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Volume 2 – The potential of trade and investment policies to address labour market issues in supply chains

3 Tackling forced labour in supply chains: The potential of trade and investment governance

by Franz Christian Ebert, Francesca Francavilla and Lorenzo Guarcello*

Summary

- Over recent decades forced labour concerns have made inroads into numerous trade and investment governance instruments. This includes trade and investment agreements, import ban legislation, trade preference programmes, and the investment policies of development finance institutions.

- Trade and investment governance instruments have contributed to some improvements in addressing forced labour at the company level, as well as in generating momentum for broader policy changes at the national level.

- On their own, trade and investment governance instruments are unlikely to address the root causes of forced labour. Therefore, it is important to use these instruments in combination with other governance mechanisms at the domestic and international level in a way that strengthens relevant legal and institutional frameworks and empowers local actors for change.

Background and introduction

The eradication of forced labour remains a major challenge. According to the *Global Estimates of Modern Slavery*, there were approximately 27.6 million people in forced labour in 2021. While state-imposed forced labour accounted for 14 per cent of those in forced labour, the remaining 86 per cent of the cases were imposed by private individuals, groups or companies, many of them operating in export-related sectors participating in global supply chains.

Against this backdrop, this chapter explores the potential of trade and investment governance instruments to address forced labour issues in supply chains. Trade governance instruments, such as import ban legislation, trade preference programmes and trade agreements, have been in the spotlight of policy debates regarding forced labour in a number of countries. Similarly, forced labour-related provisions have increasingly been incorporated into investment governance instruments. These instruments include international investment agreements as well as investment policies of the World Bank and other development finance institutions at the global, regional and national level. While these instruments can provide important economic leverage, little is known about their contribution to addressing forced labour in supply chains.

Research question and methodology

The chapter analyses to which extent – and under which circumstances – trade and investment governance instruments can contribute to addressing forced labour in supply chains in an effective manner, that is, in a way that tackles the underlying causes of forced labour and has an enduring impact. To this end, the chapter proceeds in three steps. First, it provides an overview of what is known about the incidence and root causes of forced labour in global supply chains. Second, it examines how forced labour-related provisions have been integrated into trade and investment governance instruments. Third, the chapter carries out two case studies to assess the effects of trade and investment governance instruments in the rubber glove sector in Malaysia and the cotton sector in Uzbekistan. The case studies rely on a comprehensive review of available reports, press articles and the academic literature as well as background interviews with relevant experts.

Findings and policy considerations

The two case studies suggest that trade and investment governance instruments can contribute to specific improvements at the company level while also serving as catalysts for broader policy change. Nevertheless, the trade and investment governance instruments at hand did not operate in a vacuum but interacted with a variety of other governance mechanisms.

The Malaysian rubber glove sector

Concerns over forced labour in Malaysia's migrant worker-dominated rubber glove sector led to the imposition of import bans in six cases under the US Tariff Act between 2019 and 2022. These import bans – together with similarly aligned responses, such as the Canadian Government ending its procurement contracts with one of the companies concerned – contributed to substantial remedial action taken at the company level. This included reimbursing the recruitment fees that workers had been required to pay, resulting in payments of more than US$30 million paid by one company. Other measures included changing the companies' recruitment agencies, revising or adopting new human resources policies, and forced labour-related capacity-building for the relevant human resources staff. To some extent, the import bans also appear to have contributed to creating space for targeted policy action at the national or sectoral level to tackle forced labour.

The Uzbek cotton sector

Several trade and investment governance instruments played a role in addressing forced labour in the Uzbek cotton sector. Of particular importance were two complaints under the investment policies of the International Finance Corporation (IFC) and the World Bank. In the first case, IFC's accountability mechanism, the Compliance Advisor Ombudsman, facilitated dialogue processes that resulted in agreements between the complainants and the companies involved, leading to the successful resolution of the complaint. The agreements included developing a grievance mechanism, monitoring the cotton harvest activities of a key supplier, and preventive measures. The second complaint, filed with the World Bank Inspection Panel, gave rise to project-specific outcomes, as well as to broader policy action at the national level. In particular, the complaint led to third-party on-site monitoring of the Uzbek cotton harvest by the ILO in various Uzbek provinces. This activity allowed data collection and provided an incentive to change the practices concerned. In 2021 the ILO concluded that "systemic forced labour and child labour has come to an end in Uzbek cotton".

Broader policy considerations

Despite advances, the case studies show that trade and investment governance instruments are unlikely to be able to tackle the root causes of forced labour on their own. Rather, they highlight the importance of utilizing these instruments to enhance relevant legal and institutional frameworks, create the conditions for meaningful social dialogue and empower local actors for change. Additionally, the findings from the case studies demonstrate the importance of addressing forced labour in conjunction with other labour rights issues that may render workers more prone to abuse, such as deficiencies in migrant worker protection and freedom of association.

Indeed, institutionalized information-sharing across different trade and investment governance instruments could improve their effectiveness. Furthermore, sufficient guidance for companies to properly comply with relevant requirements is also important in this regard and could help to mitigate potential negative business impacts. The implementation of these instruments should prioritize the well-being of workers and avoid causing unemployment. Close dialogue with and among petitioners, companies and relevant workers' and employers' organizations is crucial in this regard.

* Authors:
Franz Christian Ebert, Research Department, ILO.
Francesca Francavilla, Fundamental Principles and Rights at Work Branch, ILO.
Lorenzo Guarcello, Fundamental Principles and Rights at Work Branch, ILO.

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International Labour Organization
Route des Morillons 4
CH-1211 Geneva 22
Switzerland

E: ebert@ilo.org