



University of
Nottingham
Rights Lab

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

December 2023



Arts and
Humanities
Research Council

**MODERN SLAVERY
& HUMAN RIGHTS**

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Authorship and acknowledgements

This report on four country case studies is one of several outputs produced as part of the project Harnessing UK Trade and Investment to Address Modern Slavery, funded from 2022-23 by the Modern Slavery & Human Rights Policy and Evidence Centre and the Art and Humanities Research Council (AHRC) on behalf of UK Research and Innovation (UKRI). The project produced evidence and analysis of the role of trade and investment in the Indo-Pacific to manage risks of modern slavery.

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Table of abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACFTA	ASEAN-China Free Trade Agreement
ACFTU	ILO-All-China Federation of Trade Unions
ACTU	Australian Council on Trade Unions
AFTA	ASEAN Free Trade Area
AFTINET	Australian Fair Trade & Investment Network
AHKFTA	ASEAN-Hong Kong Free Trade Agreement
AHTU	Anti-Human Trafficking Unit
AIFTA	ASEAN-India Free Trade Agreement
AJCEP	ASEAN-Japan Comprehensive Economic Partnership
AKFTA	ASEAN-Korea Free Trade Agreement
APTA	Asia-Pacific Trade Agreement
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral investment treaty
CAI	Comprehensive agreement in principle on investment
CBP	US Customs and Border Protection
CHAFTA	China-Australia Free Trade Agreement
CMM	Capital Markets Malaysia
CPA	Certified Practising Accountants
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DFAT	Department of Foreign Affairs and Trade (Australia)
DWCP	ILO Decent Work Country Programme
ESG	Environmental, social and governance
EU	European Union
EU-MY PCA	EU-Malaysia Partnership and Cooperation Agreement
FDI	Foreign direct investment
FINL	Foreign Investment Negative List (China)
FISM	Foreign Investment Screening Mechanism (China)
FJC	MAFTA Joint Commission
FTA	Free trade agreement
GSP	Generalised Scheme of Preferences
HRC	Human Rights Coalition
HRW	Human Rights Watch
IAST APAC	Investors Against Slavery and Trafficking Asia Pacific
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIC	Institutional Investors Council Malaysia
ILO	International Labour Organisation
IPC	Indian Penal Code
ISDS	Investor-state-dispute settlement
ITUC	International Trade Union Confederation
JETCO	Joint Committee on Trade and Investment Cooperation
JSCOT	Joint Standing Committee on Treaties
MAFTA	Malaysia-Australia Free Trade Agreement
MANL	Market Access Negative List (China)

MCFTA	Malaysia-Chile Free Trade Agreement
MEEPA	Malaysia-European Free Trade Area Economic Partnership Agreement
MEP	Member of the European Parliament
MEUFTA	Malaysia-EU Free Trade Agreement
MICECA	Malaysia-India Comprehensive Economic Cooperation Agreement
MIPTA	Malaysia-Iran Preferential Trade Agreement
MJEPA	Malaysia-Japan Economic Partnership Agreement
MNZFTA	Malaysia-New Zealand Free Trade Agreement
MoHRSS	Ministry of Human Resources and Social Security (China)
MOU	Memorandum of Understanding
MPCEPA	Malaysia-Pakistan Closer Economic Partnership Agreement
MSA	Modern Slavery Act (UK)
MTFTA	Malaysia-Turkey Free Trade Agreement
NAPFL	National Action Plan on Forced Labour (Malaysia)
NCLP	National Child Labour Project (India)
NHS	National Health Service (UK)
NIA	New Investment Policy Based on National Investment Aspirations (Malaysia)
NRM	National Referral Mechanism
NWC	National Commission for Women (India)
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
P3	People Positive Palm Project
PCA	Partnership cooperation agreement
PRI	UN Principles of Responsible Investment
PV	Photovoltaic
RBA	Responsible Business Alliance
RCEP	Regional Comprehensive Economic Partnership
RM	Malaysian Ringgit
RMG	Ready-made garment
SC	Securities Commission (Malaysia)
SDG	UN Sustainable Development Goal
SET	Stock Exchange of Thailand
SIP	Sustainable Investment Platform
SRI	Sustainable and responsible investment
SRI Roadmap	Sustainable and Responsible Investment Roadmap for the Malaysian Capital Market
SSCTF	Seafood Sustainable Supply Chain Task Force
SSTC	South-South and Triangular Cooperation
TA	Trade agreement
TIP	Trafficking in persons
TIPs	Treaties with Investment Provisions
TPP	Trans-Pacific Partnership
TRIMS	Trade, Investment and Modern Slavery
TRIMS project	Harnessing UK Trade and Investment to Address Indo-Pacific Modern Slavery Risks project
UN	United Nations
US	United States of America
WRO	Withhold Release Order
WTO	World Trade Organisation
XPCC	Xinjiang Production and Construction Corp

Introduction and background

The project Harnessing UK Trade and Investment to Address Indo-Pacific Modern Slavery Risks (TRIMS project) set out to assess the role of trade and investment arrangements in the Indo-Pacific region in shaping modern slavery risks.¹ 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 chains, and the effectiveness of legal enforcement measures.² It also aligns with Rights Lab research on modern slavery risks in supply chains, international trade, and investment.³ The resulting evidence and policy recommendations from the TRIMS project are relevant for the UK Government's engagement with the Indo-Pacific region, and in trade and investment policy more broadly.

This report presents key insights from four in-depth case studies carried out on China, India, Malaysia, and Thailand and is the result of one workstream in the larger TRIMS project that complemented and enhanced our other two workstreams.⁴ First, the project team held a two-day global conference, hosted by the University of Nottingham, which laid the groundwork for the establishment of the Trade, Investment and Modern Slavery (TRIMS) Network and set out the initial insights and approach to be used throughout the project. Second, the project team carried out an empirical analysis of (1) the relationship between trade and investment and modern slavery through a 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,⁵ and (2) 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.⁶

The TRIMS conference and TRIMS network meetings discussed the context and details of the four case studies, while the findings from the other workstreams both informed and referenced the case studies. In turn, the case studies included in this report speak to the larger trends and patterns identified in the other workstreams with respect to variation in market size, the basket of tradable goods with high risks of modern slavery, and the role for trade and investment agreements in mitigating these risks. In this way, the case studies provide a complementary account that deepens our understanding of the complex relationship between trade, investment, modern slavery, and the role of formal agreements in addressing modern slavery risks.

This case studies report is structured in three parts. First, the report provides a comparative overview of the four cases. Second, it provides separate consideration of each of the four case studies organised across common and relevant areas:

1. The country context with respect to trade, investment, and modern slavery;
2. The national legislative framework for modern slavery, forced labour, and human trafficking;
3. Country commitments to international human rights instruments relevant to modern slavery and ILO conventions on forced labour;
4. Modern slavery risks and vulnerabilities;
5. Trade and investment agreements; and
6. Summary and implications.

Third, the report provides a final summary of the lessons learned from across the four case studies, observing how these link to the broader aims and objectives of the TRIMS project.

1. Case study overview

The four 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 between 2014 and 2022, and as destinations for UK foreign direct investment (FDI). As Table 1 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 persons in conditions of modern slavery per 1,000 people in the population in China to 8 per 1000 people in India, while the total estimated number of people in modern slavery across the four cases is 17.4 million, which represents 35% of the estimated global total.⁷

State party ratification of 18 key international legal instruments varies from 50% in Malaysia to 66.67% in India.⁸ 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 provide greater detail about what underpins these variations, national legislation already in place, the risks and vulnerabilities for modern slavery that vary by products, how and in what ways trade and investment agreements contain provisions that address modern slavery, and the progress of negotiation for these agreements.

Indicator	Cases			
	China	India	Malaysia	Thailand
Trade volume ⁹	£107.5 billion	£34 billion	£5.6 billion	£6.0 billion
% of total UK trade volume	6.1%	2.1%	0.3%	0.4%
FDI volume: inward	£12.9 billion	£9.3 billion	£2.4 billion	£426 million
% of inward FDI	0.8%	0.5%	0.1%	<0.1%
FDI volume: outward	£3.4 billion	£19.1 billion	£3.8 billion	£2.1 billion
% of outward FDI	0.2%	1.1%	0.2%	0.1%
Estimated Modern Slavery Prevalence: proportion ¹⁰	4 per 1000 in pop.	8 per 1000 in pop.	6.3 per 1000 in pop.	5.7 per 1000 in pop.
Estimated Modern Slavery Prevalence: total number	5.77 million	11.05 million	202,000	401,000
NRM Referrals 2014-2020 ¹¹	2,462	1,375	-	-
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

Table 1. The four TRIMS case studies compared



2. China

2.1. Country context

Over the last decade, UK-China relations have varied considerably. Bilateral relations were arguably stronger during Prime Minister David Cameron's time in office, with President Xi Jinping's visit to the UK in 2015 and the announcement of the 'golden era' of stronger economic ties. During the post-Brexit period, Prime Minister Theresa May took a more cautious approach, while Prime Minister Boris Johnson sought to find a replacement for EU markets through renewed efforts with China through the Economic and Financial Dialogue and the China-UK Joint Trade and Economic Commission (JETCO). However, neither forum was re-activated under Johnson or during Prime Minister Liz Truss's brief administration. Prime Minister Rishi Sunak has announced that the 'golden era' of UK-China relations is over and has expressed interest in establishing multilateral agreements with like-minded countries.¹²

The UK and China do not have a free trade agreement (FTA). In 2013, David Cameron called for the restart of negotiations on an FTA with China after 18 months of suspended ministerial talks.¹³ However, the UK trade department now does not plan to negotiate a free-trade agreement with China and its focus is mainly 'on reducing market access barriers for British businesses.'¹⁴ The China-Britain Business Council sees a free trade agreement as 'an appropriate medium-term goal for the UK,' but in the meantime it will focus on achieving sectoral agreements.¹⁵ China's 5-year economic plan indicates that it may not be particularly interested in pursuing a trade agreement, since its focus is on 'dual circulation'—a concept that prioritises domestic consumption and an increase in exports. While China remains open to international trade, its domestic approach is a way of seeking economic benefit from its market of 1.4 billion consumers.

Against this background of changing bi-lateral relations, there have been increasing concerns over issues with human rights in China, with efforts in the House of Commons and the House of Lords to introduce trade restrictions, such as the amendment to the Trade Bill (now the Trade Act 2021) in the House of Lords, which stated that the Trade Bill 'would require that the UK does not trade with genocidal regimes.' The amendment was approved by the House of Lords with a majority of 129 votes. However, the House of Commons rejected the Lords' amendment on 19 January 2021. This rejection was followed by a compromise amendment (Section 3 of the Trade Act 2021) such that designated committees in each House would consider whether there is credible evidence of genocide committed by a potential trading partner.¹⁶

In 2021, the House of Commons Foreign Affairs Committee published a report on its inquiry into the alleged presence of detention camps in Xinjiang, which concluded that the Government 'should respect the view of the House of Commons that crimes against humanity and genocide are taking place, and take a much stronger response.'¹⁷ At the same time, the House of Lords also published a report on security and trade relationships between the UK and China calling on the government to develop a clear China strategy for 'balancing its ambition for increased economic engagement with China with the need to protect the UK's wider interests and values.'¹⁸

During this period, there has been a steady increase in imports from China to the UK. In 2019 the total value of the imports was approximately £50.6 billion. By 2020 this had grown to £58 billion, and by 2021 to more than £65.3 billion.¹⁹ In 2021, China accounted for 13.3% of UK imported goods, the largest share of UK imports of any country.²⁰ The most imported goods in the UK were machinery and transport equipment, toys, video game consoles and exercise equipment, clothing, material manufactures and chemicals.²¹ Throughout the Covid-19 pandemic, the UK's trade deficit with China tripled, where imports from China increased by 38% and UK exports to China declined by 34%.²²

In terms of investments, in 2020, the outward stock of foreign direct investment (FDI) from the UK into China was £12.9 billion, accounting for 0.8% of the total UK outward FDI stock.²³ By comparison, the inward stock of FDI into the UK from China was estimated at £3.4 billion or 0.2% of the total UK inward FDI stock.²⁴ Throughout 2017, 2018, and 2019 the UK attracted the most Chinese FDI among all European countries,²⁵ with the UK representing nearly 30% of European FDI from China in 2019.

Overall, China is a major economic player, and in 2021, total Chinese exports reached over £2.2 trillion. Its top five importers worldwide were the United States of America (17.2% of the global total), Hong Kong (10.3%), Japan (5%), South Korea (4.5%), and Vietnam (4.2%).²⁶ Its main exported goods were: electrical machinery and equipment (£652b), nuclear reactors, boilers, machinery and mechanical appliances (£397b), furniture, bedding, lamps, and prefabricated buildings (£101b), and vehicles (other than railways and tramway rolling stock and parts and accessories) (£87b).²⁷

China offers a relatively constrained environment for foreign investment. It maintains restrictions in a number of key economic sectors and has in place requirements that can be difficult to fulfil or can raise concerns for investors, with ownership caps that require foreign companies to partner with local Chinese firms or to transfer technology.²⁸ Despite these restrictions, China remains a popular investment destination for investment, and has signed 107 bilateral investment treaties (BITs) and multiple free trade agreements (FTAs) that include investment chapters.²⁹ According to the latest Statistical Bulletin of FDI published by China, the main industries targeted by investors in 2019 were: manufacturing (25.5%), real estate (17%), leasing and business services (16%), information transmission, computer services and software (10.6%), scientific research, technical service and geologic prospecting (8%), and wholesale and retail trade (6.5%).³⁰

2.2. National legislative framework

China has enacted a range of laws and regulations to prohibit forced labour. The Penal Law prohibits ‘forcing another person to work by violence, threat or restriction of personal freedom’ (Article 244, 2011 amendment). In addition, the Labour Contract Law (2007) has the following detailed provisions:³¹

- Article 3: Labour contracts shall be concluded in adherence to the principles of lawfulness, fairness, equality, voluntariness, consensus through consultation and good faith.
- Article 9: Employers are prohibited from detaining identity cards or collecting recruitment fees or deposits.
- Article 26: A labour contract shall be invalid if it is concluded or codified against a party’s true intention by means of deception or coercion, or when the party is in a precarious situation.
- Article 38: A worker may have the labour contract revoked if the employer is found to be failing to pay labour remuneration on time and in full.
- Article 38: If an employer forces a person to work by resorting to violence, intimidation, or illegal restriction of personal freedom, the worker may revoke the contract without notice.
- Article 60: The labour dispatching unit and the receiving unit may not charge any fees to dispatched workers.
- Article 88: Administrative and criminal penalties are in place for forcing a person to work by resorting to violence, intimidation or illegal restriction of personal freedom.

China has also passed several other laws to improve aspects of the labour market and to minimise exploitation. The Interim Regulations on Labour Dispatch (2014), for example, limit the percentage of dispatched workers in a company to 10% and temporary staff can work for a term of no more than 6 months at one company to encourage companies to offer permanent positions to staff that include social security safety nets. Under the Law on Promotion of Employment (2008) labour agents and intermediaries must be registered, are required to provide truthful information about the job, cannot retain workers’ personal identification documents, and cannot charge the worker a fee or deposit.³² The Chinese Constitution states that ‘Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited.’³³ There are additional provisions in the Constitution pertaining to labour rights that are aligned with China’s international commitments.

2.3. International commitments

Table 2 shows China’s commitments to international human rights instruments related to modern slavery and Table 3 shows its commitments to ILO conventions.

In addition to its ratification of several international conventions, China has entered into multiple collaborations with the ILO.³⁴ In 2012, as part of a South-South and Triangular Cooperation (SSTC) agreement, China committed US\$1 million to support South-South cooperation and the decent work agenda.³⁵ In 2016, the ILO and the Ministry of Human Resources and Social Security (MoHRSS) signed a new Memorandum of Understanding (MoU) establishing a strategic partnership promoting social justice, decent work, and fair globalisation. In 2019, another MoU was signed between the ILO-All-China Federation of Trade Unions (ACFTU) with the goal of enhancing trade union development in the Asia and the Pacific region through sharing knowledge, training, and technology transfer.³⁶

China further increased its labour related international commitments in other forums. For example, China endorsed the ‘Call to Action to End Forced Labour, Modern Slavery and Human Trafficking’ launched at the UN General Assembly 72nd Meeting, 2017. It also 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.³⁷ This document declares how China will ‘protect the rights and interests of women and girls in accordance with the law,’ how labour skills are enhanced through vocational training, and how labour transfers contribute to poverty alleviation. It specifically refers to the protection of workers’ legal rights - ‘the linkage between labour protection supervision and enforcement and criminal justice has been strengthened to effectively ban and stop child labour. To protect labour rights and interests, China gives full play to the role of the tripartite mechanism for coordinating labour relations.’³⁸

Instrument	Party
1926 Slavery Convention	22 April 1937; Signed on behalf of the Republic of China on 14 December 1955 (note 1 under ‘China’ in the ‘Historical Information’ section in the front matter of this volume).
1953 Protocol to the Slavery Convention	Not party
1956 Supplementary Slavery Convention	Not party
1966 International Covenant on Civil and Political Rights	Not party (signature 1998; ratification/accession: N/A) ³⁹
1966 International Covenant on Economic, Social and Cultural Rights	Signature 1997, ratification/accession 2001 ⁴⁰
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons	8 February 2010
1998 Rome Statute of the ICC	Not party

Table 2. China’s commitments to international human rights instruments

Instrument	Party
Forced Labour Convention, 1930 (No.29)	12 Aug 2023, in force
Abolition of Forced Labour Convention, 1957 (No.105)	12 Aug 2023, in force
Equal Remuneration Convention, 1951 (No.100)	02 Nov 1990, in force
Discrimination (Employment and Occupation) Convention, 1958 (No.111)	12 Jan 2006, in force
Minimum Age Convention, 1973 (No.138) (min age specified 16y)	28 April 1999, in force
Worst Forms of Child Labour Convention, 1999 (No.182)	08 Aug 2002, in force
Promotional Framework for Occupational Safety and Health Convention, 2006 (No.187)	Not party
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)	Not party
Right to Organise and Collective Bargaining Convention, 1949 (No.98)	Not party
Occupational Safety and Health Convention, 1981 (No.155)	25 Jan 2007, in force
Protocol to the 1930 Forced Labour Convention, 2014	Not party

Table 3. China’s commitment to ILO conventions (including the Forced Labour Convention)⁴¹

2.4. Modern slavery risks

The 2023 Global Slavery Index estimates that modern slavery prevalence in China is 4 per 1000 people in the population, with an estimated total of over 5.77 million people.⁴² Different forms of modern slavery are reported for China, ranging from labour exploitation to trafficking for sexual exploitation and forced labour purposes. Forced labour is reportedly prominent particularly in the Autonomous Regions of Xinjiang and Tibet, but cases of labour exploitation have also been reported in other regions across the country.

Forced labour in Xinjiang has been well documented over the last five years. It is estimated that more than 1 million Uyghurs from the region have been incarcerated. In 2021, the Uyghur Tribunal, established in the UK as an unofficial and independent body, found that China's actions against the Uyghurs in Xinjiang province constitute genocide, where acts of forced labour and deportation, imprisonment, torture, rape, and enforced sterilisation were found to have been committed 'beyond reasonable doubt'.⁴³ A 2022 report published by the Office of the High Commissioner for Human Rights (OHCHR) concluded: 'The extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in the context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity.'⁴⁴ The Chinese Government refutes such allegations and argues that the enclosures where Uyghurs are held are vocational training centres and are part of China's strategy of economic development and poverty alleviation.

Uyghurs are allegedly forced to work in different sectors, are not allowed to leave the 'training camps' or contact their family, and receive little or no pay for their work. Over time, China has reportedly introduced forced labour transfer programs, such that a proportion of Uyghurs are forcefully deported to other provinces in China. This dispersal makes it more difficult for geographical areas to be pinpointed as concentrated areas of modern slavery, also posing new challenges for sanctioning products that originate from Xinjiang, as products manufactured elsewhere in China may also involve Uyghur forced labour.

For example, 83 foreign and domestic companies are reported to have benefitted from the use of 80,000 Uyghur forced labourers from 27 factories based in nine provinces outside Xinjiang through the 'Xinjiang aid' labour transfer programs.⁴⁵ Among these companies are Apple, Nike, Adidas, Puma, North Face, Amazon, BMW, Gap, M&S, Uniqlo, and Samsung. Local authorities and businesses, including suppliers for these brands, are reportedly compelled and/or incentivised by local governments to fulfil transfer targets.⁴⁶ The use of these labour transfer programs has also been recently documented and reported in the fish processing and packaging industry.⁴⁷

Beyond China's Muslim population, Tibetans are also reported to face similar treatment. Thousands of rural Tibetans have been placed in 'vocational training' and manufacturing jobs through a quota-based 'surplus labour' transfer program, which the government argues to be part of the same poverty alleviation strategy seen in Xinjiang.⁴⁸ Other arrangements that present a high risk for modern slavery occur in Northeast China, where approximately 50,000 workers from North Korea are working in textile and apparel factories, and restaurants. Sent abroad by the North Korean government, they are 'managed by government representatives and are highly likely to be working under conditions of forced labour, which typically includes restricted movement, no access to their passports, and very low net wages.'⁴⁹

Outside these geographical regions, allegations of exploitative labour practices are also common. National labour laws are often ignored by companies who operate a '996' work regime, meaning that the work schedule runs from 9am to 9pm, 6 days a week or more. Other grievances often include withholding workers' wages, providing sub-standard unsanitary accommodation, and preventing workers from forming their own independent union, separate from the state-run trade union All-China Federation of Trade Unions.

The practice of withholding wages regularly leads to numerous protests across the country⁵⁰ and is an issue acknowledged by authorities, who sometimes help to collect outstanding wages. For example, in 2016, in Zhejiang province alone, £345 million in overdue pay was redistributed among 258,000 workers.⁵¹ Foxconn, the biggest contract electronics manufacturer in the world that produces devices for Apple and Amazon among others, has repeatedly come into the spotlight for the labour conditions in its factories in China. Most recently, it was reported that 40% of its staff in a factory in Hengyang were agency workers, despite a domestic labour law that states that a maximum of 10% of a company's workforce can be agency staff, and none were paid adequately for overtime.⁵²

Trade unions formed under an employer must be registered with the All-China Federation for Trade Unions (ACFTU), a government body that has limited power to protect workers' rights. The Global Times acknowledges that, 'The semi-official status of ACFTU makes it awkward when the local governments choose to side with the factories.'⁵³ Repeated attempts at establishing unions have been made, but often concluded with local authorities interfering, harassing, and intimidating those who led such initiatives. Often, labour activists end up being charged for 'gathering crowds to disturb social order' and are denied access to lawyers.⁵⁴

The TRIMS project quantitative workstream found that the highest vulnerabilities for modern slavery are found in the production of goods for export that are labour-intensive, using unskilled, low wage, and migrant labour. The sectors of the Chinese economy that share these features of production and that are more prone to labour exploitation and abuses include cotton,⁵⁵ solar panels,⁵⁶ tomatoes,⁵⁷ dates,⁵⁸ raw materials and auto parts,⁵⁹ and seafood.⁶⁰ According to the US Department of Labour, child labour in China occurs in: Shanxi and Henan provinces in brick kilns; cotton production in XUAR; electronics factories in Guangdong, Henan, Shanxi and Sichuan; textiles in XUAR; and toys in Sichuan and Guangxi.⁶¹

Cotton is the product that has been perhaps best documented in relation to allegations of forced labour in Xinjiang. China is the world's second largest producer of cotton, and in 2020-21, 87% of China's cotton was produced in Xinjiang.⁶² The Xinjiang Production and Construction Corp (XPCC)

functions as a regional government, plays an important role in the regional production of cotton, its operations have been linked to labour camps,⁶³ and it produces nearly 40% of the region's cotton.⁶⁴

In 2021, the US Department of Labour reported that textiles and yarn are products manufactured in Xinjiang using Uyghur forced labour. The US Department of Labour makes reference to over 2,000 Uyghurs and ethnic Kazakhs, who 'have been involuntarily transferred out of Xinjiang to yarn factories in the east and forced to produce thread/yarn products,' with companies 'frequently engag[ing] in coercive recruitment; limit[ing] workers' freedom of movement and communication; and subject[ing] workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and threaten[ing] family members (...)' may undergo re-education to eradicate extremism.⁶⁵ Another 100,000 people are thought to be part of forced labour programs in 're-education camps.'⁶⁶

To address concerns in the cotton industry, 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.⁶⁷ 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.⁶⁸ 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.

China also has a large share in manufacturing components solar photovoltaic (PV) products. Chinese companies lead the market at each stage of production, producing 77% of the world's polysilicon, over 97% of polysilicon wafers, 83% of solar cells, and 74% of solar modules, all of which are components of solar panels.⁶⁹ A high percentage of the mining and manufacturing processes for PVs take place in Xinjiang. The risks of forced labour in the solar panels supply-chain occur at several stages of production. At the initial stage, raw silica is mined and transformed into metallurgical silicon; eleven different metallurgical silicon producers in XUAR have been identified to have used forced labour.⁷⁰ The metallurgical grade silicon then undergoes a chemical purification process to transform it into polysilicon. Four of largest polysilicon makers operating in XUAR—GCL-Poly, TBEA/Xinte, and East Hope Group, and a Daqo New Energy Corp, which account for 45% of the world polysilicon supply—are suspected of using forced labour in their supply-chains.⁷¹



2.5. Trade and investment agreements

China has sixteen bilateral trade agreements, three regional agreements (see Table 4), is negotiating or initiating a further 8 TAs,⁷² and has agreed over 100 bilateral investment treaties. For 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). The selection of these TAs was made based on the democratic nature of the countries with which the TA was agreed, their human rights record, their geographical location and geopolitical interests, and their bilateral relations of power, all of which were deemed influential in shaping TA negotiations and their potential attention to modern slavery.

China's trade agreements	
Regional	
ASEAN China (*upgrade)	
Asia Pacific Trade Agreement (APTA)	
RCEP	
Bilateral	
China-Australia	
China-Chile (*upgrade)	
China-Costa Rica	
China-Georgia	
China-Hong Kong (closer economic and partnership agreement)	
China-Iceland	
China- Republic of Korea	
China-Macao (closer economic and partnership agreement)	
China-Mauritius	
China-Maldives	
China-New Zealand	
China-Pakistan (*upgrade)	
China-Peru	
China-Singapore (*upgrade)	
China-Switzerland	

Table 4. Chinese regional and bilateral trade agreements

In Australia, CHAFTA has been contested in the domestic political context owing to Australia's democratic system, active civil society, Modern Slavery Act (2018), and the need for healthy trade relations with China. CHAFTA has also seen inter-party contestation related to Australia's economic dependence on China,⁷³ Australia's ban on Huawei and its support for Taiwan, anti-dumping tariffs imposed on Australia, and a ban on some Australian goods entering the Chinese market.⁷⁴

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.'⁷⁵ In its more recent submission to the Foreign Affairs, Defence and Trade Legislation Committee inquiry into the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020, the Australian Council on Trade Unions (ACTU) reissued its earlier concern over the lack of labour provisions within CHAFTA, criticising the Chinese and Australian Governments for making no commitments to abide by fundamental labour rights as defined by the ILO:

There are no commitments in CHAFTA on any of these labour rights, including on the issue of forced labour, and therefore no means for the Australian Government to raise the issue of whether such products should have preferential access to Australia, and no obligation on the Chinese government to take action to end forced labour.⁷⁶

The Australian Government's position was that a 'transparency approach' was the 'preferred model for government to work together with business, civil society and academia to address modern slavery, including forced labour in supply chains.'⁷⁷

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.⁷⁸

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

addressing 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 Globalisation, and Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, as well as domestic labour laws.⁷⁹ 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 Korean farmers and fisherman who feared their own markets being flooded with cheap goods. The FTA was approved with built-in subsidies for these groups,⁸⁰ 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 Economic 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 restrictions may be imposed relating to temporary entry for CSS.'⁸¹

In its current and updated form, China formally became part of the Asia-Pacific Trade Agreement (APTA) in 2006, which by 2002 included Bangladesh, China, India, Laos PDR, Mongolia, the Republic of Korea, and Sri Lanka.⁸² 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.'⁸³ After the Fourth APTA Ministerial Declaration in 2017, there were signs that APTA may become a deeper trade agreement that may recognise some environmental, social and governance (ESG) issues. The Declaration 'recognised the inter-linkages between international trade with economic, social, and environmental policy objectives and the need to integrate them at all levels to achieve sustainable development (...) achieving greater transparency, eliminating Non-Tariff Barriers, and promoting green trade and investment.'⁸⁴

China has signed 145 bilateral investment treaties (BITs) since the 1980s.⁸⁵ Of the countries discussed earlier with which China has an FTA, China did not sign a BIT with Switzerland and Iceland. It does have BITs with Australia (1998) and South Korea (2007) and is part of the APTA Investment Agreement (2009). Consistent with our broader analysis of BITs in our

quantitative workstream, almost none of these treaties contain labour provisions. The South Korea-Myanmar Bilateral Investment Treaty (2014) stands as an exception: 'Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment and the promotion of consumer protection and internationally recognized labour rights.'

China and the UK signed a BIT in 1986, which provides no protection to workers and contains no labour provisions. China and the EU reached a comprehensive agreement in principle on investment (CAI) in December 2020. The CAI is underpinned by sustainable development principles, which is notable as it is the first time China agreed to such provisions with a trade partner. China committed to not lowering the standards of protection to attract investment, to abide by its international obligations, and to promote responsible business conduct. China has also agreed to implement the ILO conventions it has already ratified and committed to follow the ILO fundamental conventions on forced labour.⁸⁶ The CAI includes a provision for the creation of a working group responsible for overseeing the implementation of sustainable development measures related to labour and climate change.⁸⁷ This working group may involve an independent panel of experts and seek input from civil society. Additionally, the working group is mandated to publish a comprehensive report assessing the implementation of sustainable development commitments, including any areas of disagreement.⁸⁸

In its 2017 Sustainability Impact Assessment, the European Commission recommended addressing private actors' potential abuse of human rights, in addition to encouraging compliance and monitoring companies' behaviour.⁸⁹ In November and December 2020, the European Parliament issued two Resolutions to highlight that 'respect for human rights is a pre-requisite for engaging in trade and investment relations with the EU' and condemned 'the government-led system of forced labour' in Xinjiang.⁹⁰ The CAI took seven years of negotiations, but in May 2021 the European Parliament froze its ratification. In the context of the sanctions imposed on China and harsh criticism made by some Members of the European Parliament (MEPs) over its allegations of forced labour and deprivation of human rights among Uyghurs in Xinjiang, China imposed a series of sanctions on MEPs, who in turn condemned what they considered to be arbitrary and baseless sanctions and voted for the suspension of the CAI negotiations.⁹¹

In addition to its multiple Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs), China has enacted a series of laws with respect to its foreign investment market. The 2019 Foreign Investment Law changed the existing landscape⁹² and aims to create a level playing field between foreign and domestic firms, i.e., to protect, promote, and manage investment in a more unified manner. The Law prohibits forced technology transfer, grants foreign firms equal rights to participate in government procurement, and protects intellectual property rights (see also Trademark Law, Anti-Unfair Competition Law and Administrative Licensing Law and Regulations on Technology Import and Export Administration).⁹³

The 2021 Foreign Investment Screening Mechanism (FISM) established an agency to undertake reviews of foreign investments across a wide range of sectors such as defence, agriculture, energy, and key technology, among others. The 2021 Anti-Foreign Sanctions Law prohibits domestic entities from unilateral cooperation with foreign civil and criminal investigations.⁹⁴ The law seeks to 'safeguard national sovereignty, security and development interests and protect the legitimate rights and interests of [our] citizens and organizations.' It asserts that China 'has the right to employ corresponding countermeasures' when 'foreign nations violate international law and basic norms of international relations to constrain or suppress China under any kind of pretext.' The law allows for individuals and organisations that 'directly or indirectly participate in the drafting, decision-making, or implementation' to be placed on China's sanctions list. This law complemented the Export Control Law (in force since December 2020), which also enables the Chinese government to take reciprocal measures against countries that damage China's national security through export control measures.⁹⁵

In addition to these laws, China publishes lists that restrict investments, such as the Foreign Investment Negative List (FINL) and the Market Access Negative List (MANL). Such lists outline industries that are prohibited or restricted for private investment by companies in China or list items that require approval, permits, or licensing.⁹⁶ In terms of labour rights, China requires all foreign invested companies provide a work contract to their employees, stipulating remuneration, working hours, labour conditions, and protections, among others. Dispatched labour is also capped to no more than 10% of the total labour force.⁹⁷

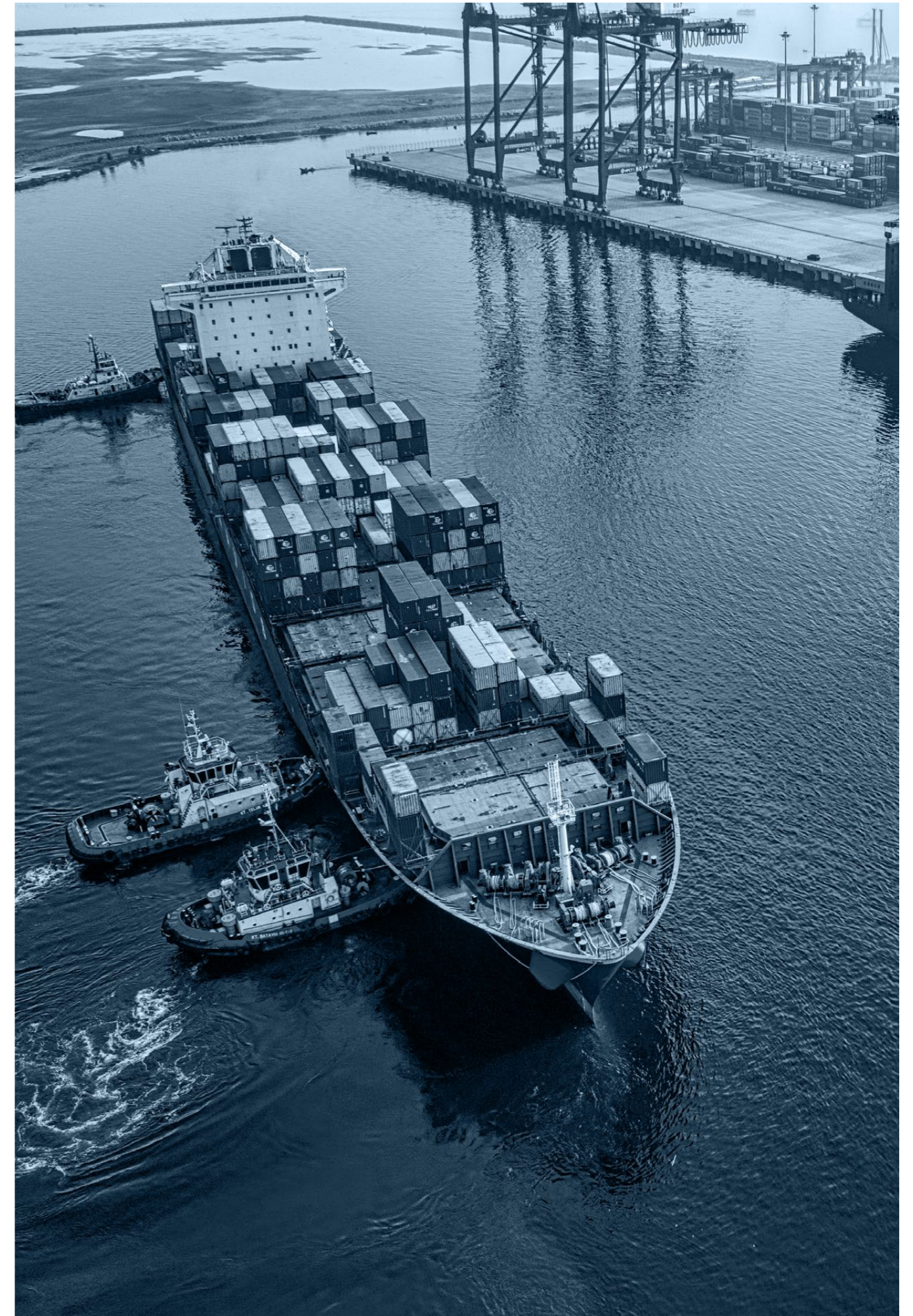
2.6. Summary and implications

This case study has shown that China is a large market under high global demand for bilateral and multi-lateral trade and investment opportunities. Its formal legal frameworks signal commitment to protecting the rights of workers, prohibit forced labour, and combat modern slavery. Its commitments to international human rights instruments relevant to modern slavery and the ILO conventions are not comprehensive, while its domestic legal frameworks have various provisions on labour governance and forced labour that require stronger and more consistent implementation.

In contrast to its formal legal commitments, there are persistent and increasing reports of troubling labour rights violations, particularly towards its ethnic minority populations, which have been challenged by observers, commentators, and trade and investment partners. The labour transfer programmes have dispersed workers from ethnic minority backgrounds, making compliance with its formal commitments increasingly difficult to monitor.

China is actively engaged in a large portfolio of bilateral and multilateral trade and investment agreements, which are not considered particularly strong on worker rights protections. Tensions arise from differences in larger normative commitments to human rights between China and trade partners. Bilateral relations are characterised by the resort of partners to tariffs, trade bans, sanctions, and other trade and investment measures typical of relations between actors with differential market power.

Democratic governments, like the UK, EU countries, Australia, and New Zealand, face additional challenges to trade and investment relations with China from within their parliaments, organised civil society organisations, and media outlets that are increasing their scrutiny and reporting on worker rights protections, particularly those in the production processes used for tradable goods. As identified in the other case studies that feature in this report and against our broader analysis of FTAs and BITs, opportunities remain for the UK to continue to forge trade and investment relations with China that address worker rights, labour protections, modern slavery, and a stronger commitment to human rights.





3. India

3.1. Country context

India is a large⁹⁸ and complex democracy⁹⁹ and a lower middle-income country¹⁰⁰ with which the UK is currently seeking a Free Trade Agreement. The two countries have a ‘shared history’ through the British Empire, with India celebrating 75 years of independence on the 15 August 2022.¹⁰¹ India ranks 85/180 in Transparency International’s Corruption Perceptions Index¹⁰² and ‘5’ in the International Trade Union Confederation (ITUC) Global Rights Index, with no guarantee of rights.¹⁰³ This rating is a function of repressive laws, murders, union-busting, protection of civil liberties, prosecution of union leaders, and dismissals for participating in strike action.

Total trade in goods and services (exports and imports) between the UK and India was £34.0 billion, in the four quarters to the end of Q3 2022, an increase of 51.7% or £11.6 billion from the four quarters to the end of Q3 2021.¹⁰⁴ Of this, total UK exports to India amounted to £14.8 billion, and total UK imports from India amounted to £19.2 billion.¹⁰⁵ India was the UK’s 12th largest trading partner in the four quarters to the end of Q3 2022, accounting for 2.1% of total UK trade.¹⁰⁶ In 2021, the outward stock of foreign direct investment (FDI) from the UK to India was £19.1 billion, accounting for 1.1% of total UK outward FDI stock. Inward stock of FDI to the UK from India was £9.3 billion, accounting for 0.5% of the total UK inward FDI stock.¹⁰⁷

India’s exports are primarily manufactured products, accounting for 70.7% of total exports, followed by agricultural products at 14.1%, fuels and mining products at 14.7%, and other products at 0.5%.¹⁰⁸ Petroleum oils (other than crude) are India’s single biggest export, valued at US\$54.04 billion in 2021. This is followed by diamonds, whether or not worked (US\$ 24.75 billion), medicaments in measured doses (US\$ 17.12 billion), articles and parts of jewellery (US\$ 10.53 billion), rice (US\$ 9.62 billion), and unwrought aluminium (US\$ 6.97 billion).¹⁰⁹

3.2. National legislative framework

The Constitution of India expressly protects against exploitation, specifically prohibiting human trafficking and forced labour,¹¹⁰ and the employment of children below the age of 14 in factories, mines, and any other hazardous employment.¹¹¹ The Constitution also protects freedom of association and unionisation,¹¹² freedom of movement,¹¹³ and the right to practice any profession or carry out any occupation, trade, or business.¹¹⁴ The right to unionise is further regulated by the 1926 Trade Unions Act – amended in 1960, 1968, and 2001.

The 1860 Penal Code Act prohibits trafficking in persons,¹¹⁵ habitual dealing in slaves,¹¹⁶ and kidnap or abduction for purposes of slavery.¹¹⁷ The Act was amended in 2013¹¹⁸ to criminalise kidnapping or maiming a minor for purposes of begging.¹¹⁹ Similarly, kidnapping, abducting, or inducing a woman to compel her marriage is an offence under Section 366 of the Penal Code Act, as is trafficking any girl under the age of twenty one for illicit sexual intercourse.¹²⁰ 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.¹²¹ Selling and buying of minors for prostitution, illicit intercourse, or any unlawful and immoral purpose are offences under the Act, punishable by imprisonment of up to ten years.¹²² Unlawful compulsory labour is an offence punishable by up to one year in prison, a fine, or both.¹²³

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.¹²⁴ Any enforcement of bonded labour or advancement of bonded debt after

the commencement of the Act is punishable by imprisonment of up to three years and a fine.¹²⁵ Child marriage—a marriage to which either of the parties is a male below the age of 21 or a female below the age of 18¹²⁶—is voidable at the option of the minor,¹²⁷ and any male adults convicted of contracting a child marriage are liable to imprisonment for up to two years, a fine, or both.¹²⁸ In addition, the Immoral Traffic (Prevention) Act of 1956 makes it an offence to procure or take a person for purposes of prostitution, punishable by three to seven years in prison and a fine. This punishment is extended to a minimum term of seven years, extendable to life imprisonment, when the victim is a child, and up to 14 years when the victim is a minor.¹²⁹ The Act also makes it an offence to detain a person in a brothel or in any premises with intent that such a person may have sexual intercourse with a person other than the detained person's spouse.¹³⁰ 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.

3.3. International commitments

India is party to a series of international human rights instruments relevant to modern slavery (Table 5) and ILO conventions (Table 6).¹³¹ The tables show that for international human rights instruments, India is not a party to the 1998 Rome Statute of the International Criminal Court (ICC) and for the ILO conventions, it has not ratified the 1948 Freedom of Association and Protection of the Right to Organise Convention, the 1949 Right to Organise and Collective Bargaining Convention, the 1981 Occupational Safety and Health Convention, or the 2006 Promotional Framework for Occupational Safety and Health Convention, and is not party to the 2014 Protocol to the 1930 Forced Labour Convention.

Instrument	Party
1926 Slavery Convention	18 June 1927
1953 Protocol to the Slavery Convention	12 March 1954
1956 Supplementary Slavery Convention	23 June 1960
1966 International Covenant on Civil and Political Rights	10 April 1979
1966 International Covenant on Economic, Social and Cultural Rights	10 April 1979
1930 Forced Labour Convention	30 November 1954
1957 Abolition of Forced Labour Convention	18 May 2000
1989 Worst Forms of Child Labour Convention	13 June 2017
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons	5 May 2011
1998 Rome Statute of the ICC	Not party

Table 5. India's commitment to international human rights instruments

Instrument	Party
1930 Forced Labour Convention (No.29)	In Force, 30 November 1954
1951 Equal Remuneration Convention (No.100)	In Force, 25 September 1958
1958 Discrimination (Employment and Occupation) Convention (No.111)	In Force, 3 June 1960
1973 Minimum Age Convention (No.138)	In Force, 13 June 2017
1999 Worst Forms of Child Labour Convention (No.182)	In Force, 13 June 2017
2006 Promotional Framework for Occupational Safety and Health Convention (No.187)	Not ratified
1948 Freedom of Association and Protection of the Right to Organise Convention (No.87)	Not ratified
1949 Right to Organise and Collective Bargaining Convention (No.98)	Not ratified
1981 Occupational Safety and Health Convention (No.155)	Not ratified
2014 Protocol to the 1930 Forced Labour Convention	Not party

Table 6. India's commitment to ILO conventions

3.4. Modern slavery risks

Walk Free's Global Slavery Index estimates that India has a modern slavery prevalence of 8 people per 1,000, giving it the 6th highest proportional prevalence in the Asia-Pacific region, with a 56% level of vulnerability to modern slavery, a government response score of 46%,¹³² and an estimated total number of people living in modern slavery of 11,050,000. According to Walk Free, economic insecurity drives workers to take on risky jobs or loans from unscrupulous employers, who exploit workers by forcing them into labour-intensive jobs to repay their debts.¹³³ The Covid-19 pandemic caused thousands of deaths, which left thousands of newly orphaned children exposed to higher risks of abuse and trafficking.¹³⁴

India is placed in Tier 2 in the 2023 US State Department Trafficking in Persons Report,¹³⁵ and although the Indian government does not fully meet the minimum standards for the elimination of trafficking, it is making significant efforts to do so.¹³⁶ The primary administrative responsibility for anti-trafficking efforts lies with India's states and union territories, with policy oversight from the central government. These efforts include investigation of human trafficking cases, collaboration with foreign governments, and convicting traffickers for bonded labour.¹³⁷ India's National Commission for Women (NWC) established a new anti-trafficking unit to support the Anti-Human Trafficking Units (AHTUs), and the Government approved a new program to support state and territory expansion of protection services for child victims of crime, including trafficking.¹³⁸ In 2021, India reported 2,189 cases of human trafficking, 84.7% of which were formally charged.¹³⁹ These concerned a total of 6,533 victims (see Table 7).¹⁴⁰

Category	Below 18 Years			Above 18 Years			Totals		
	M	F	Total	M	F	Total	M	F	Total
Totals	1,570	1,307	2,877	901	2,755	3,656	2,471	4,062	6,533
Percentage (of Category) ¹⁴¹	54.58	45.42		24.65	75.35		37.82	62.18	
Percentage (of Total)	24.03	20.01	44.04	13.79	42.17	55.96	37.82	62.18	
Rescued	1,486	1,205	2,691	815	2,707	3,522	2,301	3,912	6,213
Percentage Rescued	94.65	92.19	93.53	90.45	98.25	96.33	93.12	96.31	95.10

Table 7. Human trafficking in India

Overall, women constitute the highest number of identified victims of trafficking, accounting for 73.35% of adult victims. Trafficking in minors affects male victims more than female victims, accounting for 54.58% of reported victims. In terms of the nationalities of rescued victims of trafficking, the majority (6,106) were Indian, while 38 (all male) were from Sri Lanka. Other rescued victims were from Bangladesh (26), Nepal (8), and ‘others’ (35).¹⁴² The purposes for which the rescued victims were trafficked are varied, with the majority (2,704) trafficked for forced labour, while a further 2,049 were trafficked for sexual exploitation or prostitution. Other reasons include domestic servitude (475), forced marriage (182), petty crimes (32), child pornography (5), begging (7), and organ harvesting (6).¹⁴³

Against this progress, challenges remain, including a drop in prosecutions for trafficking, and a reduction in the identification of trafficking victims.¹⁴⁴ In 2021, 1,645 of the 2,189 cases reported were charged, of which 298 were resolved by the police. 32 cases resulted in convictions, accounting for 16% of the cases in which trials were completed (201), while 169 (84%) were acquitted or discharged.¹⁴⁵ There appears to be a slow process of prosecution, which delays access to justice. Of the 5,755 persons arrested for trafficking offences, 4,120 were charged, but only 584 of these have either been convicted (64) or acquitted/discharged (520).¹⁴⁶ Corruption makes it even more difficult to prosecute offenders, with officials allegedly receiving bribes from traffickers in exchange for protection against prosecution, and some local politicians allegedly benefitting from the commercial sexual exploitation of children and forced begging rings.¹⁴⁷

According to Walk Free, mass unemployment, high personal debt, and limited government support enable traffickers to prey on people who were pushed into survival mode during the Covid-19 pandemic.¹⁴⁸ Given the slow return of most industries to pre-pandemic levels, many desperate people were driven into sex work and working in brick kilns under conditions of forced labour, often hundreds of kilometres from home.¹⁴⁹ Women and girls are more vulnerable, often being employed in spinning mills and paid a lump sum at the end of their contract. This ‘Sumangali’ scheme traps women and girls, many of whom are migrants or from lower castes, into working until the end of their contract or risk losing their accumulated earnings.¹⁵⁰

The Constitution prohibits forced labour, and the Indian Penal Code criminalises the practice.¹⁵¹ In addition to the 2,704 victims of human trafficking,¹⁵² India reported that in 2021, 721 of the 31,252 rescued victims of kidnapping and abduction were kidnapped for purposes of forced labour. Of these, 194 were children (58 male, 136 female), while 527 were adults (271 male, 256 female).¹⁵³ Forced labour is widely reported in the textiles and garments industry, especially affecting women and girls.¹⁵⁴

Bonded labour is illegal in India,¹⁵⁵ and a total 315,320 bonded labourers had been released by the end of 2022.¹⁵⁶ However, the practice still exists and there are some challenges with enforcing the prohibition. In 2021, 592 cases involving 667 victims were reported under the Bonded Labour System (Abolition) Act.¹⁵⁷ However, the identification of bonded labour victims decreased by over 75%, and 22 of India’s 36 states and union territories did not report identification of any bonded labour victims or file a case under the Bonded Labour System (Abolition) Act.¹⁵⁸

Economic insecurity drives workers to take on risky jobs or loans from unscrupulous employers, who then exploit these workers by forcing them into labour-intensive jobs to repay their debts.¹⁵⁹ Traffickers use debt-based coercion to compel men, women, and children to work in brick kilns, embroidery and textile factories, rice mills, and stone quarries. As high as 40% of seasonal brick kiln workers in Rajasthan were found to owe manipulated debts to kiln owners, owing more than the workers would earn over the entire season.¹⁶⁰

Although India has a fairly robust legal regime for the protection of children, the Gov.UK overseas business risk assessment notes that child labour remains a concern, especially in the textile industry.¹⁶¹ In addition to protections under the Indian Penal Code (IPC), the Child and Adolescent Labour (Prohibition and Regulation) Act prohibits the employment of children younger than 14 in all occupations and processes, while the Immoral Traffic (Prevention) Act criminalises acts such as trafficking in children for purposes of prostitution. These are complemented by central and state government efforts to reduce child labour or its effects. For example, the Indian Ministry of Labour reports that the National Child Labour Project (NCLP) has mainstreamed an estimated 1.3 million children previously engaged in child labour.¹⁶² The Government of India also works with international organisations, such as the International Labour Organisation,¹⁶³ and with other countries, notably the US,¹⁶⁴ to achieve the elimination of child labour.

India’s Ministry of Labour reports that in the 2001 census, 12.6 million children aged between 5 and 14 were engaged in child labour, although this number reduced to 9.07 million in 2005 and 4.35 million in 2011.¹⁶⁵ In 2021-22, the Government of India removed 13,271 children from child labour situations, down from 58,289 and 54,894 children in the previous two reporting periods.¹⁶⁶ Despite these efforts, children in India engage in the worst forms of child labour, including in forced labour producing garments, quarrying stones, and performing dangerous tasks in the production of thread and yarn. An estimated 1.4% of children in India (3,253,202 children) aged 5-14 were engaged in work in 2020, and a further 0.3% (approximately 697,115 children) aged 7-14 combined work and school. The majority (56.4%) of these children were working in agriculture, while 33.1% were in industry and 10.4% in services.¹⁶⁷

3.5. Trade and investment agreements

India and the UK launched FTA negotiations in January 2022. In April 2022, the UK and Indian Prime Ministers targeted concluding talks on an FTA by the end of October 2022, though this deadline has not been achieved with the two countries currently in round 12 of the negotiations. In the UK and India Roadmap 2030, a Liberal Democrat asked if the government would give assurances that a future trade deal be linked with human rights. The government responded that the UK’s human rights commitments are central in its trading relationships.¹⁶⁸

The UK takes the approach that it is ‘committed to upholding’ labour standards in a trade agreement with India.¹⁶⁹ The FTA aims at putting ‘Global Britain at the heart of the Indo-Pacific region,’ in line with the UK’s policies prioritising the Indo-Pacific.¹⁷⁰ It sets its outline approach as sending ‘a powerful signal to the rest of the world that the UK is an independent trading nation.’¹⁷¹ In the UK’s strategic approach to the trade agreement, it reaffirms ‘commitments to international labour standards,’ provides for ‘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.’¹⁷²

This process to date has involved a consultation with input from consumers and businesses, launched on the 25th May 2021.¹⁷³ The consultation highlights key priorities, including ‘the need to ensure that the labour chapter does not weaken or reduce the level of protection afforded by labour laws in order to encourage trade and investment.’¹⁷⁴ Concerns were raised over the differences in domestic enforcement and standards and the impact this would have on workers and business.¹⁷⁵

To this, the government responded that it makes clear that ‘we will not compromise on these’ and will ensure parties ‘reaffirm their commitment to international labour protections.’¹⁷⁶

Despite the role of labour rights in the UK’s strategic approach to a UK-India FTA, the House of Commons International Trade Committee criticised a lack of transparency from the UK Government over negotiations,¹⁷⁷ noted the decision to dissolve the agreement on the 26 April 2023, and the resulting termination of its inquiry prior to taking oral evidence from experts and stakeholders, thus being unable to publish a full report.¹⁷⁸ The ITC wished to know the aims of the government with regards to an investor-state-dispute settlement (ISDS) clause, which could potentially mean a state could be sued over legislation that protects human rights,¹⁷⁹ or the potential conditionality of trade liberalisation on ratifying core UN and ILO human rights conventions.¹⁸⁰

The Business and Human Rights Resource Centre does not back an ISDS clause, and expresses concern that the UK government has ‘been a vocal supporter of the ISDS system’ whilst India has moved away from such provisions.¹⁸¹ It also supports the conditionality of trade liberalisation on the basis of ‘ongoing violations of human rights and labour rights in India,’ including ‘wage theft in the garment sector and labour abuses in tea supply chains that include forced labour.’¹⁸² It illustrates as a model the UK’s ‘enhanced framework’ for trade preferences, whereby preferences are granted upon a country’s ratification and implementation of key human and labour rights conventions. Accordingly, it considers that failure to require FTA partners to meet those same standards ‘would be a clear demonstration that human rights are subordinate to economic considerations in the UK’s trade policy.’¹⁸³

There are several Indo-Pacific trade agreements in place with India, which all lack a strong decent work basis, in particular in relation to the eradication of modern slavery. The Preamble of the India-Thailand Framework Agreement (2003) commits parties to ‘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, going slightly further with the aim to ‘enhance economic and social benefits, improve living standards and ensure high and steady growth in real incomes,’ but without mentioning decent work or sustainable development. The India-Singapore Economic Cooperation Agreement (2003) repeats the reaffirming clause, and likewise aims for economic and social benefits. Unlike the other two agreements, this takes note of sustainable development, but in the environmental context only. The Bangladesh-India Trade Agreement

(2015) has no mention of rights. The preamble of the Japan-India Economic Partnership Agreement (2011) states that social development is a part of sustainable development, including an article on environmental protection and objectives ensuring long-term sustainable development.¹⁸⁴ The Korea-India (2010) Agreement also commits parties to environmental sustainable development.¹⁸⁵ The New Zealand-India (1986) Agreement does not include mention of sustainable development.

As a more recent agreement, it would be expected that decent work would be included in the Australia-India Economic Cooperation and Trade Agreement (2022). The Preamble points to 'creating opportunities for workers and business,' improving living standards and promoting sustainable growth. In creating this agreement, negotiations were launched in May 2011, suspended in 2016 pending the outcome of other multilateral regional negotiations, and re-launched in 2021 with the aim of concluding an Economic Cooperation and Trade Agreement to liberalise and deepen bilateral trade and use this foundation to resume negotiations on the Australia-India Comprehensive Economic Cooperation Agreement.¹⁸⁶ There was no inclusion of sustainable development or labour issues in the Joint Free Trade Agreement feasibility study.¹⁸⁷

There were few submissions on labour rights and sustainable development in the negotiation process. The Australian Fair Trade & Investment Network (AFTINET) recommended there be impact assessments of potential social and human rights impacts of the agreement, and contain enforceable commitments by both governments not to reduce labour rights, alongside including the ILO's Declaration on Fundamental Principles and Rights at Work.¹⁸⁸ It recommended excluding ISDS and implementing rights through a government-to-government dispute process.¹⁸⁹ Note was taken of India's non-ratification of four fundamental conventions, the reduction of labour rights, and the government's changes to labour laws in the Industrial Relations Code 2020.¹⁹⁰ Australia's public sector union likewise pushed for the inclusion of labour rights, pointing to the Australia-US FTA with labour chapters referring to ILO and UN labour rights standards.¹⁹¹ Australian unions expressed fear that the trade agreement will 'fuel the growth of temporary, employer-sponsored migration' and the failure to include a labour rights chapter could 'contribute to a race to the bottom.'¹⁹²

Additional trade agreements to which India is a party have no mention of labour rights protections, including the India-Bhutan FTA (2006),¹⁹³ India-Nepal FTA (2009),¹⁹⁴ India-Sri Lanka FTA (1998),¹⁹⁵ India-Afghanistan Preferential Trade Agreement (2003),¹⁹⁶ ASEAN-India FTA (2010),¹⁹⁷ and Chile-India Preferential Trade Agreement (2007).¹⁹⁸

The preamble and objectives of the more recent India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (2021) aim to contribute to social development.¹⁹⁹

The EU launched trade negotiations with India in June 2022, declaring that the future agreement will include 'ambitious and enforceable provisions on trade and sustainable development,' including labour standards.²⁰⁰ Given the EU's basis for trade and sustainable development chapters, it is anticipated that this agreement will be the strongest rights-based agreement in place with India.

The EU's textual proposals for the trade and sustainable development chapter takes note of the context of sustainable development.²⁰¹ Whilst some of the language is soft, such as a provision that parties shall 'strive to ensure that its relevant law and policies provide for, and encourage, high levels of environmental and labour protection,' other language allows for more solid protection, such as 'shall not weaken or reduce the levels of protection afforded in its...labour law in order to encourage trade or investment,' or parties 'shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its...labour laws in order to encourage trade or investment.'

The chapter is firmly grounded in multilateral labour standards and agreements, in particular ILO instruments, taking note of the ILO Declaration on Fundamental Principles and Rights at Work, as updated. Parties must 'effectively implement' their ratified ILO conventions, and 'make continued and sustained efforts to ratify the fundamental ILO Conventions,' though ratification of the fundamental conventions is not mandated. Parties agree to cooperate on labour policies, including, for example, on implementation of the conventions, decent work, and the impact of labour law and standards on trade and investment. The section does not refer to 'modern slavery' as a phrase, though takes note of the ILO's core labour standard to eliminate forced or compulsory labour.

There is also a section on trade and responsible business conduct and supply chain management. Here parties commit to promoting responsible business conduct by 'providing supportive policy frameworks that encourage the uptake of relevant practices by businesses' and support the 'adherence, implementation, follow-up and dissemination of relevant international instruments' such as the UN Global Compact. A monitoring framework is established to 'facilitate, monitor and review' the implementation of the chapter, giving consideration to 'communications and opinions from the public'. Provisions on dispute settlement are incorporated in an EU proposal for the Dispute Settlement chapter, which includes provisions on a panel and panel report.

The UK has undertaken to ensure that investment agreements incorporate human rights as a business responsibility, with business and human rights forming some of the priorities of the UK's policy on human rights.²⁰² The UK-India Bilateral Investment Agreement (1994)²⁰³ was terminated in 2017,²⁰⁴ but it did not provide for any labour rights or the prevention of modern slavery practices. The ongoing negotiations for the UK-India FTA seek to cover some aspects of investment.²⁰⁵

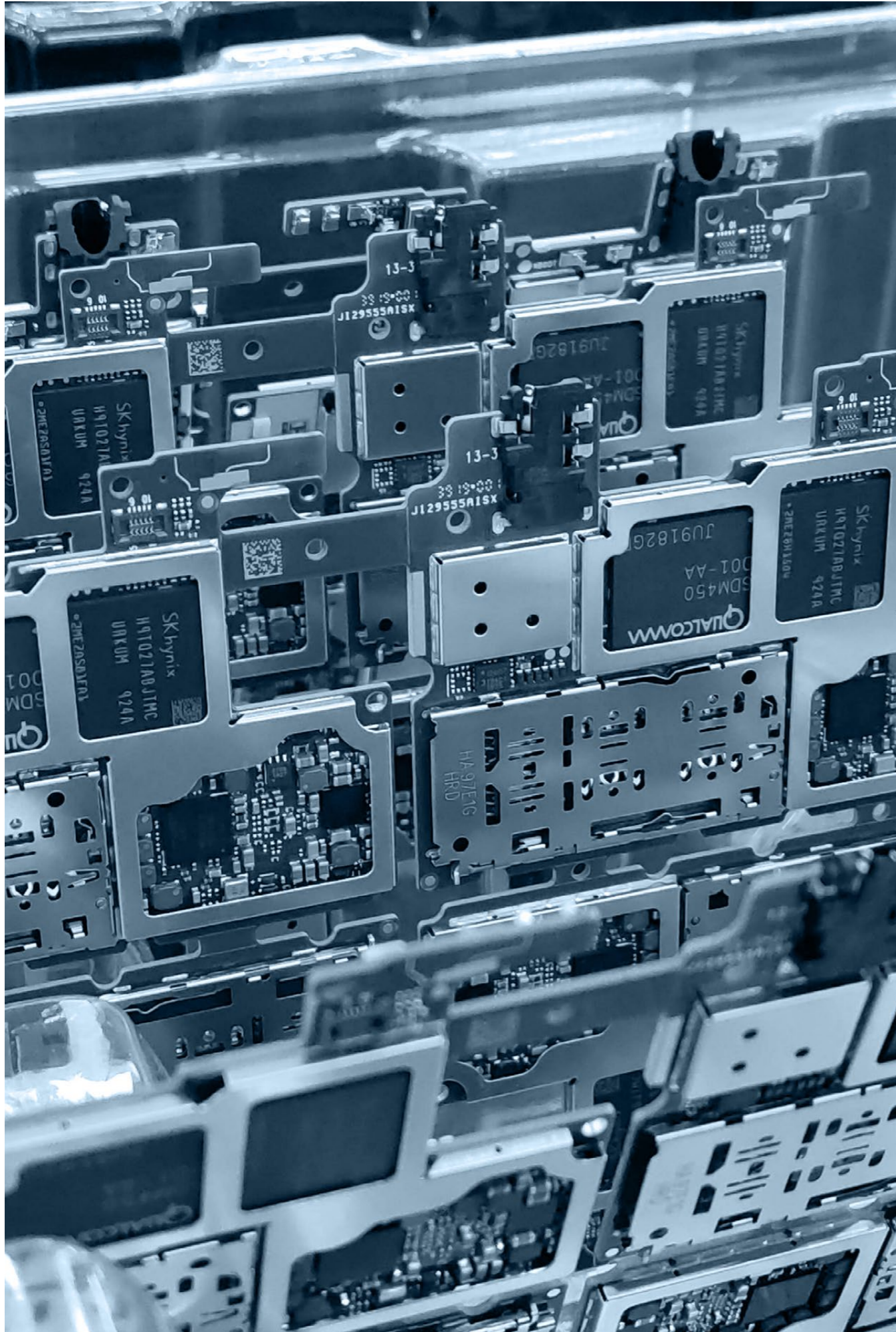
Most of India's bilateral investment treaties (BITs) follow the same model BIT, and therefore do not have provisions on the prevention of modern slavery or the protection of labour rights. These include India's BITs in force with Bangladesh,²⁰⁶ China²⁰⁷ South Korea,²⁰⁸ and the Philippines.²⁰⁹ More recently, India signed the ASEAN-India Investment Agreement, which governs its investment relations with Brunei, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.²¹⁰

3.6. Summary and implications

India has a series of commitments to international human rights instruments with respect to modern slavery and ILO conventions, but there remain significant gaps. India has not yet ratified the 1998 Rome Statute of the International Criminal Court or four ILO conventions and is not a party to the 2014 Protocol to the 1930 Forced Labour Convention. Domestically, India has constitutional and statutory protections against forced labour, bonded labour, child labour, and human trafficking. Against this legal background, India remains a high prevalence country for modern slavery globally and within the Indo-Pacific, the patterns of which affect the production of goods for export. India shares a close historical relationship with the UK and has a set of democratic institutions 'loosely' modelled on the Westminster system of parliamentary government.²¹¹ It is also a federal system with great variation in legal implementation of labour protections and prevalence estimates across its 28 states and 8 union territories.

The combination of the shared history and democracy between the UK and India provides significant entry points for the UK to incorporate labour protections and modern slavery provisions into the UK-India FTA in ways that align with Parliament's assertion that there should be no 'one-size-fits-all' approach to international agreements. The case of India thus presents both a challenge and an opportunity for the UK to be 'normative actor' in its external relations,²¹² to pursue its 'Global Britain' objectives as a 'force for good'²¹³ and position itself as a world-leading international development donor working towards the UN Sustainable Development Goals (SDGs) and upholding universal human rights.²¹⁴





4. Malaysia

4.1. Country context

In the Post-Brexit period, UK-Malaysia bilateral relations have been reinvigorated. In 2021, the two countries established a Strategic Dialogue to serve as a forum for discussion and collaboration across multiple government departments over the next five years. At the inaugural session of the Strategic Dialogue held in London on 24 February 2022, 10 key areas of cooperation were agreed, including human rights and the rule of law, expansion of the trade, investment and business environment, tackling organised crime, political-diplomatic cooperation, and foreign policy coordination.²¹⁵

In recognition of the importance given to bilateral trade relationships, in 2022 the Joint Committee on Trade and Investment Cooperation (JETCO) was elevated to a ministerial level engagement. This means that trade, investment, and economic cooperation between the two countries will be further strengthened. Trade and investment are expected to continue to grow with the UK and Malaysia's recent ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

During the four quarters leading up to the end of Q4 in 2022, Malaysia ranked as the UK's 44th largest trading partner, accounting for 0.3% of total UK trade.²¹⁶ While Malaysia is not one of the UK's most important trading partners, it has been a steady trading partner over the years and it controls a significant part of specific global supply chains, which has an impact on the UK's imports from Malaysia.

Over the last 26 years, exports from Malaysia to the United Kingdom have increased at an annual rate of 0.8%, from £1.4 billion in 1995 to £2.0 billion in 2021.²¹⁷ In 2021, the main products exported from Malaysia to the UK were rubber apparel (23.1%), aircraft parts (5.9%), gas turbines (4.94%) and integrated circuits (4.09%).²¹⁸ Rubber and integrated circuits, along with palm oil, are also the industries in Malaysia that present some of the higher risks of modern slavery. With respect to investment, the stock of FDI from the UK to Malaysia has been declining to as low as 0.2% of the total UK outward FDI stock in 2021, i.e., £3.8 billion—55.6% lower than in 2020.²¹⁹ In contrast, the stock of FDI from Malaysia to the UK increased by over 50% from 2020 to 2021, reaching an approximate value of £2.4 billion.²²⁰

At the global level, Malaysia's key export industries are electrical machinery and equipment (£74.7 billion, 34.4%), mineral fuels or oils, products of their distillation (£27 billion, 12.5%), machinery and mechanical appliances (£18.0 billion, 8.4%), animal or vegetable fats and oils (£14.3 billion, 6.6%) and rubber and articles thereof (£12 billion, 5.6%).²²¹ Among agricultural products, palm oil represents the top exported product with a value of £10.9 billion. The most exported non-agricultural products include Integrated Circuits (£51.5 billion), Refined Petroleum and Petroleum Gas (£29 billion) and Rubber Apparel (£9.65 billion). The prime destinations for Malaysia's exports are: Singapore (£36 billion), China (£34.8 billion), the United States (£31.1 billion), Hong Kong (£13.9 billion), and Japan (£13.8 billion).²²²

According to the 2021 published statistics of FDI in Malaysia by the Ministry of Economy of Malaysia, the top sector for FDI inflows is the manufacturing sector (flows RM 29.5 billion, income RM 66.9 billion), followed by services (flows RM 12 billion, income RM 27.3 billion) and mining and quarrying (flows 5.8 billion, income 5.9 billion). Flows include equity and investment funds shared and debt instruments, while income refers to equity and investment fund shared and interest. Top investors of FDI flows and income are the US, Singapore, the UK, and the Netherlands.²²³

4.2. National legislative framework

Domestically, Malaysia's Federal Constitution and Penal Code include relevant 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, i.e., kidnapping and abduction for confinement, marriage, or grievous hurt purposes. The Penal Code also 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.²²⁴

Several other pieces of legislation directly and indirectly address offences potentially related to modern slavery. For example, the Immigration Act 1959/63 stipulates that any Malaysian citizen is penalised for harbouring illegal immigrants, including employers. The Passports Act 1966 prohibits the holding of 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.

Significant further legislative amendments and ratifications took place over the last several years. These regulatory changes came against the backdrop of significant criticism from the international community on Malaysia's labour conditions and treatment of migrant workers. 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.²²⁵ The launch of the NAPFL follows a two-year process undertaken by the Ministry of Human Resources, ILO, and the Malaysian Employers Federation and Malaysian Trade Union Congress.²²⁶ In March 2022, the Government of Malaysia ratified the ILO Protocol of 2014 to the Forced Labour Convention, 1930, becoming the second ASEAN state to ratify the Protocol. Malaysia therefore committed to take effective action to prevent forced labour, protect victims, and give access to remedy.

Malaysia has also made relevant amendments to existing acts. In July 2019, the government amended its Trade Unions Act and Industrial Relations Act and increased freedom of association protections. A National Labour Advisory Council, which encompasses the Malaysian Trade Unions Congress and Malaysian Employer's Federation, was formed to increase labour participation in unions.²²⁷ A 2022 Amendment to the Employment Act now includes a section on forced labour, defines weekly limits to hours of work, and requires employers to raise awareness of sexual harassment. Moreover, employers who want to hire migrant workers need to obtain prior permission and they must inform the Director General of Labour when the employment of migrant workers ends.²²⁸ Another Amendment Act from 2022 to the Anti-trafficking in Persons and Anti-Smuggling of Migrants Act 2007, clearly defines forced labour as a form of exploitation. These recent amendments strengthen the regulatory framework to reduce human trafficking of migrants and modern slavery.

4.3. International commitments

Malaysia has made commitments to international human rights instruments relevant to modern slavery (Table 8) and ILO conventions (Table 9). The tables make it clear that Malaysia has a much higher rate of ratification and participation in the ILO conventions (7 out of 11) than the international human rights instruments (2 out of 7). This mix of commitments makes Malaysia the least engaged in the relevant international legal instruments across our four case studies in terms of formal commitment. However, this level of commitment should be viewed against the recent enhancement of its domestic legislative framework.

Instrument	Party
1926 Slavery Convention	Not party
1953 Protocol to the Slavery Convention	Not party
1956 Supplementary Slavery Convention	18 Nov 1957
1966 International Covenant on Civil and Political Rights	Not party
1966 International Covenant on Economic, Social and Cultural Rights	Not party
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons	26 Feb 2009
1998 Rome Statute of the ICC	Not party

Table 8. Malaysia's commitment to international human rights instruments

Instrument	Party
1930 Forced Labour Convention (No.29)	11 Nov 1957
1957 Abolition of Forced Labour Convention (No.105)	13 Oct 1958, Denounced on 10 Jan 1990; Not in force
1951 Equal Remuneration Convention (No.100)	09 Sep 1997
1958 Discrimination (Employment and Occupation) Convention (No.111)	Not ratified
1973 Minimum Age Convention (No.138)	09 Sep 1997
1999 Worst Forms of Child Labour Convention (No.182)	10 Nov 2000
2006 Promotional Framework for Occupational Safety and Health Convention (No.187)	07 Jun 2012
1948 Freedom of Association and Protection of the Right to Organise Convention (No.87)	Not ratified
1949 Right to Organise and Collective Bargaining Convention (No.98)	05 Jun 1961
1981 Occupational Safety and Health Convention (No.155)	Not ratified
2014 Protocol to the 1930 Forced Labour Convention	21 March 2022

Table 9. Malaysia's commitment to ILO conventions



4.4. Modern slavery risks

Malaysia has featured in reports over the years concerning its human rights situation, which include poor labour practices and instances of modern slavery. The reports document practices such as: arbitrary and extra-judicial killings, torture, arbitrary arrest and detention; restrictions on freedom of expression, freedom of movement, freedom of association, the right to protest, and harassment of human rights organisations; and human trafficking and child labour.²²⁹ In the 2022 US State Department Trafficking in Persons (TIP) report, Malaysia was placed in Tier 3, alongside Myanmar, China, and North Korea, meaning that it does not meet the minimum standards for the elimination of trafficking and is not making significant efforts on the anti-trafficking front.

The report pointed out that practices such as the retention of workers' passports by employers continues, labour protections of domestic workers are missing, migrant workers continue to have weak protections in place, and those who are victims of trafficking have limited freedom of movement outside shelters.²³⁰ For several consecutive years from 2016-2019, the Responsible Business Alliance (RBA) has classed forced labour as the number one issue for Malaysian businesses.²³¹ Migrant workers also remain particularly vulnerable to unethical recruitment practices. Labour activists claim that recruitment fees into Malaysia are exorbitant, with rogue recruiters charging as much as a year's pay for job placements.²³²

The highest risks of labour abuse and modern slavery occur in electronics manufacturing, the palm oil industry, and the rubber industry. These industries hold immense importance in the global supply chain, as Malaysia is a major exporter of electronics (more specifically integrated circuits), palm oil, and rubber apparel (particularly rubber gloves during the Covid-19 pandemic).²³³ Additionally, the palm oil and rubber apparel industries heavily rely on the employment of migrant workers, who are more exposed to unethical recruitment practices and present more indicators of risk of modern slavery.²³⁴

Malaysia is the second largest producer of palm oil in the world after Indonesia, representing 31% of global supply in 2022²³⁵ and constituting 15% of total UK imports.²³⁶ As an ingredient in many products, the use of palm oil is difficult to avoid, since it is estimated to be found in almost half of the packaged products in supermarkets and is included in most cosmetic brands.²³⁷

There have been numerous reports over the years on labour abuses in Malaysia's palm oil supply chain. For example, in 2016 Amnesty International reported that Nestlé, Unilever, Procter and Gamble, and Colgate-Palmolive were just some of the big brands that use palm oil from Malaysian producers and suppliers involved in abusive labour practices.²³⁸

The report identified debt bondage, human trafficking for labour exploitation, harassment of victims by authorities, and child labour, not uncommon in Sabah, the second largest states producing palm oil.²³⁹

Palm oil producers in Malaysia rely heavily on migrant workers, who make up 80% of the total workforce in the industry. The foreign workforce provides cheap labour to an industry where this kind of work is perceived to be dirty, risky, and difficult, and where there is little take up among locals. Owing to difficulties recruiting a sufficient foreign workforce during Covid-19, palm oil producers considered using prison labour, which was heavily criticised on the grounds that the focus should be on improving labour conditions and not on 'forcing' inmates to work in a sector experiencing labour shortages.²⁴⁰

Despite the increasing concern over forced labour in the palm oil industry, global market requirements, and pressures exercised on companies to disclose commitment to human rights, research casts doubt over corporate accountability in this sector. A recent article found that across a sample of 16 certified palm oil companies in Malaysia, there is a failure to disclose human rights risks and there are no approaches to mitigate these risks.²⁴¹

Some international responses have toughened. In 2020, the US halted imports from FGV Holdings Berhad and Sime Darby Plantation Berhad, some of the world's largest crude palm oil producers, citing in both cases the presence of 11 indicators of forced labour, including debt bondage, withholding of wages, intimidation, and physical and sexual violence.²⁴²

Over the last few years, Malaysia has shown signs of willingness to rectify issues of forced labour. For example, in 2022 the Human Rights Coalition (HRC)—a global organisation that brings together consumer goods retailers and manufacturers—launched the People Positive Palm Project (P3) to address the issue of forced labour in the palm oil sector in Malaysia, which successfully engaged the authorities. On 14th of March 2023, the HRC hosted a due diligence workshop with palm oil suppliers, government groups, and civil society organisations, which was opened by YAB Dato' Sri Haji Fadillah Yusof, Deputy Prime Minister of Malaysia, and Minister of Plantation and Commodities. The project promises to 'make Malaysia an opportune environment to test strong due diligence practices and set an example for other countries and commodity sectors.'²⁴³

The UK has taken a different approach as it has been trying to access the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), whose membership was formalised on the 31st of March 2023. As part of the accession process to CPTPP, the UK agreed to reduce its import tariffs on palm oil from Malaysia from 12% to zero. Critics of this move raised environmental and climate change

concerns related to deforestation and the destruction of animal habitats.²⁴⁴ However, none of the concerns reported in the press related to workers' rights and forced labour. After the CPTPP was signed, Kemi Badenoch, the trade secretary, stated that trade-offs had to be made and that palm oil was 'a great product' and 'not some illegal substance.'²⁴⁵ These comments prompted the Malaysian commodities minister Fadillah Yusof to say, 'She rightly dispelled the myth of deforestation and the negative or untrue campaigns regarding the commodity,' especially the 'unfair narrative' by the EU.²⁴⁶

Malaysia is among the top 10 worldwide producers of rubber and top 5 worldwide exporters of rubber.²⁴⁷ Malaysia came to the centre of public attention, particularly during the Covid-19 pandemic, due to allegations of forced labour in its medical gloves manufacturing sector. This included the company Top Glove, the largest manufacturer of rubber gloves in the world.

A report²⁴⁸ that draws on surveys conducted with 1,491 workers in Malaysia, and dozens of interviews with migrant workers, government officials, suppliers, and procurement managers in the UK, and manufacturers in Malaysia found compelling evidence of forced labour in the production of medical gloves in Malaysia and supplied to the UK's National Health Service (NHS). The report showcases the dependence of workers, many of whom are foreign, on employers not only for their wages but also their work permits, accommodation, and food. More specifically, labour abuses identified included high recruitment fees, poor quality and crowded accommodation, and an unsavoury working environment, retention of passports, restriction of movement, and excessive working hours.²⁴⁹

Five Malaysian glove manufacturers were banned by US Customs over alleged forced labour. After the ban was imposed on Top Glove, for example, which lasted one year from 2020 to 2021, the financial repercussions were immediate - shares in the company fell by 48%.²⁵⁰ Smart Glove, another prominent Malaysian glove manufacturer, was also banned for 17 months and the sanctions were lifted once evidence was provided that workers' conditions improved, including establishing a free recruitment policy, improving accommodation, and putting in place an anonymous reporting mechanism.²⁵¹ The US also issued an import ban against this manufacturer in October 2021 after it identified 10 ILO indicators of forced labour.²⁵² Shortly after, in November 2021, Canada also suspended contracts from Supermax due to the same concerns over labour abuses.²⁵³

In November 2021, the UK Government confirmed that the Department of Health and Social care had placed a July order with Supermax worth £7.9 million. Amid the concerns raised at the international level, the UK government promised to launch an investigation,

but according to the Independent Anti-Slavery Commissioner at the time, Dame Sara Thornton, the contract with Supermax was not terminated and no safeguarding measures for workers were put in place.²⁵⁴ Moreso, in December 2021, the government awarded Supermax a new contract.²⁵⁵ This despite the fact that the Independent Anti-Slavery Commissioner wrote in November 2021 to 16 permanent secretaries:

...enclosing a list of recent WROs, and asking for reassurance that their department was taking adequate measures to stop goods subject to international import bans from entering their supply chains (...) I asked what steps they are taking to work through concerns with suppliers. The WRO list included palm oil, PPE, tomatoes, tech products, textiles, and apparel. (...) All replied apart from the Ministry of Defence. Most agreed that WROs were a useful data source, even if issued under a different legal framework. The Home Office and Cabinet Office are now considering how WROs might be included in further guidance to departments. However, wording was varied on whether there were no contracts with organisations listed in the letter. The use of the phrase 'direct contracts' suggests that the analysis was limited to tier one suppliers in many cases.²⁵⁶

Some changes did take place. For example, amendments to the Health and Care Act 2022 now stipulate the need to eliminate the risks of modern slavery from NHS procurement of goods and services.²⁵⁷ The UK government has been taken to court by The Citizens, a non-profit group, for its decision to continue working with the manufacturer for failing in its supply chain due diligence. The law firm that prepared the case against the government also represented workers at Malaysian glove factories who claim that they have been held in debt bondage, and experienced physical abuse and forced labour.²⁵⁸ The case was resolved with a new obligation on the UK Government that no orders for gloves will be placed with Supermax under the disputed agreement decision and to conduct a new procurement exercise for PPE gloves with award criteria for the new framework agreement to include updated requirements relating to labour standards and modern slavery.²⁵⁹

Electrical and electronics products in Malaysia comprise the country's largest manufacturing sector and in 2021 accounted for 39.3% of the country's exports.²⁶⁰ Integrated circuits represent a significant product within this sector - in 2021, they were Malaysia's most exported product, making Malaysia the 5th largest exporter of integrated circuits in the world (exported value of £51.5 billion).²⁶¹ These statistics are reflected in a 2014 study claiming that Malaysia was involved in the production or supply chain of nearly every device available on the market, ranging from tablets to microwaves.²⁶²

A study conducted by Verite, an auditing and consulting company, found in 2014 that nearly a third of the 400 migrant workers sampled in Malaysia were working against their will. The study also found that 92% of foreign workers paid excessive recruitment fees to obtain their jobs.²⁶³ In 2019, another investigation conducted by Danwatch, revealed further abuses experienced by migrant workers producing components for renowned electronics brands. Workers alleged high recruitment fees, forced labour, working under duress, confiscation of passports, and unlawful deductions from their wages.²⁶⁴

In November 2022, Dyson—the British manufacturer known for its vacuum cleaners—dropped one of its Malaysian suppliers (ATA IMS Bhd) after the non-satisfactory results of an independent audit that came as a result of a whistle-blower.²⁶⁵ Workers travelled from Nepal and Bangladesh to work in a Malaysian electronic factory, where they claim that they received below minimum wage, lived in inadequate accommodation of up to 80 people per room, had their freedom of movement restricted by security guards, and their passports retained.²⁶⁶

The labour and human rights infringements in the palm oil, rubber, and electronics industry in Malaysia have triggered a series of reactions, including WROs from the US and investors' withdrawal from the country, which raised concerns over its impact on the economy. For investors, labour risks are becoming increasingly important within the framework of ESG. Gang Eng Peng, director at one of the largest brokerages and asset managers in Malaysia, claims that the labour problems experienced in Malaysia also affected the country's equity market because 'there's a tendency for investors to sell first and investigate later.'²⁶⁷ Anthony Dass, chief economist and head of research at local lender AMMB Holdings Bhd. in Kuala Lumpur, also sees a direct negative causal relationship between forced labour and Malaysia's economy, i.e., it has an impact on foreign direct investment, supply contracts, reduces demand for companies' goods, and damages investment in human capital.²⁶⁸

Malaysian Human Resources Minister M. Saravanan recognised that 'forced labour issues had damaged foreign investors' confidence in the country as a reputable supply hub' and later that month launched a National Action Plan on Forced Labour (NAPFL). The plan is aimed at improving law enforcement but has been criticised for its non-binding nature and for not addressing structural issues, such as migrants being tied through work permits to a specific employer.²⁶⁹



4.5. Trade and investment agreements

Malaysia has ratified multiple bilateral (Table 10) and regional (Table 11) TAs within the Indo-Pacific and further afield (e.g., Turkey).²⁷⁰ In addition to these agreements, Malaysia has several other trade agreements currently under negotiation, including: the Malaysia-Iran Preferential Trade Agreement (MIPTA), the Malaysia-European Free Trade Area Economic Partnership Agreement (MEEPA), and the Malaysia-EU Free Trade Agreement (MEUFTA).²⁷¹

The Malaysia-Australia FTA entered into force in 2013 and does not include provisions on labour or the environment. In line with Australia's domestic approval process, the text of the FTA was reviewed by the Joint Standing Committee on Treaties (JSCOT). The JSCOT report identified the '(non) inclusion of environmental and labour standards' as a main issue. Ever since the review of the 2010 ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), the JSCOT was clear in its recommendations that: 'the Australian Government include consideration of environment protection, protection of human rights and labour standards in all future negotiation mandates for free

trade agreements.'²⁷² Similarly, the Australian Fair Trade and Investment Network (AFTINET) argued that all trade agreements should contain a chapter on labour rights. The Australian Council of Trade Unions (ACTU) further stressed that the lack of a chapter on labour risks weakens labour rights and asked for a mechanism that monitors and enforces labour rights, addresses breaches, and settles disputes.

In contrast to these views, Certified Practising Accountants (CPA) Australia stated that 'the attempt to introduce labour and environment provisions into Australia's trade treaties is an entirely unwelcome development,' since there are already 'sufficient mechanisms to address these concerns in other international forums.'²⁷³ The Department of Foreign Affairs and Trade (DFAT) also rejected the view that all FTAs should include a labour and environmental chapter and argued that FTAs are negotiated on a case by case basis. It further justified the FTA text by noting that Malaysia 'has not included labour provisions in any of its other trade agreements' and that 'there were concerns over "conflicting" commitments due to Malaysia's negotiations of joining the CPTPP.'²⁷⁴ Since the negotiation, both countries have ratified the CPTPP, Australia in 2018 and Malaysia in 2022.

Free Trade Agreement	Date of Entry into Force
1. Malaysia-Japan Economic Partnership Agreement (MJEPA)	13 July 2006
2. Malaysia-Pakistan Closer Economic Partnership Agreement (MPCEPA)	1 January 2008
3. Malaysia-New Zealand Free Trade Agreement (MNZFTA)	1 August 2010
4. Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA)	1 July 2011
5. Malaysia-Chile Free Trade Agreement (MCFTA)	25 February 2012
6. Malaysia-Australia Free Trade Agreement (MAFTA)	1 January 2013
7. Malaysia-Turkey Free Trade Agreement (MTFTA)	1 August 2015

Table 10. Malaysia's bilateral trade agreements

Free Trade Agreement	Date of Entry into Force
1. ASEAN Free Trade Area (AFTA)	1993
2. ASEAN-China Free Trade Agreement (ACFTA)	1 July 2003
3. ASEAN-Korea Free Trade Agreement (AKFTA)	1 July 2006
4. ASEAN-Japan Comprehensive Economic Partnership (AJCEP)	1 February 2009
5. ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA)	1 January 2010
6. ASEAN-India Free Trade Agreement (AIFTA)	1 January 2010
7. ASEAN-Hong Kong Free Trade Agreement (AHKFTA)	13 October 2019
8. Regional Comprehensive Economic Partnership (RCEP)	18 March 2022
9. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	29 November 2022

Table 11. Malaysia's regional trade agreements

The Malaysia-Australia FTA originally included side letters on labour and the environment, which DFAT argues are legally binding.²⁷⁵ The side letter on labour from Malaysia to Australia reads:

In the course of exploring the inclusion of appropriate labour provisions in the Agreement, we have affirmed our commitments as members of the International Labour Organisation and under the Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). We have also affirmed our interest in facilitating cooperation and consultation on labour issues of mutual interest. Malaysia and Australia have also recognised each Party's responsibility to adopt, administer and enforce its own labour laws, regulations and practices and both are committed to ensuring that such labour laws, regulations and practices are not used for trade protectionist purposes or labour standards weakened to gain a trade advantage.

The side letter also stipulated that 'the inclusion of labour provisions in the Agreement will be reviewed no later than two years after the entry into force of the Agreement, or at such other time as the Parties agree.'²⁷⁶ The JSCOT committee recommended a 24-month review after the treaty came into effect to address labour and environmental impacts.

It remains unclear, however, if any of these took place as initially scheduled. The first MAFTA Joint Commission (FJC) only took place in June 2021, despite Ministers requesting for the meeting to be scheduled in 2019; Covid-19 arguably caused delays.²⁷⁷ At this meeting, 'The Co-Chairs reviewed the progress of the MAFTA in-built agenda and agreed to begin work pursuant to Article 21.7 (General Review) of the Agreement.'²⁷⁸ The Parties agreed to analyse the benefits of MAFTA and its implementation to date. Before the next FJC, the Parties will develop recommendations and a workplan for completing a General Review. The Chairs agreed to hold the second MAFTA FJC in 2022.²⁷⁹ It is not clear if this second MAFTA FJC meeting has taken place.

Australia has run a call for submissions to understand the impact of MAFTA on businesses and other groups in the community since MAFTA came onto force, but there is no reference to labour rights.²⁸⁰ According to the DFAT, the call aims 'to understand the impacts of MAFTA on businesses or other groups in the community since the Agreement entered into force on 1 January 2013.' The call closed in September 2021, but no report appears to have been published.²⁸¹ The DFAT made a call for submissions from businesses and other interested stakeholders on the Malaysia-Australia Free Trade Agreement (MAFTA) to inform work on a General Review under Article 21.7 of the Agreement, stating that 'we are keen to understand the impacts of MAFTA on businesses or other groups in the community since the Agreement entered into force on 1 January 2013.'²⁸² The call closed in Sept 2021,²⁸³ but no report appears to have been published yet.

Negotiations were launched in 2014 for a Free Trade Agreement between Malaysia and the EFTA States (Iceland, Liechtenstein, Norway, and Switzerland) and since then have had several challenges. At the seventh round of negotiations in June 2016, delegates made their respective differences clear, with palm oil at the core of the discussions. Switzerland opposed the removal of tariffs on palm oil. 'A petition signed by 20,000 people, a coalition of development, environmental, consumer protection and human rights organisations, as well as farmers' representatives called for palm oil to be exempt from the free trade agreement.'²⁸⁴ At the 13th round of negotiation in Oct 2022, one of the main hurdles remained 'market access negotiations for agricultural products between Switzerland and Malaysia, including palm oil.'²⁸⁵

The Malaysia-EU Free Trade Agreement (MEUFTA) negotiations began in 2010. However, after two years and seven rounds, negotiations were put on hold. Malaysia claimed, 'both sides had exhausted their negotiating options.'²⁸⁶ In 2016-17, parties assessed the possibility of resuming talks, but no clear position has been issued. Several challenges in these negotiations emerged over the years, casting doubt over when and under what circumstances talks might resume. Like the Malaysia-EFTA FTA, palm oil is one of the issues that sits at the heart of this stalled negotiation. In 2018, the European Parliament banned palm oil for biofuels, due to environmental concerns. A new 2023 EU law further restricts palm oil sale, as well as other commodities such as rubber and cocoa, unless evidence is provided that the production of these commodities has not contributed to deforestation.²⁸⁷ This heightened tensions with Malaysian and Indonesian producers of palm oil, who have threatened to stop their exports of palm oil to the EU.²⁸⁸

Progress within MEUFTA has thus been slow. However, business groups in Malaysia continue to lobby for the resumption of the FTA, where EUROCHAM Malaysia and the Federation of Malaysian Manufacturers have signed a Memorandum of Understanding (MOU) to form a joint Task Force to complete the MEUFTA.²⁸⁹ Whether environmental concerns, rather than labour concerns, will continue to dominate the discussions within the palm oil industry remains to be seen. In December 2022, the EU and Malaysia signed a Partnership and Cooperation Agreement (EU-MY PCA), which may help restart the MEUFTA.²⁹⁰

The 2009 Malaysia-New Zealand FTA is one of the few trade agreements that includes side agreements on labour and the environment, which 'recogni[se] the desire to enhance communication and cooperation on labour and environment through bilateral cooperative agreements between them.' A separate Agreement on Labour Cooperation was signed, which makes reference to decent work objectives as stipulated by the ILO, improving working conditions and the quality of life of workers, participating in forums to discuss labour issues, ensuring each party's labour laws are aligned with their respective international labour commitments, and 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 established national contact points and not by a third party or international tribunal.²⁹¹

The Malaysia-Chile FTA and Malaysia-Turkey FTA do not contain labour provisions. It is worth noting also that Malaysia's trade relations with New Zealand have been much stronger than those with Chile.²⁹² The 2015 Malaysia-Turkey FTA is one of Malaysia's most recent FTAs and does include an article (9.10) on 'cooperation in environment' that makes reference to climate change, air quality, waste management and others, and establishes contact points 'for the better implementation' of the article.²⁹³ The palm oil industry is estimated to benefit the most from this FTA—'Duty elimination would make Malaysia dominate refined palm oil exports to Turkey, and export revenues of crude palm oil and processed palm oil from Malaysia would grow by about 10.0% and 56.0% respectively.'²⁹⁴

The Trans-Pacific Partnership (TPP) brought together twelve Pacific Rim countries and is the flagship of President Barack Obama's strategic pivot to Asia. However, with the subsequent US withdrawal in 2017, the remaining countries formed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). Participating countries—Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam—signed on March 2018. Malaysia joined the

CPTPP in October 2022 with the expectation that it would 'expand Malaysia's access to new markets such as Canada, Mexico, and Peru, which had not been previously by other existing free trade agreements.'²⁹⁵

The CPTPP has a clear and comprehensive chapter on labour, which protects workers' rights by encouraging all parties to promote awareness of labour rights, to collaborate, and to ensure that parties abide by their commitments. The chapter 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.²⁹⁶ The CPTPP also prevents countries from weakening their domestic labour laws or their enforcement to attract trade and investment. It also includes mechanisms to enforce labour provisions and monitor compliance.

Representatives from each country in the CPTPP formed a Labour Council. The Council's responsibilities include establishing priorities for cooperation and capacity building, developing a work programme, facilitating public participation in the implementation of the Chapter, and reviewing the Chapter's overall implementation to ensure it is operating effectively.²⁹⁷ The CPTPP also established contact points based within the labour ministry with the view to assist and report to the Labour Council and facilitate cooperation between different parties.

Parties to the CPTPP established a dispute settlement mechanism in case of non-compliance, where parties are encouraged to resolve issues first through cooperation and consultation, and then through access to the same CPTPP dispute settlement procedure that applies to other Chapters in the Agreement.²⁹⁸ The mechanism provides the ability for parties to impose trade sanctions or request monetary compensation if a party is found to have violated its labour obligations.²⁹⁹

Vietnam and Malaysia signed a side letter on labour, which was agreed by all CPTPP parties, stipulating that if Malaysia seeks recourse to dispute settlement with respect to any measure that is inconsistent with the labour obligations, Malaysia shall refrain from seeking to suspend benefits stipulated in Article 28.20 of Chapter 28 for a period of three years after the date of entry into force of this agreement for Vietnam. A review was agreed to take place after the 5th and before the 7th anniversary of the date of entry into force of the agreement for Vietnam.³⁰⁰

The Malaysian government is keen to continue to maintain its status as a top destination for investment. The manufacturing sector continues to attract most FDI into Malaysia. Since 2016 China remains Malaysia's largest foreign investor in this sector, in addition to being Malaysia's largest trading partner since 2009.³⁰¹ With plans to develop numerous free trade zones, Malaysia is expected to become an increasingly important regional hub, and according to the World Bank, Malaysia may transition from a middle-income to a high-income country by 2030.³⁰²

Malaysia has made significant progress in recognising its social problems, including allegations of labour abuses and the presence of forced labour. In 2014, the Securities Commission Malaysia (SC) introduced the Sustainable and Responsible Investment (SRI) framework, that included a Sukuk aspect, which means that principles of Shariah are integrated within SRI. The 2016 'Sustainable and Responsible Investment Roadmap for the Malaysian Capital Market (SRI Roadmap)' aimed at bolstering Malaysia's position as a regional SRI hub.

In 2021, the Institutional Investors Council Malaysia (IIC) and Capital Markets Malaysia (CMM) established the Sustainable Investment Platform (SIP) with the aim of supporting institutional investors and the fund management industry in deepening sustainable responsible investment (SRI).³⁰³ In 2022, the Securities Commission published 'Principles-based sustainable and responsible investment taxonomy for the Malaysian capital market'.³⁰⁴ SRI is clearly defined as economic investments that are in alignment with environmental, social, and sustainable components. The social component consists of:

- 'Enhanced conduct towards workers' (including the need to eliminate discrimination in employment, provide a safe and healthy work environment, eliminate forced labour and child labour, ensure freedom of association and collective bargaining, prevent corruption, protect employees' mental health, and provide professional development opportunities);
- 'Enhanced conduct towards consumers and end-users';
- 'Enhanced conduct towards affected communities and wider society' (including the need to build responsible supply chains, among others through social audits as part of the procurement practice, integrating screening for social and governance factors when making investment decisions, providing or improving access to products and services that meet basic human needs and economic infrastructure, and regularly engaging stakeholders in decision making processes).³⁰⁵

The Securities Commission clearly states that SRI should comply with national legislative requirements relating to social and environmental

aspects. Companies are also encouraged to align business strategies and practices with international laws and globally accepted social principles and standards such as the UN Global Compact, UN Guiding Principles on Business and Human Rights, the ILO's Declaration on Fundamental Principles and Rights at Work, and the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

In the 'Principle based RI Taxonomy for the Malaysian capital market', the Securities Commission provides explicit supplementary information with guiding questions for businesses and case studies. For example, Appendix II includes 'Guiding questions to assess remedial efforts to mitigate harm', which is split between general questions that deal with remedial efforts to mitigate harm, monitoring of the remedial efforts, effectiveness, credibility of the implementation, independent third parties' verifications, and specific questions that solely discuss environmental objectives, and address social objectives. Appendix III provides thorough recommendations for the social component for different sectors. Appendix V offers a case study on 'investment in an oil palm plantation company', which addresses both the environmental and social component, including allegations of forced labour, and offers recommendations.³⁰⁶

Bursa Malaysia, the country's stock exchange, provides an introduction to responsible investment on its webpage and encourages the implementation of ESG principles when making investments. The Khazanah Nasional Berhad, the sovereign wealth fund of the Government of Malaysia, is committed to the UN Principles of Responsible Investment (PRI). Bursa Malaysia Securities Berhad requires reporting on sustainability by listed companies.³⁰⁷ In October 2022, the 'New Investment Policy Based on National Investment Aspirations' (NIA) was launched with an overarching ESG theme intended to improve Malaysia's investment environment in line with global trends.³⁰⁸

Alongside this more recent changing investment environment in Malaysia, which increasingly includes references labour protections, Malaysia has signed over 66 bilateral investment treaties, of which 54 are in force,³⁰⁹ and 26 Treaties with Investment Provisions (TIPs) of which 23 are in force.³¹⁰ The TIPs include obligations commonly found in BITs, or treaties with limited investment related provisions.³¹¹ Most of the BITs were signed in the 1980s and 1990s and thus do not contain references to labour provisions. For example, there are no references to forced labour and no labour provisions in Malaysia's BITs with Bangladesh (1994), China (1988), South Korea (1988), Vietnam (1993), and Taiwan (1993). Malaysia has not signed a BIT with Australia or New Zealand, while the 1988 Malaysia-UK BIT,³¹² does not include references to labour provisions.

Chapter 9 of the CPTPP is dedicated to investment, while Article 19.4 reads: 'The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws'. Foreign investors in Malaysia can bring an Investor-State Dispute Settlement (ISDS) against the Government under the CPTPP; however, ISDS will not apply for a 3-year period after entry into force for government procurement projects below specified thresholds for contracts. ISDS mechanisms are not specific to this regional agreement alone but are incorporated in Malaysia's other BITs.

The ISDS under the CPTPP is intended to ensure ethical and responsible decision making in tribunals, which includes the requirement for investors to first enter consultations and negotiations to resolve the claim, and transparency requirements for public hearings which accept public and expert submissions.³¹³ Under the ISDS regime, states should 'ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives' (Article 9.16) and should encourage companies active in their territories 'to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility' that the state endorses (Article 9.17).³¹⁴

Several side letters relevant to ISDS have been signed under the CPTPP between New Zealand and five other signatories to the CPTPP (Brunei, Malaysia, Peru, Vietnam, and Australia) to exclude the ISDS mechanism entirely or only permit it to be accessed if the relevant state agrees.³¹⁵ In the case of Malaysia and New Zealand, 'no investor of New Zealand shall have recourse to dispute settlement against the Government of Malaysia under Chapter 9, Section B (Investor State Dispute Settlement) of the Agreement', any dispute between the two parties 'should be resolved amicably through consultation and negotiation between the investor and the Government of Malaysia. This may include the use of non-binding third party procedures, such as good offices, conciliation, and mediation' If the dispute is not resolved within six months 'it may be submitted to arbitration in accordance with Chapter 9 section B' if the government of Malaysia consents to it. The same applies to Malaysian investments in New Zealand.³¹⁶

4.6. Summary and implications

Malaysia is a complex case of an emerging trade and investment hub in the Indo-Pacific that has the lowest participation rate of the four cases in international human rights instruments and ILO conventions, relatively high prevalence of modern slavery and forced labour in key export industries, gaps in protections for labour rights in trade agreements, and recent progress on social sustainability in its investment environment, which has not yet manifested in its portfolio of BITs. The National Action Plan for Forced Labour and the Securities Commission work on the Sustainable and Responsible Investment (SRI) framework are positive steps for Malaysia.

Malaysia is a key trade and investment partner for the UK, and the recent CPTPP provides the best opportunity for the UK to influence the government in terms of attention to modern slavery and forced labour, since it has a dedicated chapter on labour rights. The gaps in formal international human rights and ILO commitments remain problematic but are being partially filled through iterative trade and investment negotiations.

The contestation over rubber products and the US imposition of WROs, which led to tangible changes in company behaviour, provides a single example of how trade sanctions can be used to address modern slavery and forced labour in supply chains. Palm oil has a long history of being a problematic industry for modern slavery and forced labour, including for migrant labourers, with significant contestation from countries seeking deeper trade relations with Malaysia. These concerns over labour conditions in the production of palm oil are in tension with its large global demand and widespread use across a range of consumer products.

As UK-Malaysian relations are getting stronger, the UK has the opportunity to make clear its stance on human rights and labour rights and ensure any future FTAs or updated BITs incorporate provisions that protect people's rights and decent work as defined within UK law and international conventions.



5. Thailand

5.1. Country context

Thailand is a military-dominated constitutional monarchy with a bi-cameral parliamentary government, which has emerged from a long period of military rule dating back to 1947. Its most recent military coup took place in 2014, while in the May 2023 elections the Move Forward and Pheu Thai opposition parties secured the largest numbers of votes with a significant capture of parliamentary seats.³¹⁷ In August 2023, Srettha Thavisin from the Pheu Thai party became the country's 30th prime minister after garnering 482 votes out of 747 across both houses of parliament,³¹⁸ a result partially achieved through forming an alliance with military proxy parties.³¹⁹

Thailand is an upper-middle income country,³²⁰ and trades with the UK on WTO terms. The total trade in goods and services (exports and imports) between the UK and Thailand was £6.0 billion in the four quarters to the end of Q4 2022, an increase of 29.1% from the four quarters to the end of Q4 2021.³²¹ Thailand was the UK's 43rd largest trading partner in the four quarters to the end of Q4 2022, comprising 0.4% of total UK trade.³²² In 2021, the outward stock of FDI from the UK to Thailand was £2.1 billion accounting for 0.1% of total UK outward FDI stock, while inward stock of FDI from Thailand to the UK was £426 million.³²³ This makes the UK Thailand's 12th largest FDI partner.³²⁴

The majority of Thailand's exports (71%) are manufactured goods, 18% are agricultural goods, 4.5% are fuel and mining products, and 6.4% are 'other'.³²⁵ 14.9% of exports are destined for the US, 12.9% for China, 9.9% for Japan, 7.7% for the EU, 4.9% for Hong Kong, and 49.8% for other destinations.³²⁶ Non-agricultural products include automatic data processing machines, gold, motor cars, electronic circuits, and vehicle parts.³²⁷ Agricultural products include rice, other fresh fruit, prepared or preserved meat preparations of a kind used in animal feeding, and cane or beet sugar.³²⁸ Seafood caught for human consumption is predominantly sold to the domestic market, and enters supply chains by trash fish ground to fishmeal and fed to shrimp or pets.³²⁹

Decent work deficits, especially modern slavery, are found to an extent in all Thailand's export industries. Many export industries hire migrant workers, who are more vulnerable to labour exploitation. The fishing industry is one of the most noted for modern slavery.³³⁰ Thailand has a high prevalence index rank of 23/167 and a government response rating of 'B' on Walk Free's 2023 Global Slavery Index, which estimates the proportion of people living in modern slavery as 5.7/1000 and vulnerability to modern slavery is ranked at 46/100.³³¹ Corruption is a barrier to tackling modern slavery. Thailand scores 35/100 ('0' being 'highly corrupt') with a rank of 110/180 on Transparency International's 'Corruption Perception Index',³³² which presents significant challenges for designing and implementing effective trade and investment policies that draw workers out of modern slavery. The country's labour rights context is further illustrated by the International Trade Union Confederation (ITUC) ranking of '5' – 'no guarantee of rights',³³³ owing to legal restrictions on trade union rights.

5.2. National legislative framework

Thailand has several laws that protect against modern slavery risks. The 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.³³⁴ It also protects the right to unite and form an association, cooperative, union, organisation, community, or any other group.³³⁵ 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, and the detention or confinement of someone and making someone do an act.³³⁶ Bringing into, or sending 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, more severe if the crimes are committed to a child (under 15), crimes cause bodily or mental harm, grievous bodily harm or death.³³⁷

It is a crime to take or send a person out of Thailand by 'using fraudulent or deceitful means, threats, violence, unjust influence or any other means of compulsion.'³³⁸ The Anti-Trafficking in Persons Act 2008 criminalises trafficking and forced labour, prohibiting acts such as buying and selling 'for the purpose of exploitation.'³³⁹ The Prevention and Suppression of Human Trafficking Act 2015 adds 'practices similar to slavery,' 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.³⁴⁰

Thailand has ratified the ILO's Work in Fishing Convention No.188, the first Asian country to do so. This ensures fishers have 'decent conditions of work' with respect to minimum requirements for work, service conditions, accommodation and food, occupational safety and health, medical care, and social security. In ratifying this, Thailand encountered employer pushback.³⁴¹

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.³⁴² 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.³⁴³ The legislative framework requires improvement to provide decent work and tackle modern slavery, especially in the ratification of remaining fundamental conventions.

Implementation of the existing framework has been weak, with an insufficient number of inspectors and inadequate training.³⁴⁴

Sustainable development is a cross-cutting theme in Thailand's 20-year National Strategy 2017-2036, where it seeks to balance progress across 'economic, environmental and social dimensions' by tackling the environment, human rights, and labour rights.³⁴⁵ Although modern slavery in the fishing industry is of concern, in the Marine Fisheries Management Plan of Thailand, there is no mention of decent work and sustainable development is only cited in the context of the environment.³⁴⁶ The only reference to forced labour is the ratification of the Forced Labour Convention.³⁴⁷ In Thailand's Twenty-Year National Strategic Framework, among other goals are those on 'competitiveness enhancement,' 'development and empowerment of human capital,' and 'broadening opportunity and equality in society,' but there is no inclusion of decent work or modern slavery.³⁴⁸ In Thailand's Twelfth Economic and Social Development Plan (2017-2021), there is a five-year labour master plan, excluding modern slavery in its six strategies and instead focusing on competitiveness, job security, and quality of life.³⁴⁹

Thailand's policies are bolstered by the ILO and focus on decent work and labour violations. The ILO's Decent Work Country Programme (DWCP) designed with Thailand has three country priorities: (1) promoting an enabling environment for the growth of decent work and productive employment; (2) strengthening labour protection, especially vulnerable workers; and (3) strengthening labour market governance in accordance with international labour standards.³⁵⁰ The desired outcomes are: (1) vulnerable workers being better protected by strengthened institutional frameworks, policies and strategic compliance tools; and (2) unacceptable forms of work—especially child labour, forced labour, and human trafficking—being reduced as a result of effective implementation of policies and programmes.³⁵¹ Attention is paid to informal workers and migrant workers, including the objective of strengthening the legal and institutional frameworks to protect migrant workers' rights.³⁵²

Thailand's relationship with the EU commits it to 'multilateralism, a rules-based international order, sustainable development, and the UN's 2030 agenda.'³⁵³ In its 'Twelfth National Economic and Social Development Plan' (2017-2021), the Thai Office of the National Economic and Social Development Board sets out the goal to develop 'significant opportunities' in trade and investment, including enhancing international cooperation.³⁵⁴ It embeds 'economic, social and environmental objectives,' including in the SDGs, targeting enhancing opportunities for decent jobs,³⁵⁵ but otherwise does not mention modern slavery or forced labour.

5.3. International commitments

Thailand is party to several international human rights instruments (Table 12) relevant to modern slavery and several ILO conventions (Table 13). The tables show that Thailand is only party to three of the seven relevant international human rights instruments (most notably the slavery instruments have not been ratified) and has only ratified eight of the eleven ILO conventions.

Instrument	Party
1926 Slavery Convention	Not party
1953 Protocol to the Slavery Convention	Not party
1956 Supplementary Slavery Convention	Not party
1966 International Covenant on Civil and Political Rights	29 October 1996
1966 International Covenant on Economic, Social and Cultural Rights	5 September 1999
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons	17 October 2013
1998 Rome Statute of the ICC	Not party

Table 12. Thailand's international human rights commitments

Instrument	Party
1930 Forced Labour Convention (No.29)	In Force, 26 February 1969
1957 Abolition of Forced Labour Convention (No.105)	In Force, 02 December 1969
1951 Equal Remuneration Convention (No.100)	In Force, 08 February 1999
1958 Discrimination (Employment and Occupation) Convention (No.111)	In Force, 13 June 2017
1973 Minimum Age Convention (No.138)	In Force, 11 May 2004
1999 Worst Forms of Child Labour Convention (No.182)	In Force, 16 February 2001
2006 Promotional Framework for Occupational Safety and Health Convention (No.187)	In Force, 23 March 2016
1948 Freedom of Association and Protection of the Right to Organise Convention (No.87)	Not ratified
1949 Right to Organise and Collective Bargaining Convention (No.98)	Not ratified
1981 Occupational Safety and Health Convention (No.155)	Not ratified
2014 Protocol to the 1930 Forced Labour Convention	4 June 2018

Table 13. Thailand's commitment to ILO conventions



5.4. Modern slavery risks

Modern slavery and labour exploitation are present across Thailand's export industries, with a higher prevalence in some industries than others. Industry areas at risk of modern slavery include: textiles, garments and footwear; manufacturing; agriculture; construction; mining; electronics; food processing; and service work.³⁵⁶ Barriers to decent work in these industries comprise their presence in the informal economy, job insecurity, low earnings, higher occupational safety and health risks, low training opportunities and poor access to freedom of association and collective bargaining rights.³⁵⁷ There are ten Special Economic Zones in Thailand associated with a lack of regulation by labour law or inspection.³⁵⁸

Walk Free set out specific risk factors that make modern slavery in Thailand more likely.³⁵⁹ These factors include: (1) the high number of low-skilled and low-wage workers; (2) the labour migration process and vulnerability of migrant workers in connection to language and visa issues; (3) the tendency for women and girls to be in temporary, informal, or precarious work; (4) the use of child forced labour in the garment, agriculture, shrimp, and seafood processing industries; and (5) discrimination against minority groups. Walk Free also assesses specific industry and product risks depending on industry practices, raw materials, manufacturing, production, or use of products and services.³⁶⁰

The Thai Government outlines prosecution, protection, and prevention as key principles in its 2021 report on anti-trafficking.³⁶¹ Thailand has the largest number of migrant workers in ASEAN.³⁶² The government reported that there were 182 human trafficking cases in 2021, with the rescue of 354 victims of trafficking.³⁶³ Thailand ranks as a Tier 2 country in the US State Department Trafficking in Persons (TIP) report, which notes a decrease in trafficking prosecutions and convictions, despite persistent levels of forced labour prevalence.³⁶⁴ According to this report, the Government identified 414 trafficking victims in 2021, 231 in 2020, and 868 in 2019.³⁶⁵ Export industries are heavily reliant on documented and undocumented migrants.³⁶⁶ An ILO study in 2020 shows that migrant workers entered from Cambodia, the Lao People's Democratic Republic, and Myanmar, with 36% through official channels, 30% through irregular channels, and 34% as fully irregular migrants.³⁶⁷

A 2017 study of the fishing industry found 37.9% were trafficked, and 49.2% 'possibly trafficked'.³⁶⁸ The fishing industry is heavily reliant on migrant workers, particularly from Cambodia or Myanmar, owing to dangerous work conditions.³⁶⁹ As knowledge of exploitation in the fishing industry spreads, brokers are increasingly hiring children and the disabled, lying about wages, and drugging and kidnapping migrants.³⁷⁰

In other industries such as electronics, migrants are lured by a promise of a good salary but pay excessive recruitment fees, face poor living conditions, and have their passports removed.³⁷¹ Trafficking can be coupled with debt bondage as victims are charged for food, shelter, travel, and registration costs.³⁷² A 2017 study found that 76% of fishermen were in debt bondage and 52.1% expressed confusion over their debts.³⁷³

Language barriers, lack of resources, and ignorance keep migrant workers unaware of their rights.³⁷⁴ Even when interviewed by officials, inconsistent and ineffective practices in inspections mean that victims are unidentified.³⁷⁵ Officials can lack understanding of the indicators of trafficking, and it is noted that Thai authorities have not identified trafficking victims during inspections,³⁷⁶ where identification is often undermined by corruption and officials 'directly complicit in trafficking'.³⁷⁷

Forced labour is evident across Thai export industries. In the US TIP report, about 177,000 children, mainly boys, are involved in child labour and at risk of facing conditions akin to forced labour.³⁷⁸ Difficulties accessing justice stem from unequal power between migrants and employers and if victims are rescued the chance of rehabilitation is poor.³⁷⁹ There can be involuntariness, coercion that includes low wages, abusive overtime, mobility restrictions, degrading living conditions, debt bondage, and withholding of documents in export industries.³⁸⁰

An unknown proportion of vessels are unregistered in the fishing industry,³⁸¹ and the risk of modern slavery and forced labour is further increased as decreasing fish stock means vessels use more fuel to travel further in order to find available fish stocks.³⁸² Longer distances for fishing increases costs for vessel owners and isolates workers who can be at sea for months or years.³⁸³ These problems are accentuated by trans-shipments, where victims can be moved or sold between vessels.³⁸⁴ In a 2020 study on fishers and seafood processing, 27% of workers were reported as experiencing a form of involuntary work.³⁸⁵ Workers also report restrictions on freedom of movement through surveillance and control, which continues when workers are onshore.³⁸⁶

Thailand does not have a strong record on unionisation, with a 2019 trade union density rate of 3.3% (ILOSTAT).³⁸⁷ Trade unions are restricted to Thai nationals, which is a violation of Thailand's commitments under the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁸⁸ Migrant workers have no right to form or lead a union under current labour laws, but migrant workers can organise into unions led by Thai nationals or form non-unionised groups.³⁸⁹ The former is less likely due to language barriers, perceived differences in interests, and discrimination.³⁹⁰

Thailand circumvents issues around unionisation with 'employee committees' and 'welfare committees,' which can be used as substitutes, but are controlled by management and not independent from employers.³⁹¹ Worker voice is vital to enabling decent work. Where there are strong trade unions, there are lower levels of modern slavery.³⁹² Trade unions that do exist in Thailand face anti-union discrimination. Practices include lockouts, dismissals, unfavourable work assignments, and reductions in work hours of union members.³⁹³

5.5. Trade and investment agreements

As a middle-income country, Thailand cannot be a beneficiary of the Generalised Scheme of Preferences (GSP). As the UK looks towards a UK-Thailand FTA, it will have less leverage for labour rights improvements than the EU since it is a smaller trade body and has yet to position itself strongly on the normative agenda, while Thailand is a key member of ASEAN.

The EU's threatened trade ban against the Thai fishing industry demonstrates the possible ramifications of a conditionality approach to trade. Global news outlets reported labour rights abuses prevalent in the fishing industry in 2014, leading to trade partner action. The Guardian reported fishermen working '20-hour days' as slaves with 'regular beatings,' being bought and sold.³⁹⁴ It also discovered that Rohingya migrants were trafficked through 'deadly jungle camps' and sold to Thai fishing vessels as slaves.³⁹⁵ This led to the US downgrading Thailand to Tier 3 in its TIP report, recognising modern slavery in the industry and concluding that Thailand had not done enough to stop problems of human trafficking.³⁹⁶

The European Commission issued a 'yellow card' warning to Thailand,³⁹⁷ under the EU's Regulation to End Illegal, Unreported and Unregulated (IUU) Fishing, which demands a certificate showing the legal origins of the seafood.³⁹⁸ The Regulation does not address labour rights, though they 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.³⁹⁹ A 'red card' trade ban could have caused a loss of over US \$600 million a year in seafood exports.⁴⁰⁰ This would have been issued if progress had been insufficient and Thailand was not cooperating.⁴⁰¹ Issuing a red card would be considered a 'failure' in the EU's use of power.⁴⁰²

The yellow card warning from the EU triggered a series of legal and policy reforms to address illegal fishing.⁴⁰³ Fishing control, monitoring, and management was changed to increase transparency and accountability of fishing and promote sustainable fishing.⁴⁰⁴ For example, the Royal Ordinance on Fisheries B.E.2558 (2015) aims to 'prevent all forms of forced labour in the fisheries sector.'

Further positive outcomes include fishing vessel registration, strengthening of port controls, and improvements to working conditions.⁴⁰⁵ Awareness has also been raised concerning exploitation, amongst prospective and current migrant workers.⁴⁰⁶

Human Rights Watch (HRW) argues that the Thai Government has not taken sufficient steps to end forced labour and other abuses.⁴⁰⁷ Problems have been encountered collecting data, inspecting boats, and identifying modern slavery victims.⁴⁰⁸ Port-in and port-out inspections designed to identify modern slavery victims have been criticised for being 'little more than cursory'.⁴⁰⁹ Other changes such as pink cards and temporary registrations for migrant workers, have tied fishers to specific locations and employers,⁴¹⁰ which could also be arranged by third parties acting on behalf of migrant workers.⁴¹¹ There is a perception that only undocumented migrants can be modern slavery victims, so holding a pink card could be a detriment to the victim.⁴¹² Changes have also increased the price of raw materials, leading to closure of businesses.⁴¹³

The fishing industry created the Seafood Sustainable Supply Chain Task Force (SSCTF) to enable companies to discuss forced labour.⁴¹⁴ It brought together competing buyers and exporters to discuss strategies on fisheries management and forced labour and enabled a shared code of conduct.⁴¹⁵ The SSCTF has been criticised as creating slower reform than a similar initiative, the Bangladesh Accord, formed after the Rana Plaza factory collapse to address labour rights violations in the ready-made garment (RMG) industry.⁴¹⁶ Significant differences exist between the two, namely the involvement in the Accord of garment brands, retailers, importers, global unions, Bangladeshi unions and NGOs as opposed to sole industry stakeholders in the SSCTF.⁴¹⁷

The creation of a joint ILO-EU supported programme in the 'Ship to Shore Rights Thailand' is a positive development, which facilitated the Seafood Good Labour Practices Guidelines.⁴¹⁸ The programme aims to: (1) strengthen the legal, policy, and regulatory framework; (2) improve the labour inspectorate's ability to move against forced labour and other rights abuses; (3) improve compliance with ILO core labour standards and establish a complaints mechanism; and (4) increase access to support services for workers, especially victims of labour abuse.⁴¹⁹ The project has been directly linked to damage to the industry's reputation, falling market share of the shrimp exports, and the threat of trade barriers.⁴²⁰ Programmes like this, funded by the EU in parallel to trade arrangements aiming to improve labour rights, do have the potential to create change.

These various changes in Thailand led to pushback, where industry representatives considered that the reforms caused significant economic impact.⁴²¹ Owing to a lack of proper industry engagement, the sentiment was that the 'Thai government was acquiescing too quickly to EU demands without having dialogue with the local industry.'⁴²² Where dialogue and stakeholder meetings have taken place between the EU, the Thai Government, and the fishing industry,⁴²³ there is a lack sufficient participation and engagement, which has led to distrust of the EU, who are seen as the central cause of increased regulations, costs, and inefficiencies.⁴²⁴ The resentment led to the distribution of anti-EU stickers and t-shirts by fishing associations and there was a hope that Thailand would have a red card so as to explore other trading partners like China.⁴²⁵ Fishermen reported that the reforms coupled with 'decades of overfishing and ecological destruction' led to increased human trafficking,⁴²⁶ where one estimate suggested that 60,000 people (20% of fishermen) lost their jobs.⁴²⁷

The EU Commission lifted its yellow card in 2019, stating that a process of cooperation, dialogue, and change had taken place, which included addressing human rights abuses and forced labour.⁴²⁸ It recognised efforts to tackle human trafficking and improve labour conditions, and committed to cooperating to promote decent work and tackle continued illegal, unreported, and unregulated fishing.⁴²⁹

Outside the EU, ASEAN has a human rights framework and has taken steps towards creating a 'regional human rights system'⁴³⁰ in which its Community Vision 2025 placed the 2030 Agenda for sustainable development as a key value.⁴³¹ ASEAN's Human Rights Declaration states that 'all persons are born free and equal in dignity and rights,'⁴³² and no person shall be held in 'servitude or slavery,' 'human smuggling or trafficking in persons.'⁴³³ Everyone has the right to 'enjoy just, decent and favourable conditions of work.'⁴³⁴ The primary responsibility for protecting and promoting human rights is on ASEAN Member States,⁴³⁵ supported by the ASEAN Intergovernmental Commission on Human Rights.⁴³⁶ The human rights framework has thus far been criticised as ineffective for real change in Thailand.⁴³⁷ Reports suggest that the military uses ASEAN as insulation, and in turn ASEAN has not used any of its human rights framework against Thailand, instead promoting and protecting human rights and fundamental freedoms where 'they do not run counter to the history, politics, religions, or economic context of the member state.'⁴³⁸

Modern slavery provisions, inclusion of labour rights, or emphasis on responsible business are scarce in Thailand's Indo-Pacific trade agreements. One agreement of note is the 2009 ASEAN and Australia/New Zealand Agreement (AANZFTA),⁴³⁹ in which Thailand is a party. There is no mention of sustainable development, decent work, labour rights, or modern slavery. However, the parties plan to upgrade the agreement in 2023, part of which will involve adding a new chapter on sustainable development.⁴⁴⁰ The upgrade introduces new inclusive and progressive provisions, including a framework for cooperation on labour standards. It signifies the importance trade partners are now attributing to sustainable development.

The process leading up to the upgrade began in 2016. The review terms of reference aimed to ensure the agreement would upgrade AANZFTA to a 'high quality and ambitious instrument.'⁴⁴¹ The Stage One Report, reviewing the agreement's implementation between 2010 and 2017, did not include sustainable development.⁴⁴² In Stage Two, officials provided recommendations on sustainable development.⁴⁴³ Its inclusion was proposed by New Zealand, and in one of the Committees it was suggested that the scope of the topic should be limited to 'cooperation, information sharing, and capacity building' and not include a dispute settlement mechanism owing to the chapter being new to ASEAN.⁴⁴⁴ New Zealand favours a cooperative and consultative approach to sustainable development in trade.⁴⁴⁵

The upgrade process permitted submissions from business and civil society. While most submissions did not engage with the issue of sustainable development, the Australian Chamber of Commerce and Industry expressed concern over the inclusion of labour issues 'which should never be considered within bilateral or regional arrangements' and should be restricted to 'global or unilateral consideration.'⁴⁴⁶ To the contrary, the Export Council of Australia recommended including a labour chapter.⁴⁴⁷ The Australian Fair Trade & Investment Network likewise supported the inclusion of labour rights.⁴⁴⁸ The importance of such a submission process is that civil society actors are able to express their views, feel engaged in the negotiation process, and work with the trade partners to develop an appropriate agreement.

There is a separate relationship between Thailand and New Zealand in their 2005 'Closer Economic Partnership.'⁴⁴⁹ The extent of labour rights inclusion is found in the preamble, stating that parties are 'aware that closer social and political relationships and economic partnerships can play an important role in promoting sustainable development,' building on rights, obligations, and undertakings under 'relevant agreements and arrangements,' which in theory could include the international human rights framework.

The Thailand-Australia FTA (2005) is again sparse on the topic of labour protections, and instead bolsters liberalisation of trade and investment flows without recognition of the impact on modern slavery.⁴⁵⁰ Australia is considered to traditionally separate trade from sustainability, not usually including sustainability in its FTAs.⁴⁵¹ Where it does, it takes mainly a cooperative and consultative approach.⁴⁵²

The 2007 Japan-Thailand Economic Partnership Agreement follows this trend, where the agreement is instead based on improving economic efficiency and consumer welfare and expanding trade and investment.⁴⁵³ The preamble again states that parties bear in mind their 'rights and obligations under other international agreements.' Japan has now included labour provisions in many of its FTAs, adopting a cooperative approach.⁴⁵⁴ The 2003 India-Thailand Framework Agreement has a similar phrase of 'reaffirming the rights and obligations with respect to each other under existing bilateral, regional, and multilateral agreements,' though otherwise remains silent on labour rights, human rights, and sustainable development.⁴⁵⁵

The Chile-Thailand FTA (2013) is a better example of labour rights inclusion than the Indo-Pacific agreements.⁴⁵⁶ Chilean trade policy has prioritised labour provisions, adopting policy tools such as dialogue, knowledge exchange, and dispute resolution to overcome implementation challenges.⁴⁵⁷ The FTA recognises that the economic partnership will bring both economic and social benefits and build on their 'respective rights and obligations under the WTO, other multilateral, regional and bilateral agreements.' Close cooperation is established with a goal of promoting 'economic and social development.'

Article 11.6 on labour issues is key to the agreement, where parties affirm a commitment to 'establish cooperation on labour' (Article 11.6.1). This includes 'labour and employment-related matters in the areas of mutual interest and benefit,' including the 'promotion of decent work, labour policies,' and 'best practices of the labour systems' (Article 11.6.2). This 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). Contact points are established to facilitate communication (Article 11.6.5). Unfortunately, the ILO is not included, there is no dispute settlement mechanism, expansion to responsible business conduct, or inclusion of modern slavery as an individual issue.

Thailand does not have an FTA with the EU. Negotiations between the EU and Thailand for an FTA were launched in 2013 and put on hold in 2014 owing to the military coup.⁴⁵⁸ The parties have announced

the relaunch of negotiations for a modern FTA with 'sustainability at its core.'⁴⁵⁹ The EU is committed to FTAs that foster decent work, including civil society,⁴⁶⁰ and is broadening its engagement with Thailand on human rights.⁴⁶¹ The first step of the engagement has been a Partnership Cooperation Agreement (PCA), which enhances political dialogue on trade and human rights.⁴⁶² The parties reaffirm democratic principles, human rights, and fundamental freedoms, and sustainable development.⁴⁶³ It is recognised that sustainable development promotes sustainable supply chains, responsible business practices, and facilitates trade and investment.⁴⁶⁴ Dialogue is used to support this objective.⁴⁶⁵ Modern slavery is not specifically identified, with decent work taking precedence, where failure to fulfil obligations can result in appropriate measures being taken in accordance with international law, such as suspending the agreement.⁴⁶⁶

Investing responsibly in Thailand requires an acknowledgement of Thailand's levels of modern slavery, the status of workers' rights, corruption, and government policies on trade and investment. The 'Investors Against Slavery and Trafficking' (IAST APAC) initiative in the Asia-Pacific provides a general framework to guide investors. This is an illustration of pushing towards shareholder action to improve modern slavery risk management, where modern slavery risks are not seen as viable investments. IAST APAC was established in 2020 with the understanding that investors expect companies to meet reporting and compliance obligations, encouraging companies to take a deeper look at risks of labour exploitation.⁴⁶⁷

On a national level, companies can engage with the Walk Free Guidance on Modern Slavery Risks for Thai businesses.⁴⁶⁸ This considers the risks in investing in connection with modern slavery. It determines these as:

- Legal and compliance risks, where slavery, forced labour and human trafficking are criminal offences, and exploitative labour practices breach Thailand's labour laws;
- Regulatory and administrative risks, where companies can place sanctions or import restrictions on market access where goods are made with forced labour;
- Brand and reputational risks as modern slavery in the supply chain can lead to a loss of market confidence and reputation, enhanced by social media and consumer awareness;
- Operational and project risks, where decent work reduces strikes and protests, and modern slavery reduces productivity; and
- Financial and credit risks, where failing to prevent or remediate modern slavery affects a company's ability to borrow money or attract investment.

Bearing in mind the risks involved in investing in industries vulnerable to modern slavery, investors need to assess audits and the indicators of risk within a specific business and develop a potential corrective action plan. Ideally, these should be developed in engagement with suppliers to identify root causes and the actions that need to be addressed.⁴⁶⁹ A key feature includes collaboration within the supply chain involving workers.⁴⁷⁰

Investors can also consider Section 54 of the UK's Modern Slavery Act (MSA), where there needs to be a statement of the steps an organisation has taken during the financial year to ensure slavery and human trafficking are not taking place.⁴⁷¹ For instance, the modern slavery statement from fish company John West commits the company to ensuring there is no modern slavery or human trafficking, where its milestones are the fair treatment of workers and the traceability of seafood.⁴⁷² However, the length and quality of these statements vary⁴⁷³ and the MSA has been criticised for its weak mitigation of the risk of modern slavery, or addressing the cause of labour exploitation.⁴⁷⁴

Investors can additionally use tools like Walk Free's Modern Slavery Benchmarking Tool, a website survey designed to help companies 'establish good practices to assess and address modern slavery risks in their operations and throughout their value chain.'⁴⁷⁵ The tool gives companies a score of their current performance and steps taken to improve it.⁴⁷⁶ This can be combined with efforts within Thailand to guide investors. The Stock Exchange of Thailand (SET) notes in its 2020 sustainability report that stakeholders are increasingly demanding sustainability information disclosure.⁴⁷⁷ SET commits to promoting corporate sustainability, including human rights and labour rights for all listed companies in Thailand.⁴⁷⁸ It has noted that listed companies report on sustainability issues in their annual reports, including disclosing information on performance and social issues such as fair labour practices.⁴⁷⁹ In 2021 Walk Free, the Stock Exchange of Thailand, and Finance Against Slavery and Trafficking published guidance on modern slavery risks for Thai businesses.⁴⁸⁰

The UK has ensured that agreements facilitating overseas investments incorporate human rights as a business responsibility,⁴⁸¹ where business and human rights are one of the priorities of the UK's policy on human rights.⁴⁸² The 1978 UK-Thailand Investment Agreement,⁴⁸³ however, appears as an outdated mechanism that lacks human rights or sustainable development.

The coupling of investment with decent work, modern slavery, and sustainable development has been rare in bilateral investment treaties. There are several BITs between Thailand and countries in the Indo Pacific, yet none provide a good example for the UK. Provisions relating to modern slavery across the

agreements are directed at providing an exception for the parties on an exemption for equal treatment for cooperation in social or labour fields. Such a clause is present in the 1989 Korea-Republic of Thailand Agreement,⁴⁸⁴ the 1996 Taiwan Province of China-Thailand BIT,⁴⁸⁵ the 1991 Thailand-Vietnam BIT,⁴⁸⁶ the 2005 Hong Kong, China SAR-Thailand BIT,⁴⁸⁷ the 1998 Bangladesh-Thailand BIT,⁴⁸⁸ the 1985 China-Thailand BIT,⁴⁸⁹ the 1990 Lao's People Democratic Republic-Thailand BIT,⁴⁹⁰ and the 1991 Thailand-Vietnam BIT.⁴⁹¹

There is no mention of decent work, modern slavery, or sustainable development in the 2008 Myanmar-Thailand BIT,⁴⁹² the 1995 Philippines-Thailand BIT,⁴⁹³ the 1995 Cambodia-Thailand BIT,⁴⁹⁴ the 2002 Korea-Thailand BIT,⁴⁹⁵ the 1995 Philippines-Thailand BIT,⁴⁹⁶ or the 2000 India-Thailand BIT.⁴⁹⁷ This is not surprising given the more recent emphasis on sustainable development and focus on modern slavery. What is needed is an update of BITs to give rise to an understanding that investment has a role to play in eradicating modern slavery. Initial steps are being made. For example, the preamble of the proposed EU-Vietnam Investment Protection Agreement integrates sustainable development in the strengthening of the 'economic, trade and investment relationship in accordance with the objective of sustainable development,' including in its social forms, promoting investment in a way that is 'mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements.'⁴⁹⁸

5.6. Summary and implications

After a prolonged period of military rule with recurring coups and a complex set of institutional arrangements, the opposition victory in the 2023 elections offers new opportunities for incorporating modern slavery and other labour protection provisions in Thai trade and investment agreements. However, the new government is the result of a political bargain between the Pheu Thai party and the military, which itself is wary of commitments to human rights, particularly if they place an additional burden on economic growth, foreign trade, and investment both within the Indo-Pacific and the wider world.

Thailand has a partial record of participation in international human rights instruments and ILO Conventions and a developing domestic legislative framework with modern slavery, human trafficking, forced labour, child labour, and treatment of migrant workers. There are numerous reports of modern slavery, human trafficking, forced labour, child labour, and abuse of migrant workers across several industries that comprise the export sector. There has been a lot of international focus on the fishing industry with mixed and partial reforms instigated by EU sanctions, while there are significant remaining challenges across other industries.



6. Summary and implications

These four case studies provide richer detail and insights at a country level concerning the complex interplay between domestic politics, law, and policy with respect to trade, investment, and modern slavery. The presentation and analysis of the four case studies complements the other workstream activities undertaken in the TRIMs conference and network meetings and the quantitative analysis of trade and investment agreements and the relationship between international trade and forced labour.

The case studies include countries that have a long history of democracy (India), newly emerging democratic institutions (Thailand and Malaysia), and increased authoritarianism (China) with varying degrees of formal commitment to human rights and mixed records for the enjoyment and exercise of human rights.

These varying country contexts shape the ongoing negotiations of new trade and investment agreements within and outside the Indo-Pacific, implementation and compliance with existing agreements, and possibilities for future agreements. Across each of these dimensions, the UK has a role to play in influencing agreements and exercising its normative power and influence in the Indo-Pacific.

Across the four cases there is great variation in the volume of trade and investment (see Table 1). For trade, China and India are clearly large and important trading partners for the UK, 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 as part of the TRIMS project reveals a paucity of provisions on modern slavery or forced labour. The consideration of BITs shows that they have virtually no commitments to protect labour rights, with an emerging and significant role for a responsible business model operating to include attention to modern slavery in the context of making investment decisions.

6.1. Legal commitments

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 (66.67%), followed by Thailand (61.1%), China (55.56%), and Malaysia (50%) (see Table 1). These patterns of participation in the international regulatory context affect the position of a country in its trade and investment negotiations and on 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.

6.2. Modern slavery risks and vulnerabilities

Against these patterns and dynamics in trade and investment, formal agreements, and international and domestic legal commitments, 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 migrant labour. For China, these high risk products include cotton,⁴⁹⁹ solar panels,⁵⁰⁰ tomatoes,⁵⁰¹ dates,⁵⁰² raw materials and auto parts,⁵⁰³ and seafood.⁵⁰⁴ For India, these include bricks, embroidery, textiles, garment, rice, and stones.⁵⁰⁵ For Malaysia, these include palm oil,⁵⁰⁶ electronics,⁵⁰⁷ and rubber.⁵⁰⁸ For Thailand, these include textiles, garments, footwear, manufacturing, agriculture, construction, mining, electronics, food processing, and service work.⁵⁰⁹ 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.⁵¹⁰

6.3. Partner relations and policy tools

Partner relations vary across the negotiation, implementation, and compliance processes for bilateral and multilateral agreements. Market size, trade and investment volume, national political attention to modern slavery, and representation from parliamentary committees, civil society organisations, and other actors reporting concerns over labour conditions in trading partners affect the pace, style, and progress of different agreements forged over many years.

The case studies in this report feature two instances of the impact and effectiveness of trade bans and import restrictions related to modern slavery, even though 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.⁵¹¹ The Malaysian case study documented the experience of Top Glove, a manufacturer of rubber gloves when its exports to the US were subjected to a Withhold Release Order (WRO) by US Customs and Border Protection (CBP) and its subsequent change in production processes. The Thailand case study considered the EU issuing a 'yellow card' over concerns with modern slavery and forced labour in the fishing industry, which is reported to have led to changes in policy and practice to some degree.

6.4. Lacunae and remaining gaps

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.

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

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

Thus, as the UK 'tilts' to the Indo-Pacific' in its international engagement,⁵¹² it is critical that the strengthened trade and investment relations intended to deliver such a shift⁵¹³ respond to specific contextual conditions of Indo-Pacific states. Indo-Pacific states present significant and diverse modern slavery risks, which must be tackled if the UK seeks to position itself as a global 'normative actor'⁵¹⁴ on this issue.



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