TRADE AND ILLEGAL LABOUR: A NEW PARADIGM

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KEY POINTS

- Two EU measures, the Forced Labour Regulation (FLR) and the Corporate Sustainability Due Diligence Directive (CSDDD) focus on how goods and services enter global supply chains. These measures complement established human rights and criminal responsibility norms in tackling the use of illegal labour in supply chains.
- The FLR and CSDDD are part of the EU Open Strategic Autonomy (OSA) and aim to identify risks and protect the integrity of supply chains.
- The measures are a mix of EU trade considerations and EU fundamental rights values.
- The FLR and CSDDD create new legal obligations, new processes, and new remedies to combat the use of illegal labour in supply chains.
- The measures create a new paradigm: they make private (non-state) actors responsible for ensuring international and national human rights and sustainability provisions are adhered to in global supply chains.
- The processes and remedies provide avenues for stakeholders and private individuals to bring breaches of the due diligence duty to the attention of public authorities and to initiate actions in national courts.
- Although there are weaknesses in both measures, the shift towards civil liability claims may revolutionise the legal responsibility of firms to observe human rights. It provides legal redress in the national courts of the Member States for victims of human rights abuses, even where they occur in third states.

INTRODUCTION

This Briefing Paper analyses two EU measures: a Forced Labour Regulation,[1] and a Directive on Corporate Sustainability Due Diligence (CSDDD).[2] Both measures were finalised in April 2024. [3]

The new provisions complement established legal measures to combat the use of illegal labour (for example, forced labour, modern slavery and trafficking) in the production of goods and, in the case of the CSDD, goods and services, created in the EU, or placed on the EU market from a third country, or where part of the production process takes place outside of the EU.

The Briefing Paper argues that in dealing with the issue of forced labour and corporate social due diligence more widely, the measures create a new paradigm from two perspectives:

1. These measures are an important shift in focusing on how goods and services enter global supply chains. This is a different dimension from the use of human rights provisions and the use of criminal law responses which focus upon the person/corporation.
2. Controversially, it is a shift from public/government responsibility to combat the use of illegal labour, to emphasizing the private/non-state sector.

The measures have emerged in the context of the 2021 European Commission Trade Policy Review – An Open, Sustainable and Assertive Trade Policy and should be viewed through the lens of the EU Open Strategic Autonomy (OSA). The EU is developing legal tools to address the geoeconomic challenges it faces in a climate of economic and political uncertainty; a series of poly-crises have forced the EU to view trade tools from a functional and multipurpose perspective. The COVID pandemic, trade wars between China and the US, the war in Ukraine, alongside instability in the Middle East, and climate change have disrupted trade norms. They have also exposed the vulnerability of global supply chains and the vulnerability of people affected by these events. In developing its trade policy the EU has committed to upholding a set of fundamental rights and values, found in Articles 2, EUR-Lex - 12012M002 - EN - EUR-Lex (europa.eu) 3, EUR-Lex - 12008M003 - EN (europa.eu) 5 EUR-Lex - 12008M005 - EN (europa.eu)and 21 TEU EUR-Lex - 12008M021 - EN - EUR-Lex (europa.eu)and Article 205 TFEUEUR-Lex - 12016E205 - EN - EUR-Lex (europa.eu) These provisions should inform the choice of legal tools and their subsequent interpretation.

A trade policy move towards nearshoring/economic localisation allows the EU to have greater control and involvement in the reliability of supply chains. The EU also recognises that it should develop a set of foreign policy and trade measures to enhance its political and economic security when dealing with countries farther afield that pose geostrategic risks.

The EU is increasingly using trade in a functional manner to address new kinds of risks facing global supply chains. It is also creating a narrative around human rights, climate change and sustainability issues. The measures are a response to developments at the Member State level. They ensure the unity of the internal market and are used in an opportunistic way to match with, and sometimes coordinate, measures taken by the US. The aim is to place the

[1] Council and Parliament strike a deal to ban products made with forced labour - Consilium (europa.eu)
[2] Corporate sustainability due diligence: Council gives its final approval - Consilium (europa.eu)
[3] The CSDD was published in the O.J. on 5 July 2024 and entered into force on 25 July 2024. The Member States have two years to transpose the Directive after publication in the OJ. There is a gradual scope of application: 3 years from the entry into force of the Directive for companies with more than 5 000 employees and €1 500 million turnover 4 years from the entry into force for companies with more than 3 000 employees and €900 million turnover; 5 years from the entry into force of the Directive for companies with more than 1 000 employees and €450 million turnover

EU at the forefront of creating a new set of trade rules and to avoid firms dumping goods on the EU market where they cannot export to the US because of trade restrictions.

FORCED LABOUR REGULATION (FLR)

The FLR and the CSDDD share a common heritage of focusing on transparency, accountability and due diligence of private actors and add to a series of measures addressing human rights in supply chains: the Corporate Sustainability Recording Directive (CSRD), The Carbon Border Adjustment Mechanism (CBAM), and the Regulation against deforestation.

The FLR creates a new EU trade and customs enforcement mechanism, requiring importers and exporters to exercise due diligence and drop suppliers who may be producing goods made with forced labour. The FLR creates a general prohibition against goods with a monetary value produced from forced labour. Such goods may not be placed on the EU market or exported.

The definition of forced labour is set out in Article 2 (a) taken from the definition in Article 2 of the ILO Forced Labour Convention: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

The ILO forced labour indicators ought to be part of due diligence appraisal, but as, discussed below, firms appear to have a choice of indicators to satisfy the FLR.

A product is defined as having been made with forced labour if at any stage within the production process (including its extraction, harvesting, manufacturing or related working and processing done to a product), the use of forced labour can be detected. This includes suppliers of raw materials.

Responsibility for the implementation of the FLR is allocated between national authorities (Article 5) and the European Commission, with the latter dealing with allegations of forced labour outside of the EU. The European and national competent authorities will cooperate and share information in a new Union Network against Forced Labour Products (Article 6).

The European Commission and the national authorities have access to the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 on the market surveillance and compliance of products.

A risk-based approach

Within 18 months of the entry into force of the FLR, the European Commission must produce a set of Guidelines for assessing the risk that a product has been made with forced labour. (Article 11) A database will be created by the European Commission containing information on forced labour risk areas and products. (Article 8) and a Single Information Submission Point (Article 9) and a Forced Labour Single Portal (Article 12). The information in the database will be publicly accessible and gleaned from information from the public, whistleblowers, and reports from civil society organisations and NGOs. Complainants and whistle-blowers will be protected (Article 32).

The European Commission will provide specific instructions to economic operators on how due diligence obligations should be conducted. This may be drawn from applicable EU and national law, guidelines and recommendations from the UN, ILO, or the OECD. Economic operators must be able to prove that they have undertaken the required due diligence

concerning the high-risk products and products under scrutiny - with the focus on the economic operators in the supply chain as close as possible to where the risk of forced labour is likely to occur.

Due diligence embraces providing information on the steps taken to identify, prevent, mitigate and/or eliminate risks that come with forced labour in the firm's operations and value chains. However, there are weaknesses. First, the FLR allows for a lighter touch for small and medium-sized enterprises. Second, where foreign operators (non-EU) are involved, they may establish their due diligence in reference to international guidelines rather than the EU Guidelines.

Formal Investigation

The national investigating Authority/European Commission must be able to show a "substantiated concern" before initiating a formal investigation. If the investigation finds that the products were made with forced labour, the Authority will adopt a Decision containing three measures:

> (i) A prohibition against placing or making available the "at-risk products" in the EU market and exporting them.
>
> (ii) An order addressing the economic operators that are the subject of the investigation to withdraw the targeted products from the EU market (including products already placed on the market); and
>
> (iii) An order addressing the economic operators that have been the subject of the investigation, to dispose of the "at risk" products following national law and EU law.

Additionally, the FLR allows the authorities to block the future import of products that are made with forced labour. This applies to all economic operators in the supply chain, not just those under investigation.

If only part of the "at risk" product is produced with forced labour, and that part is replaceable, the order to dispose of the goods applies only to the part made with forced labour. The FLR does not apply to any goods that have already reached end-users (consumers).

Article 37 FLR sets out the principles relating to penalties where a firm does not comply with the European Commission/national authority Decision.

Weaknesses in the Forced Labour Regulation

The strength of the approach is hitting firms where it hurts most. If a firm must withdraw goods from the market, this directly affects trade. The resultant publicity could harm a firm's image. However, there are some weaknesses.

The FLR is restricted to investigating and restricting the free movement of goods in the EU. But presumably, where a service has been included in the creation of the good, this could be covered. The FLR encourages firms to conduct due diligence assessments throughout their supply chains. This is not a simple task. Forced labour tends to occur in smaller companies and sub-contractors, often acting informally under the radar. Corporate law can facilitate firms to change identity easily and evade detection. Low evidentiary standards could allow firms to argue that they have carried out due diligence as a defence to stave off a full investigation.

By focusing on the goods produced under conditions of forced labour, it is difficult to create remedies and implement such remedies for the victims of forced labour. It may be difficult to locate victims given the clandestine nature of trafficking and illegal labour. The question of

what kind of remedy would be appropriate, beyond compensation and payment of back wages, is enormous, given the physical and emotional/mental harm suffered by victims of illegal labour practices. There appears to be no indication of ongoing harm to individuals. With the emphasis on forced labour, which could be a one-off event, it may be difficult to tackle modern slavery which has the connotations of a long-term exploitation of the individuals. The FLR does not seem to account for this difference in impact. One solution could be for direct remedies to be made available to individuals as a prerequisite to the lifting of a ban under Article 6.6. FLR

Thus, the measure complements, rather than replaces, a human rights/criminal law approach, to using illegal labour in the production of goods.

The onus of proving that products are made with forced labour is upon the investigating authority. This requires time, information, and resources. An alternative approach would be to place a mandatory burden on producers to label/certify that a product was free of forced labour. The producer is best placed to have information on its supply chain and to have the capacity to act quickly if any abuse occurs. The idea of using kitemarks in this way is not new and gains consumer confidence.

It can function as an incentive for a firm to register and speed up the import/export trade process. The European Commission and national authorities, NGOs and whistleblowers should retain the right to question the authenticity of the certification.

To be WTO and EU compliant the FLR is neutral in terms of countries it targets. So, for example, producers and suppliers in the UK are as much a target as suppliers in countries such as China and Myanmar.[4] The EU could be proactive, identifying countries where the use of forced labour is known and documented, for example, the exploitation of Uighur in China. It could also impose blanket bans of known goods such as textiles, emanating from regions or countries where the use of forced labour is known. [5] In the US the Uyghur Forced Labor Prevention Act (UFLPA) 2021 effectively blocks all imports from Xinjiang where it is alleged that Uyghur Muslims are compelled to work under forced labour conditions. The Act creates a rebuttable presumption that goods emanating from Xinjiang are made with forced labour.

The EU is not neutral in the application of other OSA measures and has selectively targeted China.[6] However, the EU is adamant that it cannot impose blanket bans on certain products/countries. Under the European Commission Guidelines, and as expertise builds, it may be that goods from certain parts of the world automatically become suspect, attracting investigation.

[4] Brands urged to stop sourcing from China's Xinjiang over forced labour fears (fashionnetwork.com)
[5] "The evolution of forced labour in Xinjiang", The Economist, 30 May 2024.
[6] See: the use of the EU International Procurement Instrument to investigate China's procurement market for medical devices on 24 April 2024. EUR-Lex - 52024XC02973 - EN - EUR-Lex (europa.eu) the use of the Foreign Subsidy rules to launch four investigations against Chinese firms allegedly using preferential subsidies to bid for EU procurement contracts. China's Nuctech raided in EU over foreign subsidies concerns | Reuters ; tariffs placed on Chinese EV: EU hits Chinese EVs with tariffs, drawing rebuke from Beijing | Reuters

THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

The CSDDD is a complex initiative, covering social, environmental and sustainability issues, exposing corporate supply chains to obligations of transparency and scrutiny. It addresses the production of goods and services in all activities, ranging from the upstream production of goods or the provision of services to the downstream distribution, transport, or storage of products. The impetus for the Directive came from an EU-wide civil society campaign to consolidate EU commitments towards sustainability adopted by the EU. [7]

The legal base for the CSDD is Article 50 TFEU (freedom of establishment) and Article 114 TFEU (measures for the creation and functioning of the Internal Market). Member States were already implementing transparency and due diligence initiatives, and therefore, without a consistent EU standard, distortions could occur within the Internal Market. The Member States are given discretion as to how to implement a Directive into national law, and this may create complications in States that already have created their scheme of due diligence obligations.

The Directive requires large firms operating in the EU to conduct and monitor human rights and environmental due diligence across their operations, subsidiaries, and business partners.[8]

The Council watered down the scope of the Directive. It applies to EU and non-EU companies and parent companies operating in the EU, with over 1000 employees with a turnover of more than €450m, and to franchises with a turnover of more than €80 million if at least €22.5 million was generated by royalties. However, the Directive is an example of Bradford's "Brussels Effect" by capturing foreign firms operating in the EU.[9]

The Directive applies to the firm's activities (often the parent company) and the operations of subsidiaries. Business partners, upstream, and to a limited extent downstream, are included in the scope of the risk assessment. The Directive's core obligation is a risk-based approach: identifying human rights and environmental risks within the firm's operations and supply chains. Due diligence must be integrated into the firm's policies, identifying, and prioritising any adverse impacts of the identified risks. Prevention, mitigation, and remediation are the core guiding duties of the firm.

Firms must identify, assess and address any actual or potential harm they have caused, either individually or jointly, and remedy the situation. There is a requirement for stakeholder

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[7] For eg: The Conflict Minerals Regulation 2017/821Regulation - 2017/821 - EN - EUR-Lex (europa.eu); ; the Corporate Sustainability Reporting Directive 2022/2064 Directive - 2022/2464 - EN - CSRD Directive - EUR-Lex (europa.eu);; Deforestation and Forest Degradation Regulation 2023/1115 Regulation - 2023/1115 - EN - EUR-Lex (europa.eu)

[8] The Annex contains a list of international Conventions where human rights obligations are protected: The International Covenant on Civil and Political Rights; - The International Covenant on Economic, Social and Cultural Rights; The Convention on the Rights of the Child; The International Labour Organization's core/fundamental conventions: - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); - Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol; - Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); - Equal Remuneration Convention, 1951 (No. 100); - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
Strangely the EU is not a party to these Conventions, any yet the Convention on Disability, where the EU is a party, is not mentioned.

[9] The term "Brussels Effect" was coined in 2012 by Prof Anu Bradford to describe the process of unilateral regulatory globalisation created by the EU through the externalisation of its laws outside its borders through market mechanisms. Firms based outside of the EU must comply with EU law if they want to trade in the EU. The process extends to the role the EU plays in its external relations, accession and trade policies with other states. Anu Bradford, The Brussels Effect: How the European Union Rules the World, OUP, 2019.

dialogue, a notification mechanism, and a complaints procedure. Firms must monitor and publicise their due diligence activities.

The European Commission will produce Guidelines within six months of the publication of the Directive. The CSDDD places an obligation of "meaningful" engagement with stakeholders at every stage of the due diligence process. This involves engagement that is timely, accessible, appropriate, and safe. Stakeholders could include whistle-blowers, NGOs, workers, suppliers and other third parties.

The Directive uses administrative and civil liability as a means of enforcement. Administrative enforcement will be through one or more authorities with powers to investigate, set out the action required, impose penalties and take interim measures. Natural and legal persons have the right to submit substantiated concerns to the administrative authority. This may prove to be a source of legal activity within the Member States, resulting in preliminary rulings, with NGOs, and representatives of civil society increasingly resorting to national courts to challenge the activities of multinational corporations.

The administrative authority has the power to issue penalties on the firm, with financial penalties of up to 5% of the firm's annual turnover. Civil action may take the form of damages where a firm has failed to take preventative or remedial action, but this will not include damage caused only by a business partner. Again, questions of proximity and causation are likely to appear in national courts.

Weaknesses of the CSDDD

The Directive will be introduced gradually in the Member States; only by 2030/31 will it cover all the large firms operating in the EU. According to research by the Centre for Research on Multinational Corporations (SOMO), the CSDD will apply to only 0.05% (5400) of EU-based companies. This raises the question of whether other measures could be used to reach a wider base of economic operators in the EU. The Directive is weakened further by excluding most of the financial sector which may act as an enabler of human rights abuses and environmental harm. [10] Banking on Climate Chaos 2024 - Banking on Climate Chaos

PARADIGM SHIFT: BLURRING THE STATE/PUBLIC DUTY TO PROTECT RIGHTS AND PRIVATE RESPONSIBILITY

The two measures discussed above challenge the classic divide in public international law between the duty of the State to implement legal norms and ensure their effective enforcement and the responsibilities/obligations of non-state actors. This represents a paradigm shift; normally non-state entities may be bound by international law norms when they are implemented into domestic law.

The UN 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework | OHCHR endorsed the boundaries between state and non-state obligations. Such concepts have left legal thinking falling behind the reality that firms, especially multinational firms, are global actors with economic and political power over supply chains. In tandem, there is a growing recognition that human rights and environmental standards have a place in corporate governance and private law obligations in response to environmental/climate change measures.

[10] The CSDDD excludes due diligence obligations related to climate change. Companies are only asked to draw up a transition plan for climate change mitigation, without any sanctions if they do not meet emission reduction targets.

Earlier Reports from the World Benchmarking Alliance (WBA) revealed that this source of non-state obligations is not universally implemented. [11] The 2023 Report notes new developments and argues that transformative change is possible within a short space of time. Nevertheless, most companies fail to include rightsholders in their human rights due diligence processes with WBA arguing that access to grievance mechanisms without trust and ownership hinders just remedies.[12] These limitations, along with secretive settlements, have hindered the emergence of test cases.

New Trends in Litigation

The paradigm shift appears to be part of an emerging trend recognising the horizontal effect of human rights norms where non-state actors (firms, individuals) can be sued by other non-state actors (individuals, trade unions, NGO) for a breach of human rights obligations derived from global, international norms, using private law litigation at the national level.

In the UK the UK Supreme Court has recognised a new duty of care on parent companies for torts committed by foreign subsidiaries.[13] The Canadian Supreme Court upheld a claim in Canadian tort law (conversion, battery, unlawful confinement, conspiracy, negligence) brought by three Eritrean workers in British Columbia against a Canadian Company Nevsun Resources Ltd. [14] The claim for damages was based on a breach of customary international law (forced labour, slavery, cruel inhuman or degrading treatment and crimes against humanity). The claimants had been conscripted indefinitely by the Eritrean military into a forced labour system and made to work at a mine in Eritrea which was 60% owned by Nevsun Resources Ltd through its subsidiaries.

The Canadian Supreme Court held, by a slim majority, that while states were historically the main subjects of international law the rapid emergence of human rights signified a revolutionary shift in international law away from the state-centric approach, to a "human-centric conception of global order." [15] Thus, the Canadian Supreme Court created a new tort: a breach of customary international law.

A development in judicial attitudes is seen in the ruling of the ECHR Court in Verein KlimaSeniorinnen, finding that a state's failure to take adequate action against climate change is a violation of Article 8 ECHR. The ruling is groundbreaking in accepting the locus standi of associations representing "the individuals whose rights are or will be affected" (paras 422,434,498). The ECHR Court recognises the evolution of rights in international law:

> "… the issue of victim status must be interpreted in an evolutive manner … and that any excessively formalistic interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory." (para 482)

The CSDDD creates the possibility of access to a remedy in Article 22(5) and Recital 61: Member States shall ensure that the liability provided in national law transposing the civil liability provisions of the CSDDD overrides the law applicable to disputes under private international law rules. This would provide a remedy in cases such as the KiK case: a German court held that a claim for damages for pain and suffering relating to a breach of health safety rules which led to a fire in a clothing factory supplying the textile discounter, Kik, had been statute-barred under the applicable law of Pakistan.[16]

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[11] CHRB 2017–2019 | World Benchmarking Alliance
[12] 2023 Gender Benchmark and 2023 Corporate Human Rights Benchmark | World Benchmarking Alliance
[13] Vedanta Resources Plc and Anor v Lungowe and Others [2019] UKSC20; Okpabi and others v Royal Dutch Shell Plc and anor [2021] UKSC 3.
[14] Nevsun Resources Ltd v Araya a [2020] Decision of 28 February 2020, SCC 5.
[15] Para 106-107.
[16] LG Dortmund, 10.01. 2019 – 7 0 95/15. Dortmund Regional Court, 10.01.2019 - 7 O 95/15 - dejure.org

In the US attempts have been made to use domestic courts to hold multinational firms to account for human rights abuses committed abroad, where the US firm was seen to be complicit. [17]

The CSDDD has the potential to create a legislative bridge between the traditional international law divide of state responsibility and private obligations. The remedies under the CSDDD are cumulative, accruing with remedies available under national law (within and outside the EU) and the EU Environmental Liability Directive. The CSDDD will also allow claims to be made for breaches of human rights in third countries by subsidiaries against parent companies established in the EU.[18]

The FLR and CSDDD create a concurrent duty under EU law. The Member State is under an obligation to implement EU legislation and due diligence obligations are imposed upon private firms. There will be variations between the Member States as to how far domestic law will allow individuals and groups to obtain remedies for harm caused.

The crucial question is whether individuals can use a breach of the legislation to create "follow-on" claims based on other human rights/criminal legislation against firms that have been lax in their due diligence and, further down the supply chain, the actual perpetrators using illegal labour.

COMPLEMENTARY APPROACHES

The limited application of the CSDDD to large companies and the need to marry the use of trade measures to individual human rights remedies raises the issue of whether additional complementary approaches are needed to tackle the use of illegal labour in supply chains.

Labour and Trade Agreements

A weakness underlying both pieces of legislation is how to systematically monitor labour abuses in third countries that taint the supply of goods and services in the EU. [19] A complementary approach to the FLR and CSDDD would be for the EU to bolster the inclusion and monitoring of labour clauses in trade agreements. This would allow for regulation and standards to apply at the source of the production/supply chain. Attempting to monitor the internal application of labour and social laws in trade partners is a sensitive issue, linked to criticisms of imperialism. It would be a huge task and would not address labour abuses in non-cooperative states such as China. One way of desensitising the incursion of one trading bloc interfering in the labour rights of a third country is to use global benchmarks - such as the ILO fundamental principles, creating non-negotiable standards.

Despite the historical link between the use of forced, illegal, trafficked labour in the trade industry, the linkage between labour rights and trade is a new legal development – one that emerged in the 1990s. Labour provisions are now part of a trend of including Trade and Sustainable Development (TSD) Chapters in trade agreements. Alongside labour issues, the topics of development, climate change, the environment, and sustainability are a set of "non-

[17] Chiquita/United Brands: Doe v. Chiquita Brands International | EarthRights International ; Milwaukee Tool: Petition · Milwaukee Tool: STOP Using Chinese Prisoners of Conscience as Slave Labor - United States · Change.orgMicrosoft Word - Defs.' Mem. in Support of Consolidated Mot. to Dismiss Am. Compls. Apr. 9, 2010 .doc (earthrights.org); Chevron Bowoto v. Chevron | EarthRights International

[18] This right is recognised under the French Duty of Vigilance Law 2017 and in the UK in Okpabi and ors v Royal Dutch Shell PLC and anor [2021] UKSC 3; Vedanta Resources PLC and anor v Lungowe and ors [2019] UKSC 20.

[19] This is not to obscure the fact that internal EU labour and social law continues to be fragmentary and reliant upon national standards and enforcement.

trade" issues included in bilateral trade agreements, described as an EU commitment to a "value-based trade agenda".

The use of labour clauses in trade agreements has been contentious, creating a cleavage between North-South/developed-developing countries' expectations of the implications of including labour provisions in trade agreements. The objective of labour clauses is portrayed by developed countries as promoting fair trade, protecting, and promoting, labour rights in less developed countries. In contrast, developing countries are suspicious of these motives, seeing the use of labour clauses as a form of protectionism. Increasing labour rights in developing countries increases the costs of production, destroying or reducing one of the comparative advantages "enjoyed" by developing countries in trade relations. [20] Thus, developing countries opposed the inclusion of labour clauses in multilateral trade agreements and labour rights were excluded from the GATT 1948 and the WTO 1994.

Trade and Sustainability Chapters have become part of EU trade policy since the EU- South Korea FTA 2009. Labour rights in EU trade agreements (europa.eu). The aim is to improve adherence to ILO standards, making global supply chains more responsible by focusing on jobs in specific export-oriented industries. This in turn creates a ripple effect. The EU standards start to affect other countries receiving the same exports as the EU market. Many of these TSD Chapters lacked effective enforcement and recently the EU proposed to use of sanctions in TSD chapter enforcement.

Transparency

A second, softer approach is the use of Transparency requirements, seen, for example in Norway The Transparency Act - Forbrukertilsynet 2023, as well as due diligence through reporting, seen in the US Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018; and the California Transparency in Supply Chains Act 2015.

In Switzerland, the Responsible Business Initiative proposed an amendment to the Swiss Constitution requiring domestic laws to strengthen respect for human rights and the environment by the private sector. All firms with either a registered office in Switzerland, a central administration or a principal place of business in Switzerland should respect internationally recognised human rights and ensure human rights and environmental standards are respected in operations abroad. The proposal did not gain enough political support, but it did encourage the Swiss government to adopt any regulation to increase transparency and due diligence for conflict minerals and child labour.

CONCLUSION

The Briefing Paper argues that two EU measures - developed in relation to trade and supply chains - have the potential to be transformative in tackling the way illegal labour is used in supply chains. The European Commission, collaborating with national authorities and stakeholders (NGOs, civil society organisations, trade unions) can play a pivotal role in accumulating and sharing data. Furthermore, the European Commission is experienced in the implementation of evaluation methodology, and the use of iterative processes, enabling all actors to evaluate best practices and condone poor ones at a national level. Negative publicity, especially through social media, surrounding an investigation of a firm, may influence consumer choice.

[20] J. Bhagwati, Trade Liberalisation and 'Fair Trade' Demands: Addressing the Environmental and Labour Standards Issues (1995) World Economy 18.6 745-759.

The new legislation shifts the obligation to clean up supply chains onto non-state actors. This has the potential for abuses of labour in third states to be heard in EU Member State courts. The engagement with stakeholders offers the opportunity for third-party claims to achieve standing before domestic courts. Whatever the practical outcomes, the FLR and CSDDD have changed the paradigm in the way firms are accountable for the use of illegal labour in global supply chains.

It is also worth noting that the EU measures will also impact UK trade. Any goods and services exported to the EU market will be subject to supply chain scrutiny. In light of the clothing brand Shein's potential listing on the London Stock Exchange, after being rebuffed by New York, the Labour Chair of the Business Select Committee called for a UK "Forced Labor Prevention Act ". This would be similar to the US model, and prohibit the import of products made by forced labour in the Chinese region of Xinjiang.

Not only foreign-produced goods will be under scrutiny. The weak enforcement of the UK Modern Slavery Act 2015 and the lack of regulation of domestic industries suggest that UK firms will also be increasingly exposed to supply chain scrutiny by the EU.

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FURTHER INFORMATION

The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group that:
1) initiates, comments on and analyses trade policy proposals for the UK; and
2) trains British policy makers, negotiators and other interested parties through tailored training packages. The UKTPO is committed to engaging with a wide variety of stakeholders to ensure that the UK's international trading environment is reconstructed in a manner that benefits all in Britain and is fair to Britain, the EU and the world.

The Observatory offers a wide range of expertise and services to help support government departments, international organisations and businesses to strategise and develop new trade policies in the post-Brexit era.

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