were retained by recruitment agencies, and procured the return of those documents.<sup>243</sup>
  - ii. Ensured that housing for workers complied with Malaysian legal requirements, made efforts to reduce serious workplace accidents and improve medical coverage for workers.<sup>244</sup>
  - iii. Introduced systemic changes to its recruitment practices. Top Glove terminated all contracts with its current recruitment agencies, and will conduct a new open tender exercise to select new recruitment agency partners. Recruitment agencies will be subject to due diligence and training to ensure that they comply with Top Glove's zero recruitment fees policy. Top Glove's contracts with recruitment agencies will also provide for longer lead times for recruitment agencies to source workers, and will provide for Top Glove to make part-payment up front to recruitment agencies – to reduce incentives for agencies to engage in deceptive practices or charge workers fees. Top Glove will also make available Impactt's worker helpline to workers during the recruitment process.<sup>245</sup>
  - iv. Repaid MYR 149.4 million (USD 33.1 million) in recruitment fees to eligible former migrant workers, and has committed a further sum of MYR 24.2 million (USD 5.38 million) in a sinking fund (i.e., a dedicated pool of money specifically set aside to repay a debt obligation) to reimburse recruitment fees to former workers and remaining eligible workers who have yet to be reimbursed.<sup>246</sup>
  - v. Established two sinking funds to reimburse migrant worker recruitment fees paid since 1 January 2019, and to adjudicate and settle any forced labour related claims brought by migrant workers.<sup>247</sup>
  - vi. Introduced new policies and training programs to address physical and sexual violence in the workplace, and investigated and resolved reported cases of physical and sexual harassment and violence. While Impactt's assessment did identify ongoing issues of physical and sexual violence affecting migrant workers, it considered these to not be indicative of a form of control used by Top Glove over its workers, and hence not indicative of forced labour.<sup>248</sup>
- 7.15 In September 2021, CBP modified its Finding in respect of Top Glove – enabling Top Glove to resume exports to the United States.<sup>249</sup>

242 Top Glove (26 April 2020) [Top Glove resolves all 11 ILO indicators](#)

243 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 4

244 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 4

245 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 5

246 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 6

247 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 6

248 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), pages 7-11.

249 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

## 7. Rubber Gloves: Malaysia

### E. Observations

7.16 The WRO against Top Glove and other Malaysian glove manufacturers has driven substantial changes not just within Top Glove, but across Malaysia's glove industry. In addition to Top Glove, other Malaysian glove manufacturers have reimbursed, or plan to reimburse, migrant workers' recruitment fees – totalling over USD 72 million and benefiting close to 25,000 migrant workers.<sup>250</sup> The table below summarises the amount of recruitment fees which have been reimbursed or committed by major Malaysian glove manufacturers since July 2020.<sup>251</sup> Other glove manufacturers, including YTY and Ansell have also announced plans to reimburse recruitment fees, but did not disclose the amounts to be repaid or the number of eligible workers.<sup>252</sup>

Company	Reimbursements Made / Committed (Approximate)	Workers Affected
Top Glove <sup>253</sup>	MYR 150 million (USD 33.3 million)	13,000
Kossan Group <sup>254</sup>	MYR 54 million (USD 11.2 million)	5,500
Hartalgea <sup>255</sup>	MYR 41 million (USD 9.1 million)	Undisclosed
Supermax <sup>256</sup>	MYR 23 million (USD 5.1 million)	1,750
Brightway <sup>257</sup>	MYR 38 million (USD 8.4 million)	2,719
WRP <sup>258</sup>	MYR 21.4 million (USD 4.7 million)	1,600
<b>Total</b>	<b>MYR 327.4 million (USD 72.2 million)</b>	<b>24,569</b>

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

251 It should be noted that many of these amounts are not verified by publicly available third-party audit reports.

252 Ansell Limited (13 September 2021) Sustainability Report 2021, page 4; YTY (1 June 2021) [YTY Accelerates EFC Reimbursement Payments on Humanitarian Grounds](#)

253 Top Glove [Continuous Improvement Report](#)

## 7. Rubber Gloves: Malaysia

- 7.17 It is also notable that Top Glove did not just commit to reimbursing migrant workers' recruitment fees. Uniquely among all the companies examined in this study, Top Glove established a sinking fund to adjudicate and "settle" any forced labour related claims brought by migrant workers.<sup>259</sup> Top Glove is the only company surveyed in this report to have publicly committed to providing remedies in the form of direct compensation to workers who had been in forced labour (as opposed to the reimbursement of recruitment fees). Top Glove has not, however, reported how many forced labour claims have been made or adjudicated, and how much (if any) compensation has been paid in settlement of those claims.
- 7.18 Despite this significant achievement, it should be noted that the reimbursement of migrant workers' recruitment fees does not by itself eliminate the risk of forced labour. In January 2022, CBP imposed a WRO in respect of Malaysian glove maker YTY citing indicators of forced labour in the company's operations including "abuse of vulnerability, deception, retention of identity documents, intimidation and threats, debt bondage, abusive working and living conditions, and excessive overtime".<sup>260</sup> This was despite YTY's announcement of the completion of its recruitment fee reimbursement program in June 2021.<sup>261</sup>
- 7.19 Further, the experience of Malaysian glove manufacturers risks creating an impression that reimbursing recruitment fees is a 'quick fix' to Remediate forced labour indicators. Top Glove's press releases following the imposition of the WRO highlights Top Glove's perception that repayment of recruitment fees alone would be sufficient to Remediate forced labour indicators. For example, Top Glove's initial announcement in response to the WRO in July 2020 stated that it expected to be able to resolve the issues giving rise to the WRO within two weeks upon completion of the reimbursement of recruitment fees to migrant workers.<sup>262</sup> Other Malaysian glove companies have likewise referred to recruitment fee reimbursement payments as "remediation payments", or used similar language to equate the reimbursement of fees with remediation. While recruitment fee reimbursements are a key component of providing remedies to rights holders – they should not of themselves be considered a holistic solution. For example, Top Glove's remediation sinking fund not only allocates funds for reimbursement of recruitment fees, but offers compensation for "forced labour related claims" submitted by current or former workers. This represents a more holistic approach to providing remedy that includes both the reimbursement of fees and compensation for past harm suffered.

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

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

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

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

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

259 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 6

260 US Department of Homeland Security (28 January 2022) [DHS Takes Action to Combat Forced Labor and Hold Companies Accountable for Exploiting Workers](#)

261 YTY (1 June 2021) [YTY Accelerates EFC Reimbursement Payments on Humanitarian Grounds](#)

262 Top Glove (16 July 2020) [Order by US Customs and Border Protection \(CBP\) on disposable gloves manufactured by Top Glove](#); Top Glove (30 July 2020) [Top Glove actively engaging with US CBP towards speedy resolution](#)

## 7. Rubber Gloves: Malaysia

- 7.20 In addition to action to address recruitment fees, CBP's action against Top Glove and other Malaysian glove manufacturers has led to improvements in the quality and level of transparency in their sustainability disclosures, and greater industry-driven efforts at improving standards. In 2022, the Responsible Glove Alliance was launched as an industry led initiative among glove manufacturers to commit to alignment with the Responsible Business Alliance Code of Conduct, and other standards to prevent and remediate forced labour in their operations – including transparency, disclosure, and due diligence requirements.<sup>263</sup>
- 7.21 The Top Glove case also highlights some of the challenges and shortcomings of social auditing. According to a statement from Top Glove, in December 2019 – just eight months before the WRO was imposed – its *"factory in Malaysia received an 'A' rating by Amfori following an international-level social audit in accordance with the Business and Social Compliance Initiative (BSCI) standards"*.<sup>264</sup>
- 7.22 Following the WRO, Amfori reviewed the December 2019 audit and downgraded Top Glove's audit rating from an 'A' to a 'D' *"due to a lack of supporting evidence for the conclusions indicated in the audit report"*.<sup>265</sup> Amfori's swift reversal of the audit findings raises questions as to how the 'A' rating was awarded in the first place.
- 7.23 Top Glove also stated that it had undergone *"more than 100 international external audits"* before the WRO was imposed.<sup>266</sup> Despite this, an assessment undertaken by Impactt shortly after the WRO was imposed was able to identify *"critical issues"* relating to 10 of the 11 ILO indicators of forced labour.<sup>267</sup> Impactt's findings call into question the adequacy of the *"more than 100"* prior audits and their effectiveness in identifying risks of forced labour, given the number of *"critical"* forced labour indicators identified by Impactt.
- 7.24 Finally, the WRO did not appear to have a direct negative impact on Top Glove's revenue. The year after the WRO was imposed, Top Glove reported a four-fold year-on-year increase in its profits before tax in the 2021 financial year.<sup>268</sup> This may, however, have been due to the significant increase in demand for personal protective equipment during the COVID-19 pandemic, which may have offset any adverse financial impact that might otherwise have been caused by the WRO. However, Top Glove did experience other adverse commercial consequences from the WRO. For example, the company was removed from three stock market ESG indices – the FTSE4Good Bursa Malaysia Index, ASEAN 5, and Emerging Markets Index – in June 2021.<sup>269</sup>

263 Responsible Business Alliance [Responsible Glove Alliance Membership](#)

264 Top Glove (18 June 2020) [Top Glove sets record straight on allegations made in video by Chanel 4 News, UK](#)

265 The Edge Markets (2 November 2020) [Top Glove downgraded from A to D in social compliance audit – report](#)

266 Top Glove (18 June 2020) [Top Glove sets record straight on allegations made in video by Chanel 4 News, UK](#)

267 Impactt Limited (April 2021) [Top Glove Combined CAP Summary & Q3 Remediation Payment Verification Findings](#), page 3

268 Top Glove Bhd (8 November 2021) [Integrated Annual Report 2021](#), page 190

269 Straits Times (16 June 2021) [Top Glove ousted from three ESG-related indexes in latest review](#)

## 8. Tobacco: Malawi

### A. Industry overview

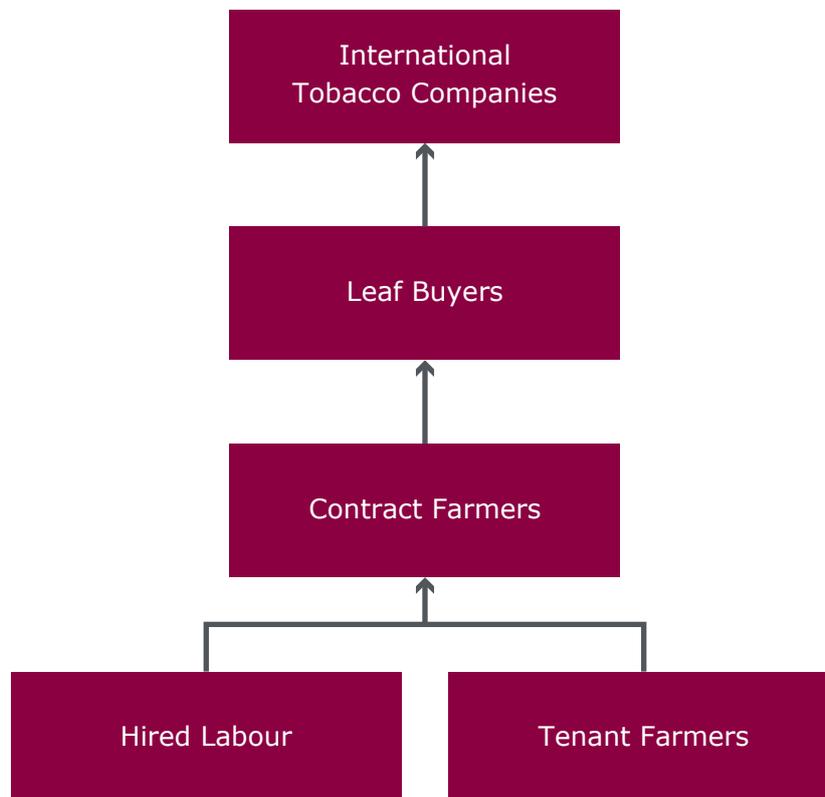
- 8.1 Malawi is one of the world's largest producers of burley tobacco – a tobacco variant primarily used in cigarette production. Burley tobacco from Malawi represents roughly 6.6% of the world's tobacco exports. Malawi's economy is heavily reliant on tobacco exports – accounting for over 50% of Malawi's total foreign earnings.<sup>270</sup> By one estimate, nearly 25% of Malawian households are reliant on tobacco production for their income.<sup>271</sup>
- 8.2 The main actors in Malawi's tobacco supply chain are international tobacco companies who source and purchase tobacco from 'leaf companies', or 'leaf buyers'. Leaf buyers are local merchants who purchase tobacco from individual farmers and sell them to international tobacco companies.<sup>272</sup> The main leaf buyers in Malawi are Alliance One Tobacco (Malawi) (Alliance One), and Limbe Leaf Tobacco Company (Limbe Leaf). Together, these companies purchase around 60-70% of Malawi's tobacco annually.<sup>273</sup> Leaf buyers mostly source their tobacco from farmers through the 'contract farming' system, also known as the Integrated Production System. Under the contract farming system, leaf buyers agree with farm owners that the farmer (known as a 'contract farmer') will sell their crop exclusively to the leaf buyer. In return, the leaf buyer will provide the contract farmer with an advance of fertilizer and seeds on credit, and occasionally financial loans.<sup>274</sup>
- 8.3 The workforce on tobacco farms comprises full-time hired labourers, casual labourers, and 'tenant farmers'. Tenant farmers comprise roughly 63% of the workforce involved in tobacco crop production and preparation for sale.<sup>275</sup> Tenant farmers are recruited to work by landowners on tobacco estates. The estate owner (usually a contract farmer) grants the tenant farmer a parcel of land on the estate to cultivate, and provides the tenant farmer with materials, seed, fertilizer, food, and other services, in exchange for the tenant producing and selling their crop to the estate owner.<sup>276</sup> These arrangements are usually informal. According to one estimate, up to 71% of tenant farmers have no written employment contract.<sup>277</sup>



- 270 Malawi Investment and Trade Centre, [Trade Information Portal: Tobacco](#)
- 271 Clear the Air (2015) [Tobacco Production and Tenancy Labour in Malawi](#), page 8
- 272 Institute of Development and Policy Management (2012) [Working Paper: How traceability is restructuring Malawi's tobacco industry](#), pages 12-13; The Guardian (25 June 2018) [Special report: The children working in the tobacco fields](#)
- 273 Centre for Agricultural Research and Development, Lilongwe University of Agriculture and Natural Resources, Malawi (April 2016) [Tobacco Production in Malawi](#), page 10
- 274 Centre for Agricultural Research and Development, Lilongwe University of Agriculture and Natural Resources, Malawi (April 2016) [Tobacco Production in Malawi](#), page 10
- 275 Clear the Air (2015) [Tobacco Production and Tenancy Labour in Malawi](#), page 12
- 276 Clear the Air (2015) [Tobacco Production and Tenancy Labour in Malawi](#), page 8; The Guardian (25 June 2018) [Child labour rampant in tobacco industry](#)
- 277 Clear the Air (2015) [Tobacco Production and Tenancy Labour in Malawi](#), page 16

## 8. Tobacco: Malawi

### Key Actors in Malawi Tobacco Supply Chain (simplified)



- 8.4 Services (food, water, accommodation, seed, fertilizer, financial advances, as well as supplemental workers to help during peak/harvest seasons) are provided by estate owners to tenant farmers on credit. The cost of these services is charged to tenants at the end of the season and deducted from the price of the tobacco crop sold by the tenant to the estate owner. In most cases, these prices are not disclosed in advance, but are determined by the estate owner at the end of the season.<sup>278</sup> These practices give rise to concerns over debt bondage and deceptive practices which leave tenant farmers at risk of forced labour.
- 8.5 In larger estates, estate owners may provide basic housing for tenant farmers. However, in most small-to-medium sized estates, tenants will be required to build their own housing using mud, tobacco stalks, and other materials available on the estate.<sup>279</sup> Tenants often have poor access to drinking water – which is usually available only through bore holes or wells. Estate owners will provide tenant farmers with basic rations of maize and maize flour. These rations are intended to last tenant farmers until they are able to grow and harvest subsistence crops on their allocated plot, though they are often inadequate.<sup>280</sup>

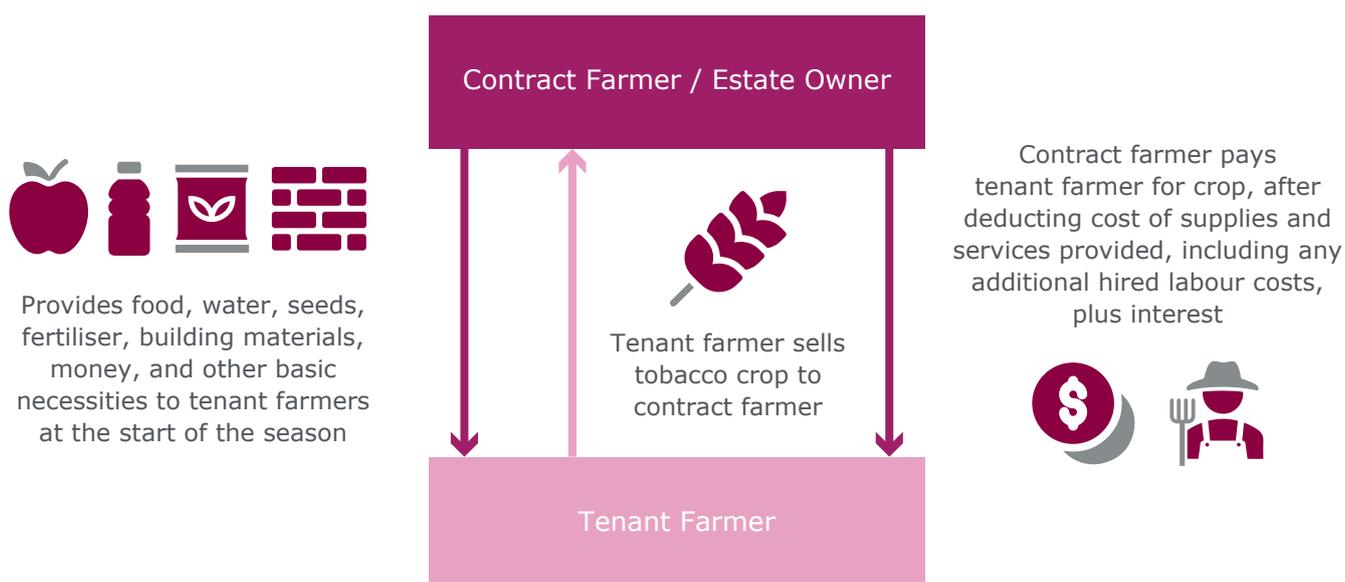
278 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 27

279 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, pages 16-17

280 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 19

## 8. Tobacco: Malawi

8.6 Tenant farmers are mostly internal migrant workers who come from other parts of Malawi to the main tobacco growing regions. Tenant farmers typically migrate with their whole family – including women and children – though only the (male) head of the family is usually officially ‘employed’ by the landlord.<sup>281</sup> The majority of tenant farmers are recruited through brokers or middlemen – often former tenant farmers themselves – who supply labour to landlords.<sup>282</sup>



8.7 Due to the power imbalances and dependencies of tenant farmers on estate owners, the tenant farming system carries an “inherent risk” of forced labour.<sup>283</sup>

8.8 Moreover, because tenant farmers typically migrate as a whole family (who live on the estate), and because their earnings are directly tied to their labour output, all members of the family are usually engaged in tobacco production.<sup>284</sup> As a result, there is a high prevalence of child labour in Malawi’s tobacco industry.<sup>285</sup> Children are often involved in tying tobacco leaves into bunches in preparation for curing, as well as cultivating food crops and household chores. A 2016 survey of labour practices in Malawi found that 55% of children surveyed, and nearly 70% of children in some estates, had performed tobacco tying.<sup>286</sup> Another study found up to 57% of all children in two tobacco growing districts in Malawi were engaged in child labour.<sup>287</sup> Children who handle tobacco products may also be at risk from illnesses such as green tobacco sickness.<sup>288</sup>

281 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 14

282 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 15

283 Control Union (February 2019) *External Assessment Limbe Leaf Tobacco Company Ltd*, page 23

284 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 22

285 The Guardian (25 June 2018) *Child labour rampant in tobacco industry*; The Guardian (25 June 2018) *Special report: The children working in the tobacco fields*

286 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 22

287 The Guardian (25 June 2018) *Special report: The children working in the tobacco fields*

288 US Department of Labor (2020) *Findings on the worst forms of child labor – Malawi*

## 8. Tobacco: Malawi

### B. CBP enforcement action against Malawi's Tobacco Industry

- 8.9 In February 2019, an audit commissioned by Philip Morris International in respect of farms which supply to Limbe Leaf. The auditors found (among other things) that child labour was used in 10% of farms surveyed, and 23% of farms employed tenant farmers.<sup>289</sup> The audit report stated that while "*no evidence was found of forced or indebted labor*", the tenant farming system carried an "*inherent risk of forced labour*" due to the tenant farmer's inability to leave the farm before the crop is sold at the end of the season, as well as the fact only the male household head is formally employed in the tenant farming system. The audit report further noted that most farms paid workers at the end of the season – rather than weekly or monthly – which again gave rise to a risk of debt bondage or forced labour as farm workers cannot leave before the end of the season or risk being unpaid.<sup>290</sup>
- 8.10 A similar audit from February 2019 commissioned by Philip Morris International in respect of farms supplying to Alliance One found that forced labour was present in 5% of farms surveyed, and child labour was used in 19% of farms surveyed.<sup>291</sup> The audit report further highlighted the "inherent risk" of forced labour arising from the tenant farming system, as well as the practice of paying workers at the end of the season, rather than monthly or weekly.<sup>292</sup>
- 8.11 In November 2019, CBP issued a WRO in respect of all tobacco and tobacco products from Malawi based on information indicating that tobacco from Malawi is produced using forced labour and forced child labour.<sup>293</sup>
- 8.12 On 3 June 2020, CBP modified the WRO to exclude tobacco products imported by Alliance One based on a "*rigorous evaluation of Alliance One International's social compliance program and efforts to minimize the risks of forced labor from its supply chain.*" CBP stated that this information "*sufficiently supports Alliance One's claim that tobacco produced and harvested from their farms does not use forced labor*".<sup>294</sup>
- 8.13 On 31 July 2020, CBP modified in its WRO to exclude tobacco products imported from Limbe Leaf, adopting the same reasons as stated in the Alliance One modification above.<sup>295</sup>
- 8.14 In December 2020, British American Tobacco and Imperial Brands were sued in the English High Court by a group of several thousand tobacco farmers and their families over alleged human rights violations – including forced labour and child labour.<sup>296</sup> The proceedings are ongoing.

289 Control Union (February 2019) [External Assessment Limbe Leaf Tobacco Company Ltd](#), pages 5, 30 and 31

290 Control Union (February 2019) [External Assessment Limbe Leaf Tobacco Company Ltd](#), page 23

291 Control Union (February 2019) [External Assessment Alliance One Tobacco Malawi Ltd](#), pages 5, 30

292 Control Union (February 2019) [External Assessment Alliance One Tobacco Malawi Ltd](#), pages 25 and 26.

293 CBP (1 November 2019) [CBP Issues Withhold Release Order on Tobacco from Malawi](#)

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

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

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

## 8. Tobacco: Malawi

- 8.15 On 21 May 2021, CBP modified in its WRO to exclude tobacco products imported from Malawian leaf buyer Premium Tobacco Malawi Limited (Premium Tobacco) – but only in respect of tobacco harvested by “club growers” in Malawi (i.e., clubs of smallholder farmers who work together to cultivate and market their tobacco).<sup>297</sup> According to CBP, club growers use little to no farm worker labour and hence do not produce their products using child or forced labour.
- 8.16 In September 2021, the US Department of Labor issued a finding that children in Malawi – including children working in the tobacco industry – are subjected to the worst forms of child labour.<sup>298</sup>

### C. Industry response to import ban

- 8.17 There is little publicly available information as to what (if any) Remediation was undertaken by Alliance One, Limbe Leaf, or Premium Tobacco to Remediate the forced labour issues identified by CBP in its WRO.
- 8.18 According to Alliance one International, the company “actively engaged, both externally and internally, to respond to the withhold release order over a 7-month period providing information relative to various aspects of our operations, including traceability and our Agricultural Labor Practices program.”<sup>299</sup>
- 8.19 Universal Corporation, the parent company of Limbe Leaf, stated that “The Company immediately engaged with CBP and subsequently filed a comprehensive explanation of Limbe Leaf’s supply chain social compliance program, its efforts to identify and minimize the risks of forced labor on contracted farms from which it purchases tobacco in Malawi, and its ability to trace such tobacco once processed and shipped from the shipping vessel back to the individual farms on which it was produced. CBP rigorously evaluated the Company’s filing and concluded that Limbe Leaf’s program and on-farm efforts produced evidence that sufficiently supported the Company’s claims that tobacco purchased from Limbe Leaf is not produced or harvested using forced labor.”<sup>300</sup>
- 8.20 It therefore appears that Alliance One and Limbe Leaf both secured a modification of the WRO based on evidence of their existing social compliance programs and traceability protocols. There is no publicly available information about what (if any) Remediation was taken by Premium Tobacco to secure a modification of the WRO.

### D. Impact of import ban on workers and rights holders

- 8.21 Given the lack of publicly available information about any Remediation undertaken by Alliance One, Limbe Leaf, or Premium Tobacco in response to the WRO, interviews were conducted in Malawi to assess what (if any) actions had been taken to Remediate the indicators of forced labour identified in the WRO and what (if any) remedies had been provided to workers as a result of that process.

297 UNCTAD (2011) *Competition issues in the tobacco industry of Malawi*, page 6

298 Clear the Air (2015) *Tobacco Production and Tenancy Labour in Malawi*, page 23; US Department of Labor (2020) *Findings on the worst forms of child labor – Malawi*

299 Nyasa Times (24 September 2020) *Malawi tobacco industry on right track to eliminate child and forced labour*

300 Universal Corporation (7 August 2020) *Universal Corporation Obtains U.S. Customs Modification for Malawi Tobacco*

## 8. Tobacco: Malawi

8.22 Interviews were conducted with 30 tenant farmers in the northern, southern, and central tobacco growing regions of Malawi (Mzimba, Kasungu, and Zomba districts). The workers interviewed worked on estates owned by contract farmers who supplied to either Alliance One, Limbe Leaf, or Premium Tobacco. Three contract farmers who respectively supply to Alliance One, Limbe Leaf, and Premium Tobacco were also interviewed. This small sample size is not intended to be representative of workers' experiences as a whole across Malawi. A focus group was also conducted among six civil society groups in Malawi who work on child labour and forced labour issues in the tobacco industry.

### Working conditions and welfare

- 8.23 Tenant farmers in Mzimba, Kasungu, and Zomba all reported that there had been no changes or improvements in their working conditions since 2019.
- 8.24 Tenant farmers in Mzimba reported that leaf buyers are generally not interested in their welfare or concerned about improving their working conditions. Tenant farmers in Mzimba, Kasungu, and Zomba reported that 'extension workers' (employed by leaf buyers to check working conditions on farms) occasionally visit tenant farmers, but they are mostly concerned with ensuring that production is going smoothly, rather than checking on the welfare of tenant farmers. Tenant farmers in Mzimba reported the contract farmer sometimes instructs tenant farmers to say positive things to the extension worker before they visit.

### Forced Child labour

- 8.25 It should be noted that the Tariff Act is intended to address forced labour and forced child labour – not child labour *per se*. However, given the close connection between, and challenges distinguishing, child labour and forced child labour, the following section discusses child labour generally.
- 8.26 The tenant farmers in Mzimba reported that while fewer children worked in tobacco production compared to the past, they confirmed that children continue to work on most tobacco farms. They also reported that, in some instances, contract farmers had encouraged parents to let their children work so that the work could be completed faster. Older children – but who are less than 18 were more likely to be working. According to one tenant farmer: "*[children] are always helping out on the farm with us, they are the ones that even work faster.*"
- 8.27 Tenant farmers in Kasungu all reported that their children helped on tobacco farms – especially during the peak harvest season. The tenant farmers were aware that leaf buyers did not permit child labour – but said that the practice continues. A tenant farmer in Kasungu explained that, because of the low earnings tenant farmers receive, they need to involve their children in farm work. If they do not, then they would need to ask the contract farmer to provide hired labour to help – the cost of which would be deducted from the tenant farmers' earnings at the end of the season.

## 8. Tobacco: Malawi

- 8.28 By contrast, tenant farmers in Zomba stated that children no longer work on farms in the area. This is because contract farmers have been trained and told not to use child labour, and leaf buyers have made agreements with contract farmers requiring them not to use child labour. However, the tenant farmers reported that these trainings had commenced long before 2019.
- 8.29 In terms of initiatives to reduce child labour, the tenant farmers in Mzimba and Kasungu reported that they had received training on child labour and human rights, but that they had not heard of any initiatives undertaken to identify, or prevent children working on farms.
- 8.30 According to an Alliance One contract farmer, he received training on child labour and forced labour from the leaf buyer. Under the contract farmer's contract with the leaf buyer, the use of child labour or forced labour is prohibited. The contract farmer also reported that the leaf buyer would terminate his contract if child labour is found. However, he reported that leaf buyers do not check up to see if he is using child labour or is otherwise in compliance with the buyers' regulations.
- 8.31 A Limbe Leaf contract farmer reported receiving similar training on child labour, and having similar contractual provisions in his contract with the leaf buyer that prohibit the use of child labour. He said that such trainings had been provided long before 2019 and there had been no changes to those trainings since 2019. However, he said that he had not received any training on how to actually reduce or prevent child labour in practice. The contract farmer also reported that he receives regular visits from extension workers to check if children are working on his farm.
- 8.32 A Premium Tobacco contract farmer reported receiving training on child labour and forced labour. He reported that these trainings had only commenced in 2019, possibly in response to an "American ban" on tobacco from Malawi because of child labour. He was told that child labour should not be used, but he was not told how to stop or prevent child labour. He reported receiving quarterly visits from an extension worker to check if children were working on farms. The contract farmer reported that there had been a real change in the area since the trainings had begun, and that child labour was no longer being used.

### Forced labour

- 8.33 Tenant farmers in Kasungu reported being required by the contract farmer to work without pay on other crops (maize or groundnuts) owned by the contract farmer.
- 8.34 Tenant farmers in Mzimba reported taking loans of between 30-80,000 Kwacha (USD 29-78) to the contract farmer/landlord. These loans were repaid (with 100% interest) at the end of the season through deductions from the farmers' pay. Tenant farmers in Mzimba and Kasungu reported that, due to deductions, some tenant farmers leave the farm at the end of the season without any money.
- 8.35 By contrast, tenant farmers in Zomba reported not being in debt to contract farmers – as they were paid per task, rather than on a seasonal basis. As a result, they did not need to seek credit from the contract farmer to cover their living costs during the season. According to one civil society group, there are better working conditions for workers in Zomba.

## 8. Tobacco: Malawi

- 8.36 Some tenant farmers in Mzimba stated that leaf buyers had given contract farmers loans so that they could pay tenant farmers monthly, instead of at the end of the season. Despite this, the tenant farmers reported that the contract farmers continued to use seasonal payments.
- 8.37 According to an Alliance One contract farmer, he had been encouraged by Alliance One to pay his workers monthly, instead of at the end of the season. However, he said that he and other contract farmers preferred to continue to pay workers on a seasonal basis. By contrast, a Limbe Leaf contract farmer reported that he had switched to paying his workers per task, rather than seasonally, to avoid conflicts with workers regarding pay at the end of the season.
- 8.38 A Premium Tobacco contract farmer reported that he was encouraged by Premium Tobacco to stop using tenant farmers, and instead pay workers monthly or per task. He was further advised that, if he paid workers seasonally, he should provide food, medicine, and soap without making deductions from the workers' pay – as this would help alleviate workers' debt problems. He said that few farmers still use tenants, and that most now prefer to hire labourers paid monthly.

### Social compliance programs

- 8.39 Some tenant farmers in Mzimba, Kasungu, and Zomba were aware of 'social compliance' or similar programs undertaken by leaf buyers. Some tenant farmers in Mzimba, Kasungu, and Zomba reported being aware of leaf buyers building boreholes or schools – but all reported not having been personally affected by these projects. Tenant farmers in Kasungu reported that leaf buyers had built example/model houses made of iron sheets for contract farmers to copy and provide for other tenant farmers. However, they reported that leaf buyers did not follow-up to check if contract farmers had actually provided improved housing to tenant farmers.
- 8.40 Seven tenant farmers in Mzimba reported that when they raised grievances with contract farmers over working conditions, they were told that they could leave if they were not satisfied. The tenant farmers reported that while contract farmers will provide workers with more food or extra workers to help during busy periods if requested – these services will be deducted from the tenant farmers' earnings at the end of the season.
- 8.41 None of the contract farmers interviewed reported being aware of any changes to the leaf buyers' social compliance programs since 2019.



## 8. Tobacco: Malawi

### E. Observations

- 8.42 The modification of the WROs in respect of Alliance One and Limbe Leaf are unusual in terms of the speed at which they were modified (within 7 and 8 months), and the absence of information regarding any specific Remediation having been undertaken by either company to secure that modification. In most cases (apart from those where a WRO may have been improperly imposed), companies have had to demonstrate significant and proactive Remediation efforts to address the indicators of forced labour identified by CBP.
- 8.43 This anomaly is even more unusual given the prevalent risks of child labour and forced labour (through the tenant farming system) in Malawi. Third party audits of Alliance One and Limbe Leaf's respective supply chains conducted just months before the WRO was imposed found evidence of child labour, forced labour, and practices carrying inherent risks of forced labour.<sup>301</sup> Interviews with tenant farmers conducted for this study also suggested the continued presence of child labour on tobacco farms, and indicators of forced labour (notably debt bondage) among tenant farmers.
- 8.44 Despite this, there was no clear evidence (from either public sources or stakeholder interviews) of efforts undertaken by either company to Remediate the indicators of forced labour or forced child labour identified by CBP. Instead, CBP seems to have decided to modify the WROs based on information relating to both companies' *existing* social compliance and traceability programs to manage the risk of forced labour in the companies' supply chains.
- 8.45 Interviews with tenant farmers across Malawi confirm that the tenancy farming system, child labour, and debt bondage continue to be present in the tobacco industry. Further, tenant farmers and contract farmers interviewed for this report confirmed that leaf buyers' training, monitoring, and social compliance programs have remained largely unchanged since 2019. The notable exception to this is Premium Tobacco, who, according to one contract farmer, appears to have introduced training for contract farmers on forced labour and child labour as a direct response to the WRO.
- 8.46 Malawian civil society groups interviewed for this report described how certain leaf buyers had intensified their child labour and forced labour education programs in response to the WRO, and had adopted an 'agricultural labour practices' policy aimed at improving social standards and addressing child labour and reducing the use of tenant farming. However, civil society groups consider that these policies have been introduced largely for show – and have not been implemented in a way which would guarantee its success. Civil society groups further reported that there has been a lack of follow-up by leaf buyers with training and awareness raising programs to ensure that the training is put into practice. For example, to have follow-up, monitoring, and engagement with farmers – and developing mechanisms to ensure that children are sent to school, rather than simply telling them not to work. Civil society groups further report that other root causes of child labour – such as low pay for workers – have not been addressed at all.

301 Control Union (February 2019) [External Assessment Limbe Leaf Tobacco Company Ltd](#); Control Union (February 2019) [External Assessment Alliance One Tobacco Malawi Ltd](#)

## 8. Tobacco: Malawi

- 8.47 While the intensification of the leaf buyers' anti-child labour and forced labour efforts is an important development, it is not clear why this should have been sufficient to secure a modification of the WRO. In other cases (e.g., palm oil and rubber gloves from Malaysia) CBP has required independent third-party verification and documentation proving that all forced labour indicators identified by CBP have been Remediated. This has often required companies to undertake substantial due diligence exercises, overhaul corporate governance policies, and refund millions of dollars in recruitment fees paid by migrant workers.
- 8.48 In the case of Malawi, forced labour and child labour continues to be prevalent in the tobacco industry, as has been recognised by the US Department of Labor – among others.<sup>302</sup> Here, forced labour and child labour continues to be prevalent in the tobacco industry, as has been recognised by the US Department of Labor – among others. In the case of Malawi, CBP appears to have modified the WRO based on evidence that the leaf buyers had adequate protocols to *manage* the risk of forced labour and child labour, rather than evidence that each of the 11 indicators of forced labour had been fully Remediated (i.e., removed). While it is not necessarily inappropriate for CBP adopt that standard, it appears inconsistent with the standard applied in other cases.



302 US Department of Labor (2020) [Findings on the worst forms of child labor – Malawi](#)

## 9. Fishing Nets: Thailand

### A. Industry overview

- 9.1 With over 280,000 inmates, Thailand has the largest prison population in South East Asia, and the seventh-largest prison population in the world.<sup>303</sup> Many inmates across Thailand's prisons are engaged in work. Thailand's prison work program, managed by the Department of Corrections, is intended to provide inmates with vocational skills training that will allow them to find paid work after their release.<sup>304</sup>
- 9.2 For several years, rights groups have voiced concerns over abuses within Thailand's prison labour program.<sup>305</sup> Civil society organisations report that prisoners are often engaged in labour-intensive work such as sewing, folding paper bags, repairing shoes, and making fishing nets.<sup>306</sup> Pay rates for prisoners vary from prison to prison, depending on the type of work performed. Prisoners may be paid per item/product produced, or monthly.<sup>307</sup>
- 9.3 The COVID-19 pandemic, and the resulting shortage of migrant workers, caused an acute labour shortage in Thailand. In response, the Thai Ministry of Justice proposed in May 2021 to establish industrial complexes near prisoners that would be staffed by prisoners.<sup>308</sup> In October 2021, the Department of Corrections recruited approximately 74,000 prisoners to work at an industrial estate – under a scheme the Department said was aimed at reducing overcrowding in prisons.<sup>309</sup>
- 9.4 In December 2021, Thomson Reuters Foundation published an investigative report on the production of fishing nets in Thailand's prisons. According to the report, at least 54 prisons in Thailand had entered into contracts with private companies or individuals to produce fishing nets. Former prisoners interviewed by Thomson Reuters Foundation reported that prisoners were forced to make fishing nets to fulfil these contracts under threat of punishment – including physical violence and delayed release.<sup>310</sup> Prisoners reported being required to meet fishing net production quotas by prison officers – failing which they would be punished through beatings, and solitary confinement.<sup>311</sup> Prisoners reported being paid as little as THB 9 per net, resulting in earnings of as little as THB 30 a month – far below Thailand's minimum wage of around THB 313-336 per day.<sup>312</sup>
- 9.5 Prisoners further reported that prison officials earned money from the fishing net contracts. Thomson Reuters Foundation reported that one fishing net contract seen by them stated that prison officials would receive 15% of the net contract price.<sup>313</sup>

303 World Prison Brief, [Highest to Lowest: Prison Population Rate](#)

304 Thomson Reuters Foundation (24 December 2021) [EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence](#)

305 See, e.g., FIDH (February 2017) [Behind the Walls: A look at conditions in Thailand's prisons after the coup](#), page 25

306 FIDH (February 2017) [Behind the Walls: A look at conditions in Thailand's prisons after the coup](#), page 25; FIDH (March 2022) [Thailand Annual Prison Report 2022](#), page 25

307 FIDH (February 2017) [Behind the Walls: A look at conditions in Thailand's prisons after the coup](#), page 25; FIDH (March 2022) [Thailand Annual Prison Report 2022](#), page 25

308 Bloomberg (5 March 2021) [Prisoners Put to Work in Thai Factories Desperate for Labor](#);

309 Bangkok Post (1 October 2021) [Department recruits 74,000 prison inmates](#). See also Bangkok Post (23 September 2021) [Inmates to be offered jobs](#); Bangkok Post (25 October 2021) [IEAT to speed up correctional estate study](#)

310 Thomson Reuters Foundation (24 December 2021) [EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence](#)

311 Thomson Reuters Foundation (24 December 2021) [EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence](#)

312 Thomson Reuters Foundation (24 December 2021) [EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence](#)

313 Thomson Reuters Foundation (24 December 2021) [EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence](#)

## 9. Fishing Nets: Thailand

### B. Petition for import ban

- 9.6 In February 2022, Global Labor Justice-International Labor Rights Forum (**GLJ-ILRF**) and the Seafood Working Group<sup>314</sup> submitted a Petition to CBP calling a ban on imports of fishing nets produced by two Thai companies – Khon Kaen Fishing Net Factory Co., Ltd. (**KKF**) and Dechapanich Fishing Net Factory Ltd. (**Dechapanich**) – on the grounds that their nets were allegedly made using forced prison labour.<sup>315</sup>
- 9.7 Among other things, the Petition called for the Thai authorities to ensure that prison labour conditions were compliant with the UN Minimum Standards for the Treatment of Prisoners (**Mandela Rules**), and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (**the Bangkok Rules**), and to investigate all allegations of human rights violations related to prison labour, publicly report the findings of those investigations, and adequately compensate all victims. The Petition also called for KKF and Dechapanich to provide remedies for all prisoners who produced fishing nets under exploitative conditions – including compensation for unpaid wages, and for international buyers of KKF and Dechapanich’s nets to cooperate with KKF and Dechapanich in this regard.<sup>316</sup>

### C. Response to Petition

- 9.8 On 2 March 2022, just nine days after the submission of the Petition, the Department of Corrections announced it would end forced labour in prisons, and would develop other measures to ensure that prison work was voluntary and not harmful to prisoners.<sup>317</sup>
- 9.9 Among other things, the Department of Corrections announced that prisons had been instructed not to use prisoners to perform work that did not benefit them or enhance their work skills and to comply with the Mandela Rules. The Department of Corrections also announced it would establish committees of provincial officials to oversee labour reforms in all of Thailand’s prisons and correctional institutions, and to set inmates’ rates of pay in line with the provincial minimum wage. Each prison would be required to report to the Department of Corrections within 15 days that they had ceased employing prisoners at substandard wages.<sup>318</sup>

314 The Seafood Working Group is a global coalition of human rights, labour and environmental organizations that work together to develop and advocate for effective government policies and industry actions to end the related problems of labour exploitation, illegal fishing and overfishing in the international seafood trade. See International Labor Rights Forum, [The Seafood Working Group](#)

315 See Global Labor Justice (22 February 2022) [Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor](#); As to the relationship between forced labour and prison labour programs, see: ILO, [Q&As on Business and Forced Labour – When is it ok to use prison labour?](#) and United Nations (2015), [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), rules 96-103

316 Global Labor Justice (22 February 2022) [Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor](#)

317 Reuters (2 March 2022) [Thailand pledges to ban forced prison labour after expose](#)

318 Bangkok Post (2 March 2022) [Prisons warned over work rules](#); Bangkok Post (2 March 2022) [Govt pledges to ban forced prison labour after expose](#); Department of Corrections (1 March 2021) [Corrections reforms prisoners’ labour according to human rights standards](#)

## 9. Fishing Nets: Thailand

9.10 In June 2022, the Department of Corrections announced that prisons would be permitted to complete any existing fishing net production contracts, but would not be allowed to extend or renew those contracts upon their expiry. The Department of Corrections stated that it expected all existing fishing net contracts to expire by September 2022. The Department of Corrections further stated that it intended to reform prison labour practices in partnership with the Department of Justice, which includes:

- i. Developing an action plan to develop and promote working skills of prisoners in line with international standards;
- ii. Inspecting prisons to ensure compliance with prison standards;
- iii. Improving the practices of prisons to be in line with the Mandela Rules (including rules 40, 96, 99, and 103); and
- iv. Implementing guidelines to ensure adherence to the 1930 Forced Labour Convention.<sup>319</sup>

9.11 In June 2022, the Department of Corrections published a summary of reforms to the employment of prisoners that had been implemented across Thailand's 10 prison districts. Officials in four districts approved pay rises for prisoners of between 3 and 30% for prisoners performing certain types of work. In an additional two districts where fishing nets were still being produced, officials agreed to increase the unit price of nets by THB 10 per unit, to align the unit price with the market price. However, it should be noted that the unit price is the price paid to prisons for nets – and is not necessarily reflective of the amount paid to prisoners. The Department of Corrections also noted that it was considering a proposal to set prices for goods made in prisons at the national level to improve verification, as opposed to the current practice of prisons agreeing prices for goods on a case-by-case basis.<sup>320</sup>

### D. Impact of Remediation on workers and rights holders

9.12 As of February 2023, there has been little transparency in relation to the implementation of the Royal Thai Government's commitments to end forced labour in prisons. NGOs report that civil society access to Thai prisons is extremely limited, and visits with inmates (even legal interviews) are conducted in the presence of guards. In the absence of publicly available information and a lack of free access to inmates, interviews were therefore conducted with former prisoners who had been released after March 2022 to assess the impact (if any) of the Department of Corrections' reforms announced in response to the Petition for an import ban.

9.13 Unsurprisingly, few prisoners were prepared to speak openly about prison conditions – citing a fear of reprisals. However, three prisoners – Awut, Boonmee, and Chawalit – (not their real names) were prepared to speak about their experiences. Given the small sample size of interviewees, the interviewees' experiences cannot be said to be representative of prisoners as a whole across Thailand.

319 Department of Corrections (June 2022) Statement from Department of Corrections in response to questions on reform of prison labour in accordance with human rights principles

320 Department of Corrections (April 2022) Summary of Guidelines for the Employment of Inmates

## 9. Fishing Nets: Thailand

9.14 Awut was released from prison in southern Thailand in July 2022. He confirmed that at the time of his release, "thousands" of inmates at his prison were still making fishing nets. According to Awut, prisoners were made to meet a quota of three nets per day under threat of punishment. Awut described the working conditions he saw:

*"If they refuse to work, they are beaten...There are more than 1,000 prisoners making fishing nets in [the province's] prisons, which houses 2,200 male and 170 female prisoners...If they don't finish, they will be beaten by a baton. I've seen this happen before since where I work is located near where the fishing nets are made. It's in the same part of the prison. After they're beaten, they are forced to train military style by rolling over on the ground or running; whatever they are ordered to do. Or clean the toilets. After doing this for three months, they move to another place where they train military style as well, but it's not that tough. Then they can request to move elsewhere. If they want to make fishing nets again, they would have to train with their boss for about a month. The boss needs to check whether or not they can finish the work in time".*

9.15 According to Awut, prisoners receive about THB 170 every three or four months (or THB 56-42 per month), and that he had not received any increase in his wages. He recalled seeing one prisoner punished for asking for an increase in wages in April 2022:

*"One day, one of the prisoners asked the boss whether the prison could increase the pay to more than 200 baht. After that, that prisoner was forced to train military style for three months. The boss said, 'You have only one duty, and you're not supposed to ask.' This happened in around April."*

9.16 Awut said that while prisoners were generally not free to decide what work they performed, long-term prisoners could ask to be transferred to different jobs:

*"It depends on the "boss" who decides what type of work we do. If we have been in the prison for a long time, it's ok, we can request to change the type of work. For instance, if we're bored of making fishing nets, we can request to work as a carpenter, in the kitchen or as a cleaner."*

9.17 Awut was not aware of any prisoners who had suffered mistreatment while making fishing nets being offered compensation.

9.18 Boonmee was released from a different prison in southern Thailand in July 2022. Boonmee was segregated from the general population in the prison and did not work on making nets. However, he confirmed that other prisoners were still making nets in the prison at the time of his release in July 2022. He said that work assignments were decided by prison staff, and that prisoners who did not want to work were punished.

9.19 Chawalit was released from a prison in southern Thailand in October 2022. He made fishing nets for over a year while in prison. Chawalit was assigned a production quota of six rows of a fishing net per day. Prisoners who failed to meet the production quota would be made to perform exercises such as sit ups.

## 9. Fishing Nets: Thailand

- 9.20 According to Chawalit, at the time of his release in October 2022, fishing nets were still being made in the prison. However, he reported that two to three months before his release, rumours began circulating in the prison that the prison would stop manufacturing prison nets because the work was too hard, and was considered “oppressive”.
- 9.21 According to Chawalit, since 2022, there had been some improvements to working conditions in the prison, with his friends reporting that they had less work and more time to rest. However, he reported that prisoners still only earned about THB 100 per month, and that there had been no increase in prisoners’ rates of pay. Chawalit was not aware of any prisoners who had suffered mistreatment while making fishing nets being offered compensation.

### E. Observations

- 9.22 It is difficult to specifically attribute actions taken by the Department of Corrections to reform Thailand’s prison work program to the impact of the Petition, rather than media pressure. Both likely complemented each other and contributed to pressuring the Thai authorities to act. However, it is notable that the Department of Corrections’ announcement that it would end forced labour in Thai prisons came within just 10 days of the submission of the Petition – whereas there had been no immediate public reaction or response when the first reports of forced labour in fishing net production were published in December 2021. One civil society group expressed surprise at the prompt response of the Thai authorities to the Thomson Reuters Foundation report, which “*achieved more than several decades of engagement*”, but they did not know if that prompt response was due to the added threat of CBP action arising from the Petition.<sup>321</sup> Another civil society group likewise commented on the effectiveness of the Thomson Reuters Foundation’s reporting and the CBP Petition as drawing attention to Thailand’s prison labour system and driving swift reforms.<sup>322</sup>
- 9.23 The swift response of the Department of Corrections to end the use of prison labour to make fishing nets, and its review of pay and working conditions for inmates across all of Thailand’s prisons, are significant achievements. Especially given the considerable challenges of using tools like import bans to address state-imposed forced labour. Unlike private companies, states are often perceived as being less susceptible to commercial pressure arising from import bans – which are predominantly directed at private companies. This case study highlights the possibility of using WROs to target private sector actors as a means to combat state-imposed forced labour.<sup>323</sup>



321 Interview with Andrea Girorgetta, Asia Desk Director, International Federation for Human Rights (FIDH)

322 Interview with Kimberly Rogovin, Senior Seafood Coordinator, Global Labor Justice-International Labor Rights Forum

323 Interview with Kimberly Rogovin, Senior Seafood Coordinator, Global Labor Justice-International Labor Rights Forum

## 9. Fishing Nets: Thailand

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- 9.24 It remains unclear to what extent the Department of Corrections will follow through on its commitments to reform the prison labour system. Notably, all three former prisoners interviewed confirmed that fishing nets were still being made using prison labour as of their respective release dates – as late as October 2022. Though one interviewee did report a rumour that net making would soon be banned. The interviewees’ experiences are not necessarily inconsistent with the Department of Corrections’ stated plan to phase out fishing net production by September 2022, as the Department has stated that it would fulfil any outstanding contracts for fishing nets before ceasing production. However, it is a cause for concern that at least one former inmate has reported that fishing nets were still being produced in at least one prison as of October 2022.
- 9.25 Of greater concern are the broader labour practices described by the interviewees – where prisoners work under threat of punishment to meet strict production quotas, and receive pay far below the minimum wage. It is these coercive practices – rather than the manufacture of fishing nets itself – that give rise to concerns of forced labour. Simply halting the production of fishing nets is therefore unlikely to address forced labour risks if broader abusive and coercive practices within the prison work program continue. Notably, none of the interviewees reported that prisoners had received an increase in wages for their work.
- 9.26 Further, there is no evidence that the Department of Corrections, KKF, Dechapanich, or their international customers have taken any steps to provide remedies to current or former prisoners who experienced abuses while manufacturing fishing nets.



## 10. The *Da Wang*: Distant Water Fishing

### A. Industry overview

- 10.1 Taiwan is among the top 25 seafood producers in the world by volume, and its seafood industry is worth roughly USD 3 billion annually.<sup>324</sup> Taiwan's seafood production includes distant water fishing, coastal and offshore fishing, and aquaculture. Distant water fishing accounts for the largest share (41%) of Taiwan's seafood production.<sup>325</sup>
- 10.2 Distant water fishing refers to fishing that takes place in waters outside of a jurisdiction's 200-mile offshore exclusive economic zone.<sup>326</sup> Taiwan has one of the world's largest distant water fishing fleets, with over 1,100 Taiwan-flagged distant water fishing vessels. There are at least another 259 vessels that are Taiwan owned, registered, or financed, but fly 'flags of convenience' of different jurisdictions.<sup>327</sup>
- 10.3 Distant water fishing poses unique human and labour rights challenges. Fishing workers face difficult living and working conditions aboard vessels. Monitoring, enforcement, and oversight of vessels operating outside of territorial waters is practically and legally challenging. Transshipment – where a catch is transferred from one vessel to another at sea, outside of port areas – means that workers may spend several months or even years at sea without returning to port, and undermines efforts at tracing and reporting catches.<sup>328</sup>
- 10.4 Taiwan's distant water fishing fleet relies heavily on migrant workers. As of December 2021, there were 19,251 migrant workers employed in Taiwan's distant water fishing fleet. Most migrant workers come from Indonesia (10,925) the Philippines (6,386), or Vietnam (980).<sup>329</sup> Migrant workers in Taiwan's distant water fleet do not have the same rights as workers employed in coastal fishing. Distant water fishing workers are not subject to domestic labour laws such as the Employment Service Act, Labour Standards Act, or the Occupational Health and Safety Act. Instead, labour standards for distant water fishers are governed by the Act for Distant Water Fisheries, which includes significantly fewer protections for workers. Among other things, the minimum wage for distant water fishing workers is USD 550 per month,<sup>330</sup> compared to the regular minimum wage of USD 770 per month. Oversight of labour standards under the Fisheries Act is the responsibility of the Fisheries Agency, rather than the Ministry of Labour, which further weakens enforcement of labour standards.<sup>331</sup>

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- 324 UN Food and Agriculture Office (2020) *The State of World Fisheries and Aquaculture: Sustainability in Action*, page 13; Global Labor Justice-International Labor Rights Forum (2020) *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, page 7
- 325 Global Labor Justice-International Labor Rights Forum (2020) *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, page 7
- 326 RISE Seafood, *Distant Water Fishing*; Global Labor Justice-International Labor Rights Forum (2020) *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, page 8; Act for Distant Water Fisheries 2016, Article 4(3)
- 327 Global Labor Justice-International Labor Rights Forum (2020) *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, page 8
- 328 RISE Seafood, *Distant Water Fishing*; IHRB (2020) *What's the Catch? Forced Labour and Trafficking in the Taiwanese Distant Water Fishing Industry*; Greenpeace (2020) *Greenpeace Briefing on Taiwan for the US Department of Labor 2020 List of Goods Produced by Child Labor or Forced Labor*
- 329 FACOA (2021) *Number of foreign crew members employed by fishing vessels in Taiwan*
- 330 The minimum wage was recently increased to US\$550 per month from US\$450 per month in mid-2022. Council of Agriculture, Executive Yuan (2022) *Action Plan for Fisheries and Human Rights*, page 18; Interview with civil society organisation in Taiwan, anonymous
- 331 Council of Agriculture, Executive Yuan (2022) *Action Plan for Fisheries and Human Rights*, page 8 and Appendix 3; Global Labor Justice-International Labor Rights Forum (2020) *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, pages 12-13

## 10. The *Da Wang*: Distant Water Fishing

10.5 Migrant workers in Taiwan's distant water fishing fleet are at risk of exploitation due to weaknesses in vessel management, oversight, and monitoring, and the two-tiered employment system which affords migrant distant water fishing workers fewer rights. In recent years, there have been several reports of trafficking, forced labour, and exploitation of workers in Taiwan's distant water fishing fleet. Among other things, there have been reports of migrant workers in Taiwan's distant water fishing fleet being subjected to physical and verbal abuse, violence, wage retention, unlawful wage deductions, excessive working hours, unsanitary or unsafe working and living conditions, passport retention, and debt bondage.<sup>332</sup> In October 2020, the U.S. Department of Labor added fish from Taiwan to its List of Goods Produced by Child Labor or Forced Labor.<sup>333</sup>

### B. CBP enforcement action against fishing vessel *Da Wang*

10.6 The *Da Wang* is a Vanuatu-flagged tuna longline distant water fishing vessel. It is owned by Yong Feng Fishery Co., Ltd. a company incorporated in Taiwan.<sup>334</sup> *Da Wang* has reportedly supplied tuna to U.S. seafood brand Bumble Bee.<sup>335</sup> Bumble Bee is a subsidiary of Fong Chun Formosa (FCF) a major Taiwan-based seafood trading company.<sup>336</sup>

10.7 In 2019, Greenpeace and SBMI, an Indonesian migrant worker union, named the *Da Wang* in an investigative report into labour abuses in Taiwan's distant water fishing industry. According to the report, six ILO indicators of forced labour were identified aboard the *Da Wang* – abuse of vulnerability, deception, physical and sexual violence, withholding of wages, abusive working and living conditions, and excessive overtime.<sup>337</sup> According to a statement from a former *Da Wang* crew member, in at least one instance, a crew member died after allegedly being assaulted by the *Da Wang's* Fishing Master.<sup>338</sup>

10.8 A representative from the *Da Wang's* owner denied the allegations made in the Greenpeace/SBMI report. In a statement given to Greenpeace and SBMI, the owners denied that crews aboard the vessel were treated inhumanely, and that crews received their pay via labour service companies in Taiwan.<sup>339</sup>

10.9 In August 2020, CBP imposed a WRO on the *Da Wang* based on information reasonably indicating the use of forced labour aboard the vessel – including physical violence, debt bondage, withholding of wages, and abusive living and working conditions.<sup>340</sup> On 28 January 2022, CBP issued a Finding in respect of the *Da Wang*, concluding that there was evidence of all 11 ILO indicators of forced labour aboard the vessel.<sup>341</sup>

332 Greenpeace (2020) [Greenpeace Briefing on Taiwan for the US Department of Labor 2020 List of Goods Produced by Child Labor or Forced Labor](#), pages 2-13

333 U.S. Department of Labor (2020) [2020 List of Goods Produced by Child Labor or Forced Labor](#), page 74

334 Greenpeace and SBMI (2019) [Seabound: The Journey to Modern Slavery on the High Seas](#), page 28

335 Greenpeace (2022) [Investigation finds suspected human rights abuse by suppliers of major US and Taiwanese seafood company – Greenpeace](#); Greenpeace (2022) [Fake My Catch: The Unreliable Traceability in our Tuna Cans](#)

336 Greenpeace (2022) [Investigation finds suspected human rights abuse by suppliers of major US and Taiwanese seafood company – Greenpeace](#); Greenpeace (2022) [Fake My Catch: The Unreliable Traceability in our Tuna Cans](#)

337 Greenpeace and SBMI (2019) [Seabound: The Journey to Modern Slavery on the High Seas](#), page 28

338 Greenpeace and SBMI (2019) [Seabound: The Journey to Modern Slavery on the High Seas](#), page 32

339 Greenpeace and SBMI (2019) [Seabound: The Journey to Modern Slavery on the High Seas](#), page 34

340 CBP (18 August 2020) [CBP Issues Detention Order on Seafood Harvested with Forced Labor](#)

341 Department of Homeland Security (28 January 2022) [DHS Takes Action to Combat Forced Labor and Hold Companies Accountable for Exploiting Workers](#)

## 10. The *Da Wang*: Distant Water Fishing

### C. Response to import ban

- 10.10 In September 2021, FCF said that it had ceased trading with the *Da Wang* as soon as the WRO had been issued, and that it required its suppliers to comply with ILO and other social responsibility standards.<sup>342</sup>
- 10.11 The *Da Wang* continued to operate after the WRO was issued, and no immediate action appears to have been taken by the Taiwanese authorities in response to the WRO against the vessel's captain or owners. However, authorities were quick to take action after CPB issued its Finding on 28 January 2022. On 30 January 2022, Taiwan's Fisheries Administration announced that in response to CBP's Finding, the Administration would revoke the rights of the owner of the *Da Wang* to invest in and operate overseas fishing vessels (including the *Da Wang*) and that any other vessels operated by the owner of the *Da Wang* would be denied entry to Taiwan's ports.<sup>343</sup>
- 10.12 In April 2022, nine people – including the *Da Wang*'s captain, first mate, and seven others – were indicted by the Kaohsiung District Prosecutors' Office for human trafficking offences, coercion, and forgery arising from the abuse of 20 Indonesian and Filipino migrant workers aboard the vessel. According to a statement from prosecutors, crewmembers were allegedly beaten, forced to work up to 20 hours per day, Muslim crew members were forced to eat pork, and one crew member died after being struck on the head by the first mate.<sup>344</sup>
- 10.13 More broadly, CBP's enforcement actions against the *Da Wang* and other Taiwan-owned or flagged fishing vessels appears to have prompted strengthened regulation of the distant water fishing industry. In May 2022, the Council of Agriculture of the Executive Yuan – which oversees the Fisheries Agency – published a four-year Action Plan for Fisheries and Human Rights.<sup>345</sup> Among other things, the Action Plan specifically cites the death and labour exploitation of crew members aboard the *Da Wang* and other vessels as having caused "far-reaching damage on the reputation of the Taiwanese distant water fishing industry". This is cited as one of the reasons for the introduction of the Action Plan.<sup>346</sup>
- 10.14 Among other things, the Action Plan includes specific commitments to:
- i. Improve wages for distant water fishing workers – including by requiring the direct payment of wages to crew (instead of paying wages to agents and brokers, as is the current industry norm), and an increase in the minimum wage by USD 100 to USD 550 (which is still below the minimum wage for workers employed domestically);
  - ii. Improve living and working conditions aboard vessels, such as through improving insurance coverage, imposing a 10-month limit on voyages at sea, improving WiFi coverage aboard vessels, and establishing grievance/complaint channels for workers; and
  - iii. Strengthen the monitoring and oversight of recruitment agents and labour inspections aboard vessels.<sup>347</sup>

342 CNA (9 September 2021) [Greenpeace Petitions the U.S. in relation to FCF](#)

343 Fisheries Administration (30 January 2022) [The United States confirms forced labour on the \*Da Wang\*, and the Fisheries Administration will abolish the qualifications of people to invest and operate](#) (Chinese)

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

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

346 Council of Agriculture (May 2022) [Action Plan for Fisheries and Human Rights](#), page 2

347 Council of Agriculture (May 2022) [Action Plan for Fisheries and Human Rights](#), pages 17-52

## 10. The *Da Wang*: Distant Water Fishing

10.15 Parts of the Action Plan, such as the increase in the minimum wage for distant water fishing workers, have been implemented. The Fisheries Agency has also announced that it would deploy an additional 79 labour inspectors by September 2022 to enforce the new regulations, and increase the frequency of inspections.<sup>348</sup>

### D. Impact of import ban on workers and rights holders

10.16 The WRO and Finding in respect of the *Da Wang* has had some direct impact on current and former crew members – most notably through the revocation of the vessel owners’ license to operate, and the prosecution of the vessel’s former captain and others. Civil society groups in Taiwan have also reported that the authorities have recognised some of the former crew members of the *Da Wang* as victims of human trafficking – allowing them to receive support and protection.<sup>349</sup>

To better understand the impact (if any) of CBP’s action on crew members of the *Da Wang*, two former crew members of the *Da Wang* agreed to be interviewed for this report. Names and details of their accounts have been anonymised to protect their identities. “Ari” (not his real name), described being subjected to systematic abuse aboard the vessel. Ari was beaten, punched, and kicked by the captain and first officer, and had sharp objects thrown at him. Ari and the crew were deprived of sleep, an adequate food, and injured crew members were denied proper medical treatment:

*“...we only got to sleep around 3 hours per day in a row. For the food, we would cook rice but the rice was only enough for 3 people. There were around 20 people onboard. So often there was no rice left for us...There was also another incident where my colleague got hit by fishing equipment when there was a big wave. He didn’t feel well after that and begged the captain to let him rest. But the captain said no, so my colleague kept working and afterwards suffered from a stroke. Even then, the captain didn’t want us to use the telephone on the boat. And there was no signal on our mobile phone so it was difficult for us. My colleague then couldn’t move and got paralyzed”.*<sup>350</sup>

10.18 Eventually, Ari was abandoned onshore in Taiwan after falling ill and requesting leave to go home. After arriving onshore, Ari was locked in his accommodation for two weeks by a labour broker until he was rescued by the authorities.

10.19 “Benni” (not his real name) reported that one crew member aboard the *Da Wang* died, and another crew member was paralysed after being hit by fishing equipment. He described having to work hard without rest days, and not being paid his full wages:

*“We started to have problems when one of the workers died. We didn’t have rest days; we didn’t even have days off even when we were onshore”.*<sup>351</sup>

348 Taipei Times (19 July 2022) [Wages for migrant fishers rise by US\\$100 this month](#); Focus Taiwan (18 July 2022) [Taiwan to enforce migrant fishermen’s pay hike: official](#)

349 Interview with NGO in Taiwan, anonymous

350 Interview with “Ari”, former crew member of the *Da Wang*

351 Interview with “Benni”, former crew member of the *Da Wang*

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10.20 Benni continued to work aboard the *Da Wang* after the WRO was imposed in August 2020. Benni said that working conditions aboard the vessel did not change after the WRO was issued, and that the vessel owners did not contact the workers to speak to them about their situation.

10.21 Neither Ari nor Benni have received any compensation or other remedies for their abuse aboard the *Da Wang*. Though Ari has expressed some satisfaction that the captain of the vessel has been prosecuted, so that others would no longer suffer similar abuse:

*"I wish that captain would be put into jail so no one else would experience this again".<sup>352</sup>*

### Q. Observations

10.22 CBP's actions against the *Da Wang* and other Taiwan flagged or owned fishing vessels appears to have had direct and indirect effects at the individual and industry level.

10.23 Most directly, CBP's Finding prompted the Fisheries Agency to revoke the permission of the *Da Wang*'s owners to operate distant water fishing vessels, and to bar any other vessel operated by the owners of the *Da Wang* from entering ports in Taiwan.<sup>353</sup> It is also notable that prosecutors indicted the captain of the *Da Wang* in May 2022, shortly after CBP's Finding in January 2022 (though this action cannot be directly attributed to the Finding). However, in terms of direct provision of remedies to victims, the WRO against the *Da Wang* does not appear to have led to any crew members receiving direct compensation or remedies for violations of their rights.<sup>354</sup>

10.24 More broadly, civil society groups in Taiwan reported that CBP's actions against the *Da Wang* and other vessels have prompted a stronger response from the authorities and the private sector to address forced labour in the distant water fishing industry:

*"A WRO from a country as powerful as the United States has definitely brought a deterrent effect... the entire government is actually starting to take action. They are afraid of what will happen if other ships are also issued with WRO... You can see the impact is very evident. I'd like to point out that in the past two years, the Fisheries Agency has been very active in persuading the fishing industry to make improvements, and the business owners have become more willing to cooperate and make changes than before".<sup>355</sup>*

10.25 Civil society groups in Taiwan highlighted the pressure generated by import bans and other measures, such as the inclusion of fish from Taiwan on the U.S. Department of Labor's List of Goods Made Using Child Labour and Forced Labour, as contributing to the development of the Human Rights in Fisheries Action Plan.<sup>356</sup>

352 Interview with "Ari", former crew member of the *Da Wang*

353 Fisheries Administration (30 January 2022) [\*The United States confirms forced labour on the Da Wang, and the Fisheries Administration will abolish the qualifications of people to invest and operate\*](#) (Chinese)

354 Interview with civil society organisation in Taiwan, anonymous

355 Interview with civil society organisation in Taiwan, anonymous

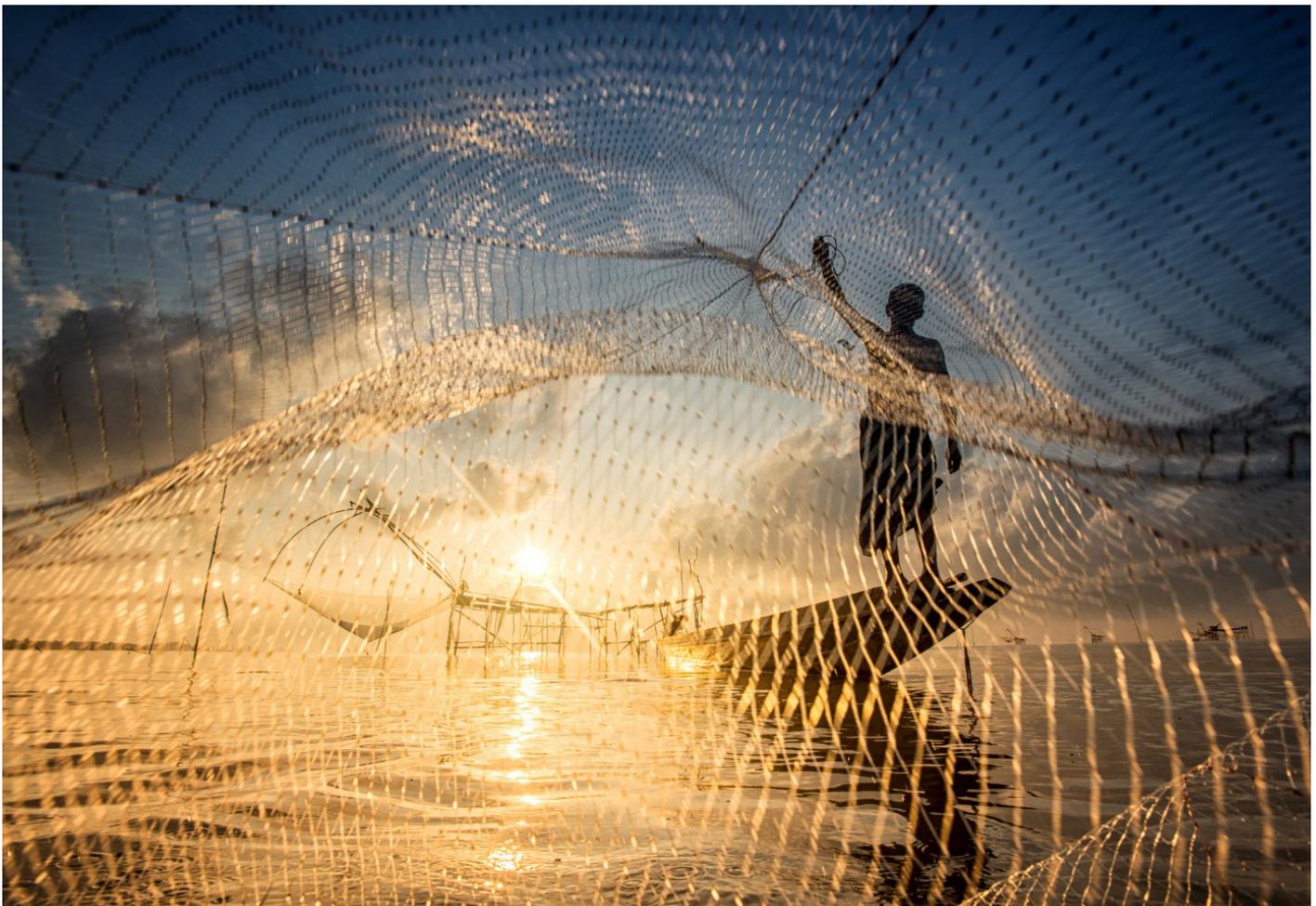
356 Interview with civil society organisation in Taiwan, anonymousRights

## 10. The *Da Wang*: Distant Water Fishing

10.26 However, civil society groups also highlighted the need to ensure that reforms are not simply superficial, and achieve long-lasting impact. According to one civil society group, while the import bans against the *Da Wang* and other vessels had caused fisheries groups and the Fisheries Agency to “panic”, “As for laws or practices to guarantee fishing workers’ protection, there is still a long way to go. The WRO hasn’t really brought obvious impact on workers’ working conditions, as it takes time...there haven’t been assessable changes made”.<sup>357</sup>

10.27 Other civil society groups noted that the efforts of the authorities and the fisheries industry seemed to be directed towards short-term, superficial, actions aimed at seeking to remove fish from Taiwan from the U.S. Department of Labor’s List of Goods Produced by Child Labor or Forced Labor, rather than addressing systemic or structural issues affecting the distant water fishing industry.<sup>358</sup> According to one civil society group, the authorities and industry:

*“...might think that they simply need to improve a little and prove that their goods are ok. They are reluctant to face the underlying structural issues pointed out by civil society. Therefore, the actions taken by the CBP has put pressure on the authorities and the fishery industry, but whether it can change the status quo remains something to be tested”.*<sup>359</sup>



357 Interview with Andrea Girorgetta, Asia Desk Director, International Federation for Human Rights (FIDH)

358 Interview with Kimberly Rogovin, Senior Seafood Coordinator, Global Labor Justice-International Labor Rights Forum

359 Interview with Kimberly Rogovin, Senior Seafood Coordinator, Global Labor Justice-International Labor Rights Forum

## 11. Carpets and Hand-Knotted Wool Products: Nepal

### A. Industry Overview

- 11.1 Carpets are a major export industry in Nepal. In 2017, there were roughly 600 small to mid-sized companies engaged in carpet manufacturing in the country.<sup>360</sup> Nepal's carpet exports were valued at over USD 77 million in the 2021 financial year, making them the country's third-most valuable export.<sup>361</sup>
- 11.2 For several years, there have been concerns over the prevalence of child labour (and to a more limited extent forced child labour) in Nepal's carpet industry. While estimates of the prevalence of child labour in Nepal's carpet industry vary, a 2021 World Vision survey conducted in cooperation with the Government of Nepal found that 6.66% of the workforce in the carpet industry were below 18 years of age,<sup>362</sup> and that 0.16% of workers in the carpet industry were in conditions of forced labour.<sup>363</sup>

### B. CBP enforcement action against Annapurna Carpet and others

- 11.3 In July 1998, CBP imposed a WRO in respect of seven carpet manufacturing companies in Nepal based on information reasonably indicating that carpets and hand-knotted wool products produced by these companies were made using forced labour<sup>364</sup> (as noted above – “forced labour” for the purposes of the Tariff Act includes both forced labour and forced child labour).<sup>365</sup> One of the subject companies was Annapurna Carpet. Despite the significant passage of time, CBP has not issued a Finding as a follow-up to the 1998 WRO.
- 11.4 Due to the passage of time, there is limited publicly available information relating to the circumstances leading up to the imposition of the WRO. According to stakeholders, the 1998 WRO was imposed after several domestic and international NGOs began to campaign and raise awareness of the issue of child labour in Nepal's carpet industry in the early 1990's.<sup>366</sup>



360 UNESCAP (2017) *Business Process Analysis of Export of Carpets from Nepal*, page 1

361 Nepal Department of Customs, *FTS of Fiscal Year 2078/2078*

362 It should be noted that the employment of children between the ages of 14-16 is not prohibited under Nepalese law, subject to certain conditions. See Child Labour (Prohibition and Regulation) Act No. 14 of 2000; U.S. Department of Labor, *Findings on the Worst Forms of Child Labor - Nepal*

363 World Vision (2021) *Changing State and Prevalence of Child Labour in Carpet and Garment Industries in Nepal: Findings from a Nationwide Survey*, Executive Summary

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

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

366 Interviews with Kiran Thapa, General Secretary of Nepal GoodWeave Foundation, Krishna Subedi, Executive Director, Child Development Society, Kumar Bhattarai, Program Director, CWIN Nepal, Benu Maya Gurung, Alliance Against Trafficking in Women and Children in Nepal

## 11. Carpets and Hand-Knotted Wool Products: Nepal

### C. Response of Annapurna Carpet to import ban

- 11.5 In late 2020, a shipment of Annapurna's carpets was stopped at a US port due to the WRO.<sup>367</sup> After the goods were stopped, the US-based importer of the carpets contacted GoodWeave for assistance. GoodWeave is an NGO that works to counter child labour and forced labour in the textiles industry through conducting supply chain mapping, regular and unannounced assessments, remediation, and protection and prevention programming.
- 11.6 The US importer is long-term partner of GoodWeave. Annapurna Carpet is also a GoodWeave Licensed Exporter, and certain of its products are produced in accordance with the GoodWeave International Generic Standard.<sup>368</sup> Among other things, GoodWeave's International Generic Standard prohibits child labour, forced labour, and bonded labour.<sup>369</sup>
- 11.7 GoodWeave contacted CBP on behalf of the importer to seek clarification of why the shipment was stopped, and to commence the modification process.<sup>370</sup> GoodWeave subsequently engaged with CBP to provide documentation relating to, among other things, GoodWeave's certification and standard, GoodWeave's investigation and audit reports into Annapurna Carpet for the preceding year and supporting documentation – including worker interviews, complaints received in relation to Annapurna and details of their resolution, as well as details of identified non-conformity with GoodWeave's standards and remediation undertaken.<sup>371</sup> CBP did not ask Annapurna or GoodWeave to provide an audit report conducted by a party other than GoodWeave to verify the information submitted to CBP.<sup>372</sup>
- 11.8 On 26 July 2021, CBP modified its WRO to remove Annapurna Carpet, stating that "*CBP's thorough review of Annapurna Carpet's business practices indicates that the company has remediated concerns about the use of forced labor in its production process and that its products may be imported into the United States...CBP modified the Withhold Release Order after evaluating detailed information that Annapurna Carpet has addressed all eleven indicators of forced labor in the production of its carpets and hand-knotted wool products, which sufficiently shows that the company's products are not made with the use of forced labor*".<sup>373</sup> According to GoodWeave, it took approximately eight months from the point of initial contact with CBP to secure the modification of the WRO. During that period, while CBP did engage with GoodWeave to ask some follow-up questions, it was difficult for GoodWeave to assess the status or progress of the modification process.<sup>374</sup>

367 Interview with Nina Smith, CEO, GoodWeave

368 Interview with Nina Smith, CEO, GoodWeave; GoodWeave, [List of Licensed Exporters – Nepal Rugs](#)

369 GoodWeave (2019) [GoodWeave International Generic Standard](#)

370 GoodWeave (2019) [GoodWeave International Generic Standard](#)

371 GoodWeave (2019) [GoodWeave International Generic Standard](#)

372 GoodWeave (2019) [GoodWeave International Generic Standard](#)

373 CBP (26 July 2021) [CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal](#)

374 Interview with Nina Smith, CEO, GoodWeave

## 11. Carpets and Hand-Knotted Wool Products: Nepal

### D. Impact of Remediation on Workers and Rights Holders

- 11.9 Before 2020, the import ban appears to have had limited direct impact on Annapurna Carpet. This is consistent with the broader observation that – despite the import ban on certain carpet makers in Nepal – carpets continue to be exported from Nepal to the US. The US is one of the largest export markets for Nepalese carpets, and carpet exports from Nepal to the US were valued at over USD 42 million between July 2021 and July 2022.<sup>375</sup>
- 11.10 Despite the apparent ability of Nepalese manufacturers to export carpets to the US, industry stakeholders in Nepal consider that the import ban had a mixed impact on workers and the carpet industry. Some carpet manufacturers attribute the import ban, and the associated negative publicity generated by public campaigns on child labour in Nepal’s carpet industry, as contributing to a downturn of Nepal’s carpet industry since the late 1990’s – leading to factory closures and unemployment.<sup>376</sup> Other manufacturers believe the import ban has had little lasting impact on Nepal’s carpet industry – especially at present.<sup>377</sup> This is supported by the trade data cited above, which suggest that perceptions about the direct adverse economic impact of the WRO on Nepal’s carpet industry may be overstated.
- 11.11 Civil society organisations in Nepal reported that the import ban had a range of impacts on workers in the carpet industry. However, the causal relationship between the import ban and the reported impacts could not be verified within the scope of this report. Especially given the significant passage of time since the import ban was imposed in 1998 and subsequent events in Nepal that are also likely to have had a significant social and economic effects (e.g., the Nepalese Civil War and the COVID-19 pandemic). Moreover, the impacts reported below some civil society organisations were disputed by others.
- 11.12 That said, some civil society groups in Nepal reported that while the overall level of child labour in the carpet industry has reduced since the import ban, there has also been a shift in the way that carpets have been produced since the ban (though not necessarily because of the ban). Instead of being produced in factories, many carpets are now often produced in workers’ homes using informal contracts and subcontracting arrangements – making monitoring and oversight more challenging.<sup>378</sup> Other NGOs reported that since the import ban, children have shifted from making carpets to other industries such as brickmaking.<sup>379</sup> Though the causal link between the import ban and this shift could not be clearly established.
- 11.13 One civil society organisation also highlighted the need for remediation to be clearly integrated with import bans to ensure that import bans lead to systemic positive impacts for workers.<sup>380</sup>

375 Nepal Department of Customs, *FTS of Fiscal Year 2078/2079*

376 Interview with carpet industry representative, anonymous; Interview with Krishna Prasad Subedi, Executive Director, Child Development Society; Interview with Tenzing Sherpa, Vice-Chair, Nepal Carpet Manufacturers and Exporters Association

377 Interview with carpet industry representative, anonymous

378 Interview with Krishna Prasad Subedi, Executive Director, Child Development Society; Interview with Kumar Bhattarai, Program Director, CWIN Nepal; Interview with Kiran Thapa, General Secretary, Nepal GoodWeave Foundation

379 Interview with Krishna Prasad Subedi, Executive Director, Child Development Society

380 Interview with Benu Maya Gurung, Alliance Against Trafficking in Women and Children in Nepal

## 11. Carpets and Hand-Knotted Wool Products: Nepal

### E. Observations

- 11.14 At the outset, it should be noted that the Tariff Act is intended to address forced labour and forced child labour – not child labour. The Tariff Act is therefore not necessarily the appropriate tool to address child labour where indicators of forced child labour are not also present.
- 11.15 Annapurna Carpet is a rare case in which a civil society organisation and a US-based importer engaged with CBP to lift an import ban. In most cases, it is the company that is directly subject to the import ban that will apply to CBP to lift an import ban. Moreover, Annapurna Carpet did not rely on a commercial social auditing company to provide evidence of the Remediation of forced labour indicators to CBP. Instead, the petition for modification was supported by evidence from GoodWeave – a civil society organisation – who provided evidence to CBP from its worker interviews, inspections, and engagement with Annapurna Carpet’s workers.
- 11.16 The Annapurna Carpet case therefore offers an alternative model to company-commissioned social audits from commercial auditing firms – as has been seen in many of the other case studies examined in this report. Instead of needing to engage an external commercial social auditor, GoodWeave was able to draw on evidence from its long-term partnership with Annapurna Carpet to demonstrate to CBP that indicators of forced labour at Annapurna Carpet had been Remediated. This case also highlights CBP’s willingness to accept evidence from civil society as its main source of evidence of the Remediation of forced labour indicators, and that a commercial, company-commissioned, social audit is not required in every case.



## 12. Bone Black: Brazil

### A. Industry Overview

12.1 Bone char or bone black is a pigment made from charring animal bones – typically pigs or cows. Among other things, bone char can be used in paints, inks, sugar refining, and water and food treatment processes.<sup>381</sup> Bonechar Carvão Ativado do Brasil LTDA (**Bonechar**)<sup>382</sup> is a bone char manufacturing company established in 1987 based in Paraná State, Brazil. It is a small enterprise that employs approximately 40 staff.<sup>383</sup>

### B. CBP enforcement action against Bonechar

12.2 In January 2018, the Labour Attorney of the Municipality of Maringá received an anonymous complaint regarding alleged environmental and labour rights violations at Bonechar. Among other things, the complaint alleged that the company operated 24 hours a day, that workers lived on site at Bonechar's factory in degrading, inhumane, and unsanitary conditions, were affected by the constant odour of rotting meat, and lacked proper safety and ventilation systems.<sup>384</sup> In response, the Labour Attorney's Office opened a civil inquiry into alleged "work analogous to slavery" at Bonechar.<sup>385</sup>

12.3 In February 2018, the Ministry of Labour inspected Bonechar's facility. The inspection did not find evidence to substantiate the allegations made in the complaint.<sup>386</sup>

12.4 In April 2018, the Labour Attorney's Office received notarised statements from three former Bonechar employees who had left the company in 2014 and 2016 respectively.<sup>387</sup> The statements are expressed in similar terms, and described that (among other things):

- Bonechar had inadequate safety measures – resulting in several work accidents and injuries the workers and their colleagues.
- Workers were not provided with adequate ventilation or safety equipment.
- Workers only had access to contaminated drinking water from a well on the property.
- Workers, their families, children, and animals lived together onsite at Bonechar's premises.
- Employees worked beyond the maximum working hours permitted by law, and were not properly paid for overtime.

381 CAMEO Materials Database, *Bone Black*; Reade, *Bone Char (Granular) / Bone Black*.

382 Bonechar's employees are employed by another company in the Bonechar corporate group - Profoscal- Comércio Atacadista de Subprodutos de origem Animal LTDA - but for simplicity, both companies will be referred to collectively as Bonechar.

383 Findings from field investigation and stakeholder interviews in Brazil.

384 Copy of complaint provided to researcher

385 Labour Prosecution Office, Labour Attorney of the Municipality of Maringá (16 January 2018) Notícia De Fato - NF No. 00013.2018.09.001/3

386 Labour Prosecution Office, Regional Labour Attorney's Office of the 9th Region (23 February 2018) Inspection Report, Procedure No. IC 000013.2018.09.001-8

387 Copies of statements provided to researcher

## 12. Bone Black: Brazil

- 12.5 In May 2018, the Global Institute of Plants and Forests (**GIPFOR**), an NGO based in São Paulo, submitted two further witness statements from Bonechar employees to the Maringá Prosecutors' Office. In the statements, the workers said that they had been promised good work and high wages at Bonechar, and that housing would be provided to them. Instead, the workers reported that they had to pay for housing, food, and other services from the company – which was deducted from their salary. The workers also stated that they were unable to leave the premises without permission from the company's management. The workers said that when they asked to leave, the company told them they would need to repay the company for the workers' recruitment costs.<sup>388</sup>
- 12.6 In response to this new information, the Labour Attorney's Office ordered a second inspection of Bonechar, which was conducted on 29 May 2018. Seven workers and their families were interviewed by the inspector. They reported that they had no complaints about their working and housing conditions, and that they only paid their employer a symbolic rent of 50 reais (approximately USD 10). The inspection report concluded that the housing provided, while simple, was decent.<sup>389</sup>
- 12.7 In June 2018, the Labour Attorney's Office requested another inspection of Bonechar be conducted by the Ministry of Labour and Employment. According to the Ministry's inspection report filed in October 2018, workers interviewed at Bonechar did not report any restrictions on their movement, and were free to enter and exit the company's premises. The inspection report stated that, in relation to the allegations of conditions analogous to slave labour at the company: *"the complaint is complete nonsense. In fact, we talked to the employees individually, and at the mere mention of restricted freedom to come and go or any of the other elements that characterize the type, the employees not only bristled at the possibility, they insisted on saying that whoever would have thought that, must be a person out of judgment"*.<sup>390</sup>
- 12.8 The report further concluded that there were no irregularities in working hours, that workers' food, water, and accommodation and housing were satisfactory, and that a nominal rent deduction of 50 reais was made from workers' salaries – but that this amounted to only around 3.5% of the workers' pay (well below the legal limit of up to 25%). The inspection report did identify some health and safety infractions at Bonechar's premises, and the company was instructed to take corrective action.<sup>391</sup>
- 12.9 In March 2019, the Labour Attorney's Office discontinued and archived its civil inquiry into Bonechar for alleged work analogous to slavery. The Labour Attorney's Office concluded that the evidence was *"conclusive as to the inexistence of any element characterising contemporary slave labour in the surveyed company, in particular degrading conditions of work, exhaustion, or debt bondage"*.<sup>392</sup>

388 Copies of statements provided to researcher

389 Labour Prosecution Office, Regional Labour Attorney's Office of the 9th Region (29 May 2018) Inspection Report, Procedure No. IC 000013.2018.09.001-8

390 Copy of inspection report provided to researcher

391 Copy of inspection report provided to researcher

392 Labour Prosecution Office, Labour Attorney of the Municipality of Maringá (20 March 2019) Filing for Discontinuance and Archiving (Promocao de Arquivamento), Civil Inquiry No. 000013.2018.09.001/3

## 12. Bone Black: Brazil

- 12.10 The Labour Attorney's Office further decided to refer GIPFOR to the Federal Police for investigation for alleged slander, among other things. The Labour Attorney's Office concluded that the evidence:
- "...provided solid indications that the complaint filed...was motivated by business competition and that the object of the complainant entity, far from intending to inform the competent authorities of the illegal act, was to obtain news, media events, linking the name of [Bonechar] to the practice of slave labour".*<sup>393</sup>
- 12.11 In April 2019, GIPFOR filed an administrative appeal against the decision Labour Attorney's decision to discontinue and archive the civil inquiry and to refer the matter to the Federal Police for Investigation. The appeal was rejected in September 2019.<sup>394</sup>
- 12.12 On 30 September 2019, CBP imposed a WRO on Bonechar, based on *"information obtained and reviewed by CBP that indicates that the products are produced, in whole or in part, using forced labor".*<sup>395</sup>

### C. Response of Bonechar to import ban

- 12.13 Bonechar was not notified of the imposition of the WRO by CBP. Instead, Bonechar learned about the WRO from a contact who had read about the WRO online.<sup>396</sup> According to Bonechar, the company then attempted to contact CBP directly to clarify the reasons for the imposition of the WRO – without success.<sup>397</sup>
- 12.14 According to Bonechar, after around five months with no response from CBP, the company engaged a law firm in the United States to liaise with CBP to secure the modification or revocation of the WRO.<sup>398</sup> Around six months after engaging the law firm, Bonechar's lawyers received information from CBP about the steps the company needed to undertake to secure a modification of the WRO. After receiving this information, Bonechar engaged a social auditor in Brazil to obtain and verify the information requested by CBP. After submitting the requested information to CBP, the WRO was modified on 4 December 2020.<sup>399</sup>
- 12.15 In a statement on 7 December 2020, CBP stated that it modified the WRO: *"after receiving detailed information about the labor conditions under which Bonechar produces bone black...The company addressed each of the five indicators of forced labor identified by CBP in a submission which incorporated data from worker interviews, a site visit, and document reviews. Employees are free to leave the premises if they wish and are not subjected to any form of punishment. The evidence provided sufficiently supports Bonechar and an affiliated importer's claim that the bone black from the company has not been produced using forced labor since at least August 2020".*<sup>400</sup>

393 Labour Prosecution Office, Labour Attorney of the Municipality of Maringá (20 March 2019) Filing for Discontinuance and Archiving (Promocao de Arquivamento), Civil Inquiry No. 000013.2018.09.001/3; Several attempts were made by the researchers to reach GIPFOR by different means for comment, but GIPFOR did not respond.

394 Labour Prosecution Office, Labour Attorney General, Coordination and Review Chamber, Resolution Extract, 23rd Ordinary Session, Held on 26 August 2019

395 CBP (1 October 2019) [CBP Issues Detention Orders against Companies Suspected of Using Forced Labor](#)

396 Interview with Carolina Meira, Administrator, Bonechar

397 Interview with Carolina Meira, Administrator, Bonechar

398 Interview with Carolina Meira, Administrator, Bonechar. The company declined to provide a copy the CBP checklist

399 CBP (7 December 2020) [CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechar Carvão Ativado do Brasil Ltda](#)

400 CBP (7 December 2020) [CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechar Carvão Ativado do Brasil Ltda](#)

## 12. Bone Black: Brazil

### D. Impact of import ban on workers and rights holders

- 12.16 The WRO had an adverse effect on Bonechar's business. According to Bonechar, roughly 70-80% of the company's products are exported to the US, which could not occur while the WRO was in force. This downturn in exports also coincided with the onset of the COVID-19 pandemic, which adversely affected the company's business. Due to the combined effect of these factors, the company had to suspend the employment of some of its workers – though these workers were later reinstated after the WRO was modified.
- 12.17 Interviews were conducted with two Bonechar employees to assess the impact (if any) of the WRO on workers at the company. Both workers reported that there were no restrictions on their movement, and they were free to choose to live on accommodation provided on-site by the company if they wished – in return for a "symbolic" payment. Both workers reported having employment contracts and receiving wages above the applicable minimum wage, and being duly paid for any overtime work. Both reported that they were rarely asked to perform overtime work.
- 12.18 One worker (who had worked for the company since 2019), reported that there had been no changes to workers' living and working conditions since the WRO was imposed in 2019 – but that since 2019, the company had improved its provision of masks and clothes to workers, and had reduced workers' direct contact with coal. Though it is not clear if these measures were implemented as a direct response to the WRO or the orders arising from the June 2018 labour inspection of the company. Both workers were affiliated with a local trade union, and were able to contact the union for assistance if needed. One worker reported that during the COVID-19 pandemic (the period corresponding to the WRO), some workers had had their contracts suspended, but that he personally had continued to work as usual.

### E. Observations

- 12.19 The case of Bonechar highlights the need for stakeholder engagement and communication by CBP as part of its decision-making process. During the stakeholder interviews conducted for this report, several trade unions, independent experts, and labour rights organisations were consulted. Most of these groups had no knowledge of any alleged forced labour at Bonechar.<sup>401</sup> Moreover, a review of materials publicly available at the time of the WRO – including media reports and official records – would have suggested that the allegations of forced labour at Bonechar may be unsubstantiated.<sup>402</sup>
- 12.20 In Bonechar's case, the company was subject to multiple official unannounced inspections by Labour Attorney's Office and Ministry of Labour – none of whom found the allegations of forced labour against Bonechar to be substantiated. Moreover, unlike many company-commissioned social audits, the results of these official investigations were publicly disclosed. It should also be noted that unlike larger companies with complex supply chains and hundreds of staff spread across multiple locations – where comprehensive audits and inspections can be difficult – Bonechar is a small enterprise with fewer than 50 employees operating from a single location.

401 Interviews with Friedrich Ebert Stiftung Foundation Brazil, Repórter Brasil, Confederação Nacional dos Trabalhadores nas Indústrias (CNTI) e da Federação dos Trabalhadores nas Indústrias do Estado do Paraná (Fetiep), Sindicato dos profissionais da Química do Estado do Paraná

402 <https://maringapost.com.br/negocios/2018/06/11/suposto-trabalho-escravo-e-crime-ambiental-em-fabrica-de-carvao-ativado-em-maringa-geram-inqueritos-no-ministerio-publico-conc-orrancia-internacional-teria-motivado-denuncias/#.Yzqpx3bMK3A>

## 12. Bone Black: Brazil

- 12.21 It is appropriate that CBP adopts a low evidentiary threshold to decide if there is a reasonable suspicion that products may be made with or using forced labour. However, in these circumstances, a more in-depth investigation and communication with interested or potentially affected stakeholders may have been warranted.
- 12.22 Further, there appear to have been delays by CBP in responding to Bonechar's requests for the modification or revocation of the WRO. According to Bonechar, it took almost eleven months from the imposition of the WRO before the company was able to obtain information from CBP about what steps the company should take to modify the WRO. During which time, the company was unable to export to its primary market – and consequently had to suspend some of its employees.<sup>403</sup> While larger and better-resourced companies may be expected to have access resources and independent advisors to help them navigate the import ban modification/revocation process independently, the same cannot be said for smaller enterprises who may be entirely unfamiliar with CBP's mechanisms.
- 12.23 Moreover, smaller enterprises are also less likely to be able to absorb the immediate financial impacts that may arise from a WRO – which increases the likelihood of potential job losses and other adverse impacts for workers. In these circumstances, it is especially important for Petitioners to consult with workers and other potentially affected rights holders to ensure that they support the Petition for an import ban, and understand the potential consequences.



403 Interview with Carolina Meira, Administrator, Bonechar

## 13. Garments: India

### A. Background

- 13.1 Natchi Apparels (P) Ltd. (**Natchi**) is a garment manufacturer in Tamil Nadu, India. It is owned by Eastman Exports, India's fourth-largest garment exporter. In January 2021, Jeyasre Kathiravel – a Dalit<sup>404</sup> woman employed at Natchi – was allegedly raped and murdered by her supervisor. Jeyasre had reportedly been subjected to months of sexual harassment and intimidation at work before her murder.<sup>405</sup> At the time of Jeyasre's death, Eastman Exports was a supplier to global clothing brand H&M, among other international companies.<sup>406</sup>
- 13.2 An investigation by Asia Floor Wage Alliance (**AFWA**) found that there was a history of sexual abuse and violence at the factory, and that the company lacked proper procedures and grievance mechanisms to address sexual violence and abuse in the workplace. AFWA's investigation also found indications of broader issues at the factory, including payments below the minimum wage, forced unpaid overtime, high production targets, and forced resignations of workers to avoid paying annual bonuses.<sup>407</sup>
- 13.3 In response to Jeyasre's death, a coalition comprising Eastman Exports, the Tamil Nadu Textile and Common Labour Union, AFWA, Global Labor Justice-International Labor Rights Forum (**GLJ-ILRF**) and H&M entered into the Dindigul Agreement to Eliminate Gender-Based Violence and Harassment in April 2022 (**the Dindigul Agreement**). The Dindigul Agreement is an enforceable brand agreement which commits each of the stakeholders to take specific action to eradicate discrimination based on gender, caste, or migration status.<sup>408</sup>
- 13.4 Among other things, the Dindigul Agreement includes commitments around training, education, and support programs, monitoring systems to combat gender and caste-based discrimination, violence, and harassment in the workplace. Under the agreement, among other things, Eastman Exports committed to strengthen its internal grievance mechanism and establish a third-party grievance mechanism for workers overseen by independent experts.<sup>409</sup> The Tamil Nadu Textile and Common Labour Union (**TTCU**) – a women-led, independent, and majority-Dalit, trade union of textile workers – will play a core role in implementing programs under the agreement. In so doing, the TTCU will be supported AFWA, an alliance of trade unions and labour organisations representing garment workers across Asia, and GLJ-ILRF – a global human and labour rights advocacy organisation.<sup>500</sup>

404 The term Dalit "means 'oppressed', 'broken' or 'crushed' to the extent of losing original identity." Dalit people fall outside of India's caste system, which considers Dalit to be 'impure' or 'untouchable'. As a result, despite the formal abolition of India's caste system in the 1950's, Dalit people continue to experience significant discrimination and social exclusion. Dalit women often face more severe discrimination due to overlapping caste, gender, and class-based discrimination. See: Minority Rights Group International, [World Directory of Minorities and Indigenous Peoples: Dalits](#); Centre for Alternative Dalit Media (2016) [Research Study on Violence against Dalit Women in Different States of India by studying the Sources of Materials that are Available and Conducting Interview of the Perpetrators, Victims and Witnesses](#)

405 The Guardian (1 February 2021) [Worker at H&M supply factory was killed after months of harassment, claims family](#); Asia Floor Wage Alliance (21 January 2021) [Gender-based violence at H&M Supplier Factory – Natchi Apparels, India](#)

406 The Guardian (1 February 2021) [Worker at H&M supply factory was killed after months of harassment, claims family](#)

407 Asia Floor Wage Alliance (21 January 2021) [Gender-based violence at H&M Supplier Factory – Natchi Apparels, India](#)

408 GLJ-ILRF (1 April 2022) [Landmark Dindigul Agreement to Eliminate Gender-Based Violence and Harassment at Eastman Exports Natchi Apparels with the Support of Global Allies](#)

409 GLJ-ILRF (1 April 2022) [Landmark Dindigul Agreement to Eliminate Gender-Based Violence and Harassment at Eastman Exports Natchi Apparels with the Support of Global Allies](#)

410 GLJ-ILRF (1 April 2022) [Landmark Dindigul Agreement to Eliminate Gender-Based Violence and Harassment at Eastman Exports Natchi Apparels with the Support of Global Allies](#)

## 13. Garments: India

13.5 According to a joint statement from the TTCU, AFWA, GLJ-ILRF, and Eastman Exports, the Dindigul Agreement:

*"...adheres to the standards set by the ILO Fundamental Conventions and provides protection for workers at Natchi against gender, migrant and caste-based violence and discrimination. It recognises that freedom of association and collective action are integral to eliminating gender-based violence, adopts the ILO Violence and Harassment Convention's (C-190) definition of GBVH, and strengthens the Internal Complaints Committees (ICCs) created under the Prevention of Sexual Harassment (POSH) Act in India".<sup>411</sup>*

13.6 The Dindigul Agreement is only the second agreement of its kind to have been adopted in the fashion industry, following the 2019 Lesotho Agreement.<sup>412</sup> According to AFWA, the Dindigul Agreement represents one of the most significant achievements for women's and workers' rights in the garment sector in Tamil Nadu in over 40 years, in particular because of its support for workers' freedom of association.<sup>413</sup> According to AFWA, as a result of the Dindigul Agreement, Natchi is the one of the only garment factories in Dindigul, and possibly all of Tamil Nadu, where a trade union has been allowed access to workers.<sup>414</sup>

### B. CBP enforcement action against Natchi Apparels

13.7 On 29 July 2022, CBP issued a WRO in respect of Natchi based on information reasonably indicating the presence of five ILO indicators of forced labour in the company's operations.<sup>415</sup> It is not clear from publicly available sources if the import ban arose from CBP acting on its own initiative, or a Petition submitted by a third party. CBP modified the WRO on 7 September 2022.<sup>416</sup>

### C. Response to import ban and impact on workers and rights holders

Stakeholders reported that the WRO had the potential to have an adverse impact on workers at Natchi, and posed a threat to the future of the Dindigul Agreement.<sup>417</sup> According to AFWA, the WRO threatened Natchi's ongoing business relationships with its customers – putting the company on the verge of having to make job cuts.<sup>418</sup>



411 AFWA (October 2022) [Joint Statement: TTCU, AFWA, GLJ-ILRF and Eastman Exports](#)

412 The Guardian (1 April 2022) [H&M pledges to end shopfloor sexual violence in India after worker killed](#)

413 Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

414 Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

415 CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

416 CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

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

418 Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

## 13. Garments: India

13.9 The WRO, and the risk of impending job cuts at Natchi threatened workers' willingness to cooperate with the TTCU and participate in the Dindigul Agreement, as workers considered the WRO to be a form of retaliation for organising:

*"The workers at the ground level did not fully understand why the WRO came in. They perceived that they were being punished for unionising and fighting for their rights...for those women and workers to come out and organise against all odds in a way unseen for decades. If after all that they lose their jobs, they would never organise again".<sup>419</sup>*

13.10 In response to the WRO, GLJ-ILRF, in partnership with the other signatories to the Dindigul Agreement, supported Natchi to seek a modification of the WRO. Among other things, testimony from workers and the TTCU attesting to the effect of the Dindigul Agreement in terms of remediating issues of gender-based violence and discrimination was submitted to CBP to support the modification request.<sup>420</sup>

13.11 CBP modified the WRO on 7 September 2022 – a little over one month later – making it one of the shortest-lived import bans imposed by CBP.<sup>421</sup> In a statement, CBP said the modification represented "a swift and successful collaboration between civil society and worker rights organizations, Natchi Apparels (P) Ltd. and its parent company Eastman Exports, and CBP".<sup>422</sup>

13.12 In a statement, GLJ-ILRF said that CBP's decision: "recognizes that the Dindigul Agreement brought about an end to gender-based violence and harassment and other forced labor indicators at the Natchi facility and that its enforceability ensures ongoing accountability".<sup>423</sup>

### D. Observations

13.13 The Natchi Apparels case demonstrates the value and importance of a collaborative approach with workers and their credible representatives, trade unions, and civil society organisations to remediate forced labour. According to AFWA, it was important for the participating trade unions and civil society organisations to support Natchi and Eastman to secure the modification of the WRO to: (i) most importantly, protect workers and jobs, (ii) demonstrate their commitment to constructive engagement under the framework of the Dindigul Agreement, and (iii) show the private sector the value of constructive partnerships with workers, trade unions, and civil society organisations.

*"The lifting of the ban shows how suppliers and trade unions can forge a common interest for ensuring decent work. As a supplier, Eastman Exports sees that having an effective labour agreement with a trade union like TTCU, which has an independent, strong and credible voice, not only assures workers in our factories are safe and protected but it provides independent verification and protection for our business as well".<sup>424</sup>*

419 Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

420 Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

421 CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

422 CBP (7 September 2022) [CBP Modifies Withhold Release Order on Natchi Apparel \(P\) Ltd.](#)

423 GLJ-ILRF (7 September 2022) [U.S. Recognizes Labor Agreement in Decision to End Forced Labor Import Ban of Indian Garment Maker Natchi Apparels](#)

424 AFWA (October 2022) [Joint Statement: TTCU, AFWA, GLJ-ILRF and Eastman Exports](#)

## 13. Garments: India

- 13.14 That said, the Natchi Apparels case highlights the need for CBP to engage in wider and more proactive stakeholder consultation as part of its decision-making process. Stakeholders reported that CBP did not engage with Natchi, Eastman Exports, workers, trade unions, any other civil society organisations involved in the Dindigul Agreement before the WRO was imposed.<sup>425</sup>
- 13.15 The case also highlights the need for CBP to consider the impact WROs more broadly on workers, and to consider forced labour in the context of other human rights. According to one stakeholder:
- "Fundamentally, CBP is a law enforcement agency with a narrow mandate to consider whether goods are made with forced labour...but this case shows the limits of that approach. In this case, the enforcement of the right to be free from forced labour risked undermining other rights – the right to be free from gender-based violence and discrimination, freedom of association, and the right to organise and take collective action...When CBP is evaluating the indicators of forced labour, they need to be looked at in the context of other fundamental rights, barriers to freedom of association, and mechanisms for addressing these rights".<sup>426</sup>*
- 13.16 A stakeholder also noted the importance of ensuring that actions against companies – including WROs – are aligned with, and supported by, affected workers: *"if the workers had asked us to support the WRO we would have – but in this case, the hard-fought gains of the [Dindigul Agreement] were at stake".<sup>427</sup>*



425 Interview with Allison Gill, Forced Labor Program Director, Global Labor Justice-International Labor Rights Forum; Interview with Nandita Shivakumar, Campaigns and Communications Coordinator, Asia Floor Wage Alliance

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

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

## Annex 1: List of Stakeholders Interviewed

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 Vandeberg	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
Yuton Lee	Greenpeace East Asia

\*An additional ten stakeholders were interviewed for this report on an anonymous basis

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## Annex 3: Worker/Rights-holder interviews

Case Study	Interviewees	Location*	Gender	
			Women	Men
Brazil, Bone black	Bonechar employees	Paraná, Brazil	-	2
Malawi, Tobacco	Tobacco farm workers (tenant farmers)	Northern Region, Malawi	4	6
	Tobacco farm workers (tenant farmers)	Central Region, Malawi	3	7
	Tobacco farm workers (tenant farmers)	Southern Region, Malawi	3	7
	Contract farmer	Northern, Central, and Southern Regions (one per region), Malawi	-	3
Malaysia, Palm oil	Indonesian migrant plantation workers (FGV/Felda plantations)	Johor State, Malaysia	-	6
	Indonesian migrant plantation worker (FGV/Felda plantations)	Pahang, Malaysia	-	1
	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 <i>Da Wang</i>	Taiwan	-	2
<b>Sub-Total</b>			10	43
<b>Total</b>			53	

\*Specific location not disclosed to protect confidentiality of interviewees

## Annex 4: Recommendations for the proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market COM(2022) 453

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### Introduction

In September 2022, the European Commission published its proposal for a regulation (**the Proposed Regulation**) to prohibit products made with forced labour on the European Union (**EU**) market.<sup>428</sup>

Below, we offer recommendations for EU policymakers on the further development of the Proposed Regulation, based on the report's key findings and recommendations.

All Article references below are to the draft of the Proposed Regulation published by the European Commission on 14 September 2022. Unless otherwise stated, terms used in this briefing have the meaning given to them in the Proposed Regulation.

### 1. Ensure effective consultation with stakeholders, including workers, workers' credible representatives, trade unions, and civil society, in the decision-making process

Our research has shown that effective communication between competent authorities and affected stakeholders - especially workers, workers' credible representatives, trade unions, and civil society - can contribute to the effectiveness of import bans as a tool to provide access to remedies for workers and effective rights holders, and can help ensure that import bans do not have unintended adverse consequences for workers or other affected rights holders.

In part, the Proposed Regulation aligns with this approach by encouraging two-way dialogue between Competent Authorities and Economic Operators during the preliminary and investigative stages of the decision-making process. Among other things, the Proposed Regulation requires Competent Authorities to notify Economic Operators when opening the preliminary phase of an investigation in relation to products allegedly made with or using, forced labour, and request information from them.<sup>429</sup> Competent Authorities must also notify Economic Operators if an investigation moves into the investigation phase, and Economic Operators may be given another opportunity to submit additional information to competent authorities at this stage.<sup>430</sup>

However, as it stands, the Proposed Regulation incentivises Competent Authorities to base their decisions principally on information submitted by Economic Operators. However, information submitted by Economic Operators may not offer a balanced or accurate representation of true working conditions. Workers, workers' credible representatives trade unions, and other civil society stakeholders are often better placed to credibly identify potential indicators of forced labour than Economic Operators under investigation.

While the Proposed Regulation permits workers, workers' credible representatives, trade unions, civil society groups, and other stakeholders to submit information to Competent Authorities, there is no

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428 European Commission, COM(2022) 453 *Proposal for a regulation on prohibiting products made with forced labour on the Union market*

429 Proposed Regulation, Articles 4(3) and (4)

430 Proposed Regulation, Articles 5(2) and (3)

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provision for Competent Authorities to proactively seek information from these groups.<sup>431</sup> Workers, workers' credible representatives, and civil society groups are unlikely to know that an Economic Operator is under investigation, and hence that there is an opportunity to share information with the Competent Authority. They may also not know how to submit information to Competent Authorities, or may not be able to do so for practical reasons (e.g., due to safety and security concerns, or fear of reprisals). To address these power imbalances, it is incumbent on Competent Authorities to proactively engage with a broad and representative range of stakeholders – including workers – to ensure that decisions made under the Proposed Regulation are based on balanced information.

**Recommendation:** The Proposed Regulation should empower and compel Competent Authorities to proactively seek information from a broad range of stakeholders – especially workers and workers' credible representatives, trade unions, or civil society – and not just Economic Operators. Such engagement should occur throughout the enforcement process, but especially in the preliminary phase and investigation phase.

### 2. Reduce the reliance on 'social audits' as the primary form of evidence relied on by Competent Authorities in the decision-making process

Complementarity between the Proposed Regulation and the Proposed EU Directive on Corporate Sustainability Due Diligence (**CSDDD**)<sup>432</sup> can help ensure the effectiveness of both instruments. The clear linkages with the CSDDD in the Proposed Directive are therefore highly welcomed.

However, the Proposed Regulation risks encouraging Competent Authorities to rely excessively on company-commissioned 'social audits' as the primary form of evidence used in their decision-making.<sup>433</sup> During the preliminary phase of investigations, Competent Authorities are instructed to have regard to due diligence conducted by economic operators on at least four distinct occasions.<sup>434</sup> While the Proposed Regulation does not specify the form that such due diligence must take, in most cases, it is likely to take the form of a social audit commissioned by the Economic Operator under investigation.

Social audits can play a role in supporting companies to identify, prevent, mitigate, and remedy forced labour risks in their value chains. However extensive research has shown that company-commissioned social audits have limited usefulness in effectively identifying forced labour, and can, in fact, increase human rights risks.<sup>435</sup> There have been multiple instances in companies received clean bills of health

431 Competent authorities may have regard to any submissions made by any legal or natural person (Proposed Regulation, Article 4(1)), but they are not required to proactively seek information from any stakeholder other than the Economic Operator in question.

432 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final

433 Proposed Regulation, Articles 4(1), (3), (6) and (7)

434 Proposed Regulation, Articles 4(1), (3), (6) and (7)

435 See, e.g., Human Rights Watch (November 2022) *Obsessed with Audit Tools, Missing the Goal*; European Center for Constitutional and Human Rights, Brot für die Welt, MISEREOR (2021) *Human rights fitness of the auditing and certification industry?*; Transparentem (2021) *Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform*; Clean Clothes Campaign (2019) *Fig Leaf for Fashion. How social auditing protects brands and fails workers*; SOMO (2022) *A piece, not a proxy: The European Commission's dangerous overreliance on industry schemes, multi-stakeholder initiatives, and third-party auditing in the Corporate Sustainability Due Diligence Directive*

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from social audits, only for the company to receive an import ban shortly afterwards due to the presence of forced labour in its value chain.<sup>436</sup>

**Recommendation:** The Proposed Regulation should discourage reliance on social audits as the primary form of evidence relied upon by Competent Authorities in their decision making. Social audits should form just one of many data points considered by Competent Authorities. Among other things, Competent Authorities should consider direct worker testimony and submissions from workers' credible representatives, trade unions, and other civil society organisations. These sources of information should be given at least equal – if not greater – weight than social audit reports provided by companies.

### 3. Avoid offering 'safe harbours' based on due diligence alone

The Proposed Regulation provides that Competent Authorities shall not initiate an investigation where the Competent Authority considers there is "no substantiated concern" of forced labour due to, among other things, "the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labour."<sup>437</sup> This provision appears to offer a 'safe harbour' to Economic Operators that can demonstrate they conduct due diligence in a way that "mitigates, prevents and brings to an end the risk of forced labour."<sup>438</sup>

However, as noted above, 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.

Moreover, as also noted above, the Proposed Regulation currently does not incentivise Competent Authorities to seek diverse sources of information from actors other than the Economic Operator (e.g., from workers, workers' credible representatives, trade unions, and civil society organisations). Without these diverse sources of information, Competent Authorities are unlikely to be able to critically assess whether Economic Operators' due diligence mechanisms do in fact, effectively mitigate, prevent, and bring an end to, the risk of forced labour.

Under the Proposed Regulation, Competent Authorities should therefore be encouraged to proactively, safely, and meaningfully engage with workers, workers' credible representatives, trade unions, and other civil society groups to triangulate and verify information submitted by Economic Operators. Such an approach may also help mitigate the risk of reprisals against workers and other rights holders by Economic Operators.

**Recommendation:** Clarify that Article 4 of the Proposed Regulation does not purport to offer 'safe harbour' to Economic Operators based on the adequacy of Economic Operators' due diligence mechanisms alone.

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436 See, e.g., The Edge Markets (2 November 2020) [Top Glove downgraded from A to D in social compliance audit – report](#); Reuters (19 May 2021) ['Slavery' found at a Malaysian glove factory. Why didn't the auditor see it?](#); Human Rights Watch (November 2022) [Obsessed with Audit Tools, Missing the Goal](#)

437 Proposed Regulation, Article 4

438 Proposed Regulation, Article 4

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### 4. Ensure that access to remedies (as defined in the UN Guiding Principles on Business and Human Rights) for workers and other affected rights holders has been provided as a condition to the removal of measures

The Proposed Regulation provides that a Competent Authority shall withdraw its decision where the Economic Operator can demonstrate that it has “eliminated forced labour from their operation or supply chain with respect to the products concerned.”<sup>439</sup> The Remedy Project welcomes the high threshold adopted in the Proposed Regulation for the removal of enforcement measures. Requiring companies to demonstrate they have “eliminated” forced labour can help ensure that Economic Operators undertake comprehensive and thorough remediation that addresses the root causes of exploitation and prevents future harm.

However, the Proposed Regulation does not clarify the basis on which the Competent Authority should decide if forced labour has been “eliminated”. In particular, it is not clear if the provision of remedies to workers and other rights holders in conditions of forced labour is part of the “elimination” of forced labour.

The provision of remedies to rights holders affected by adverse human rights impacts is a core pillar of the UN Guiding Principles on Business and Human Rights (**UNGPs**) and the CSDDD.<sup>440</sup> The provision of remedies to affected rights holders is therefore an essential component of the effective “elimination” of forced labour. Our research has shown that the lack of a specific mandate on remedy has hindered the potential of the US import ban mechanism as a tool to secure access to remedies for people in conditions of forced labour.

Consistent with the UNGPs, Economic Operators should therefore be expected to demonstrate that adequate remedies have been provided to workers and other affected rights holders as part of the process of “eliminating” forced labour. In this regard, “remedy” should be defined in a manner consistent with the UNGPs, and should include a comprehensive package of measures that aim to “counteract, or make good, the adverse impact”<sup>441</sup> on workers and rights holders as a result of forced labour. The form that such remedies take will vary depending on the circumstances and may include financial and non-financial compensation, restitution, rehabilitation, sanctions and legal accountability for perpetrators, and policy and operational reforms to ensure the non-repetition of future harm.<sup>442</sup> Crucially, such remedies should be designed, developed, and delivered based on meaningful consultations with workers and affected rights holders themselves and their credible representatives.<sup>443</sup>

439 Proposed Regulation, Article 6

440 UNGPs, Pillar III; CSDDD, Article 8(3); Explanatory Memorandum to Proposal for a Directive of the European Parliament and Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

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

442 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

443 See, e.g., UNGPs, Principle 31(h) and CSDDD Article 8(3)(b), which requires companies’ corrective action plans to be developed in consultation with stakeholders.

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- (f) Has the Economic Operator provided effective remedies to workers and other rights holders in conditions of forced labour?<sup>444</sup>
- (g) Do these remedies correspond to, and address, the human rights violations experienced by affected workers and rights holders?
- (h) Do workers and other affected rights holders consider the remedies provided by the Economic Operator to be adequate?
- (i) Has the Economic Operator designed, developed, delivered these remedies in meaningful consultation with workers, workers' credible representatives, trade unions, and other civil society organisations?
- (j) What measures has the Economic Operator taken to ensure the non-repetition of future harm?

### 5. Prioritise investigations based on the extent to which Economic Operators have caused, contributed to, or profited from, forced labour

The Proposed Regulation directs competent authorities to focus their investigations on the Economic Operators "as close as possible to where the likely risk of forced labour occurs" rather than those who may hold greater economic power or leverage over the supply chain.<sup>445</sup>

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.

Focusing on companies "as close as possible" to forced labour in the value chain can also be detrimental to efforts to provide effective access to remedy to affected rights holders. Large international buyers and brands are likely to have greater access to resources, expertise, and capacity to support the implementation of programs to remedy forced labour in their overseas value chains, compared to their smaller or mid-sized overseas suppliers.

The Proposed Regulation should therefore ensure that economic operators within the EU are not excluded from the scope of investigations simply because they are not "closest" to forced labour. Indeed, given the EU's parallel efforts to introduce a regulation on Corporate Sustainability Due Diligence, the Commission should expect economic operators in the EU to adopt a higher standard of oversight and responsibility over human rights issues in their supply chains – rather than effectively excluding them from the scope of investigations under the Proposed Regulation.

**Recommendation:** The Proposed Regulation should not direct Competent Authorities' investigations to focus on Economic Operators "as close as possible to where the likely risk of forced labour occurs". Instead, the Proposed Regulation should allow Competent Authorities to investigate any Economic Operator having regard to that operator's degree of proximity to forced labour. In assessing proximity, the Competent Authority should have regard to the extent to which the Economic Operator has caused, contributed to, or profited from, forced labour in its value chain.

444 Which should be defined in accordance with the UNGPs and guidance from OHCHR. 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

445 European Commission (2022) COM(2022) 453 *Proposal for a regulation on prohibiting products made with forced labour on the Union market*, Article 5(3)