

# **Addressing Forced Labor in Japanese Supply Chains**

**A Case Study of Shimano and the Need for an Import  
Ban on Products of Forced Labor**

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Human Rights Now Report**



**Human Rights Now**

## Executive Summary

The COVID-19 pandemic triggered an unprecedented surge in global demand for bicycles, as more people used bicycles for transportation and recreational purposes. However, the global bicycle boom was overshadowed by serious human rights abuses against migrant workers in factories in global supply chains that manufacture bicycle parts, a situation with indicators of ‘modern slavery’.

This report examines the exploitation of migrant workers in global supply chains at three levels: (1) the companies directly linked to the violations, (2) the country in which violations occur, and (3) the country to which the products of the violations are sent, which make up parts 1, 2, and 3 of the report respectively. The report examines the circumstances at each level that facilitate labor rights violations, as well as the challenges at each level in preventing violations and addressing them after they occur, and the possibilities for reforms.

To make the discussion concrete, this report focuses on a detailed case study involving labor violations against Nepalese and Bangladeshi migrant workers by a supplier factory in Malaysia run by Kwang Li Industry (KLI), with the products being sent to the transnational Japanese bicycle company Shimano.

The basic conclusion of the report is that countries of import, like Japan, can play a particularly critical role in preventing and addressing labor rights violations in global supply chains, as they have the capacity, international and market influence, potential political will, and space for legal reform to pressure supplier companies and their home countries (KLI and Malaysia in this case) to ensure that supply chains are free of forced labor and labor rights violations.

Part 1 presents the Shimano/KLI case, describing the severe exploitation faced by workers and engagement at the level of the companies involved: KLI, the supplier at the bottom of the supply chain, and Shimano, the company that imports its products at the top. It details the unethical recruitment processes that sink workers into debt and how labor violations continued unabated despite complaints. Shimano’s remediation efforts, including audits and supplier interviews, are analyzed in the context of international labor standards, demonstrating both the prospects and limitations of private engagement in addressing supply chain labor rights violations.

Part 2 covers the systemic and structural conditions in Malaysia that create vulnerabilities among migrant workers, incentives to violate their rights among companies, and challenges and obstacles for authorities to prevent and prosecute labor rights violations. It explores the social, political, and economic factors that have perpetuated the labor exploitation of migrants and workers in Malaysia, emphasizing the failures of both recruitment oversight and workplace protections to safeguard migrant workers.

Part 3 describes the legal landscape in Japan currently preventing it from addressing extraterritorial labor rights violations among the suppliers of its companies. It advocates for stronger intervention at the level of importing states at the top of supply chains, in this case Japan, where companies like Shimano are headquartered. This section highlights the potential role of import bans on goods produced through forced labor, using the Shimano/KLI case to demonstrate how such legislation could be an effective tool for combating labor rights violations. The report compares existing forced labor import ban laws in the U.S.

and EU and proposes a framework for Japan to adopt similar measures. By holding companies accountable through import restrictions, these bans could incentivize stronger corporate human rights due diligence and create systemic improvements in labor conditions among suppliers.

In conclusion, the report calls for urgent reforms in corporate accountability and government enforcement to protect migrant workers. It advocates for the implementation of import bans on goods linked to forced labor, alongside stronger labor law enforcement and ethical recruitment standards, to combat exploitation in global supply chains. International cooperation and stringent legislation will be essential to achieving meaningful change.

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## **Part 1: The Shimano Case Study and the Exploitation of Bangladeshi and Nepalese Migrant Workers at Kwang Li Industry**

### **1.1 Background Context: Shimano and Kwang Li Industry (KLI)**

The Shimano/KLI case study involves labor rights violations against migrant workers at the KLI supplier factory in Malaysia for the Japan-based company Shimano, which were brought to light when the migrant workers reported the violations to a migrant rights organization in April 2023.

Shimano is a globally recognized leader that engages in the development, production and distribution of bicycle components, fishing tackle, and rowing equipment to retailers across multiple countries, including Japan, the United Kingdom, and the United States. The company was founded by Shozaburo Shimano in February 1921 and is headquartered in Sakai, Japan.<sup>1</sup>

In Japan, top bicycle manufacturers widely use Shimano's products, reinforcing its influence in domestic and international markets. Shimano also has an official partnership with the prestigious Tour de France, featuring its components in prominent bicycle brands such as Specialized, Giant, and Trek.

The COVID-19 pandemic triggered an unprecedented surge in global demand for bicycles as more people turned to cycling for transportation and recreation. In 2021, Shimano reported a turnover of approximately ¥442 billion JPY (equivalent to £2.8 billion GBP and \$3 billion USD), which increased by 16.6% in 2022, reflecting the global bicycle boom. This growth significantly enhanced Shimano's financial performance and intensified production demands on its supply chain, including key suppliers such as Kwang Li Industry (KLI) in Malaysia.

With its robust manufacturing sector, Malaysia plays a crucial role in Shimano's supply chain. Companies like KLI depend heavily on migrant labor, predominantly from Nepal and Bangladesh. While the promise of lucrative employment lures these workers, they often encounter severe labor rights violations. These include exorbitant recruitment fees and debt bondage—conditions tantamount to modern slavery—along with unsafe and unsanitary living and working conditions, exploitation, and challenges associated with irregular migration. These harsh realities starkly contrast with the expectations set before these workers.

### **1.2 Shimano's Global Labor Practices**

Shimano's human rights policy is implemented through its Group Human Rights Policy based on its Code of Conduct, established in 2024,<sup>2</sup> requiring suppliers to adhere to the Vendor Code of Conduct.<sup>3</sup> In 2022, Shimano initiated a written survey to assess supplier compliance, which expanded in 2023 to cover Southeast Asian suppliers and Chinese subsidiaries as part of its stated commitment to ongoing human rights due diligence.

Separately, following the KLI case, which will be explored below, Shimano made a specific resolution committing to addressing human rights concerns within its supply chains, starting with supplier audits and educational sessions in 2024. The resolution included supplier interviews in March 2024 at its Malaysian subsidiary to further enforce these standards and secure cooperation.

#### **Additional Data:**

- **Global Market Share:** Shimano holds a dominant market share in the bicycle components industry, controlling approximately 70% of the worldwide market as of 2022.<sup>4</sup>
- **Workforce:** The Shimano company profile on their official site reveals that as of December 31, 2023, Shimano Inc. alone employs 1,651 people in Japan. On a consolidated level (including subsidiaries), the company has 9,703 employees globally. This suggests that a significant portion of their workforce is still concentrated in Japan, where the company is headquartered and maintains key production and development operations.<sup>5</sup>
- **Supply Chain:** Shimano's supply chain extends to over 30 countries, with a significant proportion of its production based in Asia, particularly in Malaysia, China, and Singapore.

The following sections will delve into the failures and limitations in addressing labor exploitation at the corporate level. We will first describe the case and circumstances surrounding the exploitation claims at KLI and then provide an overview of the dialogue process among the workers, organizations assisting the workers, KLI, and Shimano. Rights concerns more generally in Malaysia will be considered in Part 2.

### **1.3 Labor Challenges in Global Supply Chains: The Shimano and KLI Case Study**

Migrant workers in Malaysia are typically recruited for low-wage jobs in sectors such as sanitation, security, construction, manufacturing, agriculture, and plantations. Exploitation occurs at every stage of their employment journey due to inadequate labor and immigration regulations and inconsistent administrative oversight. Violations of workers' rights and the circumstances surrounding and addressing them can be framed in three phases or stages: (1) pre-employment recruitment, (2) employment, and (3) post-employment, repatriation, and dialog, each of which is addressed for the KLI case in the following sections.

#### **1.4. Circumstances of Recruitment**

In response to the increased demand for bicycles triggered by the COVID-19 pandemic, KLI agreed with WorldWays Manpower to recruit 251 Nepalese migrant workers in September 2022. They were promised a two-year contract with wages equal to the minimum Malaysian salary of 1,500 (JPY 50,700) Ringgit (RM) monthly.

Official documents later revealed that while KLI had agreed to cover the recruitment service fees, the workers were compelled to pay these costs, including substantial medical screenings, travel, and other processing charges. These costs were funded through high-interest loans amounting to NPR 300,000 (JPY 354,060), a clear violation of the 2018 Nepal-Malaysia memorandum that mandates employers bear such costs.<sup>6</sup>

In January and February 2023, Bangladeshi workers were further recruited by WorldWays and arrived at KLI in Malaysia, again to meet the pandemic-driven demand for bicycles.

## **1.5 Issues Faced by Workers During Employment**

### **1.5.1 Arrival of Workers and Initial Employment Conditions (January – February 2023)**

In early 2023, global demand for bicycles began to wane, leading KLI to scale back its operations, reduce shifts, and implement wage cuts. These reductions significantly impacted the workers' earnings and financial stability. Deductions were made from their wages for services such as canteen meals and "savings" fees, which were neither adequately explained nor agreed upon. These deductions sometimes reduced workers' take-home pay by as much as one-third, violating Malaysian labor laws, which limit such practices.

### **1.5.2 Exploitation and Rights Violations**

The workers also faced wage theft, as well as reports of physical and verbal abuse, passport retention, and threats. These abuses exacerbated the workers' sense of entrapment, mainly as many had incurred heavy recruitment debts in hopes of bettering their financial situation even though the costs of recruitment should be borne by the employer. The confiscation of passports, justified by KLI as a safety measure, further restricted their freedom and left them unable to leave or complain and vulnerable to police harassment. Workers should always have access to their passports, with secure storage available to address safety concerns without violating their rights.

The working conditions at KLI were marked by unrealistic production targets. Many workers could not meet these targets in the allotted time, and failure to do so often led to verbal scolding or abuse from management, contributing to a toxic and abusive workplace culture and violations of labor laws meant to protect against unsafe and abusive working environments.

### **1.5.3 Poor Living Conditions and Financial Exploitation**

The workers' accommodations were subject to strict regulations, limiting their access to and from their living quarters to designated times. This system of control restricted their freedom of movement and contributed to a regulated environment. Additionally, workers were required to pay RM 120 upfront for the foreign workers' hospitalization insurance (SKIPPA), imposing an additional financial obligation.

Additionally, long-serving employees faced discrimination, particularly in regard to reimbursement of recruitment fees. While newer workers were potentially reimbursed, long-standing employees were not, leading to a two-tier system that created division and fostered resentment.

### 1.5.4 Escalation and Worker Resignations (June 2023)

By June 2023, conditions had deteriorated significantly. Many workers, particularly from Nepal, reported wage theft and other forms of abuse to non-profit organizations, which then brought these complaints to the Malaysian Labor Department. On June 22, 2023, a labor inspector visited KLI, but no significant action was taken against the company. Despite this, KLI continued its illegal practices, forcing 82 workers to sign resignation letters in groups. The company cited the resignations as voluntary; however, the resignations occurred under coercive conditions including threat of deportation and unpaid suspensions for failing to meet production targets.

On June 27 and 28, 2023, KLI sent 82 Nepali workers back to Nepal, with 34 workers leaving on the 27th and 48 on the 28th. These workers were not compensated for early termination or the wages they had been shortchanged. Many had taken loans to secure their jobs, leaving them in precarious financial situations upon returning home. Despite multiple complaints, no immediate action was taken by the labor inspector following the mass forced resignations.

### 1.5.5 Government and Embassy Intervention

Despite the challenges, the Nepali embassy intervened, preventing the forced deportation of many workers and attempting to negotiate better terms for those who had been dismissed. The intervention drew public attention to the severity of the violations, but KLI largely ignored demands for compensation. As a result, workers continued to demand either financial compensation or placement in alternative jobs to repay their recruitment debts.

### 1.5.6 Labor Law Violations and 11 ILO Indicators of Forced Labor

Throughout their time at KLI, the workers were subjected to multiple labor rights violations, including:

- **Unlawful suspensions without pay**, violating sections 24 and 14 of the Malaysian Employment Act 1955;
- **Physical and verbal abuse**, breaching section 14(3) of the Act, which protects employees from unsafe working conditions and violence;
- **Excessive working hours** without adequate breaks or rest, contravening sections 59, 60A, 60D, 60E, and 60F, which regulate work hours and rest periods;
- **Unauthorized wage deductions**, violating section 24, which limits employer power to deduct wages;
- **Coerced resignations without proper notice or compensation**, in breach of sections 12 and 13 of the Employment Act, and section 20 of the Industrial Relations Act 1967, which mandates fair termination practices;
- **Failure to report migrant worker dismissals** to the Labor Department, violating section 60K of the Employment Act, which requires employers to notify authorities of such dismissals.

These practices, combined with the absence of financial compensation, are consistent with a pattern of forced labor according to the ILO forced labor indicators, all 11 of which KLI workers were subjected to: (1) vulnerability including dependency on the employer, (2) deception, (3) restrictions on movement, (4) residential restrictions (isolation), (5) violence, (6) intimidation and threats, (7) retention of identity

documents, (8) withholding of wages and arbitrary wage deductions, (9) debt bondage and indebtedness, (10) abusive working and living conditions, and (11) excessive overtime.<sup>7</sup> Such factors leave workers vulnerable with limited recourse, and as described in Part 2 Malaysian labor laws were not effective in protecting workers' legal rights nor in providing them justice.

### **1.6 Shimano's Remediation (Post-employment repatriation)**

Amid mounting criticism from international civil society, pressure on Shimano intensified following the publication of a Telegraph article in April 2024 titled "Shimano Cycling Parts Made by Modern Slaves in Malaysia," written by Samuel Lovett with the assistance of Andy Hall, a workers' rights NGO, and their team.<sup>8</sup> In response, Shimano initiated a comprehensive investigation into the labor practices at KLI Industry.

### **1.7 Allegations of Violations among other Shimano Suppliers**

In April 2024, with increased scrutiny following the KLI case, concerns arose about several other companies within Shimano's supply chain also allegedly engaging in irresponsible and unethical recruitment practices. Particular attention has been raised towards Three Cast, a Malaysian company linked to Shimano, where troubling working conditions were reported. Advocacy groups have also identified unethical recruitment and employment practices in at least seven other Malaysian companies supplying components to Shimano as follows.

1. Tunglip Precision Industry Sdn Bhd (Malaysian)
2. Kyotech (m) Sdn Bhd (Malaysian)
3. Tamasek Group Sdn Bhd (Malaysian)
4. Three Cast (m)Sdn Bhd (Malaysian)
5. Sunlig Sdn Bhd (Malaysian)
6. Arex Precision Manufacturing (m) Sdn Bhd (Malaysian)
7. Cicor Asia Pte Ltd (Singapore)
8. Allgood Enterprise Sdn Bhd (Malaysian)

These findings highlight the widespread reports of forced labor in Malaysia's low-wage labor market and the fact that the problem is not individual bad actors, but systemic failures in governance which underlie and facilitate labor and human rights violations throughout the region and in relevant sectors.

### **1.8 Actions taken by Shimano & KLI**

Collaborating with KLI, Shimano has committed to a remediation plan for the affected workers, agreeing to provide a total of 400,000 NPR (JPY 472,105, USD 3,268) to cover recruitment-related fees and costs incurred by migrant workers.

This amount represents a reasonable average for such fees, reflecting the costs incurred and the interest rates on loans taken to cover these expenses. However, former migrant workers at KLI who faced similar abusive treatment were not compensated. The decision not to pursue legal action stemmed from the labor inspector's findings, which did not identify any violations, leading to the belief that a court case would not yield a favorable outcome. Nevertheless, Andy Hall and the workers' rights NGO continue to advocate

for comprehensive resolutions that ensure full compensation for all former workers in Shimano's supply chain. This would amount to RM 36,000 in full compensation for all of the workers given a RM 1,500 wage over two years had they been successful in court. Some of the reasons why the workers could not receive full compensation by going to court will be discussed below in Part 2.3.

Later, in April 2024, Human Rights Now (HRN) also contacted Shimano regarding their efforts to address labor rights violations at KLI Industry and to conduct human rights due diligence before the allegation was reported. Shimano reiterated its commitment to promoting responsible corporate activities and adhering to international human rights norms. In particular, Shimano has stated its commitments to the following:

- Developing and implementing responsible recruitment practices.
- Creating and enforcing policies to prevent forced labor.
- Protecting the rights and well-being of migrant workers across its global supply chain.
- Ensuring that these policies are not just theoretical but are translated into practical, workable solutions that are effectively applied throughout its operations worldwide.
- On August 9th, 2024, after one year of engagement, Shimano further released a comprehensive Group Human Rights Policy.<sup>9</sup>

Shimano is a significant conglomerate globally with considerable leverage to bring about positive change in ensuring decent work and responsible recruitment across workplaces in the countries where production occurs. It is important that Shimano's actions are monitored to ensure they fulfill their commitments and that the continued demands of the workers' representatives are addressed.

At the same time, the case also reveals the limits of individual cases as an approach towards advocacy and supports the conclusion that it may take more to motivate significant changes addressing supply chain labor rights violations, such as action by the state of import as discussed in Part 3.

### **1.9 Systemic Challenges: Evaluating Shimano's Labor Rights Actions, From Supplier Surveys to Compensation**

The labor rights violations and challenges to addressing them discussed in this part reflect a widespread systemic problem that any global company will have to address. The Shimano/KLI case study reveals the inadequacies of corporate self-regulation to address human rights violations in supply chains and highlights vulnerabilities in Malaysia's labor law framework, where inconsistent enforcement perpetuates such violations. Part 2 will look at the limits and failures of Malaysian labor laws and enforcement mechanisms in addressing the problem, setting the foundations for why action is also needed by states of import like Japan at the top of the supply chain.

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## **Part 2: Systemic Issues Contributing to Labor Rights Violations in Malaysia**

The Malaysian economy's reliance on migrant labor is linked to economic, political, and historical conditions which have created systemic worker vulnerabilities, economic dependence on foreign

businesses, and politically powerful domestic actors including recruiters and large employers. Labor regulation in Malaysia has always been guided by the goals of low labor and production costs, and exploitative laws and practices were established during the British colonial period, which have become entrenched after a century of practice, making the risk of forced labor high.<sup>10</sup>

To provide a perspective on the scale, approximately 2 million migrant workers are employed in Malaysia across various industries, as mentioned in Part 1.3. Approximately 30% have reported facing some form of exploitation, including forced labor and human trafficking.<sup>11</sup> Between August 2022 and May 2024, 500,000 workers were reported to have migrated for work from Bangladesh,<sup>12</sup> and in 2023 and 2024, 667,418 foreign workers had entered the country, well over the government's forecast of 518,000.<sup>13</sup>

## **2.1 Pre-employment Recruitment Exploitation**

### **2.1.1 Migration Incentives and Forced Labor Vulnerabilities in the Migrant-Sending Country**

Migrant workers in Malaysia are typically already in a vulnerable position, putting them at risk of forced labor, while still in their home countries like Nepal and Bangladesh, due to factors including low education, skills and domestic work-prospects;<sup>14</sup> high indebtedness due to high relative inflation (which only increases as they are exploited by their recruiters and employers);<sup>15</sup> and high remittances from migration, e.g., around 30% of Nepal's GDP in 2019, which encourages out-migration and discourages migrant-sending states from preventing exploitative out-migration.<sup>16</sup> Legal standards for migration from Nepal to Malaysia are given by the Nepal-Malaysia Memorandum of Understanding (MOU), meant to manage migration and migrant workers' rights; however, the MOU does little to prevent migrant vulnerabilities or protect them from exploitation for reasons discussed in the following sections.

### **2.1.2 Incentives underlying exploitative recruitment**

While work abroad offers migrants from migrant-sending countries upward economic and social mobility and an exit from debt and poverty, recruiters and their agents—often at several levels—capitalize on the demand for migration in often exploitative ways.<sup>17</sup> This includes high recruitment fees, which contribute to debt bondage and the likelihood of forced labor and rights violations. While successful recruiter operations are often linked to influential Malaysian and migrant-sending country officials, even unconnected recruiters gain from deceptive recruitment, with typical profits between USD 4,500 and 6,000 per worker, sustaining an illicit 'migration industry'.<sup>18</sup>

### **2.1.3 Forms of Exploitative Recruitment**

#### **(a) Recruitment, Deception, and Coercion**

The exploitation of migrants entering into exploitative employment situations typically already begins in the recruitment stage through worker deception and/or coercion (such as physical and psychological abuse for refusals), where workers unwittingly or unwillingly accept exploitative conditions, such as poor living conditions and movement restrictions, and exploitative measures, such as retention of passports and wage garnishments for arbitrarily imposed charges. Migrants are easily deceived due to information

asymmetries and systemic barriers for them to verify recruiter claims and the actual conditions of their placement, and violence and verbal abuse reinforce migrant vulnerability and employer dominance.

### **(b) Debt Bondage**

Debt bondage created during recruitment (and later employment) typically also plays a key role in keeping workers in exploitative situations. This includes pre-migration loans secured with family-owned land as collateral, which according to reported trends require 2 to 3 years of migration funding for the collateral to be redeemed, even if all wages are devoted to recruitment loans; and arbitrary charges or fees charged en route to the place of work, which recruiters often conceal in advance. Such debt burdens compound worker vulnerability and coercion in accepting unreasonable working conditions and wages.

### **(c) Employment and Policy Disruptions**

One feature of the recruitment system that particularly adds to the vulnerability of workers is disruptions in the employment or policy situations after migrant workers have accepted recruitment, a common result of migrants' limited access to information.

**Employment disruptions.** After migrants enter the country, many find that the employer either no longer wishes to employ them or will not authorize their work permits.<sup>19</sup> Even after beginning work, businesses often downsize their workforce, for example due to declining demand for its products or operational challenges, leaving migrants in a vulnerable position, as was the case in the KLI case. Without labor department or civil society oversight, workers are typically the party left bearing the losses of reneged agreements. Unscrupulous officials may also deceive workers into paying exorbitant recruitment fees for phantom jobs that do not exist, a problem largely unchecked due to ineffective enforcement against corruption.

**Government policy disruptions.** The Malaysian government frequently and unexpectedly (to prospective migrant workers) reduces quotas or refuses valid-appearing work permits. This typically results in months-long delays from the time workers pay recruiter fees to the time they migrate and commence work.

Due to such disruptions, Malaysia's Department of Labour reportedly reassigned 1664 workers to new employers in 2023 and 910 in 2024. The favorability of terms to workers under which reassignment was authorized remains unknown. Such disruptions greatly contribute to migrants' vulnerability. They can leave migrants abandoned in a foreign country without a valid immigration status or employer support, and in such situations workers are unable to repay their debts and relieve their debt burden, which negatively affects their physical and psychological well-being.<sup>20</sup>

Despite the severe migrant vulnerabilities that such disruptions create, however, recruiters have incentives to continue the exploitative system. They are paid whether the employment agreement is fulfilled for the agreed duration or not, with virtually no risk of legal accountability. Thus, full disclosure of the possibility of employment or policy disruptions is not a priority.

#### **2.1.4 Government and private contributions to a risk of exploitative recruitment**

Several government and public-private initiatives directly raise the risk of exploitative recruitment or fail at preventing it. Three examples are as follows.

- Three Malaysian companies were given a mandate or monopoly by the government's immigration department to authorize and process work permits of illegal migrants and repatriate them, creating an officially driven risk of forced labor.<sup>21</sup>
- A private organization, the Foreign Workers Centralised Management System, has a contract with the government to provide recruitment services, and all businesses in Malaysia must use the systems in place to recruit workers, due to the reported strong links the organization has with the government. Despite reports of it being implicated in a recruitment syndicate, its contract with the government was recently renewed.<sup>22</sup>
- While recruitment employment agreements need to be endorsed by consular offices in both Malaysia and migrant-sending countries before migrants move, presumably to prevent exploitative conditions, the oversight process has been ineffective. Generally speaking, the comparative advantages migrant-sending and receiving countries, like Nepal and Malaysia respectively, receive from exploitative recruitment deters serious efforts to restrict vulnerable migrant inflows and their subsequent abuses beyond nominal but ineffective initiatives.

#### **2.1.5 Limits to Responses to Address Exploitative Recruitment**

Due to this unwillingness or incapacity of migrant-receiving countries to detect and prevent recruitment exploitation, some private initiatives have attempted to fill the gap, but they are limited in their effectiveness. Examples include the following.

- The Responsible Business Alliance adopted a no-fee recruitment standard to eliminate travel, visa, employment pass, and other costs and fees for migrant workers.<sup>23</sup> However, this is a minuscule initiative against the scale of exploitative recruitment.
- Some migrant-receiving companies have committed to bear all initial recruitment costs, or the companies they supply, at the top of the supply chain, to require such companies to bear the costs by policy. However, statistics consistently showing a high percentage of migrants with debt burdens demonstrate that such efforts are minimal or nominal. Additionally, even if responsible businesses attempt to reimburse workers for recruitment fees paid and lost wages, the receipt of these reimbursements by workers is not certain. A number of non-profits working with returnee migrants have raised concerns about the payments being unscrupulously diverted to third parties or never reaching repatriated workers, including in the Shimano case for workers that were difficult to contact.
- Some transnational companies commit to conducting human rights due diligence among suppliers to identify and address violations at various stages, including the recruitment stage. Below in Part 3.1.4 this report will discuss the limitations of human rights due diligence commitments of transnational companies at the top of the supply chain.

### **2.2 Employment Phase: Employers Reneging On Terms of Employment**

The vulnerability of migrant workers continues during their employment through abusive conditions and renegeing on the agreed terms of employment as demonstrated in the KLI case and described in this section. It is important to recognize the systemic factors motivating widespread abusive practices by employers of migrants and to avoid concluding that abusive practices are only restricted to a few bad companies acting out of the norm due only to internal motivations.

### **2.2.1 Employer motivations for abusive conditions**

Aside from severe competitive pressures to provide low-cost production by keeping labor costs exploitatively low—including by changing terms of employment, including wage theft, abusive and unsafe conditions to save money, demanding extra hours, not paying benefits, etc.—employers also bear the costs of recruitment, giving them further incentive take certain practices to mitigate the risks of wasted expenses by collecting hidden and arbitrary fees and charges from workers or deducting such fees from pay, such as for personal care of amenities or fines for infractions. Employers may also be subject to extortion by corrupt law enforcement officials, and workers may be unable to meet their debt commitments.<sup>24</sup>

### **2.2.2 Systemic migrant vulnerabilities and barriers to migrant worker grievances and rejection of abusive conditions**

There are both systemic features of the employment situation in Malaysia as well as abusive practices by employers to avoid worker grievances and losing workers, to ensure workers meet exploitative demands, and to shield exploitative practices from official scrutiny.

Workers migrate indebted but are motivated by the expectation that migration costs and fees will be recovered over the duration of their work permits. However, they are typically unaware that their tie to the employer, as part of the employment application process, carries significant financial and administrative burdens for the employer and that immigration rules prohibit migrant workers from changing employers or leaving abusive workplaces without immediately losing their rights of residence.

Systemically, migrant workers are in vulnerable positions which deter them from reporting abuses to officials and from rejecting exploitative practices, due to factors including the aforementioned debt burden and the common confiscation of workers' passports by employers, making them subject to police arrest or harassment if they leave the place of employment or contact officials, exacerbated by workers' immigration status being tied to their continued employment which is subject to retaliatory dismissal.

### **2.2.3 Employer barriers to migrant worker grievances and rejection of abusive conditions**

Employer practices to deter worker grievances and reject exploitative practices often involve the threat of employer retaliation creating fear in workers, such as by

- Retaliatory employer abuse, including verbal and physical abuse;
- Withholding workers' salaries as long as a worker complains or rejects exploitative conditions;
- Retaliatory dismissal, following which migrants lose their immigration status and become unable to meet their debt obligations;<sup>25</sup>

Exploitative contracts may require workers to constantly renew contracts after short terms or by employers simply arbitrarily dismissing “troublesome” workers that raise grievances, and other exploitative practices.<sup>26</sup> Malaysian laws contain anti-retaliation provisions in the context of a unionized environment. However, the nationwide decline in union representation renders these provisions ineffective. Also, migrants only compose about 2% of union membership in Malaysia.<sup>27</sup> Employers may also take further measures to avoid official scrutiny, such as hiding violations from inspectors, inviting official corruption, and prompting workers to lie on threat of retaliation.

Given the barriers to complaining to employers or officials for abusive conditions or the employer renegeing on agreed terms, a common response of exploited migrant workers is to abscond from their employment without notice, relinquishing their passports to their employer and salary, leaving them further in debt and in a further vulnerable position as described in the next section.

### **2.3 Law Enforcement Phase: Failures of Measures in Place to Combat Forced Labor**

Two categories of measures to remedy workers after rights violations occur are human rights due diligence and social audits by businesses and private organizations and public labor and criminal law enforcement. Both have systemic limitations that often make them ineffective in remedying workers’ violations.

#### **2.3.1 Limits to business human rights due diligence and social audits**

While multinational corporations, such as Shimano, often establish human rights due diligence and social audit processes, often these processes are conducted at a bare minimum of scrutiny, and even processes that are conducted are serviced by private actors which may be ineffectual or have compromising incentives. For example, the auditing company has an interest in maintaining future work with its audited supplier partners and thus an incentive to unduly trust the word of the supplier and keep its independent investigation weak, such as by only conducting surveys that are easily manipulable and not subjected to rigorous scrutiny. As in the case of Shimano’s human rights due diligence surveys of KLI, companies or social auditing firms frequently overlook evidence of labor rights violations and exploitative and dangerous working conditions and rely on statements that businesses comply with human and labor rights obligations.<sup>28</sup> Further challenges to human rights due diligence practices and needs for reform among Japanese companies are given below in Part 3.1.4.

#### **2.3.2 International and Domestic law standards for forced labor and labor rights violations**

Malaysia is a member of several labor conventions, including 18 ILO conventions, 14 of which are in effect,<sup>29</sup> including No. 29 prohibiting forced labor, No. 98 on the right to organize, No. 155 on occupational safety, No. 81 on labor inspections, and No. 95 on protection of wages. Malaysia is still not a member of four fundamental and priority ILO conventions, however;<sup>30</sup> nor is it a member of the International Covenant on Civil and Political Rights (which includes Art. 8 prohibiting state-sanctioned forced labor and Art. 21 and 22 prohibiting arbitrary restrictions on worker assemblies and unions), although in 2018 it accepted a UPR recommendation to ratify it, which it has since neglected; nor is it a member of the International Covenant on Economic, Social and Cultural Rights (which includes Art. 6, the right to work).<sup>31</sup>

Thus, there are several gaps in Malaysia’s commitment to respecting international standards, and even among the ILO commitments it has made, there are numerous gaps in their implementation and enforcement of international law.

The international standard for forced labor is given by the ILO Forced Labor Convention 1930 (No. 29), which defines forced labor as “All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself (or herself) voluntarily.”<sup>32</sup> The ILO has further established primary indicators of forced labor demonstrating work or service procured through involuntariness, coercion, and a menace of penalty, as described in Part 1.5.6 above. Malaysian law does not define forced labor, and it is commonly addressed under the Anti-Trafficking in Persons and Smuggling of Migrants Act, which defines forced labor as a form of exploitation covered under the act.<sup>33</sup> The government is currently in the process of reforming its handling of forced labor following several forced labor import bans by the US in recent years and international criticism.

Common labor rights violations include the following, with the first two, arbitrary dismissals and wage theft by manipulating workers’ hours, being the most prevalent if unreported violations.

- Arbitrary dismissals<sup>34</sup>
- Wage theft by, e.g., arbitrarily withholding pay, arbitrary fees, extending demanded worker hours beyond legal limits and/or without required overtime pay, etc.
- Arbitrary suspensions from work without pay
- Unlawful limitations to personal time off
- Non-compliance with minimum wage regulations<sup>35</sup>
- Exceeding statutory limits to hours of work<sup>36</sup> without making overtime payments.<sup>37</sup>
- Failure to notify the oversight agency, the Department of Labour, when migrant workers are repatriated or dismissed<sup>38</sup>
- Breaches to the employment agreement resulting from threats of danger or violence

### **2.3.3 Challenges and obstacles to law enforcement**

Law enforcement officials face serious challenges in enforcing domestic labor protections or limits in their effectiveness in preventing forced labor and labor rights violations, including the following.

- In practice both employers and officials often interpret coercion and penalty much more narrowly than the ILO indicators, leading to unduly high incidence and low law enforcement rates.
- Trafficking and forced labor criminal networks are opaque and complex, making it very difficult to identify victims and to satisfy the onerous evidentiary burdens in prosecutions to ensure convictions.<sup>39</sup> The high evidentiary burdens for relevant prosecutions deter authorities from forced labor and labor rights violations prosecutions generally as well.
- Malaysia law enforcement officials are greatly under-resourced for investigations and criminal prosecutions of labor rights violations, and they are given little official incentive to enforce labor-related laws, in combination with official policy encouraging economic migration that may also tacitly encourage turning a blind eye to or minimizing allegations of labor violations.
- Procedures for investigating and prosecuting labor rights violations countrywide are still developing and not systematic or standardized countrywide yet, including procedures for

identifying victims of labor trafficking or forced labor during law enforcement raids or among vulnerable populations.

- Several structural challenges impede investigations and prosecutions involving non-citizen migrant workers, including the language barrier with alleged victims, lack of documentation, confiscated passports, etc.
- The immigration status of non-citizen migrant workers is tied to their employer, making them subject to arrest, detention, and deportation when that link is broken or even when it is not as described below. This deters exploited workers from approaching or bringing complaints to officials to avoid this risk. This concern is discussed further in section 2.3.4 below. Three such situations creating a risk of migrant worker detention or deportation are as follows.
  - An employer may refuse to formalize workers' employment status, meaning the migrant workers never have documentation supporting their status from the start.
  - Employers may dismiss migrant workers in retaliation for making complaints.
  - In the case of criminal prosecutions of forced labor or trafficking, prosecutors and investigators may resort to pre-trial administrative detention of victims regardless of status.<sup>40</sup>
- Delays and refusals to take action by authorities leave victim workers with delayed or no remedy, leaving them vulnerable to detention, displacement, and falling behind on their debt burdens.
- Labor inspectors frequently fail to consider the vulnerabilities of workers highlighted above and are not instructed on how to investigate the full context of employment situations, giving employer practices the appearance of minor infractions when seen in isolation.
- Enforcement in individual cases does not directly address many underlying systemic conditions or practices facilitating forced labor described above.

Convictions of abusive employers can result in the imposition of fines or orders of compensation to the complainant; however, successful convictions are rare and limited in effect. Labor courts were reported to have ordered offenders to pay a total of RM 115,000 (\$25,054 USD) in fines in 2023;<sup>41</sup> however, compared to the scale of incoming migration and sums paid in fees by migrant workers, these figures are negligible.

The lack of effective law enforcement also contributes to migrant workers' vulnerability. For example, although employers are aware that when they arbitrarily dismiss non-citizen workers the workers are eligible for back wages for the unexpired period of their fixed-term contracts,<sup>42</sup> most are equally aware of the challenges that the workers face seeking legal assistance and financing their continued stay in the country pending the decision, and are thus not deterred by the prospect of claims. In cases where claims are made, frequent settlements well below the unexpired period of the contract are offered.

### **2.3.4 Criminal and immigration law enforcement against ex-workers following arbitrary dismissals**

As mentioned above, non-citizen migrants lose (or never obtain) the required link to an employer for their immigration status when they abscond from their job, when they are dismissed, or when the employer refuses to formalize their employment status, all common in forced labor situations, leaving the migrants undocumented and vulnerable to criminal prosecution under immigration laws.

The Director General for Immigration has the power to detain undocumented non-citizens pending deportation, which can range between three and six months and whether or not any proceedings are taken against them. Inconsistent victim identification also raises the risk that authorities detain, arrest, and deport trafficking victims.<sup>43</sup> The risk of administrative detention for forced labor victims following police reports was also mentioned above. This is the primary risk for ex- or undocumented workers, which is further compounded by the risk of extortion by unscrupulous parties threatening to expose them.

### **2.3.5 Recent progress and persistent challenges in addressing forced labor in Malaysia**

Despite the above challenges, the government of Malaysia has made recent progress in combating trafficking. In 2024, Malaysia was ranked Tier 2 in the US annual Trafficking in Persons report, an upgrade from Tier 3 in 2022 and the Tier 2 Watch List in 2023. In 2022 and 2023, the Malaysian government was found to have insufficiently prosecuted labor traffickers, with greater success in sex trafficking and human smuggling. The 2024 upgrade was attributed to strengthened anti-trafficking legislation. In addition, the government reported prosecuting five employment agencies under the Private Employment Agencies Act and convicting three with two cases ongoing.

While this may give rise to some optimism on future progress in combating labor rights violations and forced labor, as discussed in this section, significant structural issues remain that maintain incentives for employers to practice labor rights abuses and forced labor and that obstruct officials from preventing, investigating, or successfully prosecuting them; and even successful prosecutions do little to deter violations. Given the limits of actions at both the supplier company level and the supplier country level to prevent forced labor and labor rights violations, the next section will consider the possibilities of effective action at the level of the importing country, which is Japan in the Shimano/KLI case.

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## **Part 3: The Role of Japan, as an Importing Country, in addressing forced labor and labor rights violations among suppliers**

The basic argument of this review article is that states of import, in the Shimano case Japan and other states to which Shimano exports, have a key role to play in combating labor rights violations in the supply chains of domestic companies given the failures or limitations of labor rights protections at the level of the companies and governments of export, in this case KLI and the Malaysian government, as discussed in the previous parts.

This part will review the legal landscape of Japan vis-a-vis its responsibility to protect the rights of people affected by transnational businesses in their jurisdiction including their suppliers, concluding that Japan significantly lacks the legal apparatus to address such violations. This part then turns to how a new law in Japan banning or restricting the import of products of forced labor or serious labor rights violations may work to address supplier labor rights violation cases like the Shimano/KLI case and more broadly when targeting suppliers in supplier countries like Malaysia.

## **3.1 Landscape in Japan vis-à-vis extraterritorial labor violations**

### **3.1.1 Japan's Legal Landscape**

Japan does not currently have a general law restricting the import of goods linked to forced labor or human and labor rights violations. There are a variety of domestic laws in Japan that restrict or prohibit the importation of specific categories of imports (like drugs and foodstuffs) or general imports for specific purposes (like environmental and health protection), as well as some disclosure duties by the importers that may link the products to illegal activities, such as illegal extraction.<sup>44</sup> Other relevant domestic regulations are the Corporate Governance Code, Japan's Stewardship Code, and Guidance for Collaborative Value Creation. However, these existing customs rules, laws, and regulations do not restrict imports based on labor rights violations such as forced labor among suppliers in any sector, nor do they give mandatory duties on companies related to identifying and addressing human and labor rights violations in their supply chains, such as mandatory human rights due diligence.

Japan is also a member of several labor-related treaties, including several ILO conventions, the ICCPR, and ICESCR, and it has joined several international initiatives relevant to labor rights in supply chains.<sup>45</sup> Despite these treaties and initiatives, Japan has not taken effective measures to address violations of workers' rights, such as forced labor, within the supply chains of Japanese companies operating outside Japan.

### **3.1.2 Japan's National Action Plan and Subsequent Developments**

In October 2020, Japan released a National Action Plan (NAP) on Business and Human Rights (BHR), which establishes the basic policy of the Japanese government on human rights violations in the supply chains including of Japanese companies, starting with the explicit declaration that the government's BHR policy "should include consideration of human rights in supply chains," in accordance with the UN Guiding Principles on Business and Human Rights.<sup>46</sup> The NAP references international BHR standards, including the OECD guidelines on due diligence and multinational enterprises,<sup>47</sup> as well as domestic standards<sup>48</sup> and the international laws and initiatives mentioned above.

Following the passage of the NAP, rules on non-financial disclosures were updated. While there is still no mandatory duty to gather and disclose rights-related information, the Financial Services Agency and Tokyo Stock Exchange do require listed companies to submit corporate governance reports in accordance with the Corporate Governance Code, and in June 2021, the code was revised to add a requirement for directors of listed companies to recognize "respect for human rights" as an important management priority. Since June 2022, these companies have been required to disclose their actions to respect human rights.<sup>49</sup>

In September 2022, the Japanese government followed the NAP up with the release of the "Guidelines on Respecting Human Rights in Responsible Supply Chains" (GRHR),<sup>50</sup> and in April 2023, the Ministry of Economy, Trade and Industry (METI) published a compilation of case studies for businesses to reference for performing human rights due diligence (HRDD) and preventing human rights violations in their supply chains as well as guidelines for public procurement which stated that "prospective bidders/contractors shall make effort to respect human rights based on the GRHR guidelines in the

bidding instructions and contracts for public procurement.”<sup>51</sup> In July 2023, the UN Working Group on Business and Human Rights (UN WG on BHR) visited Japan and submitted an End of Mission Report to the Human Rights Council in June 2024, which offered numerous recommendations.

In the time after the NAP’s publication, the government of Japan has continued to make several official statements and commitments regarding labor rights violations in supply chains. In January 2023, the joint U.S.-Japan Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains was launched with the aim “to protect and promote human rights and internationally recognized labor rights, including prohibiting the use of forced labor in supply chains through trade policy.”<sup>52</sup> Japan’s government also joined the May 2023 G7 Conference in Hiroshima’s joint communiqué commitment on “eradicating all forms of forced labor from global supply chains” and promoting “decent work and [protecting] rights-holders in global supply chains.”<sup>53</sup>

While these commitments, guidelines, and statements point Japanese policymaking in the right direction, it is important to note that the government guidelines are non-binding and voluntary, and there is no disclosure, grievance, or reporting mechanism to monitor whether and how companies are following the guidelines.

### **3.1.3 Shortcomings in Japanese company behavior**

Overall, the practices of Japanese companies to identify, prevent, and address labor rights violations among suppliers are relatively underdeveloped compared to their counterparts in other G7 countries, with large companies having some amount of pro-rights practices and small companies rarely having any. A variety of practices to address BHR issues in supply chains have been consistently recommended including the following:

- Establishing a human rights policy and requiring suppliers to commit to its standards;
- Establishing an internal office responsible for human rights investigations and responses and regularly reviewing its rights-related systems to ensure they are effective and up-to-date, and giving the office sufficient staff and resources to be effective;
- Implementing robust compliance programs including training, monitoring, and reporting mechanisms throughout its business;
- Conducting regular and effective human rights due diligence and audits of suppliers and disclosing the results;
- Establishing policies for effective responses when violations are identified to ensure that workers are sufficiently compensated, possible harms are mitigated, and reforms are established to prevent recurrences;
- Disclosing lists of suppliers down to the source levels;
- Providing an effective and accessible grievance mechanism for supplier workers in the workers’ language, and ensuring that workers are informed about it;
- Collaborating with local and international NGOs and other stakeholders to identify violations and to improve labor standards and protections.

### **3.1.4 The potential for developments in Japanese company behavior**

There are indications that the guidelines discussed in the previous section have not had a large effect in changing the practices of Japanese companies, but also indications that the situation may be beginning to change. A JETRO survey on Japanese companies operating overseas found that only 10% of stock market-listed companies conducted HRDD in 2022, with the 2023 survey finding that number increased to 24.7%, both finding that generally only large companies conducted HRDD, while small and medium-sized enterprises (SMEs) did not.<sup>54</sup> A HRN survey in October 2023 later found that 70% of responding companies stated that human rights due diligence legislation was desirable,<sup>55</sup> and a Keidanren survey of companies in January 2024 found that 76% of the responding companies stated that they are “implementing initiatives based on the UNGP (including partial implementation and plans for implementation)”, more than 40% over the previous survey.<sup>56</sup> However, while BHR initiatives among transnational businesses towards their suppliers have started to gain traction in recent years, they have still largely focused only on surface problems, such as illegal recruitment or labor violations, not the underlying systemic problems discussed in Part 2. Nevertheless, while company engagement is still minimal and limited in ambition and effect, there is a gradual warming of companies towards mandatory human rights legislation, which may have a greater impact including on systemic issues.

### **3.1.5 Causes and motivations in the development of pro-human rights practices**

Several factors can help explain this shift in opinion. First, business commentators are speaking as if some business and human rights legislation in Japan is likely if not inevitable in the future. This perception is fed by government initiatives listed above as well as the increasing investor and public scrutiny into rights issues, particularly following highly publicized rights issues linked to Japanese company supply chains, including Uniqlo’s link to forced labor in Xinjiang and a ban from US import under the US’s Uyghur Forced Labor Prevention Act in May 2021;<sup>57</sup> Japanese companies continuing to operate in Myanmar in sectors financially supporting Myanmar’s military following its February 2021 coup and later bombings of civilian areas;<sup>58</sup> and the visit by the UN Working Group on Business and Human Rights.<sup>59</sup> Several external developments have also been shifting companies’ views on business and human rights legislation, most importantly the passage of import ban or restriction legislation in Germany, the UK, Canada, and the Corporate Sustainability Due Diligence Directive (CSDDD) for the EU.

These developments also put pressure on particularly large transnational Japanese companies to harmonize their practices and standards (regarding measures to ensure that their supply chains are free of forced labor) to ensure entry into the European market. This in turn facilitates their support for mandatory human rights legislation to ensure a level playing field in Japan, so that other Japanese companies are subjected to comparable administrative burdens and companies are not competitively punished for complying with overseas standards. However, it should be noted that small and medium sized enterprises (SMEs) do not face the same pressures, but they do have comparatively more political influence in the Diet. This is considered to create an incentive for legislators to limit any import ban legislation’s scope to larger companies; however, as discussed above, SMEs have the lowest rates of BHR policies and practices, calling for some measures to address the gap.

### **3.1.6 Structural and institutional issues obstructing developments in BHR**

Even to the extent that the NAP and GRHR establish the foundation on which future mandatory legislation can be constructed, however, there are several issues of concern with the current state of the government vis-a-vis action on BHR. One set of concerns is structural and institutional. The NAP fragments responsibility for BHR issues among multiple ministries, in particular METI and MOFA, of which only METI have divisions dedicated to BHR. Relatedly, Japan does not have a central National Human Rights Institution (NHRI) with the mandate to create and harmonize BHR policy throughout the government and address institutional issues.

Official guidance has already proven to be insufficient for past BHR issues, including a governmental call for “responsible exit” and “heightened HRDD” for companies operating in Myanmar which did not clearly state whether companies should withdraw or remain, and an unclear declaration whether business in Xinjiang was linked to forced labor or not and guidance on how companies should react.<sup>60</sup>

## **3.2 Background on the US and EU Forced Labor Import Ban Laws**

Two major reference points for import ban legislation are the relevant US and EU laws.

### **3.2.1 US Section 307**

For the US, there is “Section 307” of the Tariff Act of 1930, which prohibits the importation of products “mined, produced, or manufactured wholly or in part by forced labor” and child labor, and which began to be regularly applied following a 2015 reform that ended a common block to the law. The law is applied when an individual submits an allegation that a product of forced labor is being or is likely to be imported into the US to the US Customs and Border Protection (CBP) office, or the CBP can also initiate an investigation. The CBP then conducts an investigation, and if it determines that available information “reasonably but not conclusively” indicates that a product of forced labor is being or likely to be imported into the US, then the CBP orders a “withhold release” order (WRO), in which the CBP holds on to the imported good. The burden of proof then shifts to the importer, who can either remove the product from the country or contest the WRO within 3 months. The importer can lift the WRO during the contest stage if it produces documentary evidence that the import is not a product of forced labor and that it made “every reasonable effort” to determine the source and type of labor. If the product is not removed or successfully contested within 3 months, it may be seized or destroyed. Notably, Canada and Mexico also have import ban legislation for products of forced labor, and there are efforts to coordinate action among the three states as envisaged by the USMCA trade agreement.

In December 2021, the US enacted the Uyghur Forced Labor Prevention Act (UFLPA) which created a rebuttable presumption that any product linked to Xinjiang Uyghur Autonomous Region (Xinjiang) will be presumed to be a product of forced labor, which acts like an automatic WRO-trigger except that the burden of proof for the importer to contest the presumption is to produce “clear and convincing” evidence, which is a higher burden than for Section 307. While the CBP enforces these laws, the Forced Labor Enforcement Task Force (FLETF), an interagency group of seven US agencies chaired by the Department of Homeland Security (DHS), monitors its enforcement.

### **3.2.2 The European Forced Labor Regulation**

A second reference is the European Forced Labor Regulation (EFLR), which was passed by the EU Parliament in July 2024. Under that regulation, EU states must designate an authority to enforce the regulation, and the burden of proof is on that agency to determine that the product (an import or internally traded product) is a product of forced labor, informed by information submitted by the importer and others, guidelines created by the Commission, and an official database specifying areas and products at high risk of forced labor. The agency also has the power to request economic actors to submit relevant information and conduct checks and inspections with the actor's consent. The designated agency has the initiative to consider an investigation based on a risk-based approach, where it focuses on the highest-risk areas and products first. To then initiate an investigation, the designated agency must show a "substantiated concern" that the product is linked to forced labor due to "a well-founded reason, based on objective and verifiable information." The agency then determines whether the product is linked to forced labor or not based on the available information in the investigation, with an overall burden of proof higher than that of Section 307 for a WRO. If a determination is made, the importer then has 15 days to request a review after a negative determination or five days for perishable goods.

### **3.2.3 Analysis of Section 307 and the EFLR**

There are several factors to note or compare with these two laws. Both laws define forced labor in reference to the 1930 ILO Convention on Forced Labor as work or service that is exacted from any person under the menace of any penalty. The US Section 307 can be initiated by the allegation of a private party (such as an NGO) or automatically if it is linked to Xinjiang under the UFLPA, whereas a designated state agency self-initiates an investigation on a risk-based approach. Also, the burden of proof is lower for a product to have an investigation initiated under the US law than the EU law, with the US law shifting the burden of proof to the importer to lift the ban by demonstrating a lack of forced labor with a high burden, whereas in the EU the state agency has a high burden to initiate an investigation for a product, and the importer contests it through a judicial review of its determination. Overall it may be said that the US law makes it easier to initiate and apply the law to ban products of forced labor targeting various levels (e.g., states, factories, and workers). The EU regulation does not provide the same flexibility to initiate a case or target advocacy, and its implementation is also more fragmented across states, but it does have a broader scope on any products of forced labor in a jurisdiction, not only imports.

These factors may inform Japan's discussion about its own future forced labor import ban law. It is best to adopt the same definition of forced labor to harmonize with the US and EU laws. The more robust approach of the US law would also better prevent products of forced labor from entering Japan, and its model can be recommended for that reason.

### **3.3 Considerations from the Shimano/KLI case to the discussion on a forced labor import ban law**

There are several contributions that the Shimano/KLI case can give to the discussion in Japan about a future forced labor import ban law and other BHR legislation, including guidance to Diet and ministry members on constructing and implementing such legislation.

The case demonstrates several of the details that any import ban legislation will need to face, as well as how such a law may factor towards the underlying labor issues, including the workers subject to labor

rights violations and reforms of Malaysian labor law and enforcement and other systemic labor reforms. The following sub-sections consider various ways the Shimano/KLI case can offer guidance to the import ban legislation discussion. Because of the advantages of the US model of regulation as described above, the below analysis will generally focus on that model, while considering issues with the model of the EU law when appropriate.

### **3.3.1 How would an import ban law work for the Shimano case study?**

From the perspective of a prospective Japanese forced labor import ban law addressing a case such as the Shimano/KLI case discussed in Part 1, with Part 2 providing the relevant context, one of the first issues raised is asking which party can initiate the process. In both the US and EU regulations, the customs agency, in Japan's case the Customs and Tariff Bureau (CTB), can always self-initiate an investigation; but only in the US regulation can an NGO assisting the workers also submit an allegation to the customs agency to initiate an investigation.

Following the US model, an allegation made for the Shimano case practically may have followed the prompting of Japanese civil society, which became engaged in the case following the engagement of Nepal-based civil society working with the workers when they reached out to Japan's civil society. With this context in mind, it may be beneficial to have efforts that promote contact and coordination between foreign and Japanese civil society and both with customs officials to help connect the investigation and decision-making process with the advocacy supporting the workers. It may also be beneficial to have measures in the law that facilitate the participation of foreign civil society (such as accessible explanations, applications, and procedures for submitting evidence in their language) to accelerate the process of initiating an investigation and to ensure that CTB has access to good information in an investigation. Note that an application would need to designate actual goods being imported to Japan linked to the forced labor allegation. However, as mentioned above, there may be challenges for civil society to identify such goods. At the same time, it is still beneficial for civil society to raise allegations against the source factory when there are complaints, since CTB would have the mandate and power under the law to link particular imports to the targeted factory.

There are reasons to be concerned about a Japanese agency like the CTB having sole initiative to initiate investigations and in conducting investigations in its current state, as Japanese agencies generally have no past mandate, experience, or staff trained in labor and human rights issues addressing foreign suppliers. For this reason, it would be best to ensure that civil society can also initiate investigations and for CTB to be required to hire staff skilled in labor and human rights investigations to ensure that its investigations are accurate and effective. .

Under a risk-based approach, the Shimano/KLI case is of the type that might trigger the initiation of an investigation because Malaysia is a relatively high-risk jurisdiction for forced labor, as still acknowledged by the most recent US Trafficking in Persons report (despite the upgrade),<sup>61</sup> Shimano is a major transnational Japanese company, and the case raised modestly high public attention by media reports. As for the scope of a forced labor claim, the Shimano/KLI case displays all 11 of the ILO indicators of forced labor as described in Part 1.5.6 above. Further, the precedence set by Malaysian-sourced products successfully receiving a WRO under the US Section 307 can offer guidance to the CTB, which includes labor rights situations similar to that of KLI, both in terms of the violations and the failure of state labor

law enforcement, such as the 2023 “Smart Glove” case of labor rights violations in several factories in Malaysia for latex gloves, collectively labeled the Smart Glove group.<sup>62</sup>

### **3.3.2 How might an import ban have related to the parallel advocacy on behalf of the KLI workers?**

It is likely that the Shimano/KLI case under an import ban law would have garnered attention and action from Shimano much faster, as it took several attempts to make contact before gaining Shimano’s attention and engagement on the issue.

Notably, the commitments made by Shimano in the case at hand would likely not be sufficient to lift the import ban on KLI products. Rather what would be sufficient is Shimano providing documentation and evidence sufficient to prove that the practice of forced labor has ended at the KLI factory, ensuring that future products linked to the factory being imported to Japan would not trigger another investigation or allow the company to successfully rebut a preliminary investigation finding of forced labor. Shimano ending its supply relationship with KLI and using another supplier should be discouraged under an import ban law unless it is the last resort after exercising its leverage to mitigate the adverse impact.

This would have a stronger systemic effect on labor rights at KLI and other Shimano suppliers than the negotiations for only the workers affected in the recent case. KLI would need to demonstrate a sustained absence of forced labor to retain Japanese market access. Shimano would be pressured to bolster its due diligence system both to identify a risk of forced labor from suppliers before entering into a business relationship and to serve as evidence to rebut any initiation of action under a Japanese forced labor import ban law.

A series of successful import bans of Malaysian companies in Japan, as has occurred in the US (although there are reasons beyond the scope of this report that suggest the US will not target Malaysian companies as much in the future, making Japan’s role to fill that gap even more important), would also generate further pressure diplomatically on the Malaysian government to reform its enforcement of its own labor laws to the extent that labor officials would want to ensure that Malaysian factories and companies are not regularly flagged by import states, undermining their economic competitiveness for core export industries.

However, it should be noted that the case-based approach of an import ban law is not directly tailored towards motivating reforms in Malaysia to address the systemic and structural issues underlying the vulnerability of migrant workers and the prevalence of forced labor and labor rights violations, and it should not be a substitute for advocacy work to that end, which should still continue. Overall, however, the combination of civil society advocacy and the pressure of closing Japan’s market access under a ban on products of labor should together be very effective at pressuring countries like Malaysia and its supplier companies to prevent forced labor. It would also be beneficial if Japan’s law were coordinated with the actions of other international partners with import ban laws, similar to the proposals for the US, Mexico, and Canada to coordinate their respective import ban actions, to facilitate a combination of import bans on specific companies across multiple jurisdictions, increasing their effectiveness.

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## Part 4: Conclusion

This report has detailed the reality of forced labor and serious labor rights violations of vulnerable workers, many of them migrants, at the bottom of supply chains in countries like Malaysia, financed by the market power of rich Global North countries like Japan and transnational companies under its jurisdiction. It considered the failures and limitations to prevent or rectify forced labor at multiple levels: failures of supplier companies that create abusive labor conditions and failures of buying companies that neglect the risks of doing business with them, discussed in Part 1 of this report; failures in Malaysian law and other structural failures that facilitate migrant and worker vulnerability and failures of Malaysian officials and law enforcement to effectively enforce Malaysia's own labor law, discussed in Part 2; and the current failures of the Japanese government in tolerating the importation of products of forced labor, discussed in Part 3.

For many reasons, including Japan's relatively greater governmental capacity and market power, Japan, as the state of import, has a uniquely effective potential to prevent labor rights violations among the supplier countries from which its companies source their products. Part 3 discussed how a ban on the importation of products of forced labor, in the model of Section 307 in US law with some appropriate reforms, could leverage the power of access to Japan's large market to pressure supplier companies and countries to reform their laws and enforcement to better prevent forced labor and serious labor rights violations among suppliers. To this end, this report offers the following recommendations.

### 4.1 Recommendations

To the government of Japan:

- Implement new legislation to ban the importation of products of forced labor referring to the model of the US Section 307 and UFLPA, with additional reforms discussed in Part 3.3, including making efforts to facilitate stakeholder dialog and the participation of foreign civil society and to coordinate action under the law with other states with forced labor import ban laws.
- Ensure that the CTB is sufficiently funded, trained, and equipped to effectively investigate, identify, and address products of forced labor.
- Implement new legislation to require companies to conduct human rights due diligence of its suppliers, including standards and guidelines to ensure its effectiveness, and to disclose the results, as well as to disclose their suppliers.
- Implement new legislation to require companies to implement other measures, including those listed in Part 3.1.3, directed at the protection of the rights of people affected by its business, including among workers in its supply chain.
- Create a National Human Rights Institution based on the Paris Principles and either designate it or create a new office or ministry network to be the central responsible office for official BHR action,

including coordinating BHR-relevant actions throughout the government, and ensure all relevant ministries and offices have staff trained in addressing BHR issues.

- Follow the recommendations of the WG on BHR following its recent state visit to Japan.
- Review the principles in Japan’s NAP and reform them consistent with the above recommendations including adding a gap analysis with international human rights standards for the current situation and ensuring that they are enforced by binding and effective law.

To the government of Malaysia:

- Provide greater resources, standardized guidelines and procedures, and incentives to law enforcement officials, particularly those in rural areas, to investigate, identify, and successfully prosecute forced labor and labor rights violations according to international standards.
- Ratify the ICCPR, ICESCR, other major international human rights treaties and the remaining ILO conventions listed in the endnote, in particular the four fundamental and priority conventions not yet ratified.<sup>63</sup>
- Implement legal reforms to better protect non-citizen migrant workers to ensure that whistleblowing does not harm or threaten their immigration status and that they are protected from social dislocation following the loss of their employer.
- Require domestic companies to implement human rights policies, effective human rights due diligence practices, and grievance and whistleblower mechanisms in workers’ languages that workers are informed on how to use.
- Establish legal measures to deter exploitative recruitment, such as enhanced tripartite dialog (officials, employers, and workers and labor rights organizations) to identify violations and bilateral agreements facilitating information sharing and prosecution of abusive recruiters, and prevent unsustainable debt burdens among migrant workers fueling labor rights violations by enforcing prohibitions on arbitrary fees and other means of debt burden.

To Shimano:

- Provide full compensation for all former workers linked to forced labor indicators in Shimano’s supply chain.
- Implement the recommendations listed above in Part 3.1.3 that have not been implemented yet, including improving human rights due diligence practices, disclosing lists of suppliers down to the source level, informing workers about grievance mechanisms, and proactively engaging in stakeholder dialog.

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<sup>1</sup> Shimano, “Company Profile”, accessed October 2024, <https://www.shimano.com/en/company/profile.html>.

<sup>2</sup> Shimano, “Shimano Group Human Rights Policy”, accessed October 2024, [https://www.shimano.com/en/company/human\\_rights\\_policy.html](https://www.shimano.com/en/company/human_rights_policy.html).

<sup>3</sup> Shimano, “Vendor Code of Conduct”, accessed September 2024, <https://www.shimano.com/en/company/vendor.html>.

<sup>4</sup> Maren Ritzheim, “For the Bicycle Industry, 2022 Presents a Continued Supply Chain Crisis”, Omnia Retail, 10 March 2022, <https://www.omniaretail.com/blog/bicycly-industry-supply-chain-crisis-growth>.

<sup>5</sup> Shimano, “Company Profile”, 31 December 2023 (last modified), <https://www.shimano.com/en/company/profile.html>.

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- <sup>6</sup> Ashok Ghimire, "MoU Between Nepal and Malaysia on Labour Supply Came Into Force", CESLAM, 13 Sept. 2019, <https://www.ceslam.org/news/mou-between-nepal-and-malaysia-on-labour-supply-came-into-force>.
- <sup>7</sup> ILO, "ILO Indicators of Forced Labour", 1 Oct. 2012, [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf).
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- <sup>18</sup> Palma, *supra*, note 12.
- <sup>19</sup> *Chin Well Fasteners v Sampath Kumar Vellingiri & Others* [2006] 1 Malayan Law Journal 117. There have been a number of reports in 2023 alone of workers being duped off nearly MYR 20,000 for jobs in Malaysia and brought onshore but not assigned work or paid.
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(JPY 6760) per migrant worker, purportedly for placement in the company. The Claimant's dismissal was upheld for misconduct.

<sup>25</sup> See Muhammad Ishfaq v. Indrasit Holdings Sdn Bhd [2009] 1 Industrial Law Reports 330. In the case the claimant, a migrant worker, was not only shortchanged on his wages but also arrested and wrongfully detained for being undocumented because his passport was retained by the employer. On being notified of the arrest and requested to provide a lawyer to secure the employee's release, the employer's representative hung up.

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<sup>29</sup> ILO, "Ratifications for Malaysia", <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO:::>(accessed on 15 Oct. 2024).

<sup>30</sup> See, *infra*, note 63 and its associated text in the Recommendation section for the list.

<sup>31</sup> ILO, "Ratifications for Japan", [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102729](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102729) (accessed on 11 Oct. 2024). These include the 1930 forced labor convention and 1957 Abolition of Forced Labour Convention, the ICCPR and ICESCR, and and of the ILO conventions, Japan has ratified 8 of 10 Fundamental Conventions, 3 of 4 (Priority) Governance Conventions, and 39 of 177 Technical Conventions.

<sup>32</sup> ILO Forced Labour Convention, 1930 (No. 29), [https://normlex.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://normlex.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029).

<sup>33</sup> ILO, "Business responsibility on preventing and addressing forced labour in Malaysia", 2019, [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms\\_717944.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_717944.pdf), at 4

<sup>34</sup> Industrial Relations Act 1967, section 20. See also Employment (Termination and Lay-Off Benefits) Regulations 1980, regulation 4.

<sup>35</sup> Minimum Wages Order 2022, s 4-6. The minimum wage for workers is MYR 1500 (USD 300) per month. Although by law the hours of work are restricted to 45 hours per week, overtime is the rule rather than the exception. Working hours average 60 to 70 hours per week.

<sup>36</sup> Employment Act 1955, Part XII.

<sup>37</sup> Employment Act 1955, section 60A.

<sup>38</sup> Employment Act 1955, section 60KA.

<sup>39</sup> See Public Prosecutor v Jafperi Noor and Another 2024 Current Law Journal Unreported 812.

<sup>40</sup> Security Offences (Special Measures) Act 2012, s 30.

<sup>41</sup> US State Dept., *supra* note 11 (under "Prevention", third paragraph).

<sup>42</sup> Ranhill Worley Sdn Bhd v Franz Josef Marie Schefman [2009] 8 Current Law Journal 364 (High Court Malaya).

<sup>43</sup> US State Dept., *supra* note 11.

<sup>44</sup> These include including customs law (1954), stimulants control act (1951), food sanitation act (1947), the tuna management law (1996) and specified aquatic products act (2020), about which HRN released a report on their failures to address supplier labor rights in 2023 at HRN, "Tuna in the Black Box", 27 Dec. 2023, <https://hrn.or.jp/eng/news/2023/12/27/tuna-in-the-black-box-report/>.

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<sup>46</sup> Japan Ministry of Foreign Affairs, "National Action Plan on Business and Human Rights (2020-2025) (Provisional Translation)", Oct. 2020, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/Japan-NAP.pdf>.

<sup>47</sup> These include the UN Guiding Principles on Business and Human Rights (UNGPR), The ILO MNE Declaration, 2011 OECD Guidelines for Multinational Enterprise, and the 2018 OECD Due Diligence Guidance for Responsible Business Conduct.

<sup>48</sup> These include Japan's Stewardship Code and Corporate Governance Code, Guidance for Collaborative Value Creation, and the Women's Participation Act, NAP, *supra* note 46, at 23.

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