

Harnessing UK trade and investment to address Indo-Pacific modern slavery risks

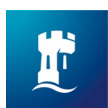
Policy report

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Authorship and acknowledgements

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The research was led by the Rights Lab at the University of Nottingham, with a team that included Dr Timothy Masiko, Dame Sara Thornton, Dr Ergul Celiksoy, Dr Katarina Schwarz, Dr Oana Burcu, Dr Katrina Peake, Professor Todd Landman, and Professor Facundo Albornoz Crespo. All members of the research team contributed to this report.

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Table of abbreviations

| | |
|--------------------|---|
| AANZTA | ASEAN and Australia/New Zealand Agreement |
| APTA | Asia Pacific Free Trade Agreement |
| AUD | Australian dollars |
| BIT | Bilateral investment treaty |
| CBP | US Customs and Border Protection |
| CHAFTA | China-Australia Free Trade Agreement |
| CPTPP | Comprehensive and Progressive Agreement for Trans-Pacific Partnership |
| CSDDD | Corporate Sustainability and Due Diligence Directive |
| CSO | Civil society organisation |
| CSS | Contractual Service Suppliers |
| EFTA | European Free Trade Association |
| ESG | Environmental, Social, Governance |
| EU | European Union |
| FCDO | Foreign, Commonwealth and Development Office |
| FDI | Foreign direct investment |
| FOIP | Free and open Indo-Pacific |
| FTA | Free trade agreement |
| GATT | General Agreement on Tariffs and Trade |
| ILO | International Labour Organisation |
| IUU | Illegal, Unreported and Unregulated |
| Modern Slavery PEC | Modern Slavery and Human Rights Policy and Evidence Centre |
| NAPFL | National Action Plan on Forced Labour (Malaysia) |

| | |
|-------|---|
| OSHRD | Open Societies and Human Rights Directorate |
| PCA | Partnership Cooperation Agreement |
| RCEP | Regional Comprehensive Partnership |
| SDG | Sustainable Development Goal |
| TA | Trade agreement |
| TRIMS | Trade, Investment and Modern Slavery |
| TSD | Trade and Sustainable Development |
| US | United States |
| WTO | World Trade Organisation |
| XUAR | Xinjiang Uyghur Autonomous Region |

1. Introduction

The publication of the March 2021 *Integrated Review* (updated in March 2023)¹ heralded a UK ‘tilt’ to the Indo-Pacific. It declared that ‘By 2030’, the UK ‘will be deeply engaged in the Indo-Pacific’—the areas around the Indian and Pacific Oceans—and continue its policy of pursuing a ‘free and open Indo-Pacific’ (FOIP).² The stated UK agenda in relation to the Indo-Pacific was ambitious, aspiring to be the ‘European partner with the broadest and most integrated presence’ in the Indo-Pacific.³

The UK Government moved rapidly to realise this strategic repositioning, as demonstrated through efforts to strengthen trade and investment with the region.⁴ On 16 July 2023, the UK acceded to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).⁵ The UK became an ASEAN Dialogue Partner in 2021,⁶ and the negotiations for a UK-India free trade agreement (FTA) are now in their 12th round.⁷

As it seeks to increase trade and investment with the region, the UK Government has been vocal in calling on businesses to take steps to ensure their supply-chains are free of forced labour. This is particularly important in UK trade and investment with the Indo-

¹ HM Government, ‘Integrated Review Refresh 2023: Responding to a More Contested and Volatile World’ (March 2023)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145586/11857435_NS_IR_Refresh_2023_Supply_AllPages_Revision_7_WEB_PDF.pdf.

² HM Government, ‘Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy’ (March 2021)

https://assets.publishing.service.gov.uk/media/60644e4bd3bf7f0c91eababd/Global_Britain_in_a_Competitive_Age_the_Integrated_Review_of_Security_Defence_Development_and_Foreign_Policy.pdf. The

Government further expanded on its understanding of a FOIP in 2023: ‘The UK believes that a free and open Indo-Pacific is one where a regional balance of power ensures no single power dominates, and where a rich tapestry of institutions and partnerships shape a stable but adaptable regional order in which: states can make choices free from coercion, disinformation and interference; territorial integrity is respected and disputes resolved in line with international law; international rules and norms govern the sea, land and air as well as international trade; shipping lanes remain secure and open; action is taken against illegal, unreported and unregulated fishing; and countries are resilient against the full range of threats and risks, whether from climate change, natural disasters or cyberspace.’ House of Commons Foreign Affairs Committee, ‘Tilting Horizons: The Integrated Review and the Indo-Pacific’ (Eighth Report of Session 2022-2023, 30 August 2023) <https://committees.parliament.uk/publications/41144/documents/204045/default/>

³ *ibid.*

⁴ In 2021, the Indo-Pacific accounted for 17.5% of UK global trade—*ibid.*, p 66.

⁵ HM Government, ‘The UK and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)’ (20 July 2023) <https://www.gov.uk/government/collections/the-uk-and-the-comprehensive-and-progressive-agreement-for-trans-pacific-partnershipcptpp>.

⁶ HM Government, ‘UK Becomes Dialogue Partner of the Association of Southeast Asian Nations’ (05 August 2021) <https://www.gov.uk/government/news/uk-becomes-dialogue-partner-of-the-association-of-southeast-asian-nations>.

⁷ HM Government, ‘Joint Outcome Statement: UK-India Round Ten FTA Negotiations’ (19 June 2023) <https://www.gov.uk/government/news/joint-outcome-statement-uk-india-round-ten-fta-negotiations>.

Pacific.⁸ The Asia-Pacific region has the highest incidence of modern slavery in the world—accounting for 59% of the global estimate.⁹ The Indo-Pacific is home to some of the most challenging modern slavery crises, including reported state-sponsored forced labour in Xinjiang, China, widespread debt bondage and forced labour in India, and recurring issues around forced labour in Thai fishing and Malaysian palm oil and manufacturing sectors, which affect domestic and migrant workers.

Post-Brexit, the UK is beginning to find its feet as a ‘normative actor’ in its external relations.¹⁰ It aims at a ‘Global Britain,’ using the UK as a ‘force for good’¹¹ and positioning itself to be a world-leading international development donor working towards the UN Sustainable Development Goals (SDGs) and upholding universal human rights.¹² The Foreign, Commonwealth and Development Office (FCDO) states that the UK is committed to eradicating modern slavery as set out in SDG 8.7.¹³ It has an Open Societies and Human Rights Programme which promotes and defends universal human rights.¹⁴ The FCDO human rights objectives emphasise working with domestic and international partners to ‘drive an international effort to combat modern slavery’ as a ‘global moral imperative.’¹⁵ In association, the Open Societies and Human Rights Directorate (OSHRD) seeks to promote and support a world where respect for human rights can flourish.¹⁶ This provides an opportunity to ‘mainstream and prioritise human rights in UK foreign policy.’¹⁷

Trade is placed at the heart of ‘Global Britain’ based on core principles including human rights.¹⁸ International trade and investment provide critical opportunities for the UK to

⁸ For purposes of this project, ‘Indo-Pacific’ States are Australia, Bangladesh, Brunei, Cambodia, China, India, Japan, Laos, Malaysia, Myanmar, New Zealand, Papua New Guinea, Philippines, Singapore, South Korea, Thailand, and Vietnam.

⁹ Walk Free, ‘Modern Slavery in Asia and the Pacific’ (*Global Slavery Index*, 2023)

<https://www.walkfree.org/global-slavery-index/findings/regional-findings/asia-and-the-pacific/>.

¹⁰ Ian Manners, ‘Normative Power Europe: A Contradiction in Terms?’ (2002) 40(2) *Journal of Common Market Studies* 235.

¹¹ HM Government, ‘Global Britain in a Competitive Age’, above n 2, p 14.

¹² *ibid*, p 20.

¹³ UK Foreign, Commonwealth and Development Office, ‘Human Rights & Democracy: The 2021 Foreign, Commonwealth & Development Office Report’ (2021)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130821/human-rights-and-democracy-2021-foreign-commonwealth-development-office-report.pdf, p 28.

¹⁴ UK Foreign, Commonwealth and Development Office, ‘Open Societies and Human Rights Programme Summary’ <https://www.gov.uk/government/publications/official-development-assistance-oda-fcdo-international-programme-spend-objectives-2021-to-2022/open-societies-and-human-rights-programme-summary#:~:text=The%20Open%20Societies%20and%20Human,no%20one%20is%20left%20behind.>

¹⁵ *ibid*.

¹⁶ *ibid*.

¹⁷ Human Rights Watch, ‘United Kingdom: Events of 2021’ (2022) <https://www.hrw.org/world-report/2022/country-chapters/united-kingdom>.

¹⁸ HM Government, ‘Global Britain in a Competitive Age’, above n 2, p 54. The UK’s 2017 Trade White Paper does not include modern slavery, but it does include the prospect of trade agreements that can ‘promote and support labour protections’ and human rights—Department for International Trade, ‘Preparing

realise these commitments, particularly as it seeks to ensure the governance of 'international norms and rules'¹⁹ in a high-priority region with significant modern slavery risks.

The UK Government has already taken some significant steps towards addressing modern slavery in its business and trade policies. The UK provides guidance for companies operating in high-risk and conflict-affected areas to reduce human rights risks,²⁰ a core rights foundation to business operations. The UK's Modern Slavery Act 2015 (section 54) guides investor decisions, calling for transparency in supply chains and a slavery and human trafficking statement with information about issues such as due diligence, human rights risks, and risk management. The UK Government also works towards implementing the UN Guiding Principles on Business and Human Rights (UNGPs) including on human rights impacts of trade agreements and investment protection.²¹ The UK encourages companies to extend domestic grievance practices to their overseas operations and has supported projects through the FCDO Human Rights and Democracy Programme Fund on remedy procedures in third countries.²² However, the Government has not yet developed coherent strategies to address modern slavery in the context of trade and investment, nor has it developed a systematic practice in this domain.

Following the lead of the US, the UK Government was actively considering adopting a ban on imports of goods made in whole or in part with forced labour in 2021.²³ Import legislation related to forced labour in the Xinjiang Uyghur Autonomous Region (XUAR) specifically was proposed as a Private Members' Bill in 2022, although this did not make any progress in that Parliamentary session.²⁴ A proposed amendment to the Energy Bill

for our future UK trade policy' (2017)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880607/Preparing_for_our_future_UK_trade_policy_Report_Web_Accessible.pdf.

¹⁹ House of Commons Foreign Affairs Committee, 'Tilting Horizons', above n 2.

²⁰ UK Foreign, Commonwealth and Development Office, 'Human Rights & Democracy' above n 13, p 27.

²¹ HM Government, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (2016)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf, p 11.

²² *ibid*, p 21.

²³ Emilio Casalicchio, 'UK hints at Banning Chinese Imports with Forced Labor Links' (*Politico*, 20 December 2021) <https://www.politico.eu/article/uk-could-impose-chinese-forced-labor-import-ban/>.

²⁴ Import of Products of Forced Labour from Xinjiang (Prohibition) Bill HC Bill (2021-22) 3151 <https://bills.parliament.uk/bills/3151>. In 2022-2023 the Government faced legal challenge brought by the World Uyghur Congress over cotton imports from Xinjiang, although the challenge was not successful in the High Court. *The King on application of World Uyghur Congress v Secretary of State for the Home Department, Commissioners for His Majesty's Revenue and Customs Service, and National Crime Agency* [2023] EWHC 88 (Admin). See also Phillip Adnett, 'UK government faces legal action over "forced labour" imports from Xinjian, China' (*Institute of Export and International Trade*, 26 October 2022) <https://www.export.org.uk/news/621269/UK-government-faces-legal-action-over-forced-labour-imports-from->

in 2023 would place an obligation on the Planning Inspectorate in England to block nationally significant infrastructure projects unless it could be demonstrated that slave labour was not involved.²⁵ However, these developments have yet to translate into legislation. The US Uyghur Forced Labour Prevention Act came into force in 2022²⁶ and US Customs and Border Protection (CBP) continues to implement the Tarriff Act in relation to forced labour.²⁷ The EU is moving forward with its proposed ban on products made with forced labour²⁸ and its Corporate Sustainability Due Diligence Directive (CSDDD).²⁹ However, the UK has yet to take similar steps and has been criticised for not having introduced fines for businesses not complying with the reporting obligations in the Modern Slavery Act, as promised in May 2022.³⁰

1.1. Research aims and objectives

This project set out to assess the role of trade and investment arrangements in the Indo-Pacific region in shaping modern slavery risks. Our aim was to provide new evidence, analysis, and recommendations on how the UK can reduce modern slavery risks through trade and investment with the Indo-Pacific. The project falls within the Modern Slavery PEC's research areas on preventing modern slavery, modern slavery in business supply

[Xinjian-China.htm](#); Laura Smyth, 'Landmark High Court Decision on Supply Chains and Human Rights' (*Travers Smith*, 09 March 2023) <https://www.traverssmith.com/knowledge/knowledge-container/landmark-high-court-decision-on-supply-chains-and-human-rights/>.

²⁵ HL Deb 05 September 2023, vol 737, col 246, [https://hansard.parliament.uk/commons/2023-09-05/debates/A2CF4126-6164-4F6E-97BC-933B37F073AB/EnergyBill\(Lords\)](https://hansard.parliament.uk/commons/2023-09-05/debates/A2CF4126-6164-4F6E-97BC-933B37F073AB/EnergyBill(Lords)). See also Patrick Wintour, 'UK solar could be "dumping ground" for products of Chinese forced labour, ministers warned' (*The Guardian*, 03 September 2023) <https://www.theguardian.com/global-development/2023/sep/03/uk-solar-could-be-dumping-ground-for-products-of-chinese-forced-labour-ministers-warned>; Muhammad Mussa, 'UK at crossroads over Uyghur forced labour in solar supply chain' (*Islam21*, 09 September 2023) <https://www.islam21c.com/news/uk-crossroads-uyghur-forced-labour-solar-supply-chain/>; Robert Alexander, 'Rutland MP Alicia Kearns wants amendments to Energy Bill affecting solar farms' (*Rutland & Stamford Mercury*, 07 September 2023) <https://www.stamfordmercury.co.uk/news/mp-pushes-to-change-solar-farms-policy-9329377/>.

²⁶ US Customs and Border Protection, 'Uyghur Forced Labor Prevention Act' (21 July 2023) <https://www.cbp.gov/trade/forced-labor/UFLPA>.

²⁷ US Customs and Border Protection, 'Forced Labor' (12 October 2023) <https://www.cbp.gov/trade/forced-labor>.

²⁸ See European Parliament, 'Towards an EU ban on products made with forced labour' (*Eureporter*, 20 October 2023) <https://www.eureporter.co/politics/european-parliament-2/2023/10/20/towards-an-eu-ban-on-products-made-with-forced-labour/>; Silvia Ellena, 'EU lawmakers set to define position on forced labour products ban' (*EURACTIV*, 16 October 2023) <https://www.euractiv.com/section/economy-jobs/news/eu-lawmakers-set-to-define-position-on-forced-labour-products-ban/>.

²⁹ Rachel Davis, 'Aligning the EU Due Diligence Directive with International Standards: Key Issues in the Negotiations' (Shift, October 2023) <https://shiftproject.org/wp-content/uploads/2023/10/Aligning-the-EU-CS3D-with-the-international-standards-.pdf>; 'Crunchtime for the due diligence law' (*EURACTIV*, 18 October 2023) https://www.euractiv.com/section/economy-jobs/special_report/crunchtime-for-the-due-diligence-law/.

³⁰ See for instance, Sam Meadows, 'Sunak's Government Accused of Allowing UK Businesses to Profit from Chinese Slave Labour' (*Byline Times*, 14 September 2023) <https://bylinetimes.com/2023/09/14/sunaks-government-accused-of-allowing-uk-businesses-to-profit-from-chinese-slave-labour/>.

chains, and the effectiveness of legal enforcement measures.³¹ It also aligns with Rights Lab research on modern slavery risks in supply chains, international trade, and investment.³² The evidence and policy recommendations herein are relevant for the UK Government's engagement with the Indo-Pacific region, and in trade and investment policy more broadly.

The relationship of trade and investment to modern slavery risks and outcomes is becoming increasingly clear. A growing body of international practice and literature positions labour rights, human rights, and sustainable development concerns—including addressing modern slavery—within the domains of international trade and investment. Yet, the extent to which modern slavery is tackled through these instruments has not been systematically addressed, and evidence of the effectiveness of different approaches is limited. Therefore, understanding the role of trade and investment rules in addressing those risks and outcomes is critical to any attempts made to mitigate modern slavery risks and outcomes.

Although there has been an upsurge in attention and impetus to address the issue of modern slavery within the domains of trade and investment, this positioning is not without its challenges. There is a tension between the policy objectives of promoting trade and investment on the one hand, and reducing modern slavery risks on the other, since it involves seeking a balance between the economic imperatives that feature in the consideration of gains from trade³³ and maintaining a commitment to universal human rights norms, principles, and values.³⁴ As Schwarz et al explain:³⁵

While trade policy has been highlighted as an arena of significant opportunity in advancing efforts to address modern slavery in third

³¹ Modern Slavery and Human Rights Policy and Evidence Centre, 'Consultation on the Modern Slavery PEC's Research Priorities' (January 2021) <https://modernslaverypec.org/assets/downloads/Research-consultation-report-final.pdf>, p 3.

³² The Business and Economics Programme at the Rights Lab has produced a number of published studies on modern slavery risks in supply chains and addressing modern slavery in trade and investment policy, developed BS 25700 Organizational Responses to Modern Slavery, and is currently developing ISO/AWI 37200 Guidance for the prevention, identification and response to human trafficking, forced labour, and modern slavery. See <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/programmes/business/index.aspx>.

³³ Comparative advantage and gains from trade are mainstay features of economic theory and analysis of bi-lateral and multi-lateral trade regimes in the global economy. See, for example, Michael Todaro, *Economic Development* (6th Edn, Longman 1997), 419-497.

³⁴ Borchert et al label human rights, labour, and environmental concerns 'Non-Trade Policy Objectives' (NTPOs), emphasising the distinction between these issues and the traditional trade objectives—Ingo Borchert, Paola Conconi, Mattia Di Ubaldo, and Christina Herghelegiu, 'The Pursuit of Non-Trade Policy Objectives in EU Trade Policy' (Robert Schuman Centre for Advanced Studies Research Paper No RSCAS 2020/26, 2020). Traditional trade objectives include providing a market for goods produced in abundance, and 'maximising the availability of inexpensive goods'—Lawrence E Briskin, 'Dynamics of International Trade' (1993) 7(5) *The International Trade Journal* 569.

³⁵ Katarina Schwarz et al, 'External Policy Tools to Address Modern Slavery and Forced Labour' (European Parliament, April 2022) [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2022\)653664](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2022)653664)

countries, tensions and conflicting incentives can operate in this domain. Actions taken in the pursuit of traditional trade objectives may facilitate or enable modern slavery practices. Vice versa, approaches driven by the goal of addressing modern slavery practices may impair open trade in particular circumstances. It is therefore necessary to recognise that the antislavery imperative may not be simply 'added on' to trade relations without considering the competing priorities thereby created, and how these must be balanced.

There is a further tension raised by the asymmetry between and among trading partners, in terms of market size and power, factor endowments, supply and demand of tradable goods,³⁶ and the extant international and national legal commitments of states to human rights and fundamental freedoms, including those relating to modern slavery. This tension raises important empirical and theoretical questions for law and policy:

1. What is the relationship between trade and investment arrangements, on the one hand, and modern slavery risks and dynamics on the other?
2. What legal and policy arrangements in international trade and investment agreements reduce vulnerability to, and risks of, modern slavery?
3. How do legal and policy arrangements reduce vulnerability to modern slavery risks?
4. Which instruments (such as forced labour bans, sanctions, social chapters in trade deals, investment screening, investor-state arbitration) are most effective in addressing modern slavery, in which circumstances? What does this mean for UK law and policy?

Given the UK's focus on the Indo-Pacific region for trade and investment, this project offers quantitative and qualitative evidence and analysis of immediate relevance to the UK's recent accession to the CPPTP, negotiations for a UK-India trade pact, growing UK-ASEAN trade cooperation, and enhanced two-way capital flows between the UK and the Indo-Pacific.

³⁶ Tradable goods are those that form part of the basket of goods suitable for export and import, such as primary goods, commodities, raw materials, manufactured good, textiles, garments, etc. See, for example, Michael Todaro, *Economic Development* (6th Edn, Longman 1997), 478.

2. Project workstreams and methods

This project set out to achieve its objectives across three inter-related workstreams:

WORKSTREAM 1: The first workstream involved a two-day global conference on trade, hosted by the University of Nottingham. This conference laid the groundwork for the establishment of the Trade, Investment and Modern Slavery (TRIMS) Network—a collective of academics and practitioners at the intersection of the three fields to continue research and exchange knowledge to share emerging developments in these fields.

WORKSTREAM 2: The second workstream delivered an empirical analysis of the relationship between trade and investment and modern slavery through the development of several new databases. One database enabled mixed methods analysis of the inclusion of modern slavery and related considerations in trade and investment agreements (TAs and BITs) adopted by the UK and Indo-Pacific states. The workstream complemented this analysis with a formal theoretical and empirical econometrics study on the relationship between international trade and forced labour using two cross-national and time-series data sets.

WORKSTREAM 3: The final workstream undertook four qualitative country case studies of the relationship between trade and investment arrangements on the one hand, and modern slavery risks and outcomes on the other. Case studies examined these dynamics in China, India, Malaysia, and Thailand with a focus on trade and investment, vulnerabilities and products, de jure anti-slavery measures, and lacunae and barriers to progress.

Findings from the three workstreams are synthesised in this report to better understand current approaches to tackling modern slavery through trade and investment frameworks from different perspectives and in different contexts. Empirical and econometric analyses provided macro-level insights on the impacts of trade and investment on modern slavery dynamics, as well as existing efforts to integrate modern slavery concerns in trade and investment treaties. Case studies provide ground-level and contextualised insights on how these interactions manifest on the ground, while the conference and network provided key informant perspectives to supplement learnings across levels.

2.2. Workstream 1: TRIMS conference and network

This project included a two-day conference (held on 15 and 16 November 2022) with two main aims:

1. To bring together academics and practitioners in the fields of trade, investment, and modern slavery (TRIMS) to share emerging research and experience from practice on the issues with which the project was concerned.

2. To establish the TRIMS network for continued engagement and further research.

The TRIMS conference was held in hybrid form, with participants from the UK, Australia, Malaysia, Thailand, Kenya, and the United States (US) representing governmental, intergovernmental, non-governmental, and private sector organisations as well as academic researchers. The main motivation for holding the conference early in the project was to start the conversation and develop scholarship in an otherwise less-studied area.

The Trade, Investment and Modern Slavery (TRIMS) network, established following the conference, fosters production and exchange of policy-relevant research in response to the research agenda emerging from the conference. The aim for this network is to carry the work forward beyond the duration of this project, thereby contributing to the sustainability of its impacts. As such, the network comprises academics, government officials and policy makers, and representatives of civil society organisations (CSOs). This membership will expand in future meetings to include representatives from international organisations and from the business community.

The network's first meeting in April 2023 shared preliminary findings from this project following new figures released from the ILO and Walk Free showing that 28 million people were in forced labour across the globe.³⁷ There was a keen interest in both trade and investment levers to tackle modern slavery, even beyond the geographical focus of this project. For example, in response to the case studies conducted by this project, civil society representatives emphasised the need for engagement and in-depth country research both within and beyond the Indo-Pacific, particularly on the impact of trade bans in the countries to which they relate.

The second meeting of the network on 26 July 2023 shared further findings and set out potential strategies for future collaboration beyond the duration of the project. The network session involved three presentations:

1. An overview of the project and its approach.
2. The coding, analysis, and findings of trade agreements (TAs) and Bilateral Investment Treaties (BITs).
3. The quantitative analysis of the relationship between international trade and forced labour.

Attendees noted the paucity of modern slavery provisions in TAs and BITs, probed further into labour governance issues and laws, and shared the ways in which labour, modern slavery, human rights, and related provisions appear in particular TAs.

³⁷ International Labour Organisation, Walk Free and International Organisation for Migration, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage' (Geneva 2022) https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf; Walk Free, 'Global Slavery Index' (2023) <https://www.walkfree.org/global-slavery-index/>.

2.2. Workstream 2: empirical analysis

Workstream 2 delivered a comprehensive empirical analysis of the relationship between trade and investment and modern slavery. This was delivered through two core research activities:

1. The development and analysis of a new trade and investment agreements dataset.
2. A formal and theoretical empirical econometric study on the relationship between international trade and forced labour using two cross-national and time-series data sets.³⁸

2.2.1. Trade and investment agreements dataset

The project developed a new mixed methods data set interrogating the handling of modern slavery issues in trade agreements (TAs) and bilateral investment treaties (BITs). The database collated a total of 348 TAs from the ILO's Labour Provisions in Trade Agreements Hub,³⁹ and through supplementary online searches. We also collated 114 BITs from the Investment Policy Hub's database,⁴⁰ including 14 BITs concluded between the UK and Indo-Pacific states and 100 BITs that are in force between Indo-Pacific states. The data covered agreements adopted between 1975 and 2022.⁴¹ The project carried out a review, coding, and analysis of TAs and BITs in two phases.

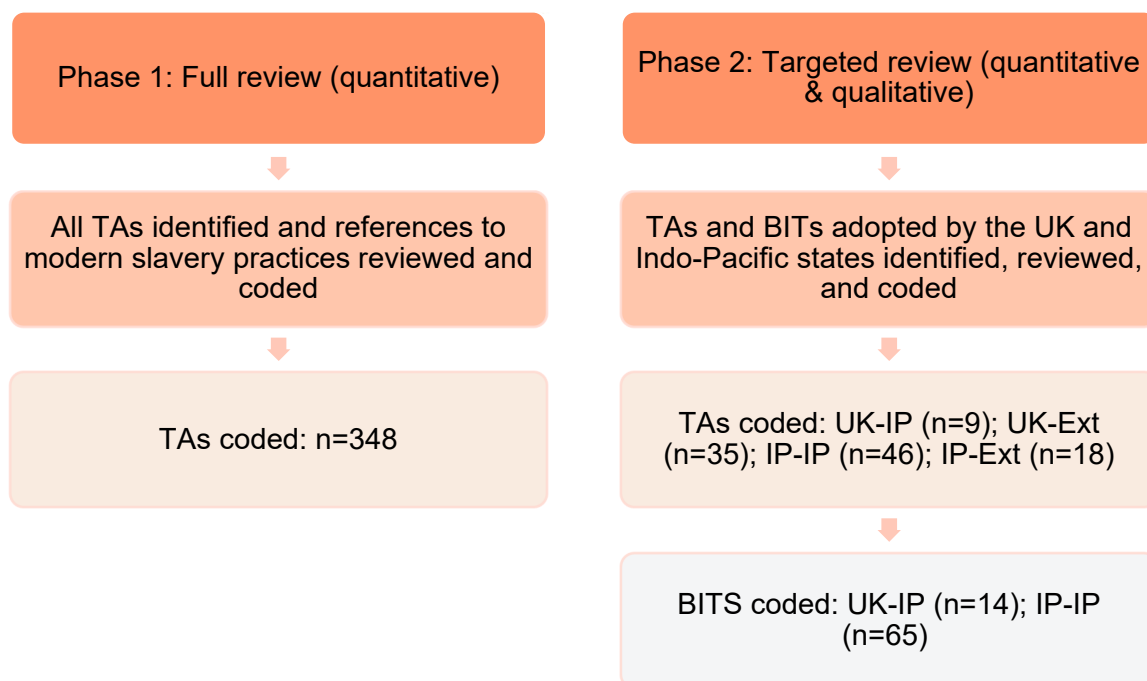
³⁸ It is standard practice in economic analysis to build a formal model of the main factors at play (i.e. trade and forced labour) to deduce a set of testable propositions, which are then subjected to econometric analysis using quantitative data on the main variables of interest, control variables, and an identification of different models to address questions of reverse causality (also known as endogeneity), multi-collinearity (i.e., any significant correlations between the independent variables), and reduction of errors in the estimation of relationships

³⁹ ILO's Labour Provisions in Trade Agreements Hub can be found at: <https://www.ilo.org/LPhub/>.

⁴⁰ Investment Policy Hub's database can be found at: <https://investmentpolicy.unctad.org/international-investment-agreements/advanced-search>.

⁴¹ This time period predates key international developments with regard to human trafficking (such as the negotiation and adoption of the Palermo Protocol) and the widespread usage of the term 'modern slavery'. This provides an overview of evolution in trade and investment agreements as the international regime and global practice on modern slavery developed. However, key concepts and practices of direct relevance to the challenge of modern slavery (including slavery, forced labour, servitude, and institutions and practices similar to slavery) were already firmly embedded in the international system at the inception of this period.

Figure 1. Trade and investment coding phases



Phase 1 included a review of all TAs for modern slavery practices. At this stage, we coded and reviewed all 348 agreements using NVivo 12 qualitative analysis software. We used pre-established key search terms related to modern slavery practices in the NVivo 12 ‘text search query’ tool.

Phase 2 adopted a more refined and comprehensive approach to evaluate the inclusion of modern slavery concerns in TAs and BITs, incorporating both quantitative and qualitative analysis to delve deeper into the subject. This stage focused on TAs and BITs involving the UK and Indo-Pacific states.

Review, coding, and analysis of TAs covered four categories of instrument based on the parties and assessed a total of 108 instruments (see Table 1). The evaluation initially focused on agreements between the UK and Indo-Pacific states (UK-IP)—the primary focus of the project. However, given the small sample size of instruments in this category (n=9), the research expanded to cover three additional categories:

1. Agreements adopted between Indo-Pacific states (IP-IP), which provide further insights on the priorities and approaches evident within the region.
2. Agreements between the UK and states external to the Indo-Pacific region (UK-Ext), which provide further evidence of the ways in which modern slavery considerations are advanced by the UK through trade.
3. Agreements between Indo-Pacific states and other states external to the region beyond the UK (IP-Ext), which provide evidence of how other states engage with modern slavery considerations in trade with Indo-Pacific states,

as well as Indo-Pacific state priorities and approaches represented in these instruments.

Review, coding, and analysis of BITs was narrower in scope as a result of the practical constraints of the project and the relative underdevelopment of modern slavery considerations in this context, focusing specifically on two categories of instrument—agreements between the UK and Indo-Pacific states, and agreements between multiple Indo-Pacific states (total n=79). We identified an additional 35 BITs within these two categories in the review but excluded them from the analysis since they were either terminated or not in force.

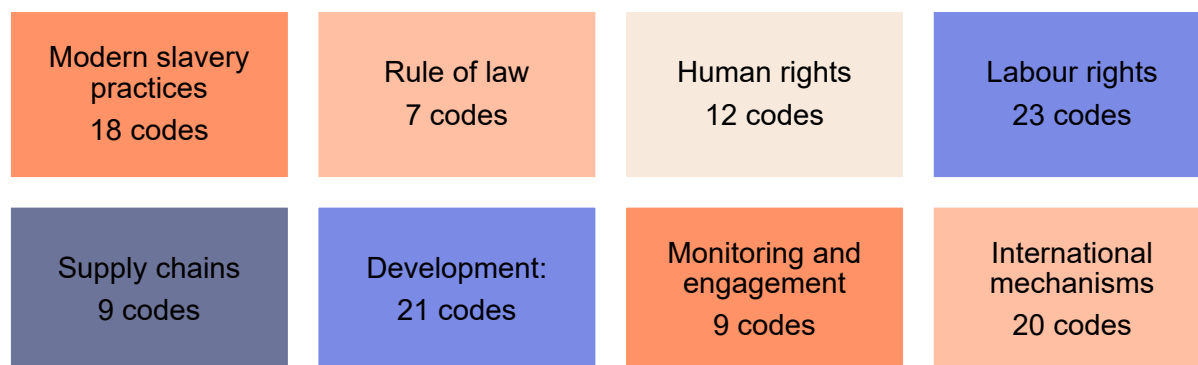
Table 1. Summary of instruments coded and analysed

| Category | Parties to the agreement | FTAs | BITs |
|----------|---|------|-----------|
| UK-IP | Agreements between the UK and Indo-Pacific states | N=9 | N=14 |
| IP-IP | Agreements between multiple Indo-Pacific states | N=46 | N=65 |
| UK-Ext | Agreements between the UK and non-Indo-Pacific states | N=35 | Not coded |
| IP-Ext | Agreements between Indo-Pacific states and non-Indo-Pacific states (excluding the UK) | N=18 | Not coded |

We reviewed TAs and BITs individually and thematically, coding them against a pre-established codebook in NVivo 12. The codebook encompassed a wide range of issues relevant to the consideration of modern slavery in trade and investment instruments, organised under eight different themes:⁴² (1) modern slavery practices, (2) rule of law, (3) human rights, (4) labour rights, (5) supply chains, (6) development, (7) monitoring and engagement, and (8) international mechanisms. We developed a specific set of codes under each theme to ensure comprehensive capture of relevant modern slavery concerns addressed in FTAs and BITs. The analysis revealed a total of 119 codes across these eight themes, which enabled both quantitative and qualitative examination of the extent to which modern slavery concerns are addressed in trade and investment instruments.

⁴² See further Ergul Celiksoy, Katarina Schwarz, and Timothy Masiko, 'Addressing Modern Slavery in UK-Indo-Pacific Trade and Investment Agreements: A Mixed Methods Empirical Analysis' (*Rights Lab*, 2024), *forthcoming*.

Figure 2. Organisation of thematic codes



The Codebook yielded a breakdown of the occurrence of the search terms in each of the agreements coded, which we recorded in both the volume (number of keywords occurring) and intensity (frequency of occurrence of keywords). These were in turn represented in their totals, with total count for volume, and total sum representing the intensity (see further section 4.2). Codes also supported thematic qualitative analysis of the agreement texts.

2.2.2. Formal theoretical and empirical econometrics

The project built and analysed one cross-national and time-series data set for 116 developing countries between 2005 and 2016 and a second data set on 97 countries between 2012 and 2016. The data sets comprise two different measures of forced labour (extensive margin and intensive margin),⁴³ standard measures of trade openness, and other variables to control for other factors that may affect the relationship between international trade and forced labour. Other factors included geography, gross domestic product, FDI, democracy, regime durability, preferential trade agreements, human rights performance, civil war, population size and distribution, and regional variation. The analysis provided a formal theoretical model of the different mechanisms underpinning the relationship between international trade and forced labour, which yielded a series of observable implications tested through econometric analysis of the two data sets. The formal model yielded a series of propositions concerning: (1) forced-labour-intensive goods and terms of trade; (2) free-labour-intensive goods and relative terms of trade; and (3) trade openness and anti-forced labour policies in the country or by trade partners. For example, agricultural products can have a high prevalence of forced labour, and the relative terms of trade for many such products (e.g. coffee) will see a disadvantage in terms of trade for the producer country (owing to competition and substitution of supplier countries). If the terms of trade improve, then the tendency to use forced labour in the production of such goods decreases. Both the formal theoretical

⁴³ 'Extensive' forced labour margin: proportion of countries with observed forced labour over time. 'Intensive' forced labour margin: the number or proportion of people in countries estimated to be in modern slavery.

framework and the econometric analysis produced a generalisable set of inferences on the overall relationship between international trade and forced labour that both complemented and enriched the findings from the TA and BITs analysis and the four qualitative case studies.

2.3. Workstream 3: country case studies

The project included four in-depth qualitative case studies of the relationship between trade and investment arrangements and modern slavery risks and outcomes in China, India, Malaysia, and Thailand. These cases were selected for their characteristics in trade with the UK, their estimated prevalence of modern slavery, as countries of origin for individuals reported into the UK National Referral Mechanism (the system for identifying and supporting people affected by modern slavery) between 2014 and 2022, and as destinations for UK foreign direct investment (FDI). As Table 2 shows, China makes up the largest proportion of UK trade, followed by India, Thailand, and Malaysia. The estimated prevalence of modern slavery varies from 4 per 1,000 people in China to 8 per 1,000 people in India, while the total estimated number of people in modern slavery across the four cases is 17.42 million, which represents 35% of the estimated global total.⁴⁴ State party ratification of 18 key international legal instruments varies from 50% in Malaysia to 66.67% in India. The UK has both a free trade agreement (FTA) and a bilateral investment treaty (BIT) with Malaysia only, while all four countries have a varying number of both with other countries in the Indo-Pacific.

The case studies complemented the quantitative analysis of trade and investment agreements by providing a more qualitative examination of the interactions between trade and investment arrangements and modern slavery risks. They further present additional contextual information on interactions in the Indo-Pacific region that can inform future UK efforts to establish new TAs and BITs.

Table 2. The four TRIMS case studies compared⁴⁵

| Indicator | Cases | | | |
|----------------------------------|----------------------------------|----------------------------------|-----------------------------------|-----------------------------------|
| | China | India | Malaysia | Thailand |
| Trade Volume⁴⁶ | £107.5b (6.1% total UK trade) | £34b (2.1% of total UK trade) | £5.6b (0.3% of total UK trade) | £6.0b (0.4% of total UK trade) |
| FDI volume: inward | £12.9b (0.8%) | £9.3b (0.5%) | £2.4b (0.1%) | £426m (<0.1%) |

⁴⁴ Note: this figure includes estimates of the prevalence of forced marriage, as forced labour and forced marriage estimates are not disaggregated at the country level.

⁴⁵ 'Harnessing UK Trade and Investment to Address Indo-Pacific Modern Slavery Risks: Country Case Studies' (University of Nottingham, 2024), *forthcoming*.

⁴⁶ Total imports and exports.

| | | | | |
|---|---|--|--|-------------------------------------|
| FDI volume: outward | £3.4b (0.2%) | £19.1b (1.1%) | £3.8b (0.2%) | £2.1b (0.1%) |
| Estimated Modern Slavery Prevalence⁴⁷ | 4 per 1000 of pop. 5.77 million people | 8 per 1000 of pop. 11.05 million people | 6.3 per 1000 of pop. 202,000 people | 5.7 per 1000 pop. 401,000 people |
| NRM Referrals 2014-2022⁴⁸ | 2600 | 1657 | 110 | 186 |
| Party to key international instruments | 10/18 55.56% | 12/18 66.67% | 9/18 50% | 11/18 61.1% |
| TAs with the UK | 0 | 0 | 1 | 0 |
| TAs with IP states | 5 | 5 | 2 | 1 |
| BITs with the UK | 1 | 0 | 1 | 1 |
| BITs with IP states | 16 | 2 | 9 | 13 |

The research aim of the case studies was to highlight how modern slavery risks and dynamics emerge from the political economy in the four countries, and how trade and investment arrangements may have contributed to or mitigated against that result. The analysis was based on the ‘triangular framework’ for analysing the political economy of modern slavery systems first presented in *Developing Freedom*,⁴⁹ which treats modern slavery as a product of: (1) the interaction of institutional settings; (2) the characteristics of vulnerable populations; and (3) exploiter strategies. While the case studies naturally had country-specific contextual differences, the project aimed for comparability and complementarity in the analysis.

2.4. Methodological limitations

The focus on the analysis of trade and investment instruments in workstream 2 provides insights on the extent to which modern slavery concerns have been addressed in the domains of trade and investment, and key patterns and trends in how these concerns are represented. However, this does not explain the reasons why trade and investment agreements are settled on these terms, nor how negotiation processes and priorities shape the instruments that are ultimately adopted. Likewise, the analysis does not indicate the extent to which these instruments deliver changes in policy or practice in

⁴⁷ Walk Free, ‘Global Slavery Index’ (2023) <https://www.walkfree.org/global-slavery-index/>.

⁴⁸ Aggregated from NCA and Home Office National Referral Mechanisms statistics published from 2014-2022. See further Lumley-Sapanski et al. (2023) ‘Criminalizing survivors of modern slavery: the United Kingdom’s National Referral Mechanism as a border-making process,’ Rights Lab ESRC-funded project *Pathways Through Liberation: Revealing Survivors’ Support Needs* [grant number ES/T016337/1].

⁴⁹ James Cockayne, ‘Developing Freedom: The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking’ (United Nations University Center for Policy Research, 2021) https://www.developingfreedom.org/wp-content/uploads/2021/01/DevelopingFreedom_MainReport_WebFinal.pdf.

trade and investment partners with regard to modern slavery concerns, since the coding is a snapshot of the current state of affairs and does not capture the dynamic nature of trade or its possible impact on modern slavery or forced labour. Thus, while the analysis helps to improve understanding of the terms of trade and investment and potential explanatory factors underpinning these trends, further investigation is required to understand how these impact modern slavery dynamics at scale.

The formal theoretical model and econometric analysis overcomes some of the limitations in the coding and case study elements of the workstreams. First, the formal theoretical model demonstrates why and how we can expect different kinds of relationships between international trade and forced labour given the underlying complexities of global trade relations. Second, the cross-national and time-series data sets used in the econometric analysis allowed us to test for 'endogeneity' (i.e., a possible two-way relationship between international trade and forced labour) and to provide a set of generalisable inferences across a wide sample of countries and time. Third, the use of time series data sets in the analysis allows for a richer understanding of the dynamics of international trade and its relationship to forced labour. The analysis, however, is not without its own limitations, including the binary coding of forced labour presence in one data set (extensive margin), and the inclusion of modern slavery practices not related to forced labour (intensive margin) in the other data set. In recognising these limitations, we carried out a series of further robustness checks and alternative modelling strategies, which upheld the main findings set out in this report.

The case studies provided additional contextual and nuanced evidence on the variation in market size, economic structures, asymmetries between trading partners, differences in terms of inclusion of modern slavery, forced labour, and human trafficking provisions in agreements, and impacts of trade and investment relations on modern slavery. However, there are certain limitations to the generalisability of the lessons learned in each study or the comparison across the studies. There are clear differences between the countries in the products disproportionately affected by modern slavery, forced labour, and human trafficking. There were also significant differences in terms of participation in international legal instruments and domestic legal frameworks in a region of the world that has high estimated prevalence of modern slavery. Thus, the four case studies can be seen as indicative of some patterns and trends in the relationships between trade, investment, and modern slavery, but may not be representative of a larger set of countries.

3. Findings

Our analysis shows that the relationship between trade, investment, and modern slavery is multi-faceted and nuanced. The findings presented below provide insights across four key thematic areas:

1. The consideration of modern slavery concerns in trade and investment instruments.
2. The relationship between trade, investment, and modern slavery risks and dynamics.
3. Comparisons in the dynamics of trade, investment, and modern slavery in four country case studies.
4. The impact of trade bans and restrictions on modern slavery and forced labour risks and dynamics.

3.1. Modern slavery concerns in trade and investment agreements

While the relationships between trade, investment, and modern slavery are apparent,⁵⁰ the role of international trade and investment agreements in reducing modern slavery risks and outcomes is less clear. Three core questions emerge in considering the role of legal and policy instruments within the domains of trade and investment in tackling modern slavery:

1. To what extent should modern slavery concerns be addressed in trade and investment instruments? (normative)
2. How are modern slavery concerns currently being addressed in trade and investment agreements? (descriptive)
3. How do efforts to address modern slavery concerns in trade and investment instruments impact policy, practice, and prevalence? (causal)

Traditionally, both trade and investment have been engaged as domains distinct from issues of labour and human rights. Historically, bilateral investment treaties (BITs) have focused exclusively on the protection of investments and have not addressed issues considered extraneous to concern, such as modern slavery.⁵¹ Likewise, the traditional objectives of trade law focus on facilitating access to commodities, providing new

⁵⁰ See for instance Schwarz et al, above n 35; Todd Landman, Katarina Schwarz, and Katrina Peake, 'Advancing Human Rights in Asia through Trade after Brexit' (Asia Research Institute, 2019) <https://www.nottingham.ac.uk/asiaresearch/documents/policy-briefs/policy-report-schwarz.pdf>.

⁵¹ Tove Lovgren Frisk, 'The Effectiveness of Labour Provisions in Bilateral Investment Treaties and their Future Potential' (MA Thesis, Uppsala Universitet 2018).

markets for goods, and maximising availability of inexpensive goods.⁵² However, the intersections between trade and investment and human and labour rights issues has increasingly been the subject of scrutiny, and efforts to integrate such considerations in agreements negotiated in these domains has increased substantially in recent years.⁵³

As outlined in section 3.2, the nexus between international trade and investment on the one hand, and modern slavery practices on the other, is clearly established (albeit highly complex). The growing body of evidence and practice supports a shift towards meaningful consideration of modern slavery concerns in trade and investment instruments. Empirical analysis of trade agreements (TAs) and bilateral investment agreements (BITs) conducted in the TRIMS project reveals the extent to which modern slavery concerns are currently being addressed in trade and investment instruments adopted by the UK and Indo-Pacific states.

While a substantial body of practice has developed in addressing modern slavery concerns in TAs, attempts to address such issues in BITs remains nascent. Approaches to addressing human and labour rights concerns, including modern slavery issues, in TAs has undergone significant evolution in recent decades. For instance, prior to 2006, the EU addressed human rights concerns in TAs through ‘essential elements clauses.’ This approach positioned human and labour rights as ‘essential elements’ of TAs without extensive consideration of the specific nature of duties and responsibilities connected to the trade relationship and in many cases without non-compliance clauses. The 2006 EU global trade strategy marked a shift to more substantial engagement with modern slavery relevant concerns, introducing ‘trade and sustainable development’ (TSD) chapters in all EU new generation FTAs.⁵⁴ Such evolution is not evident in BITs, where modern slavery relevant concerns are seldom referenced at all and there remains a paucity of references to the related domains of human rights, labour rights, and sustainable development.

Note: A more detailed breakdown of these practices and where they occur is available in the trade agreements and BITs coding and analysis report.⁵⁵

3.1.1. Modern slavery practices in trade agreements and bilateral investment treaties

While the shift towards considering human rights, labour rights, and sustainable development concerns in trade agreements has diffused throughout global practice,

⁵² Lawrence E Briskin, ‘Dynamics and Objectives of International Trade’ (1993) 7(5) *The International Trade Journal* 569.

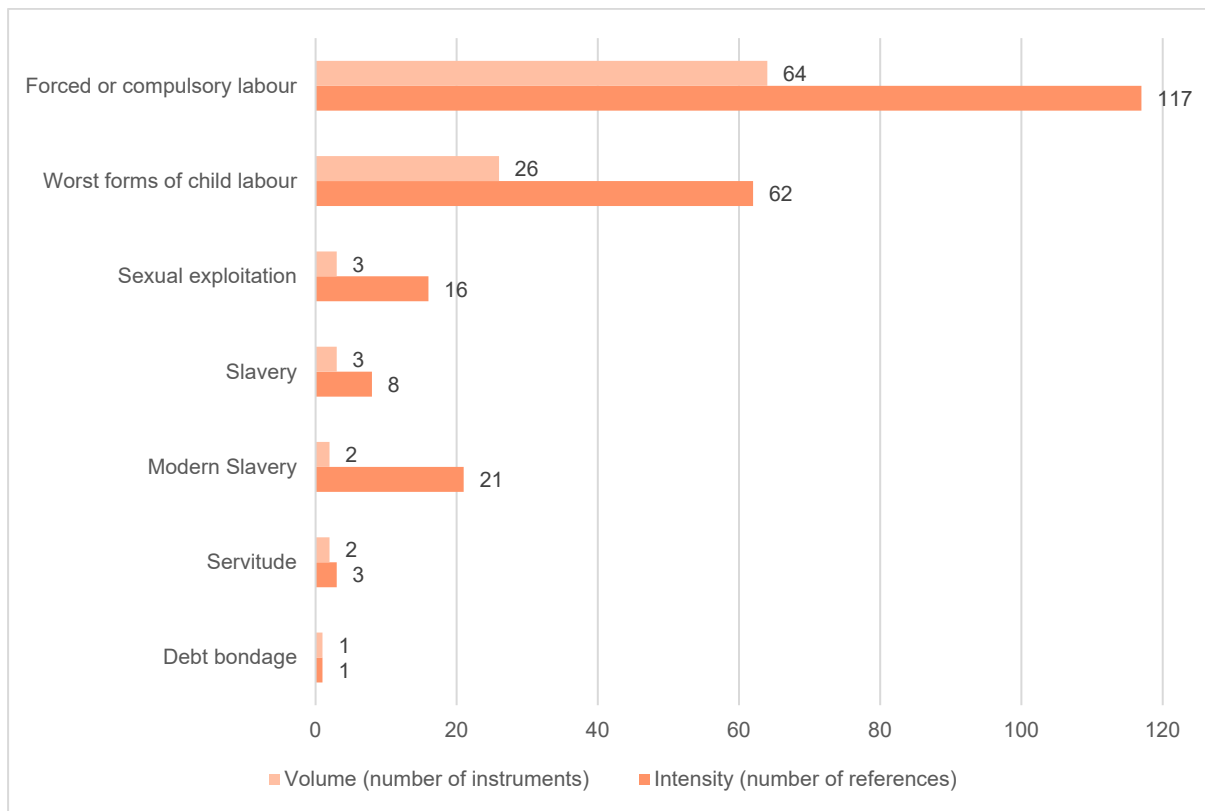
⁵³ See Schwarz et al, above n 35; Landman, Schwarz, and Peake, above n 53; D Gaukrodger, ‘The Future of Investment Treaties’ (OECD, 2021) <https://www.oecd.org/daf/inv/investment-policy/OECD-Investment-Treaty-Conference-March-2021-Agenda.pdf>.

⁵⁴ Landman, Schwarz, and Peake, above n 50.

⁵⁵ Celiksoy, Schwarz, and Masiko, above n 42.

reference to modern slavery practices specifically remains relatively limited. Globally, only 64 of the identified and coded 348 TAs (18.4%) contained one or more reference to modern slavery practices. The most common modern slavery practice referenced in these instruments was forced or compulsory labour—all 64 instruments considered this form of modern slavery specifically (see Figure 3). In addition, 26 instruments specifically referenced the worst forms of child labour. Other modern slavery practices were scarcely reflected in the instruments, with sexual exploitation and slavery itself each identified in only three instruments, servitude and ‘modern slavery’ identified in two, and debt bondage referenced in only one TA.

Figure 3. Volume and intensity of reference to different modern slavery practices in TAs globally



Intensity is generally aligned with volume—that is, modern slavery practices referenced in a larger number of instruments (volume) were also referenced more frequently (intensity). On average, instruments referencing forced labour contained 1.8 references to the practice, and instruments referencing the worst forms of child labour contained an average of 2.4 references. Where modern slavery and sexual exploitation appeared, they did so with a much higher intensity than other practices—with averages of 10.5 and 5.3 references per instrument respectively.

The 108 UK and Indo-Pacific TAs coded more comprehensively in phase 2 largely followed these global patterns—22 of the 108 instruments coded (20.4%) contained reference to modern slavery practices, and the most commonly referenced practices were forced or compulsory labour and the worst forms of child labour (see Figure 4).

Human trafficking also appeared in these instruments, while sexual exploitation was not addressed specifically in any UK-Indo-Pacific TAs coded. Instruments typically contained only one specific reference to the relevant modern slavery practice, although the average number of references was higher for instruments considering ‘modern slavery’ specifically (average 2.5 references per instrument) or human trafficking (average 2 references per instrument).

Figure 4. Volume and intensity of reference to different modern slavery practices in UK-Indo-Pacific TAs

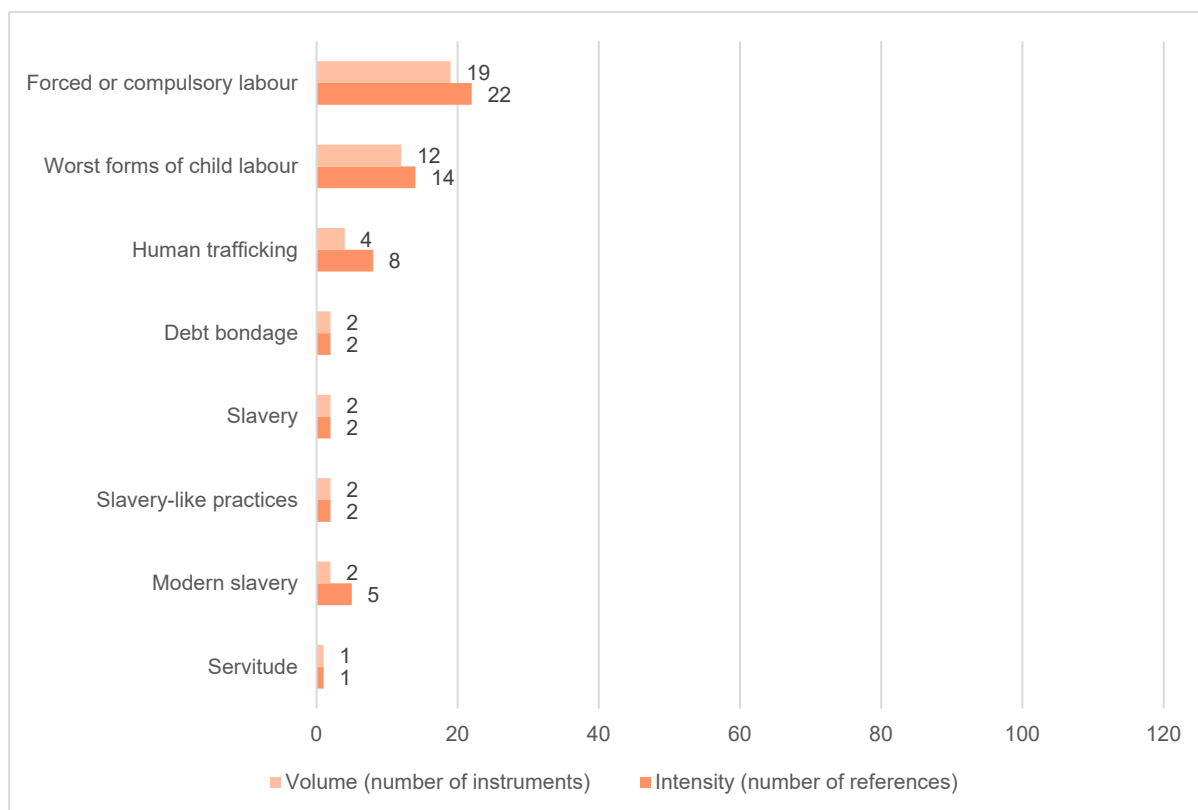


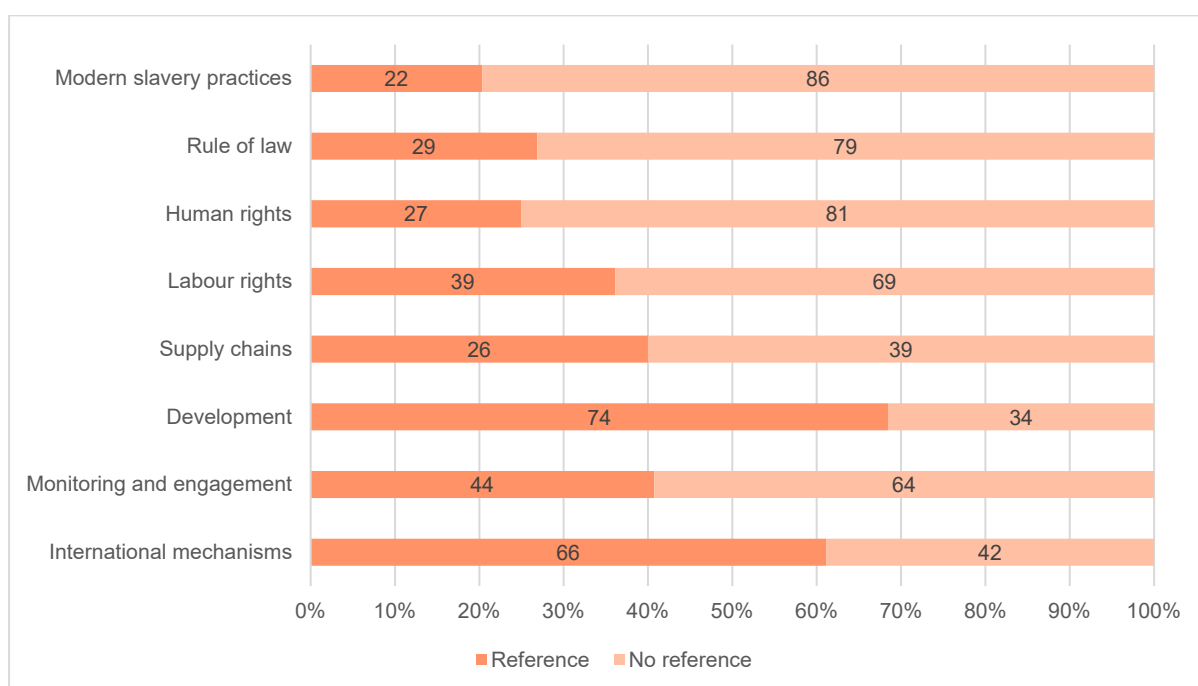
Figure 3 and Figure 4 demonstrate that specific references to modern slavery practices in trade agreements remain scarce, and largely focus exclusively on forced labour and the worst forms of child labour. References in BITs, by comparison, were non-existent. No UK-Indo-Pacific bilateral investment treaties coded in this study included specific reference to any modern slavery practice.

Overall, volume and intensity were correlated in UK-Indo-Pacific TAs—instruments with reference to a wider range of modern slavery relevant concerns were also more likely to reference these issues multiple times (see Figure 10). This demonstrates that instruments considering a wide range of modern slavery relevant concerns are also more likely to address these concerns more extensively in the text.

3.1.2. Modern slavery-relevant concerns in UK-Indo-Pacific TAs and BITs

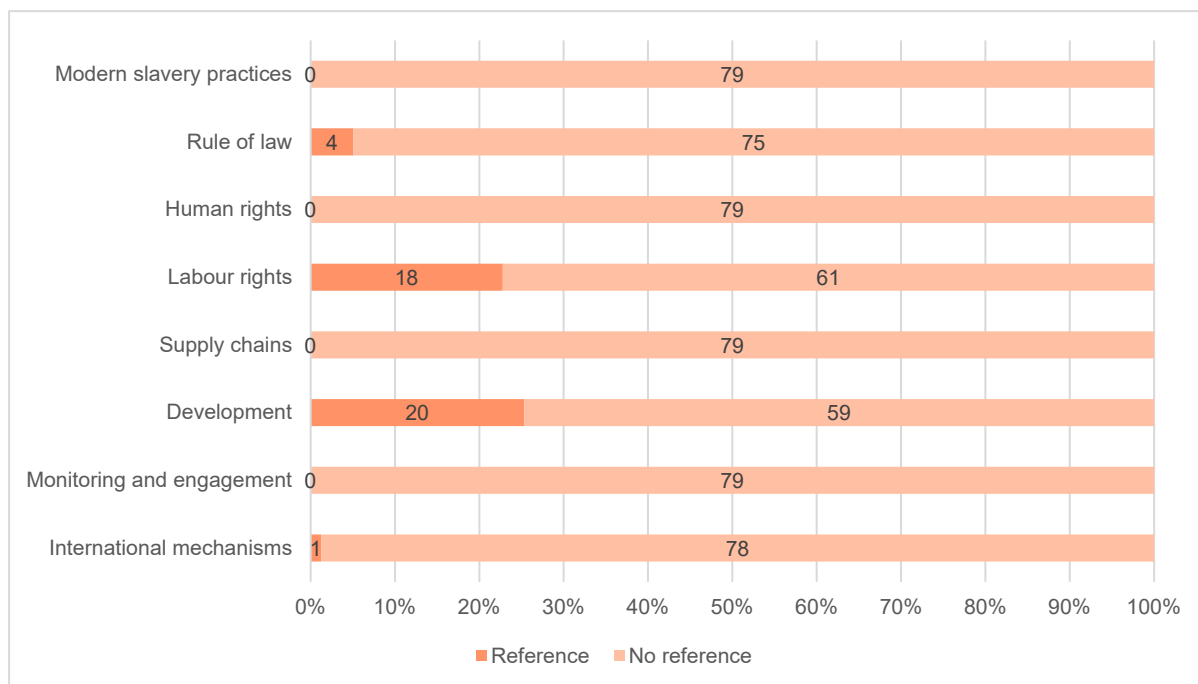
Specific references to modern slavery practices are a key marker of the extent to which these issues are addressed in trade and investment instruments. However, other provisions may also effectively capture modern slavery issues without explicit reference to any modern slavery practice. For instance, instruments might reference relevant international treaties that contain modern slavery provisions, provide broadly for human or labour rights protections, or advance a sustainable development agenda. The TRIMS TA and BIT coding framework assessed UK-Indo-Pacific instruments against 119 modern slavery relevant codes (see section 2.2.1).

Figure 5. Number of UK-Indo-Pacific TAs with reference to modern slavery relevant concerns



Development issues, such as sustainable development and environmental sustainability were the most commonly addressed thematic focus area in UK-Indo-Pacific TAs coded, considered in 74 of the 108 instruments (68.5%) (see Figure 5). Development concerns addressed (and coded) in TAs included, *inter alia*, poverty reduction, raising living standards, access to education, and development aid. Relevant international mechanisms were also commonly referenced in the TAs coded, considered in 66 agreements (61.1%). This included references to specific international organisations (for instance, the OSCE or WTO) and instruments (for instance, the Universal Declaration on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, or the UN Global Compact). Modern slavery practices themselves were the least commonly referenced, while rule of law, human rights, and supply chains concerns were also relatively under-represented.

Figure 6. Number of UK-Indo-Pacific BITs with reference to modern slavery relevant concerns



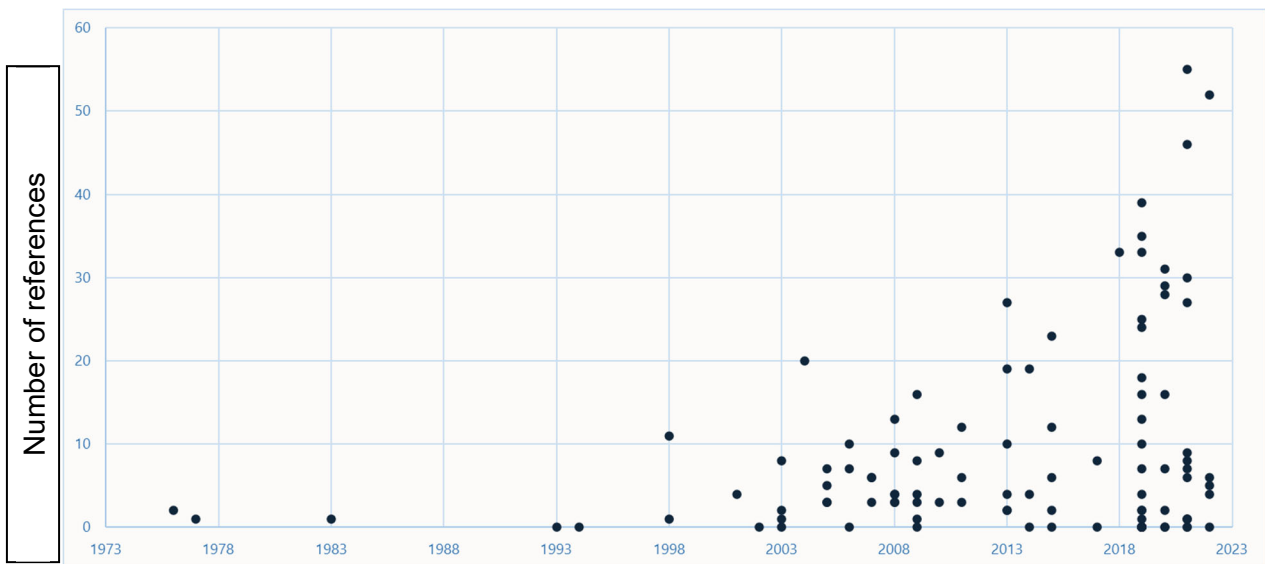
In UK-Indo-Pacific BITs, modern slavery relevant concerns were overall less engaged (see Figure 6). Modern slavery practices themselves, human rights issues, and supply chains concerns were not addressed in any of the BITs studied. Reference to other relevant thematic focus areas was also limited, with only one instrument referencing relevant international mechanisms and four considering key rule of law concerns. Development concerns were the most represented thematic focus area coded, found in 20 of the 79 instruments coded (25.3%), while labour rights issues were addressed in 18 BITs (22.8%).

These findings demonstrate that the inclusion of modern slavery relevant concerns is more developed in UK-Indo-Pacific TAs than in BITs. Although development concerns—including sustainable development—have found the strongest footing in both TAs and BITs, this is not yet systematised across all TAs and only emerges in a quarter of all UK-Indo-Pacific BITs. References to relevant international mechanisms and instruments are common in TAs, however, they have not yet reached two thirds of trade instruments. Further, international regimes have yet to find a footing in BITs. Overall, practice in integrating modern slavery relevant concerns remains piecemeal, and has yet to be systematised across either of the two domains. Network members further emphasised that there remains a certain opacity as to how and in what way trade negotiators put labour, human rights, and modern slavery provisions ‘on the table’ at different stages of the negotiations.⁵⁶

⁵⁶ Second Meeting of the TRIMS network, 26 July 2023.

The inclusion of modern slavery relevant concerns in TAs has broadly increased over time (see Figure 7). Earlier instruments contained very few references to modern slavery relevant concerns. The earliest instruments (adopted in the 1970s and 1980s) contained only one or two references to relevant development concerns. Three of the four instruments adopted in the 1990s also contained few or no references to modern slavery relevant issues, with the exception being the 1998 New Zealand-Malaysia Agreement on Labour Cooperation, which included consideration of labour rights. Later instruments were more likely to include modern slavery relevant concerns. However, it should be noted that practice in recent years is far from systematic—there is a high level of variation in the extent to which modern slavery relevant concerns are addressed in agreements adopted from 2000 to 2022.

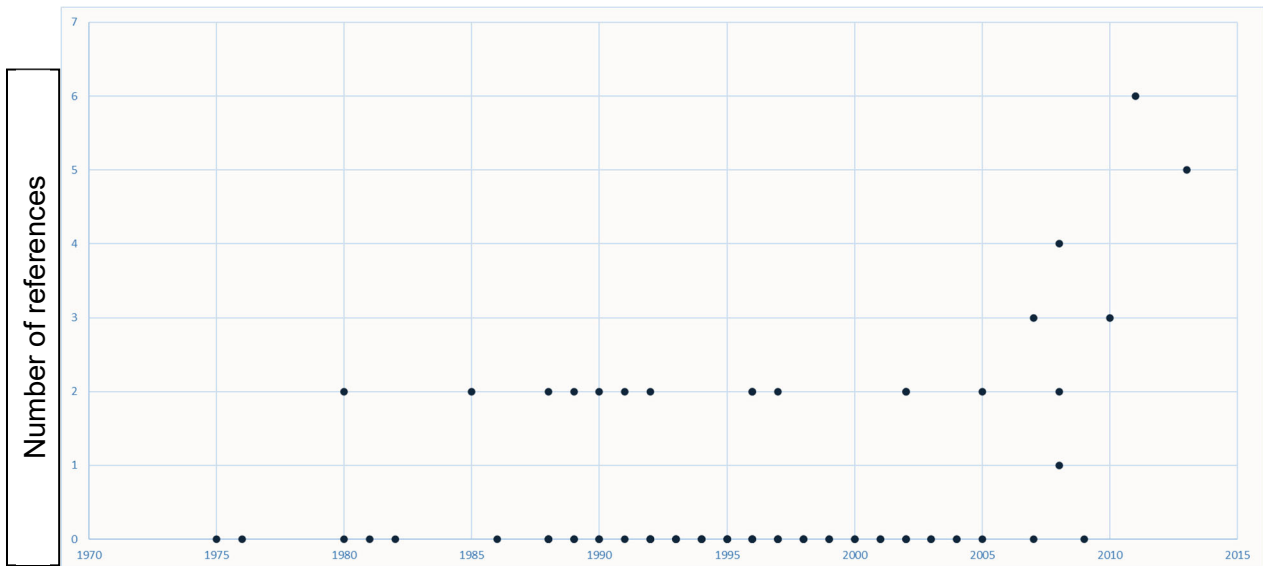
Figure 7. References to modern slavery relevant concerns in UK-Indo-Pacific TAs over time⁵⁷



Given the nascency of efforts to address modern slavery relevant concerns in BITs, it is unsurprising that there has not yet been a significant evolution over time in the number of relevant issues that are addressed in the instruments (see Figure 8). While some progress has been made in the consideration of such issues in BITs in recent years, practice remains limited across the board. Thus, substantial efforts are needed to translate emerging improvements into a meaningful trend.

⁵⁷ Each dot represents a single trade agreement.

Figure 8. References to modern slavery relevant concerns in UK-Indo-Pacific BITs over time⁵⁸



While there are global frameworks for the regulation of international trade, there are no similar arrangements for flows of capital through investment.⁵⁹ TRIMS conference participants therefore focused on the voluntary and collaborative efforts of investors and the potential role for stock exchanges to address modern slavery risks. In the UK, for example, there is the ‘Find it, Fix it, Prevent it’ collaboration of 65 investors with assets under management of £15 trillion (GBP).⁶⁰ In the Asia-Pacific, there is Investors Against Slavery and Trafficking with \$9.4 trillion (AUD) assets under management.⁶¹ In both cases, investors use structured engagement with the companies in which they have investments to raise forced labour issues.

⁵⁸ Each dot represents a single bilateral investment treaty.

⁵⁹ TRIMS conference, November 2022.

⁶⁰ See further CCLA, ‘Engagement Expectations: Find It, Fix It, Prevent It – An Investor Project to Tackle Modern Slavery’ <https://www.ccla.co.uk/documents/modern-slavery-engagement-expectations/download?inline=true>.

⁶¹ Investors Against Slavery and Trafficking Asia Pacific, ‘Who we are’ (IAST APAC, 2023) <https://www.iastapac.org/>.

Figure 9. Volume and intensity of reference to modern slavery relevant concerns in top 30 TAs

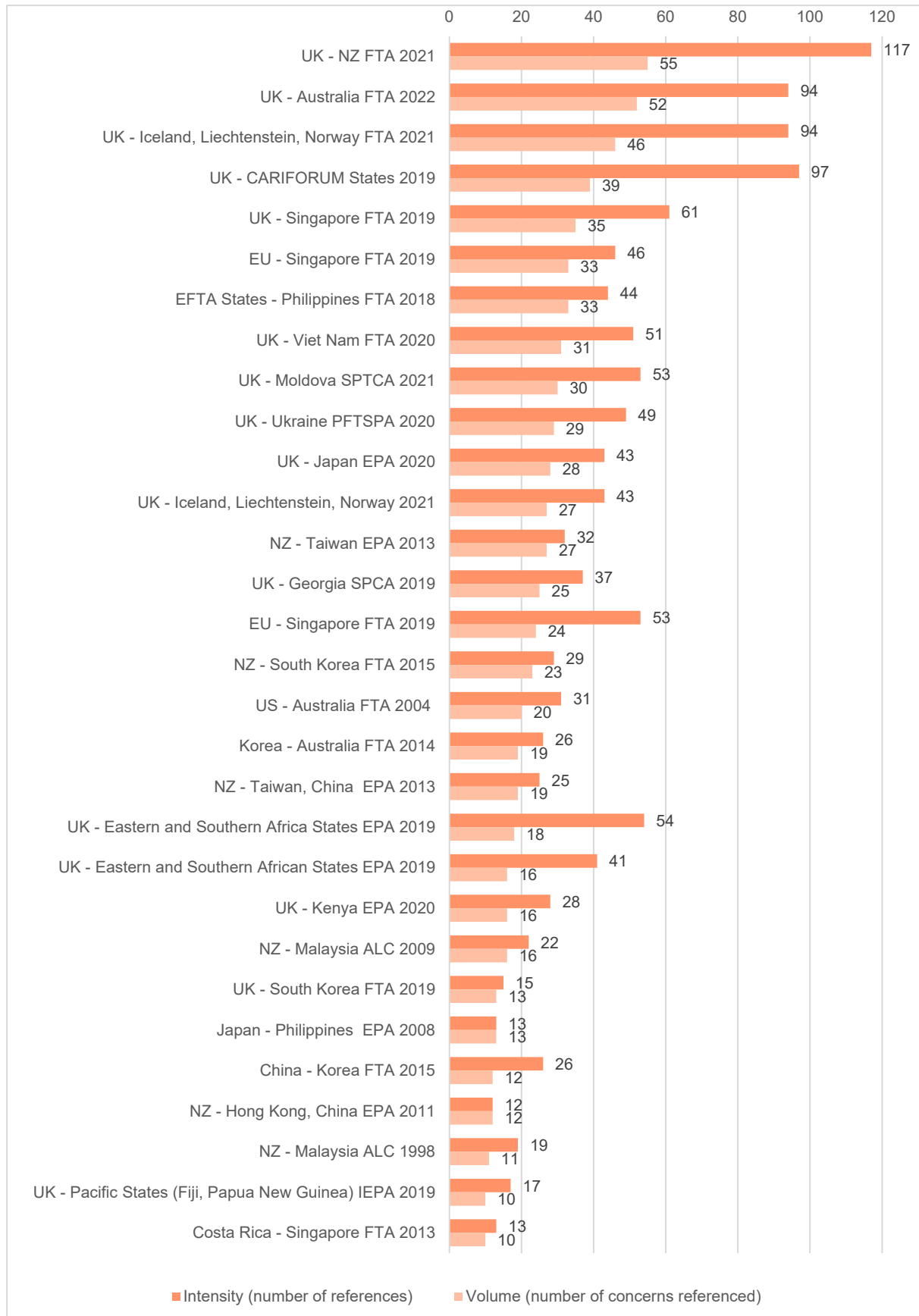
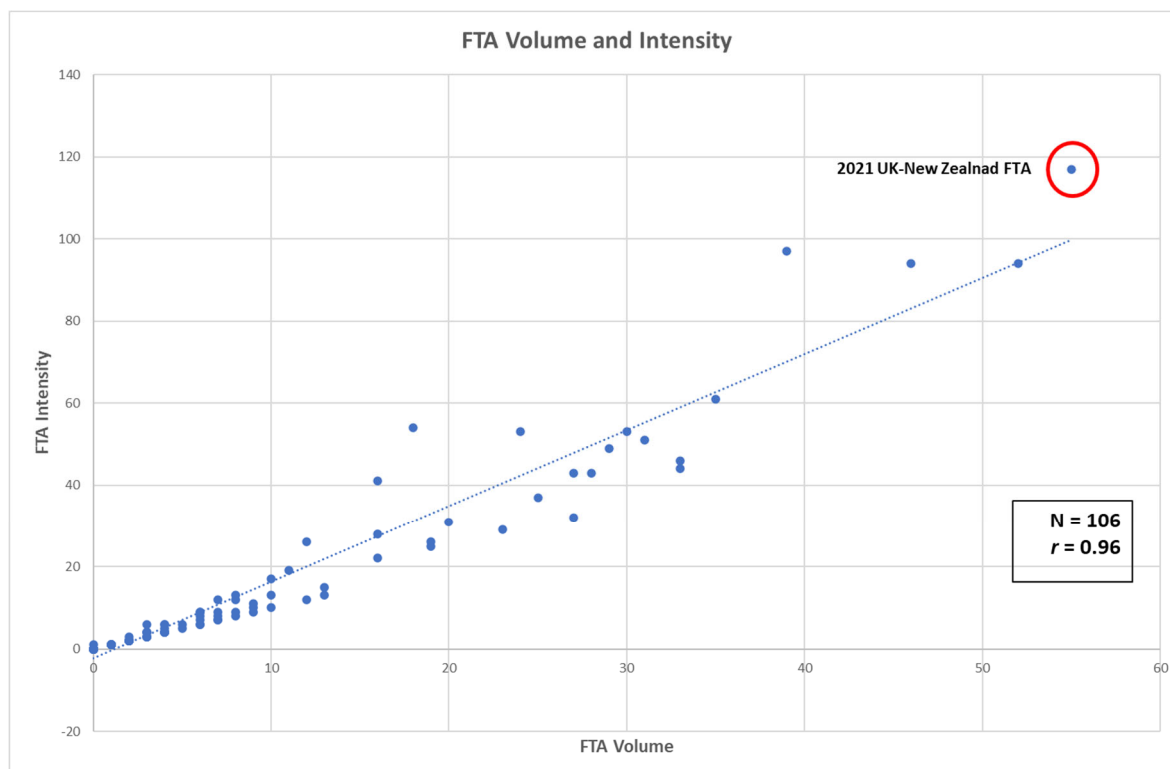


Figure 10. Scatterplot of volume and intensity of UK-Indo-Pacific FTAs



Note: Total number of FTAs is 106, where *r* is Pearson’s *r* measure of linear correlation, which ranges from -1 (strong negative relationship) to 1 (strong positive relationship), calculated at the 99% level of confidence.

Volume and intensity were strongly correlated ($r = 0.96$, $p < .000$) for the consideration of all modern slavery relevant concerns in FTAs—demonstrating that consideration of a wider range of relevant issues in trade instruments was also likely to deliver a more substantial consideration of these concerns.⁶² The instrument with the highest volume (55) and intensity (117) of modern slavery relevant provisions is the 2021 UK-New Zealand FTA (Figure 10, red circle in the top right corner). This is followed by the 2022 UK-Australia FTA, 2021 UK-Iceland, Liechtenstein, Norway FTA, and 2019 UK-CARIFORM States agreement (see Figure 9 and Figure 10).

On the other end of the spectrum, the 2019 UK-Faroe Islands FTA had no references to modern slavery relevant concerns, and therefore scored zero on both volume and intensity. Almost a quarter of FTAs coded did not contain any reference to the modern slavery relevant concerns coded in this study. This included several instruments negotiated by the United Kingdom in the past five years.

⁶² This assumes that higher intensity (i.e. a higher number of references to modern slavery relevant considerations) represents a more substantial consideration of these issues.

Text box 1. The role of survivors, vulnerable populations, and other affected stakeholders in shaping trade and investment arrangements

Civil society engagement has been increasingly integrated into trade policy at various stages of the process.⁶³ Labour unions are the most common non-business stakeholder engaged in these mechanisms in connection with trade and sustainable development provisions in trade agreements.⁶⁴ Stakeholder selection in these contexts appears to be largely instrument-specific and issue-driven, and civil society participation is rarely institutionalised or harmonised across FTAs.⁶⁵ A growing body of practice among other key international actors committed to addressing human rights, labour rights, and modern slavery integrates CSOs in the context of trade policy (for instance, the EU and Canada through Domestic Advisory Groups and Civil Society Forums, the US through the national advisory committee, and Switzerland through the EFTA Consultative Committee).⁶⁶ CSO engagement in this context has been characterised as ‘crucial’, particularly in relation to modern slavery.⁶⁷ However, in UK-Indo-Pacific TAs coded in the study, only six created mechanisms for participation of civil society organisations. No UK-Indo-Pacific BITs coded created such mechanisms.

Where mechanisms for CSO engagement exist, this does not necessarily translate into stronger modern slavery, human rights, or labour rights protections in the final instruments adopted. For instance, during the negotiations for the China-Australia FTA (CHAFTA), the Australian Fair Trade and Investment Network (AFTINET) highlighted China’s record on labour rights, warning that CHAFTA would reward violations of labour rights by granting Chinese products preferential market access to Australia.⁶⁸ Such concerns did not significantly alter the shape of the treaty, as demonstrated by the low volume and intensity of references to modern slavery in this treaty.⁶⁹

Although the body of practice engaging CSOs in trade policy mechanisms considering human rights, labour rights, and modern slavery issues has developed in recent years, this is yet to be systematised. On the other hand, no substantial evidence of survivors and vulnerable populations being directly involved in, or significantly influencing, the direction of trade and investment agreements was identified in this study. This is potentially explained by the nature of negotiations, which happen between representatives of their respective governments, and almost always behind closed doors.⁷⁰ To date, it appears that efforts to meaningfully engage people with lived

⁶³ LSE Consulting, ‘Comparative Analysis of Trade and Sustainable Development (TSD) Provisions for Identification of Best Practices to Support the TSD Review’ (European Commission, November 2021), p 93.

⁶⁴ *ibid.*

⁶⁵ Schwarz et al, above n 35, pp 75-77.

⁶⁶ *Ibid.*, p 76.

⁶⁷ *Ibid.*, pp 76-77.

⁶⁸ See ‘China Case Study’, above n 45.

⁶⁹ Celiksoy, Schwarz, and Masiko, above n 42.

⁷⁰ TRIMS conference, November 2022.

experience of modern slavery, vulnerable populations, and other affected stakeholders in shaping trade and investment arrangements are extremely limited. Thus, the unique insights that those with lived experience of modern slavery are able to bring are persistently overlooked in the domains of trade and investment.

3.2. The relationship between trade, investment, and modern slavery

Labour is a core element of any supply chain, which is comprised of different combinations and intensities of labour and capital along different parts of the supply chain. The relationship between trade, investment, and modern slavery risks is not particularly straightforward, since it depends on the nature of production, the goods and services that form the basis of trade, and the degree to which any partners in the trading relationship have formal and informal protections in place against forced labour. While there is evidence that global value chains do promote growth, the existence of modern slavery practices at different points of the supply chain is at present a system failure.⁷¹

Challenges associated with estimating the prevalence of modern slavery and risks owing to the ‘hidden’ nature of the phenomenon and the ‘fundamental problem of unobservability’⁷² affect our ability to understand and evidence the relationship between trade and investment and modern slavery. Prevalence data is often made up of estimates with relatively high degrees of uncertainty and there is a paucity of comparable data over time. This makes it difficult to assess the impact of policy and legislation in tackling the risks. The World Trade Organisation’s (WTO) exclusion of labour standards and rights from trade agreements also makes it difficult to assess and address these risks in the context of the WTO. Yet, changing this approach presents a significant challenge, as agreement between 164 WTO Members would be needed.⁷³

Our econometric analysis used a cross national and time-series data set for forced labour observance⁷⁴—what we call the ‘extensive’ forced labour margin (i.e., proportion of countries with observed forced labour over time)—and a cross national data set on the prevalence of forced labour⁷⁵—which we call the ‘intensive’ labour margin (i.e., the number or proportion of people in countries estimated to be in modern slavery) to test a

⁷¹ TRIMS conference, November 2022.

⁷² See Todd Landman, ‘Measuring Modern Slavery: Law, Human Rights, and New Forms of Data’ (2020) 42(2) *Human Rights Quarterly* 303; and Todd Landman and Christine Garrington, *The Rights Track: Sound Evidence on Human Rights*, (Anthem Press 2022).

⁷³ TRIMS conference, November 2022.

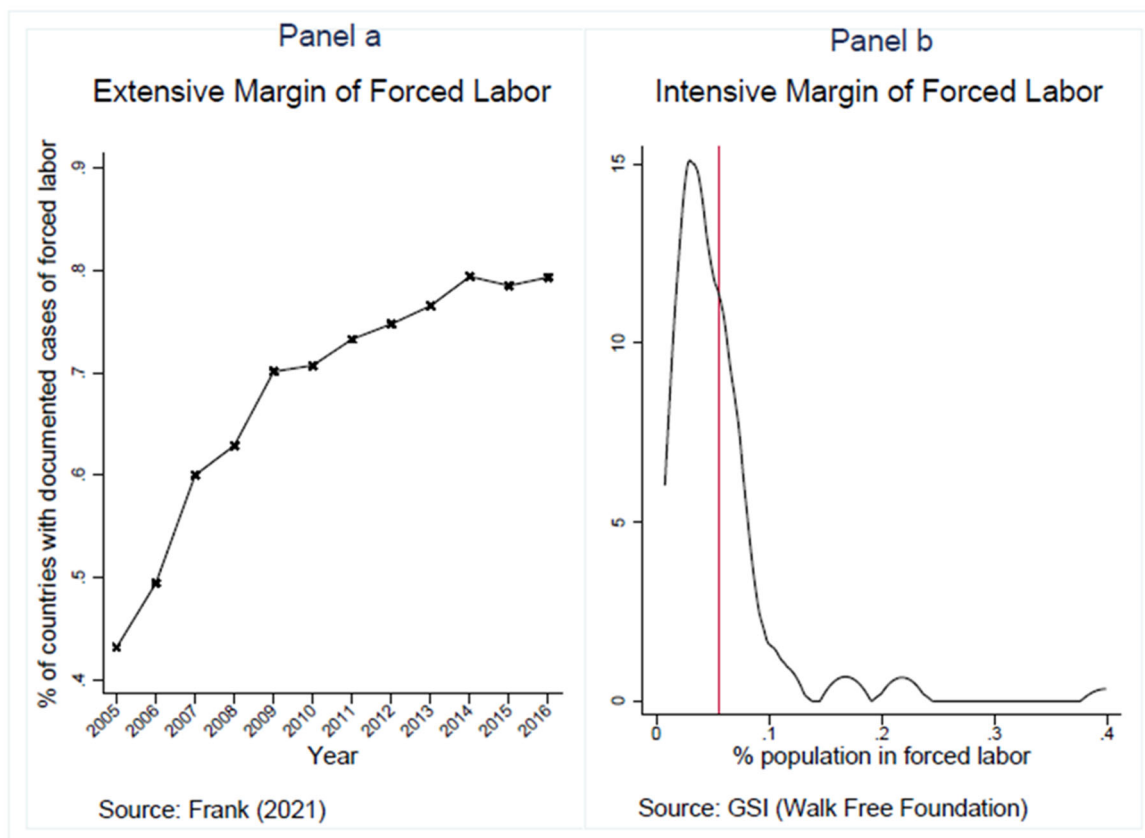
⁷⁴ Richard W Frank, ‘Human trafficking indicators: A new dataset’ 48(1) *International Interactions* 152.

⁷⁵ Walk Free Foundation, ‘Global Slavery Index 2018’ (Technical Report, 2018)

<https://globalslaveryindex.org/resources/downloads/>

number of propositions derived from our formal theory (see Figure 11).⁷⁶ Overall, the model predicts that the effect of international trade on forced labour depends on the type of products favoured by trade-induced changes in relative prices and on institutional characteristics of trade partners involved in the bilateral trade relationship.

Figure 11. Extensive and intensive margins of forced labour over time



The empirical analysis testing the formal model began with simple bi-variate modelling of the relationship between international trade and forced labour for both the extensive and intensive margins, which revealed simple negative relationships for international trade and both our extensive margin and intensive margin measures, such that increases in international trade are associated with lower levels of forced labour. This simple modelling, however, ignores additional significant factors that may be driving the relationship, such as endogeneity effects (i.e., two-way relationships between trade and forced labour), the institutional arrangements in countries, geographical proximity, and other factors. The more extensive modelling and analysis controlling for these factors revealed important and differentiated findings for: (1) the extensive labour margin; (2) the intensive labour margin; and (3) policy harmonisation.

⁷⁶ Facundo Albornoz, Matthias Dahm, Luis Fronces, and Todd Landman, 'International Trade and Forced Labour' (2023) University of Nottingham Working Paper; currently under review with *International Organization*.

3.2.1. Extensive margin of forced labour

For the extensive margin, we found that trade openness does not generally affect the probability of observing forced labour; that trade openness reduces the extensive margin of labour when involving trade partners characterised by high labour rights protections; and that this effect is particularly relevant for trade in products that are intensive in both unskilled labour and the production of primary goods.

These findings for the extensive margin have implications for policy, since any measures adopted should reflect on the nature of the trade relations, the underlying impact on the terms of trade (i.e., the ratio of export prices to import prices), the kinds of goods being traded, and the degree to which labour protections are in place. The key message from this part of the analysis is that introducing forced labour protections can mitigate the potential negative effects of free trade on forced labour.

3.2.2. Intensive margin of forced labour

For the intensive margin, we found that trade openness does increase the intensive margin of forced labour: trade with countries with high levels of labour protection is related to a reduction in the number of workers under forced labour conditions (the inverse is true for countries with low levels of labour protection). This effect is explained by trade in products that are intensive in unskilled workers and the production of primary goods. Like the findings for the extensive margin, these findings have policy implications, since in the absence of labour protections, increased trade openness can increase the use of forced labour. The introduction of forced labour protections will thus likely reduce the worst effects of forced labour from free trade.

3.2.3. Forced labour policy harmonisation

With respect to policy harmonisation, we find that increasing trade with countries with high levels of labour protection is related to increases in anti-forced labour government enforcement policies. This final finding demonstrates one underlying mechanism for policy diffusion and policy harmonisation and supports the case that the UK government should pursue trade agreements that include provisions addressing modern slavery practices, building on extant international and domestic legal frameworks. It is also reasonable to argue from our analysis that benefits from trade can still accrue to both trading partners between and among those partners that have labour protections in place. Although these provisions may lead to increased import costs in the short term, they have the potential to steer trade towards higher quality and more differentiated products, fostering economic growth and development. The gains, in this case, are higher than the costs, including higher productivity, reduction in inter-generational poverty, reduction in institutionalised inequality, a greater harnessing of multiplier effects, increases in innovation in production processes, better functioning of capital markets,

and lower costs to the public purse in the long run.⁷⁷ These different long term benefits can make trade globally beneficial while at the same more socially sustainable.

Our econometric analysis demonstrates that there remain strong economic drivers for forced labour, but these drivers vary according to the basis of trade between partners and, more importantly, they can be mitigated through the provision of labour protections. Forced labour, human trafficking, child labour, and debt bondage constitute the most prevalent forms of modern slavery practices related to trade and investment. These risks are particularly pronounced in countries where there is a preponderance of unskilled labour used for the production and export of primary goods. Key modern slavery risk factors and patterns in the Indo-Pacific include:

1. Labour-intensive primary goods production that uses unskilled, low wage, and migrant labour.
2. Weak national institutional arrangements, including lower levels of democracy and protection of human rights.
3. Paucity or low enforcement of forced labour legislation and policy.

There is thus a strong case for the introduction and use of measures that address forced labour in trade and investment agreements. Against this general call for more formal attention to ethical labour measures, however, there are significant contextual factors specific to the Indo-Pacific region, and individual states within it, that shape the modern slavery risks, patterns, and trends connected to international trade and investment. The inclusion of our four case studies provides a greater understanding of these different contextual factors and conditions within the Indo-Pacific.

3.3. The four case studies compared

Our case study analysis of China, India, Malaysia, and Thailand draws on a variety of sources, including formal text from the various TAs and BITs, reports and submissions from non-governmental organisations, committees and other groups within national parliaments, trade union organisations, investigative journalism and other media reports, and extant data on modern slavery, forced labour, and human trafficking. This section of the report is organised into four sections:

1. Trade and investment
2. Vulnerabilities and products
3. De jure anti-slavery measures
4. Lacunae and barriers to progress

⁷⁷ James Cockayne, *Developing Freedom: The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking*, (United Nations University 2021), 58-67.

3.3.1. Trade and investment

Across the four cases there is great variation in the volume of trade and investment (see Table 2). For trade, China and India are clearly large and important trading partners with a combined total of more than £140 billion in trade volume with the UK, whereas Malaysia and Thailand have a combined total of £11 billion in trade volume. For UK-Indo-Pacific investment, total inward and outward investment is highest for India (£28.4 billion), followed by China (£16.3 billion), Malaysia (£6.2 billion), and Thailand (£2.6 billion).

This variation in trade and investment volume affects any bargaining and negotiating position the UK may have and will variously affect its ability to address modern slavery and related practices or provide different entry points for negotiation based on material and institutional differences across the four countries. The UK has one TA and one BIT with Malaysia, one BIT with Thailand, one BIT with China, and no TAs or BITs with India. The coding and analysis of these agreements reveals a paucity of provisions on modern slavery or forced labour (see section 3.1). Since the BITs have virtually no commitments to protect labour rights, this summary of the case studies concentrates on TAs and other economic cooperation agreements.

China

China has 14 bilateral TAs and 2 regionally based multilateral TAs. Our research examined the 2015 China-Australia Free Trade Agreement (CHAFTA), the 2013 China-Iceland FTA, the China-Switzerland FTA, the China-Republic of Korea FTA, and the Asia-Pacific Trade Agreement (APTA).

In Australia, CHAFTA has been contested in the domestic political context owing to its democratic system, active civil society, Modern Slavery Act (2018), and the need for healthy trade relations with China. A review by the Australian Department of Foreign Affairs and Trade in 2020 concluded that CHAFTA had achieved its objective of enriching opportunities for businesses and consumers, while only once mentioning issues related to modern slavery and forced labour, citing the ‘the lack of enforceable commitments to implement the fundamental ILO Conventions on labour rights.’⁷⁸ Since this review, the Australian Government’s position is that a ‘transparency approach’ is the ‘preferred model for government to work together with business, civil society and academia to address modern slavery, including forced labour in supply chains.’⁷⁹

⁷⁸ China-Australia Free Trade Agreement Post-Implementation Review (Dec 2020)

<https://oia.pmc.gov.au/sites/default/files/posts/2021/03/china-australia-free-trade-agreement-pir.pdf>

⁷⁹ Australian Government, Department of Foreign Affairs and Trade, Australian Government response to the Senate Foreign Affairs, Defence and Trade Legislation Committee report: Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020, <https://www.dfat.gov.au/publications/international-relations/australian-government-response-senate-foreign-affairs-defence-and-trade-legislation-committee-report-customs-amendment-banning-goods-produced-uyghur-forced-labour-bill-2020>

There is a stark asymmetry in terms of size and market power between Iceland and China, where the China-Iceland FTA was initially seen as a necessary part of Iceland's recovery after the 2008 financial crisis. Article 96 of the FTA states that 'The Parties shall enhance their communication and co-operation on labour matters' but makes no formal commitment towards such matters. There are no further references made to human rights, workers' rights, or decent work in the FTA.⁸⁰

Like Iceland, Switzerland is also a small country relative to China. The 2014 China-Switzerland FTA does not contain particular provisions on labour rights. However, the FTA references the Agreement on Labour and Employment Cooperation, which was signed in 2013 (developed on the basis of a Memorandum of Understanding from 2011), which in parallel with the FTA contains four clear articles that address labour issues. The Agreement references international commitments under the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Declaration on Social Justice for a Fair Globalization, and Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, as well as domestic labour laws.⁸¹ Discussions on an update to the FTA have been stalled owing to increased concerns over labour and other human rights conditions in China.

The 2015 China-Republic of Korea FTA was initially contested by farmers and fisherman who feared their own markets being flooded with cheap goods. The FTA was approved with built-in subsidies for these groups,⁸² while the two countries continue to negotiate over key sectors with discussion on services, trade, and investment liberalisation. Overall progress has been slow, and negotiations were delayed by the Covid-19 pandemic and Korean attention to its own Regional Comprehensive Partnership (RCEP). The FTA makes no reference to a human rights or labour rights framework, types of exploitation, or the rule of law more broadly in relation to any aspect of modern slavery. The main labour related concern is about service suppliers or movement of the workforce: 'Labour market testing may be required as a condition for temporary entry of CSS [Contractual Service Suppliers], or numerical restriction may be imposed relating to temporary entry for CSS.'⁸³

⁸⁰ Free Trade Agreement between the Government Of Iceland and the Government of the People's Republic of China , <https://www.government.is/media/utanrikisraduneyti-media/media/fta-kina/Iceland-China.pdf>

⁸¹ Agreement on labour and employment cooperation between the federal department of economic affairs, education and research of the Swiss confederation and the Ministry of Human Resources and Social Security of the People's Republic of China (2013)

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Freihandelsabkommen/partner_fha/partner_weltweit/china/Abkommenstexte.html

⁸² AKI Press, 'South Korea's parliament approves free trade pact with China' (30 Nov 2015)

https://akipress.com/news:569217:South_Korea_s_parliament_approves_free_trade_pact_with_China/

⁸³ Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Korea (2015) http://fta.mofcom.gov.cn/korea/annex/xdzw_en.pdf

In its current and updated form, China formally became part of the APTA in 2006, which by 2002 included Bangladesh, China, India, Lao PDR, Mongolia, the Republic of Korea, and Sri Lanka.⁸⁴ In its original 1976 form (known as the Bangkok Agreement), the agreement makes no specific reference to labour rights, but commits to necessary measures that may be taken for ‘the protection of its national security, the protection of public morality, the protection of human, animal and plant life and health, and the protection of articles of artistic, historical, and archaeological value.’⁸⁵ After the Fourth APTA Ministerial Declaration in 2017, there were signs that APTA may become a deeper trade agreement that may recognise some ESG issues. The Declaration ‘recognised the inter-linkages between international trade with economic, social, and environmental policy objectives and the need to integrating [sic] them at all levels to achieve sustainable development (...) achieving greater transparency, eliminating Non-Tariff Barriers, and promoting green trade and investment.’⁸⁶

India

The UK and India started negotiations for an FTA in January 2022, which are now in their 12th round. In the UK and India Roadmap 2030, a Liberal Democrat peer, Lord Hussain, asked if the government would give assurances that a future trade deal would be linked with human rights. The government responded that the UK’s human rights commitments are central in its trading relationships.⁸⁷ The UK’s strategic approach to the trade agreement reaffirms ‘commitments to international labour standards,’ provides ‘assurance that parties will not waive or fail to enforce their domestic labour protections in ways that create an artificial competitive advantage’ and ‘provide for appropriate mechanisms for the implementation, monitoring and dispute resolution of labour provisions.’⁸⁸ Despite these commitments, the House of Commons International Trade Committee has criticised a lack of transparency from the UK Government over trade negotiations.⁸⁹

⁸⁴ Asia Pacific Free Trade Agreement (APTA), https://www.unescap.org/sites/default/files/Brochure-of-the-APTA_Nov-2020.pdf.

⁸⁵ First Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement) (1976) <https://www.unescap.org/sites/default/files/1-Bangkok-Agreement.pdf>

⁸⁶ Mohammad Farhad, ‘Asia-Pacific Trade Agreement an evolving preferential regional trade agreement’ (2022) <https://repository.unescap.org/handle/20.500.12870/5184>

⁸⁷ House of Lords, ‘UK and India Collaboration: Roadmap to 2030’ (2023) <https://lordslibrary.parliament.uk/uk-and-india-collaboration-roadmap-to-2030/>

⁸⁸ Department for International Trade, ‘UK-India Free Trade Agreement: The UK’s Strategic Approach’ (2022) 16-17 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf

⁸⁹ House of Commons International Trade Committee, ‘UK Trade Negotiations: Agreement with India, Fifth Report of Session 2022-23’ (2023) <https://committees.parliament.uk/publications/39121/documents/192295/default/>

Outside the UK and in the Indo-Pacific, the Preamble of the India-Thailand Framework Agreement (2003) speaks of ‘reaffirming the rights and obligations with respect to each other under existing bilateral, regional and multilateral agreements’ without expressly mentioning the international rights framework. The India-Malaysia Economic Cooperation Agreement (2011) has a similar phrase in its preamble, with the aim to ‘enhance economic and social benefits, improve living standards and ensure high and steady growth in real incomes’ but does not mention decent work or sustainable development. The India-Singapore Economic Cooperation Agreement (2003) repeats the reaffirming clause, and likewise aims for economic and social benefits. The Bangladesh-India Trade Agreement (2015) has no mention of rights. The Japan-India Economic Partnership Agreement (2011) includes labour rights in the preamble, which states that social development is a part of sustainable development, including an article on environmental protection and objectives including ensuring long-term sustainable development.⁹⁰ The Korea-India (2010) Agreement also speaks of environmental sustainable development.⁹¹ The New Zealand-India (1986) Agreement is void of any mention of sustainable development.

Indian trade agreements with other states make no mention of labour rights, including the India-Bhutan FTA (2006),⁹² the India-Nepal FTA (2009),⁹³ the India-Sri Lanka FTA (1998),⁹⁴ the India-Afghanistan Preferential Trade Agreement (2003),⁹⁵ the ASEAN-India FTA (2010),⁹⁶ and the Chile-India Preferential Trade Agreement (2007).⁹⁷ The more recent India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (2021), however, has in its preamble and objectives the aim to contribute to social development.⁹⁸ On the other hand, negotiations between India and the EU are committed to ‘ambitious and enforceable provisions on trade and sustainable development,’ including labour standards.⁹⁹

⁹⁰ Comprehensive Economic Partnership Agreement between Japan and the Republic of Korea (2011) https://www.mofa.go.jp/region/asia-paci/india/epa201102/pdfs/ijcepa_ba_e.pdf

⁹¹ India-Republic of Korea Comprehensive Economic Partnership Agreement (2010) <https://aric.adb.org/fta/india-korea-comprehensive-economic-partnership-agreement>

⁹² Agreement on Trade, Commerce and Transit between the Royal Government of Bhutan and the Government of the Republic of India (2006)

⁹³ Revised Indo-Nepal Treaty of Trade Ministry of Commerce, Government of India New Delhi (2009)

⁹⁴ Free Trade Agreement between the Republic of Korea and the Democratic Socialist Republic of Sri Lanka (1998)

⁹⁵ Preferential Trade Agreement between the Republic of India and the Transitional Islamic State of Afghanistan (2003)

⁹⁶ Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations (2010)

⁹⁷ Preferential Trade Agreement between the Republic of India and the Republic of Chile (2007)

⁹⁸ Comprehensive Economic Cooperation and Partnership Agreement (CEPA) between the Republic of India and the Republic of Mauritius (2021)

⁹⁹ European Commission, ‘EU and India Kick-Start Ambitious Trade Agenda’ (17 June 2022) https://policy.trade.ec.europa.eu/news/eu-and-india-kick-start-ambitious-trade-agenda-2022-06-17_en

Malaysia

Malaysia has 7 bilateral TAs and 9 regional TAs. Our case study primarily considered the Malaysia-Australia FTA (2013), the Malaysia-New Zealand FTA (2009), the Malaysia-CPTPP (2022), the Malaysia-EFTA (under negotiation), and the Malaysia-EU FTA (under negotiation). Across the TAs in force, there is a paucity of provisions for the protection of labour rights and measures to address modern slavery, while the progress of negotiations for the remaining TAs has been slow owing to concerns over the inclusion of labour rights protections and the production processes for certain goods, such as palm oil and rubber. Against these general trends, the Malaysia-New Zealand FTA and the Malaysia-CPTPP are notable exceptions.

The Malaysia-New Zealand FTA has a separate Agreement on Labour, which makes reference to ILO stipulated decent work objectives, improving working conditions and the quality of life of workers, participating in forums to discuss labour issues, and ensuring each party's labour laws are aligned with their respective international labour commitments, and affirms that their laws and practices will not be used for trade protectionist purposes or to weaken labour laws in order to gain trade or investment advantage. The FTA also stipulates that disputes should be settled through consultation among parties through the national contact points established and not by a third party or international tribunal.¹⁰⁰

The Malaysia-CPTPP has a dedicated chapter on labour protections, which reaffirms all parties' obligations as enshrined in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, including freedom of association, abolition of forced labour and child labour, collective bargaining, and elimination of discrimination in employment.¹⁰¹

Thailand

Within the Indo-Pacific, Thailand has a number of trade cooperation agreements and TAs, including the ASEAN and Australia/New Zealand Agreement (2009) (AANZTA),¹⁰² the Thailand and New Zealand 'Closer Economic Partnership' Agreement (2005),¹⁰³ the Thailand-Australia FTA (2005),¹⁰⁴ the Japan-Thailand Economic Partnership Agreement

¹⁰⁰ New Zealand Ministry of Foreign Affairs and Trade, 'New Zealand-Malaysia Agreement on Labour Cooperation' (1998) <https://www.mfat.govt.nz/assets/Trade-agreements/Malaysia-NZ-FTA/mnzfta-labour-agreement.pdf>

¹⁰¹ Government of Canada, 'Consolidated TPP text- Chapter 19- Labour', <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-tpa/text-texte/19.aspx?lang=eng>

¹⁰² ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) (2009)

¹⁰³ Thailand-New Zealand Closer Economic Partnership Agreement (2005).

¹⁰⁴ Australia-Thailand Free Trade Agreement (2005), Article 102(a).

(2007),¹⁰⁵ and the India-Thailand Framework Agreement (2003).¹⁰⁶ Across these different agreements there is little to no mention of, or provisions on, modern slavery, forced labour, and human trafficking, with the exception of the AANTZA, which is being upgraded to introduce new inclusive and progressive provisions, including a framework for cooperation on labour standards.¹⁰⁷

Outside the Indo-Pacific, the Chile-Thailand FTA (2013) has a series of labour provisions. Article 11.6 affirms a commitment to ‘establish cooperation on labour’ (article 11.6.1), including ‘labour and employment-related matters in the areas of mutual interest and benefit,’ the ‘promotion of decent work, labour policies,’ and ‘best practices of the labour systems’ (article 11.6.2). The cooperation is carried out by ‘mutually agreed activities’, including ‘exchanges of information and expertise’, seminars, workshops, and meetings (article 11.6.3). Parties recognise that it is inappropriate to ‘encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws’ (article 11.6.4).¹⁰⁸

Paused for a period after the military coup in 2014, Thailand has now resumed negotiations with the EU through the initial launch of a Partnership Cooperation Agreement (PCA) where parties reaffirm democratic principles, human rights and fundamental freedoms, and sustainable development.¹⁰⁹ The preamble recognises that sustainable development promotes sustainable supply chains, responsible business practices, and facilitates trade and investment, although modern slavery is not specifically mentioned.¹¹⁰

3.3.2. Vulnerabilities and products

Against these patterns and dynamics in trade and investment and formal agreements, there remain vulnerabilities and risks to modern slavery, forced labour, and human trafficking, which vary considerably across the structure and geography of the economies in the four case studies. The highest vulnerabilities in the production of those goods for export are for those that are labour-intensive, using unskilled, low wage, and

¹⁰⁵ Agreement between Japan and the Kingdom of Thailand for an Economic Partnership (2007)

¹⁰⁶ Framework Agreement for Establishing Free Trade Area between the Republic of India and the Kingdom of Thailand (2003)

¹⁰⁷ ASEAN, ‘ASEAN-Australia-New Zealand Free Trade Area Upgraded’

[https://www.aseanbriefing.com/news/asean-australia-new-zealand-free-trade-area-aanzfta-upgraded/#:~:text=Ministers%20involved%20in%20the%20negotiations,AANZFTA\)%2C%20in%20Spring%202023](https://www.aseanbriefing.com/news/asean-australia-new-zealand-free-trade-area-aanzfta-upgraded/#:~:text=Ministers%20involved%20in%20the%20negotiations,AANZFTA)%2C%20in%20Spring%202023)

¹⁰⁸ Free Trade Agreement between the Government of the Republic of Chile and the Government of the Kingdom of Thailand (2013)

¹⁰⁹ Council of the European Union, Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part (Brussels, 3 October 2022) <https://data.consilium.europa.eu/doc/document/ST-11910-2022-INIT/en/pdf>

¹¹⁰ Ibid., Preamble, Article 2 (e)(f).

migrant labour. For China, these high risk products include cotton,¹¹¹ solar panels,¹¹² tomatoes,¹¹³ dates,¹¹⁴ raw materials and auto parts,¹¹⁵ and seafood.¹¹⁶ For India, these include bricks, embroidery, textiles, garment, rice, and stones.¹¹⁷ For Malaysia, these include palm oil,¹¹⁸ electronics,¹¹⁹ and rubber.¹²⁰ For Thailand, these include textiles, garments, footwear, manufacturing, agriculture, construction, mining, electronics, food processing, and service work.¹²¹ There are particular concerns in the Thai fishing industry, with reports of a heavy reliance on migrant workers from Cambodia, Myanmar, and other countries, against whom there are consistent violations of worker rights.¹²²

¹¹¹ Cissy Zhou, 'Xinjiang cotton ban uncertainties weigh on Chinese farmers, smaller textile firms' (16 Apr 2021), South China Morning Post, <https://www.scmp.com/economy/china-economy/article/3129610/xinjiang-cotton-ban-uncertainties-weigh-chinese-farmers>; Adrian Zenz, 'Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton' (14 Dec 2020) Newlines Institute, <https://newlinesinstitute.org/china/coercive-labor-in-xinjiang-labor-transferand-the-mobilization-of-ethnic-minorities-topick-cotton/>.

¹¹² Laura Murphy and Nyrola Elimä, 'In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains' (2021) Sheffield Hallam University Helena Kennedy Centre for International Justice, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>.

¹¹³ François-Xavier Branthôme, China: exports under threat from a possible extension of the boycott (2 April 2021) https://www.tomatonews.com/en/china-exports-under-threat-from-a-possible-extension-of-the-boycott_2_1260.html; Dong Xue, 'Your ketchup might be from NW China's Xinjiang' (17 Oct 2019) <https://news.cgtn.com/news/2019-10-17/Your-ketchup-probably-comes-from-Xinjiang--KQdXzT7PJS/index.html>

¹¹⁴ Nuzigum Setiwaladi, 'Fruits of Uyghur Forced Labor: Sanctioned Products on American Grocery Store Shelves' (28 Aug 2022) <https://uhrp.org/report/fruits-of-uyghur-forced-labor-1/#:~:text=Twenty%20percent%20of%20the%20world's,Hotan%2C%20Qumul%2C%20and%20Turpan>.

¹¹⁵ Laura Murphy et al, 'Driving force. Automotive supply chains and forced labour in the Uyghur region' (Dec 2022) <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>

¹¹⁶ Outlaw Ocean Project (2023) <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/>.

¹¹⁷ Bureau of International Labor Affairs 2020, *2020 Findings on the Worst Forms of Child Labor – India*, United States Department of Labor, p. 7.

¹¹⁸ Amnesty International, 'Palm Oil: Global brands profiting from child and forced labour' (2016) <https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profiting-from-child-and-forced-labour/>; Amnesty International, 'The Great Palm Oil Scandal' (2016) <https://www.amnesty.org/en/documents/asa21/5184/2016/en/>.

¹¹⁹ OEC, Electronics (n.d.) <https://oec.world/en/profile/sitc/electronics>

¹²⁰ Reuters, 'Malaysia's glove industry appeals for foreign labour intake' (2021) <https://www.reuters.com/world/asia-pacific/malysias-glove-industry-appeals-foreign-labour-intake-2021-09-28/>; Janina Puder, "Cheap Labour, (Un)Organised Workers The Oppressive Exploitation of Labour Migrants in the Malaysian Palm Oil Industry" in Elise van Nederveen Meerkerk and Rolf Bauer (eds) *Global Agricultural Workers from the 17th to the 21st Century* (Brill 2022).

¹²¹ Walk Free, 'Tackling Modern Slavery in Supply Chains: A Guide 1.0 (2020) 18 <https://cdn.walkfree.org/content/uploads/2020/10/06152910/TacklingModernSlaveryInSupplyChains20141-1.pdf>

¹²² Issara Institute and International Justice Mission, 'Not in the Same Boat: Prevalence and Patters of Labour Abuse Across Thailand's Diverse Fishing Industry' (2017) 7 <https://ijmstoragelive.blob.core.windows.net/ijmna/documents/studies/IJM-Not-In-The-Same-Boat.pdf>; Urbina, I. (2019) *The Outlaw Ocean: Crime and Survival in the Last Untamed Frontier*, London: Penguin Random House, 227-269.

3.3.3. De jure anti-slavery measures

There is variation across the four cases in their formal ratification of seven main international human rights instruments relevant to modern slavery and eleven relevant ILO conventions. India has the highest rate of ratification (67%), followed by Thailand (61%), China (56%), and Malaysia (50%) (see Table 2). These patterns of participation in the international regulatory context affect the position of a country in its trade and investment negotiations and its commitment to address modern slavery and forced labour domestically, where there is great variation in domestic legislation on modern slavery, forced labour, human trafficking, and practices related to slavery.

China

Internationally, China has endorsed the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking launched at the UN General Assembly 72nd Meeting, 2017. It renewed its commitment to the Sustainable Development Goals (SDGs) and in 2021 published a progress report on the implementation of the 2030 Agenda for Sustainable Development.¹²³ Domestically, there are provisions on forced labour across a number of laws in China, including the Labour Contract Law (2007), Penal Law (2011 amendment), Law on Promotion of Employment (2008), and Interim Regulations on Labour Dispatch (2014).

Outside of formal trade and investment negotiations, the Chinese government and third parties have pursued social audits and certification schemes (e.g., the Better Cotton Initiative, Textile Exchange, the China Cotton Association), the effectiveness of which have been hard to assess, have been in doubt, and/or have not been free of their own challenges in terms of governance and implementation.¹²⁴ In addition, governments have used an array of sanctions against China in an effort to reduce the risk of modern slavery and forced labour in supply chains.¹²⁵ Like social audits and certification schemes, there is no systematic evidence on whether such sanctions are effective, nor has there been ample consideration of the negative consequences on supply or on vulnerable populations.

¹²³ Centre for International Knowledge on Development, 'China's Progress Report on Implementation of the 2030 Agenda for Sustainable Development' (2021)

https://www.fmprc.gov.cn/mfa_eng/topics_665678/2030kccxfzyc/202109/P020211019152754484797.pdf

¹²⁴ Irina Bukharin, 'Long Shadows: How the Global Economy Support Oppression in Xinjiang' (2021) C4ADS, <https://c4ads.org/longshadows>; Veronica Bates Kassatly, 'Xinjiang, XPCC and the sham of 'sustainable cotton'' (3 Aug 2020) <https://apparelinsider.com/xinjiang-xpcc-and-the-sham-of-sustainable-cotton/>.

¹²⁵ James Cockayne, 'Making Xinjiang sanctions work' (2022) <https://www.xinjiangsanctions.info/wp-content/uploads/2022/07/Making-Xinjiang-Sanctions-Work-FINAL.pdf>.

India

Of the four cases, India has the highest level of formal ratification of international human rights instruments and ILO conventions relevant to modern slavery, as well as multiple domestic laws on forced labour, bonded labour, and human trafficking. The Constitution of India expressly protects against exploitation, specifically prohibiting human trafficking and forced labour,¹²⁶ and the employment of children below the age of 14 in factories, mines, and any other hazardous employment.¹²⁷ The Constitution also protects the freedom of association and unionisation,¹²⁸ freedom of movement,¹²⁹ and the right to practice any profession or carry out any occupation, trade, or business.¹³⁰ The right to unionise is further regulated by the 1926 Trade Unions Act—amended in 1960, 1968, and 2001.

India’s Penal Code Act prohibits trafficking in persons,¹³¹ habitual dealing in slaves,¹³² and kidnap or abduction for purposes of slavery.¹³³ The Act was amended in 2013¹³⁴ to criminalise kidnapping or maiming a minor for purposes of begging.¹³⁵ Additional protection from trafficking is afforded to minors by more severe punishment in cases where the victim of trafficking is a minor (minimum of ten years imprisonment, extendable to life, and a fine). Exploiting a trafficked minor is a separate offence punishable by three- to seven-year jail terms.¹³⁶ Unlawful compulsory labour is an offence punishable by up to one year in prison, a fine, or both.¹³⁷ Further protection is provided by the Bonded Labour System (Abolition) Act of 1976, which abolished bonded labour, freeing and discharging all bonded labourers from any obligation to render bonded labour.¹³⁸ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 also provides additional protections for individuals from these highly discriminated minority populations, including against compelled and bonded labour.

Malaysia

Of the four case study countries, Malaysia has the lowest formal participation rate in the international human rights instruments and ILO conventions relevant to modern slavery. Domestically, Malaysia’s Federal Constitution and Penal Code include relevant

¹²⁶ Article 23, Constitution of India

¹²⁷ Article 24, *Ibid.*

¹²⁸ Article 19(1)(c), *Ibid.*

¹²⁹ Article 19(1)(d) and (e), and Article 21, *Ibid.*

¹³⁰ Article 19(1)(g), *Ibid.*

¹³¹ Section 370, Penal Code Act 1860.

¹³² Section 371, *Ibid.*

¹³³ Section 367, *Ibid.*

¹³⁴ By the Criminal Law (Amendment) Act 2013.

¹³⁵ Section 363A, Penal Code Act.

¹³⁶ Section 370A, *Ibid.*

¹³⁷ Section 374, *Ibid.*

¹³⁸ Section 4(1), Bonded Labour System (Abolition) Act, 1976.

provisions on modern slavery. The Federal Constitution prohibits slavery, forced labour, and banishment, protects freedom of movement, and ensures 'liberty of the person.' The Penal Code includes numerous references to elements that can be related to modern slavery and makes specific reference to kidnapping or abducting a person in order to subject them to slavery, buying or disposing of people as slaves, trading of slaves, and forced labour.¹³⁹ The Immigration Act 1959/63 stipulates that any Malaysian citizen can be penalised for harbouring illegal immigrants, including employers. The Passports Act 1966 prohibits holding a passport issued in someone else's name, except for authorities. According to the Employment Act 1955, all workers, including migrant workers, have the right to a minimum protection of their working conditions.

In November 2021, Malaysia launched a National Action Plan on Forced Labour (NAPFL) for 2021-2025, focused on awareness, enforcement, migration, and victims' access to support services and remedy, developed with support from the ILO.¹⁴⁰ The launch of the NAPFL follows a two-year process undertaken by the Ministry of Human Resources, the ILO, and the Malaysian Employers Federation and Malaysian Trade Union Congress.¹⁴¹ In March 2022, Malaysia ratified the 2014 Protocol to the 1930 Forced Labour Convention, becoming the second ASEAN state to ratify the Protocol.

Malaysia amended its Trade Unions Act and Industrial Relations Act in July 2019 and increased freedom of association in Malaysia. A National Labour Advisory Council, which encompasses the Malaysian Trade Unions Congress and Malaysian Employer's Federation, has been formed to increase labour participation in unions.¹⁴² A 2022 Amendment to the Employment Act now includes a section on forced labour and further defines weekly limits to hours of work. Employers are required to raise awareness of sexual harassment. Moreover, employers who want to hire migrant workers need to obtain prior permission and must inform the Director General of Labour when the employment of migrant workers ends.¹⁴³ A 2022 Amendment Act to the 2007 Anti-trafficking in Persons and Anti-Smuggling of Migrants Act defines forced labour as a form of exploitation. These recent amendments strengthen the regulatory framework to reduce human trafficking of migrants and modern slavery.

¹³⁹ *Antislavery in Domestic Legislation*, 'Malaysia' (n.d.) <<https://antislaverylaw.ac.uk/country/malaysia/>> accessed 27 June 2023

¹⁴⁰ ILO and Malaysian Rubber Council, *Addressing, preventing and eliminating forced labour in the rubber industry in Malaysia* (2022) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_853094.pdf> accessed 2 March 2023

¹⁴¹ ILO, 'Malaysia takes major step towards ending forced labour' (2021) https://www.ilo.org/asia/media-centre/news/WCMS_829873/lang-en/index.htm

¹⁴² US Department of State, '2021 Investment Climate Statements: Malaysia' (2021) <<https://www.state.gov/reports/2021-investment-climate-statements/malaysia/>> accessed 6 March 2023

¹⁴³ ILO and Malaysian Rubber Council, 'Addressing, preventing and eliminating forced labour in the rubber industry in Malaysia' (2022) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_853094.pdf> accessed 2 March 2023

Thailand

Thailand's 2017 Constitution expressly protects against forced labour, except by provision of law enacted for the purpose of averting public calamity, or when a state of emergency or martial law' is declared, or during times of war or armed conflict.¹⁴⁴ It protects the right to unite and form an association, cooperative, union, organisation, community, or any other group.¹⁴⁵ Thailand's Penal Code punishes the 'detaining, confining or deprivation of liberty of another' with more severe punishment if death or grievous bodily harm is caused, or in cases involving the detention or confinement of someone and making someone do an act.¹⁴⁶ Movement into or out of Thailand, or 'removing, buying, selling, disposing, accepting or restraining any person' so as to enslave them, is punishable by imprisonment of seven years and a fine, with more severe penalties if the crimes are committed against a child (under 15), or cause bodily or mental harm, grievous bodily harm, or death.¹⁴⁷ It is a crime to take or send a person out of Thailand 'using fraudulent or deceitful means, threats, violence, unjust influence or any other means of compulsion.'¹⁴⁸

The Anti-Trafficking in Persons Act 2008 criminalises trafficking and forced labour, prohibiting acts such as buying and selling 'for the purpose of exploitation.'¹⁴⁹ The Prevention and Suppression of Human Trafficking Act 2015 adds 'practices similar to slavery' to this, revises the definition of forced labour to include seizure of identification documents and debt bondage, and increases protection for those individuals under the age of fifteen.¹⁵⁰

The Labour Protection Act sets out that all workers, regardless of nationality and legal status, are guaranteed equal conditions and protections with regards to minimum wage, working hours, rest periods, paid leave, discrimination, and workplace harassment.¹⁵¹ A Royal Ordinance on managing migrant workers establishes a framework to govern aspects of labour migration and rights, including protection from abusive practices, flexibility to change employer, a requirement to provide a written contract, and a right to retain a copy of a written contract and other personal documents.¹⁵²

¹⁴⁴ Section 30, Thailand Constitution 2017

¹⁴⁵ Section 42, *ibid*

¹⁴⁶ Thailand Penal Code, section 310, 310 bis <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Thailand-Penal-Code.pdf>

¹⁴⁷ *Ibid.*, Section 312 bis and Section 312 ter.

¹⁴⁸ *ibid*, Section 320.

¹⁴⁹ Thailand, The Anti-Trafficking in Persons Act B.E.2551 (2008), section 6.

¹⁵⁰ Thailand, Prevention and Suppression of Human Trafficking (No.2) Amendment Act B.E. 2558 (2015).

¹⁵¹ Thailand Labour Protection Act B.E.2541 (1998)

¹⁵² Thailand, Royal Ordinance Concerning the Management of Foreign Workers B.E.2561 (2018).

3.3.4. Lacunae and barriers to progress

There are a series of sustained and persistent gaps between the *de jure* protections for labour and the *de facto* experience of workers across all four of the cases. There is a complex patchwork of formal commitments at the international and domestic level, as well as bilateral and multilateral trade agreements, which variously contain provisions and commitments to protect labour rights and to address modern slavery. Against this patchwork is the persistence of reports of modern slavery, forced labour, human trafficking, and practices related to slavery across all four countries, where prevalence of these practices affects the production processes for a wide range of goods for export.

There has been less formal commitment to address modern slavery, forced labour, and human trafficking in the area of investment, where BITs primarily focus on encouraging inward and outward investment and rely on responsible business and investment frameworks that to date are more voluntary in nature. This is consistent with international trends, demonstrating greater consideration of modern slavery relevant concerns in TAs than in BITs to date (see section 3.1).

The barriers to enactment and implementation of further commitments and provisions on modern slavery, forced labour, and human trafficking include:

1. Differences in national interest, understanding, and acceptance of these issues.
2. The dominance of economic imperatives relating to gains from trade and the benefits of investment.
3. Weak enforcement of existing legislation.
4. Bureaucratic inertia with respect to permits, licences, contracts, visas, and other formal procedures used to govern domestic and migrant labour markets.
5. Limits to state capacity and remaining pockets of corruption.

3.4. The impact of trade bans and restrictions

Although not the primary focus of the research, this project considered evidence on the impacts and effectiveness of trade bans and import restrictions related to modern slavery through conference and network meetings and in country case studies. Current evidence on the impacts and effectiveness of trade bans and import restrictions related to modern slavery is relatively thin, with no systematic analysis as to their effectiveness.¹⁵³ The conference did review evidence of the impact of trade bans imposed by the US on the countries and traders those bans affected. The conference session focused on the experience of Top Glove, a Malaysian manufacturer of rubber gloves, when its exports to

¹⁵³ See Irene Pietropaoli, Owain Johnstone, and Alex Balch, 'Policy Brief: Effectiveness of Forced Labour Import Bans' (Modern Slavery and Human Rights Policy and Evidence Centre, July 2021) <https://modernslaverypec.org/assets/downloads/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf>.

the US were subjected to a Withhold Release Order (WRO) by US Customs and Border Protection (CBP) (see Text box 2).

Trade bans and restrictions have increasingly become the subject of focus for efforts to address modern slavery risks in the context of trade in recent years.¹⁵⁴ US Customs and Border Protection use the Tariff Act to prohibit the importation of goods made using forced labour, and issued 80 WROs and Findings from 1991-2022.¹⁵⁵ In 2022, the US Uyghur Forced Labour Prevention Act came into force, banning goods produced using forced labour in XUAR from being imported into the US and creating a rebuttable presumption that goods produced in the region were made using forced labour.¹⁵⁶ In 2019, the EU began the process of establishing a ban on goods produced using forced labour within the EU single market.¹⁵⁷ Canada's BILL S-216 also provides for the imposition of import restrictions connected to modern slavery issues.¹⁵⁸ Despite several public indications of consideration of similar measures by the UK Government,¹⁵⁹ no such legislation has yet been introduced in the UK.

As the most mature and established regime for restricting imports connected to forced labour, the US implementation of the Tariff Act has been the focus of significant attention in assessing the deployment and impacts of these measures in practice. Under Section 307 of the 1930 US Tariff Act, the importation of goods manufactured in any foreign country by convict labour, forced labour and/or indentured labour is prohibited.¹⁶⁰ This Act was amended in 2000 to cover forced or indentured child labour. When CBP has information reasonably indicating that imported goods are made by forced labour, the agency will order the detention of any shipments of those goods, which will be forfeited unless the importers show that the goods were not imported with forced labour.¹⁶¹ From 01 October 2022 to 30 September 2023, CBP stopped 4,415 shipments for forced labour

¹⁵⁴ See Schwarz et al, above n 35, pp 84-88.

¹⁵⁵ US Customs and Border Protection, 'Withhold Release Orders and Findings List' (10 October 2023) <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>. There are currently 51 active WROs and eight active Findings.

¹⁵⁶ Uyghur Forced Labor Prevention Act (Public Law No 117-78). See US Customs and Border Protection, 'Uyghur Forced Labor Prevention Act' (21 July 2023) <https://www.cbp.gov/trade/forced-labor/UFLPA>.

¹⁵⁷ Ionel Zamfir, 'Ban on import of goods produced using modern forms of slavery and forced labour, including that of children' (European Parliament, 20 November 2019) <https://www.europarl.europa.eu/legislative-train/theme-europe-as-a-stronger-global-actor/file-ban-on-import-of-goods-produced-using-modern-forms-of-slavery>.

¹⁵⁸ An Act to enact the Modern Slavery Act and to amend the Customs Tariff, BILL S-216 (43rd Parliament, 2nd Session) <https://www.parl.ca/legisinfo/en/bill/43-2/s-216>.

¹⁵⁹ See for instance Casalicchio, above n 23.

¹⁶⁰ See Christopher A Casey and Cathleen D Cimino-Isaacs, 'Section 307 and Imports Produced by Forced Labor' (Congressional Research Service, 26 July 2022) [https://crsreports.congress.gov/product/pdf/IF/IF11360#:~:text=Section%20307%20of%20the%20Tariff,\(CBP\)%20enforces%20the%20prohibition](https://crsreports.congress.gov/product/pdf/IF/IF11360#:~:text=Section%20307%20of%20the%20Tariff,(CBP)%20enforces%20the%20prohibition).

¹⁶¹ US Customs and Border Protection, 'CBP Modifies Forced Labor Finding on Top Glove Corporation Bhd' (09 September 2021) <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-forced-labor-finding-top-glove-corporation-bhd>.

enforcement actions or reviews.¹⁶² Biesenthal et al in 2020 found that this framework had delivered heavier scrutiny of imported goods for evidence of forced labour.¹⁶³

Text box 2. Case study on the impacts of trade restrictions: Top Glove Malaysia

A dedicated session of the TRIMS conference focused on the experience of Top Glove—a Malaysian manufacturer of rubber gloves—when their exports to the US were subjected to a Withhold Release Order (WRO) by US Customs and Border Protection (CBP).¹⁶⁴

In July 2020, a WRO was issued against imports of rubber apparel manufactured by Top Glove, which was confirmed by a Notice of Finding issued on 29 March 2021. These measures had a range of effects. Almost immediately, the value of the company's shares fell by 48%. In the months that followed, Top Glove took steps to address the allegations. This included paying out at least \$30 million in remediation payments to workers and improving labour and living conditions at their facilities. These steps led to the lifting of the ban in September 2021.

Top Glove was just one of at least five companies subject to WROs for forced labour practices between July 2020 and November 2021.¹⁶⁵ In Top Glove's case, import restrictions secured a quick response from the company, change in policies and working conditions, and payments of remedies to victims. The WRO led to measurable changes in Top Glove's behaviours and choices to minimise the effect of restrictions on the producer's market share. This suggests that import bans can, in certain circumstances, be effective in mitigating modern slavery risks. However, the wider impacts of trade bans and restrictions cannot be inferred from a single case, and further systematic research is needed to understand the effects of these measures in different contexts and conditions.

¹⁶² US Customs and Border Protection, 'Forced Labor' (12 October 2023) <https://www.cbp.gov/trade/forced-labor>.

¹⁶³ Bethany K Biesenthal, Laura E Ellsworth, and Roman E Darmer, 'Combating Forced Labor: The Increased Use of Withhold Release Orders and Formal Findings' (*Jones Day*, March 2020) <https://www.jonesday.com/en/insights/2020/03/combating-forced-labor>.

¹⁶⁴ The Canadian government also suspended imports from specific entities in response to forced labour concerns in the manufacture of medical gloves in Malaysia— Mei Mei Chu, 'Canada: Govt. Pauses Imports from Malaysian Glove Maker Supermax over forced labour concerns' (*Business & Human Rights Resource Centre*, 14 November 2021) <https://www.business-humanrights.org/en/latest-news/canada-govt-pauses-imports-from-malaysian-glove-maker-supermax-over-forced-labour-concerns/>.

¹⁶⁵ A Ananthalakshmi, 'U.S. Bans Imports from Fifth Firm in 15 Months over Alleged Forced Labour' (*Reuters*, 05 November 2021) <https://www.reuters.com/world/asia-pacific/us-bans-imports-fifth-malaysian-firm-15-months-over-alleged-forced-labour-2021-11-05/>.

Some evidence of the positive impacts of trade bans and restrictions—whether actually imposed or merely threatened—was also evidenced in the Thailand case study.¹⁶⁶ The European Union (EU) threatened to impose a trade ban on fishing products from Thailand if steps were not taken to address modern slavery practices in the Thai fishing industry. In April 2015, the European Commission issued a ‘yellow card’ warning to Thailand,¹⁶⁷ under the EU’s Regulation to End Illegal, Unreported and Unregulated (IUU) Fishing, which demands a certificate showing the legal origins of the seafood.¹⁶⁸ The Regulation does not address labour rights, though these are intertwined within IUU fishing. The yellow card is reported to have led to a 21% drop in Thai fishing export revenues the following year,¹⁶⁹ while it has been estimated that a ‘red card’ trade ban could have caused a loss of over US \$600 million a year in seafood exports.¹⁷⁰ Issuing the ‘yellow card’ led to a series of legal and policy reforms to address illegal fishing and labour abuse,¹⁷¹ where the EU was perceived as the primary reason behind the reforms.¹⁷² Fishing control, monitoring, and management was changed to increase transparency and accountability of fishing and promote sustainable fishing.¹⁷³ This example suggests that ‘trade conditionalities’ can drive change as they may threaten profits and market share. However, such a top-down approach risks being operative only at a surface level with limited change filtering down to workers.¹⁷⁴

The effectiveness of trade bans and other import restrictions needs more systematic analysis before drawing robust conclusions, which may inform the ongoing debate. The potential impacts of trade bans and import restrictions are twofold: ‘directly affecting

¹⁶⁶ Thailand Country Case Study, above n 45.

¹⁶⁷ Human Rights Watch, ‘Hidden Chains: Rights Abuses and Forced Labour in Thailand’s Fishing Industry’ (2019) 2 https://www.hrw.org/sites/default/files/report_pdf/thailand0118_report_web.pdf

¹⁶⁸ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulation (EEC) No 2847/93 [2008] OJ L 286/1.

¹⁶⁹ James Cockayne, ‘Developing Freedom: The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking’ (United Nations University, 2021) XXXII <https://www.developingfreedom.org/report/>

¹⁷⁰ Amanda Flaim, Guna Subramaniam and Lisa Rende Taylor, ‘Eliminating Human Trafficking from the Thai Fishing Industry: Perspectives of Thai Commercial Fishing Vessel Owners’ (Issara Institute Series Paper 4, January 2018) 15 https://www.issarainstitute.org/files/ugd/5bf36e_df306710e41a43b8b0a7e351a7365bef.pdf

¹⁷¹ Josh Stride, ‘Current & Potential Impacts of Legal Reforms on Businesses and Workers in Thailand’s Fishing Industry’ (Issara Institute Series Paper 1, October 2016) 1 <https://respect.international/wp-content/uploads/2020/06/Current-and-potential-impacts-of-legal-reforms-on-business-and-workers-in-thailand-fishing-industry.pdf>

¹⁷² Amanda Flaim, Guna Subramaniam and Lisa Rende Taylor, ‘Eliminating Human Trafficking from the Thai Fishing Industry: Perspectives of Thai Commercial Fishing Vessel Owners’ (Issara Institute Series Paper 4, January 2018) 1 https://www.issarainstitute.org/files/ugd/5bf36e_df306710e41a43b8b0a7e351a7365bef.pdf

¹⁷³ Amanda Flaim, Guna Subramaniam and Lisa Rende Taylor, ‘Eliminating Human Trafficking from the Thai Fishing Industry: Perspectives of Thai Commercial Fishing Vessel Owners’ (Issara Institute Series Paper 4, January 2018) 10 https://www.issarainstitute.org/files/ugd/5bf36e_df306710e41a43b8b0a7e351a7365bef.pdf

¹⁷⁴ ‘Thailand Country Case Study’, above n 45.

businesses engaged in the imports' and 'raising awareness of the issues and "providing civil society with the focus of advocacy on these particular goods that we know are produced with forced labour."¹⁷⁵ In certain circumstances, import restrictions have proven effective in changing behaviour and conditions (as in the case of Top Glove). They may catalyse both business and government action to address forced labour.¹⁷⁶ However, the likelihood of success of such measures in addressing forced labour is contingent on a range of factors, including the size of the import market imposing restrictions.¹⁷⁷ Further, such measures may result in negative externalities, including perpetuating harms to those at risk of modern slavery.¹⁷⁸ Further research is therefore needed to understand whether, and in what conditions, these measures are effective in addressing modern slavery to inform UK policy in this regard.

¹⁷⁵ Schwarz et al, above n 35, p 84.

¹⁷⁶ *ibid*, p 85.

¹⁷⁷ *ibid*.

¹⁷⁸ *ibid*, p 88.

4. Conclusions and recommendations

Modern slavery is linked to international trade and investment in myriad ways. While the relationship between trade, investment, and modern slavery is clear, it is also complex, multi-faceted, and variable. Thus, there is no single story of how international trade and investment impact modern slavery. Given the undeniable connection between modern slavery, trade, and investment in various contexts, efforts to address modern slavery through trade and investment instruments and relations have gained significant traction in recent years. Yet, despite the UK's stated commitment to tackling modern slavery globally¹⁷⁹ and acting as a 'force for good' on the international stage promoting and supporting human rights,¹⁸⁰ efforts to address modern slavery in UK trade and investment remain underdeveloped.

Our systematic analysis of UK and Indo-Pacific TAs and BITS reveals:

1. Efforts to address modern slavery practices and related considerations in UK trade and investment instruments has evolved, but falls behind international best practice and has not yet developed into a coherent strategy.
2. The consideration of modern slavery concerns in trade agreements has increased over time. However, this has not yet become systematised. A high proportion of new agreements involving the UK and Indo-Pacific states do not substantially address modern slavery and related concerns, and practice remains piecemeal.
3. Although some progress has been made in the consideration of modern slavery concerns in bilateral investment treaties (BITS) in recent years, practice remains limited across the board. Modern slavery considerations are yet to be meaningfully considered in the context of BITS, and modern slavery practices themselves are not mentioned in any UK-Indo-Pacific BIT coded in this study.

Although it is not possible based on current evidence to make a decisive determination on whether the incorporation of anti-slavery measures in TAs or BITS makes a tangible difference to the prevalence of modern slavery, our econometric analysis shows:

1. The effect of international trade on forced labour depends on the type of product favoured by trade-induced changes and the institutional characteristics of trade partners.
2. Trade openness reduces forced labour when involving trade partners with high levels of labour rights protection, particularly where trade involves production of primary goods and products intensive in unskilled labour.

¹⁷⁹ UK Foreign, Commonwealth and Development Office, 'Human Rights & Democracy: The 2021 Foreign, Commonwealth & Development Office Report' (2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130821/human-rights-and-democracy-2021-foreign-commonwealth-development-office-report.pdf, p 28.

¹⁸⁰ HM Government, 'Global Britain in a Competitive Age', above n 2, p 14.

3. Increasing trade with countries with high levels of labour protection is related to increases in anti-forced labour government enforcement policies. Thus, other measures for forced labour protection appear to make a difference and provide evidence of a normative ‘bandwagon’ effect, or evidence of policy diffusion.
4. In the absence of labour protections, or where labour protections are weak, increased trade openness can increase the prevalence of forced labour, particularly where trade involves production of primary goods and products intensive in unskilled labour.

There is a clear need for more research on the effectiveness of trade and investment agreements in reducing modern slavery risks.¹⁸¹ The links between trade, investment and modern slavery are becoming clearer. Yet our quantitative analysis demonstrates that these links remain highly differentiated owing to different trade patterns, terms of trade between trading partners, institutional characteristics of trading partners, and the degree to which the production of goods is labour intensive.¹⁸² The effectiveness of trade and investment measures to address modern slavery risk thus requires continued research and econometric analysis.

The risks and dynamics of modern slavery manifesting in connection with trade and investment relations depends on the nature of production, the goods and services that form the basis of trade, and the degree to which any partners in the trading relationship have formal and informal protections in place against modern slavery practices. This varies from one country to the next. There are significant contextual factors specific to the Indo-Pacific region, and individual states within it, that shape the modern slavery risks, patterns, and trends connected to international trade and investment. For instance, our case studies demonstrate:

1. Modern slavery prevalence and dynamics vary by country, structure of export economy, and basket of products. Higher vulnerability to modern slavery in specific industries is found where the industry is labour intensive, work is low skilled and low waged, high levels of informality exist, and where migrant workers and those from minority communities are over-represented.
2. The formal commitments of states to international human rights and labour rights instruments vary substantially, demonstrating differential commitment to these regimes and engagement with the international system.
3. National legislative frameworks, and the extent to which these frameworks address modern slavery, labour rights, and human rights issues vary dramatically, diverging not only in coverage and scope, but also in form and content.
4. The number and terms of TAs and BITs, as well as ongoing negotiations of such instruments, vary substantially not only from one country to the next, but also from one instrument to the next where one party remains the same.

¹⁸¹ TRIMS conference, November 2022.

¹⁸² Albornoz et al, above n 76.

5. Variation in market size and power as well as geopolitical factors affect the ability of outside states to negotiate for, and secure, the inclusion of modern slavery provisions in TAs and BITs.

This demonstrates the importance of adopting context-specific approaches to the design, implementation, monitoring, and revision of trade and investment instruments and relations. While coherent trade and investment strategies to tackle modern slavery in the Indo-Pacific require some level of standardisation in both the commitment to fundamental principles and core frameworks, additional contextual adaptation and nuancing are needed to ensure the approach is fit for purpose in the specific country or countries.

4.1. Recommendations for the UK Government

1. Develop a systematic approach to the integration of modern slavery concerns in trade and investment agreements, embedded in a broader UK trade strategy addressing human rights, labour rights, and sustainable development.
2. Seek to ensure that modern slavery concerns are substantially integrated in trade and investment agreements in negotiations, with robust monitoring and engagement mechanisms.
3. Review existing trade and investment agreements with a modern slavery lens to support future amendments and new instruments.
4. Adopt a tailored and context-specific approach to the integration of modern slavery concerns in trade and investment relations with the Indo-Pacific, accounting for the different risk and production profiles of the different states, existing international commitments, and domestic legislative and regulatory infrastructure.
5. Conduct rigorous ex ante sustainability impact assessments during negotiation of all trade and investment agreements, including engagement with people with lived experience of modern slavery and CSOs in the third country.
6. Conduct rigorous and regular sustainability impact assessments for all trade and investment agreements during implementation, including engagement with people with lived experience of modern slavery and CSOs in the third country.
7. Include formal commitments of Indo-Pacific states to international human rights and labour rights instruments as a conditionality of trade and investment negotiations.
8. Develop a coherent foreign policy approach to advancing modern slavery protections in third states, integrating antislavery efforts in trade and investment with other soft power domains (including development policy¹⁸³).

¹⁸³ The ICAI review provides important insights for tackling modern slavery through aid spending – International Development Committee, ‘The UK’s Approach to Tackling Modern Slavery through the Aid Programme: Report from the Sub-Committee on the Work of ICAI’ (Third Report of Session 2021-22, 4 November 2021) <https://publications.parliament.uk/pa/cm5802/cmselect/cmintdev/104/report.html>

9. Develop mechanisms for engagement of people with lived experience of modern slavery and other vulnerable populations in the negotiation and monitoring of trade and investment agreements, supported by survivor-led organisations.
10. Fund robust research on the impacts of trade and investment on modern slavery policy and practices in third countries.

4.2. Recommendations for civil society organisations:

1. Advocate for greater integration of modern slavery practices in future trade and investment agreements.
2. Proactively engage in monitoring and auditing of modern slavery provisions in trade and investment agreements, including recording modern slavery abuses directly related to the impact of trade and investment relations.
3. Support the development of mechanisms for engagement of people with lived experience of modern slavery and other vulnerable populations in the negotiation and monitoring of trade and investment agreements.

4.3. Recommendations for researchers

1. Expand the TRIMS-TA/BITs database to encompass all trade and investment agreements globally. This would provide richer insights on where and how modern slavery considerations are addressed in these instruments, what factors influence this, and the impacts of different approaches.
2. Pursue qualitative research on the ways in which modern slavery practices and related concerns are considered in negotiation processes for trade and investment agreements, and how these change throughout the process.
3. Undertake rigorous and systematic research evaluating the impacts of import bans on the ground, with a focus on effects on vulnerable populations.

MODERN SLAVERY & HUMAN RIGHTS | POLICY & EVIDENCE CENTRE

Led by the University of Oxford

The Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC) was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to address it. The Centre funds and co-creates high quality research with a focus on policy impact, and brings together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to collaborate on solving this global challenge.

The Centre is hosted by the Humanities Division at the University of Oxford. The Centre is a consortium of three universities consisting of the Wilberforce Institute at the University of Hull, the University of Liverpool, and the Bonavero Institute of Human Rights at the University of Oxford.

Between 2019 and March 2024, the period when this project was awarded funding, the Centre was led by the Bingham Centre for the Rule of Law (part of the British Institute of International and Comparative Law (BIICL)) and was a consortium of six organisations consisting of the Rights Lab at the University of Nottingham, the Wilberforce Institute at the University of Hull, the University of Liverpool, the Bonavero Institute on Human Rights at the University of Oxford and the Alan Turing Institute.



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