



ARTICLE

Human rights and the supply chain

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As the world marked Human Rights Day on 10 December, never before has this key defining and global principle been more relevant or more of a threat to businesses in Asia Pacific.

Sharply rising scrutiny and expectations of companies' Environment, Social and Governance (ESG) performance is attracting growing activist attention triggering customer and government action that is impacting the business bottom line.

With the region at the centre of the global supply chain it is vulnerable to human rights abuses, particularly deep in the supply chain where factory owners and their customers can even be unaware of what is happening.

There are an estimated 48 million international migrant labourers in Asia Pacific¹, many working in the ASEAN corridor or Australia and New Zealand, with countless million more migrant workers within their home country – 286 million in China alone.² They have been most impacted by the economic and social strains and stresses of COVID-19, isolated from their families and the first to feel the consequences of falling economic performance.

Companies are quickly finding out that what was acceptable in the past is no longer acceptable now. Hard evidence comes from the US Customs and Border Protection (CBP) which has stepped up its import bans for forced labour, from the Asia Pacific region.

In the first seven months of this year the CBP detained 1,125 cargoes worth US\$413 million for alleged forced labour violations, many involving labour-intensive industries and some of the world's largest companies. This is a major step up from 314 detentions worth almost US\$50 million in 2020 and just 12 in 2019.³

The CBP has targeted mainly Chinese and Malaysian imports. Three of Malaysia's largest and most successful international companies were issued Withholding Release Orders (WRO) for alleged forced labour violations and another is being investigated. One WRO was lifted after 14 months. Another is still in force more than a year later while the company goes through a major independent review of labour rights in its operations. A third ban is approaching a year.

All CBP actions in Malaysia followed reports by NGOs. All the CPB needs to detain merchandise at the port of

¹ https://www.ilo.org/asia/media-centre/news/WCMS_793027/lang--en/index.htm

² <https://clb.org.hk/content/migrant-workers-and-their-children>³ Schwartzkopf, William, John J. McNamara and Julian F. Hoffar. 1992

³ <https://www.cbp.gov/newsroom/stats/trade>, last access on 07/12/2021.

entry is information that “reasonably indicates” it contains any components that are the result of forced labour. To lift the WRO, the burden of proof is on the importer.

The bans are a wakeup call for all businesses, but particularly those operating complex supply chains reaching into Asia Pacific where political, social and environmental issues are hard to assess and manage with limited oversight and contractual control.

They are part of a broader trend that has increased scrutiny on environmental and human rights standards leading to demands for higher standards which are now being acted upon by regulators and legislators in a number of countries, but particularly Europe and the United States.

Unless Asia Pacific companies are prepared, they should expect increasing disruption.

Many are not, according to a recent independent survey⁴ of the top 250 companies listed on the Singapore, Kuala Lumpur, Jakarta, Manila and Bangkok stock exchanges which showed they disclosed on average less than 22% of the human rights data recommended by the accepted international standard, the UN Guiding Principles on Business and Human Rights. Overall, only a quarter of the surveyed companies disclosed any information at all on monitoring or reporting of human rights.

At the same time there is a growing understanding of ESG that is changing the way companies look at their business. In [FTI Consulting's 2021 Resilience Barometer](#), almost a third of the 2,800 large companies polled in G20 countries expect to be investigated by regulatory or government agencies over ESG in the next 12 months.⁵

New US laws on forced labour have been set for trade between the US, Mexico and Canada⁶ particularly, reflecting growing political focus on human rights and the environment in the US Senate and Congress. In the wake of CBP interest in the two Malaysian palm oil companies, the Congress' Ways and Means Committee urged “aggressive and effective enforcement”, asking if CBP had considered a blanket ban on all palm oil imports from Malaysia and Indonesia, the other major palm oil producer.

The EU Green Deal, which is aimed at driving sustainable approaches across all business sectors to achieve a carbon neutral Europe by 2050⁷, is fundamentally changing the business landscape for European companies and any other companies trading in Europe or part of the supply chain feeding the EU market.

The EU Commission⁸ is now well advanced in introducing legislation for sustainable corporate governance which will include mandatory requirements for human rights and environmental due diligence.

The legislation is expected to reflect existing established international and voluntary guidelines that rule makers are now convinced are no longer enough.

European companies looking for partners and suppliers in Asia Pacific will be increasingly using human rights and environmental policies and practices to screen their selection process. Those who can differentiate themselves will have an advantage.

The challenge for companies involved in complex and often opaque supply chains is immense and requires investment and care to monitor and assess the growing societal concerns, understand the regulatory and legislative trends, looking five years ahead or further, to develop standards and practices that future proof the company and support business growth.

But that is not enough. To thrive in the ‘single-issue’ activist era of fake news and a social media free-for-all, trust has never been more important but does not happen by chance. Companies need to establish relationships with key legislators and regulators as well as opinion formers in key markets and internationally to ensure a broad, balanced and factually-based understanding of the company's position, dilemmas and responsible approach.

Being prepared is a lot cheaper than dealing with a crisis – organising and funding independent human rights reviews, absorbing the losses from the ban, reassuring worried customers and watchful governments in other markets. Building back reputation and trust with customers, regulators, government bureaus and their influencers is time consuming and resource intensive and can be costly.

⁴ Pg. 5, <https://humanrights.wbcsd.org/project/human-rights-disclosure-in-asean/>

⁵ Pg 10, [FTI Consulting's global 2021 Resilience Barometer](#)

⁶ <https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca>

⁷ <https://www.robeco.com/sg/key-strengths/sustainable-investing/glossary/european-green-deal.html>

⁸ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en

FTI Consulting successfully helps clients using its global understanding of supply chain complexities, the growing social, environmental and protectionist trends in markets across the world, a deep understanding of how decisions are made in a variety of countries and what companies need to do to ensure their position is understood and heard before any action is taken.

We have assisted companies that have recognised potential threats before it was too late. We have helped companies with supply chains in Xinjiang and elsewhere evaluate the issue and establish dialogue with regulators to ensure that the company's approach and record is communicated, and sensitivities recognised and managed so that any decisions are based on a balanced understanding.

We have also helped clients manage the public fallout that follows bans or business disruption.

In summary, companies need:

- A clear ESG strategy and plan that guides its operations and sets clear standards.
- At the heart of that strategy an effective issues identification, monitoring and management system that identifies ESG trends impacting supply chains, assesses, evaluates and maps risks and sets management plans to avoid potential business impacts. This should be managed at leadership level.
- Stakeholder engagement in key markets to build trust.
- To harness technology to improve supply chain traceability.

These will help Asia Pacific companies navigate the increasingly complex and polarised issues around supply chain and achieve business growth.

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