

Treaty-Backed Due Diligence Governance: UFLPA's Travelling Enforcement and Strategic Agency in Malaysia and Vietnam

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Abstract: This article examines a new form of transnational labour and supply-chain governance. It argues that transnational U.S. forced-labour governance, especially Section 307 and the Uyghur Forced Labor Prevention Act (UFLPA), has evolved from unilateral border enforcement into treaty-backed travelling due diligence governance: a form of indirect governance that travels through international supply chains and economic interconnectivity to reshape labour governance in Southeast Asia. Moving beyond accounts that portray Southeast Asian states as passive recipients, the article shows how governments become rule-shaping agents that embed U.S.-style due diligence into domestic law and industrial policy, and use external pressure to improve domestic governance capabilities. The study combines comparative process-tracing of Malaysia and Vietnam with (i) textual analysis of trade agreements, national action plans, customs/labour cooperation instruments, and selected corporate disclosures; and (ii) event-style evidence around U.S. Customs and Border Protection interceptions in high-exposure sectors, including gloves, palm oil, apparel, electronics, and solar. We advance the concept of treaty-backed travelling due diligence governance, in which forced-labour risk is translated into market-access pressure, contractualisation, and capacity building. Findings reveal divergent adaptation paths. Malaysia follows an enforcement-to-remediation trajectory: Withhold Release Orders (WROs) and UFLPA actions trigger firm-level audits and remediation funds, then scale into a public compliance infrastructure anchored in a national forced-labour action plan. Vietnam pursues a treaty-alignment trajectory: labour commitments under the EU–Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) are paired with supply-chain risk reconfiguration to pre-empt UFLPA frictions. Across the two cases, greater export exposure in high-priority UFLPA sectors is associated with earlier and stronger adoption of forced-labour and due-diligence measures.

Keywords: *UFLPA; geoeconomics; due diligence; Southeast Asia; Malaysia; Vietnam; labour governance.*

Since Section 307 of the Tariff Act of 1930 prohibits the import of goods made with forced labour, the U.S. has gradually embedded labour standards in its trade and customs enforcement system. The Uyghur Forced Labor Prevention Act (UFLPA), which was enacted in 2021, represents a significant upgrade in this governance logic. Unlike Section 307, which relies on case-by-case investigations and cross-border enforcement through Withhold Release Orders (WROs), the UFLPA operates through a rebuttable presumption: covered goods are presumed to be made with forced labour unless importers provide sufficient evidence to rebut that presumption.¹ According to U.S. Customs and Border

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Protection (CBP) enforcement practice from 2022 to 2024, detained shipments were concentrated in highly globalised and labour-intensive industries such as gloves, palm oil, ready-to-wear, electronics, and solar modules. A considerable proportion of these shipments did not come directly from China but entered the U.S. market through Southeast Asian countries; in terms of the value of withheld shipments, Vietnam and several other countries at times surpassed China.²

Against this background, Malaysia and Vietnam have become two of the most representative cases of the spillover effect of the UFLPA. Annual enforcement data released by CBP show that cargo interceptions in high-exposure industries in Vietnam and Malaysia under the UFLPA are significantly higher than those of most other Southeast Asian countries.³ As the world's largest exporter of medical and industrial gloves, Malaysia exported rubber gloves to the U.S. at a value exceeding \$3 billion in 2021; palm oil and its downstream chemical products have also continued to face forced-labour review by U.S. customs.⁴ In Vietnam, the U.S. has been one of the country's largest export markets for many years. Total U.S. imports from Vietnam in sectors such as ready-to-wear, footwear, electronics, and photovoltaic modules exceeded \$100 billion.⁵ Solar energy and electronic products have also been listed as key review targets after the implementation of the UFLPA, and some cases involve raw materials or intermediate inputs linked to targeted Chinese supply chains.⁶

More importantly, although the UFLPA clearly targets the Xinjiang region of China in its legislative narrative, its actual operation has posed a systemic challenge for the domestic compliance systems of Southeast Asian countries and even major U.S. trading partners such as Japan and South Korea, by extending supply-chain traceability, due diligence, and corporate compliance responsibilities. This mechanism makes the UFLPA more than a sanction tool against China. It has become a key institutional lever through which the U.S. reshapes global labour governance and the supply-chain order amid escalating structural competition and geoeconomic conflict between China and the U.S. In this context, the ways in which Malaysia and Vietnam respond and adjust between market-access pressure, domestic governance capacity, and institutional sovereignty constitute a key entry point for understanding the logic of the UFLPA's indirect governance. We argue that U.S. import enforcement on forced-labour grounds, especially under the UFLPA, has evolved from a single border-control measure into a travelling due-diligence regime underpinned by trade agreements and treaty-based commitments. It uses market coercion, contractualisation of compliance, and state-led capacity building to reshape Southeast Asian supply chains. The cases of Vietnam and Malaysia show that Global South states are not passive receivers; rather, they exercise strategic dynamism by translating external evidence and traceability requirements into domestic compliance infrastructure, not only to reduce the risk of market exclusion, but also to selectively rewrite the rules of geoeconomic governance.

The Three Mechanisms and Theoretical Approach

This article conceptualises the supervision and sanctions system composed of Section 307 and the UFLPA as a mode of governance, and treats small and medium-sized countries within this system, such as Vietnam and Malaysia, as agentic actors rather than passive objects of U.S. extraterritorial influence. The core analytical strategy is to track how external forced-labour compliance pressures are transmitted along global value-chain governance structures and to identify the channels through which

these countries respond and adapt. Global value-chain scholarship shows that even when lead firms and buyers do not directly own production facilities, they can still organise production through cross-border coordination, and different types of governance correspond to different degrees of power asymmetry.⁷ When transactions are complex but can be codified into clear standards, documents, and data, and when supplier capabilities are unevenly distributed, governance relationships are often accompanied by greater information flows, closer coordination, and a more obvious power gap.⁸ Recent scholarship on modern slavery and global value chains further shows that forced labour is not merely an isolated workplace violation, but is often produced through buyer pressure, subcontracting, labour intermediation, migration regimes, and asymmetric bargaining power. Building on this literature, this article treats the UFLPA not simply as a border-sanction instrument, but as a governance technology that redistributes responsibility for forced-labour risk across suppliers, buyers, states, and intermediaries.⁹ This is exactly the condition under which forced-labour rules are transformed into operational requirements that affect procurement decisions, contract terms, and factory-level practices. On this basis, as shown in Figure 1, this paper proposes three mechanisms to connect external forced-labour regulation with local policy space: market coercion, contractualisation, and capacity building. The three mechanisms can be distinguished analytically, but they are intertwined empirically. In reality, market coercion often triggers contracting, which then creates demand for capacity building. At the same time, existing research shows that each mechanism has limitations and perverse incentives, so the framework also expects uneven distributions of strategic compliance, risk transfer, and burden among all parties in the chain.

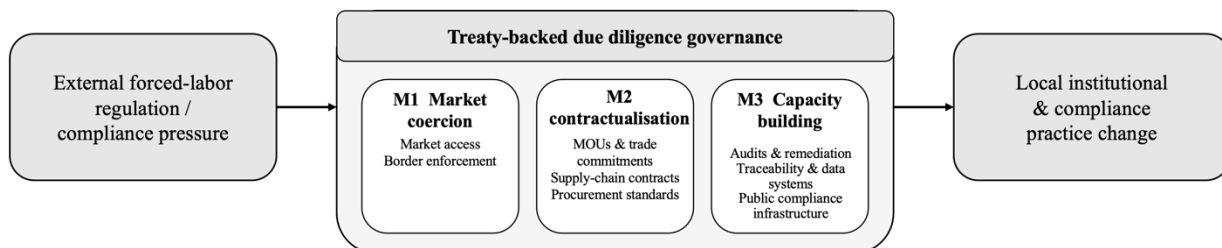


Figure 1: Three-mechanism research process

Market Coercion through Market Access and Border Enforcement

Market coercion refers to the process through which forced-labour allegations and evidentiary uncertainty are converted into market-access risk. Border enforcement tools enable this lever to be implemented. Under the enforcement ecology created by Section 307, forced-labour concerns enter trade governance through customs decisions. Where CBP has reasonable evidence that goods were made with forced labour, it may detain shipments and require importers to submit rebuttal evidence within a limited period.¹⁰ This process converts indicators of coercive recruitment, debt bondage, restricted mobility, abusive working conditions, or other forced-labour risks into immediate market-access consequences. Even if the direct target is only a shipment or an enterprise, its signalling effect is broader, affecting the risk assessments of other buyers, financial institutions, and insurers. Therefore, market coercion operates not only through formal rulings, but also through commercial expectations and risk pricing. In this process, the enforcement effects of statutes extend beyond their jurisdictions. From the perspective of global value chains, the effect of market coercion depends on the position of the threatened market in the corporate income structure and on whether buyers can transmit

compliance requirements downstream through governance relationships. In buyer-dominated chains, global buyers can strengthen control over suppliers through clear coordination even without owning production facilities.¹¹ The risk of losing high-value markets can therefore be translated into supplier selection, stricter delivery conditions, and higher-intensity document requirements. However, research also suggests that market coercion may lead to substitution rather than rectification. If buyers can easily change suppliers, the response may be withdrawal rather than improvement, thus pushing risks and costs onto weaker chain participants.¹²

According to UFLPA interception data released by CBP, this form of market coercion has become more intense because the law takes rebuttable presumption and a heightened evidentiary threshold as the core of its operation. In essence, the burden of proof is shifted more extensively to importers and exporters, requiring enterprises to prove that their goods are not related to forced labour. This change is theoretically important because it reshapes the behavioural expectations of buyers and suppliers. When the risk of interception rises and the evidentiary burden becomes higher, enterprises are more likely to adjust orders in advance, modify procurement paths, or impose stricter controls on upstream suppliers even without a final legal ruling.

Contractualisation through Memoranda of Understanding (MOUs), Supply-Chain Contracts, and Procurement Standards

Contractualisation refers to the embedding of forced-labour requirements into formal instruments, including supply contracts, procurement terms, memoranda of understanding, codes of conduct incorporated by reference into contracts, and public procurement standards. Its core theoretical proposition is that contracts not only reflect compliance, but also create enforceable compliance obligations by assigning risks, stipulating verification obligations, and setting remedies for breach. Dadush's research on model contract clauses shows how contract tools can transform labour commitments from aspirational language into more enforceable arrangements, such as conditioning acceptance of goods on compliance and creating termination rights.¹³ Such provisions can also set a trigger threshold of "reason to believe," so that the buyer can refuse to accept goods when a violation is suspected, and even affect multiple contractual relationships.¹⁴ Contractualisation therefore becomes a private-law analogue to the evidentiary logic of border enforcement.

Public procurement research provides another path. When the state is the buyer, procurement rules can use purchasing power to impose labour standards at all stages of procurement, including information disclosure and due-diligence requirements, and transmit them deep into the supply chain through contracts.¹⁵ Research associated with Electronics Watch emphasises that procurement can affect working conditions through requirements, monitoring, and enforcement.¹⁶ However, the procurement path also faces an implementation gap: the expansion of clauses is often faster than monitoring capacity, and verification often relies on an audit ecosystem with structural weaknesses.¹⁷ Under the global value-chain framework, contractualisation is more likely to play a role in codifiable and relatively one-way relationships with stronger control, such as modular and captive relationships.¹⁸ When suppliers' bargaining power is stronger, or when compliance requirements conflict with buyers' procurement practices, such as compressed delivery dates and lower prices, contractual effects will be significantly weakened. This is especially critical for manufacturing exporters in Southeast Asia,

because speed and cost pressures may systematically weaken the labour protection nominally required by contracts.

Capacity Building through Audits, Remediation, Data Systems, and Public Compliance Infrastructure

In the forced-labour context, capacity building should not be understood as generic compliance upgrading. It refers to the institutional and organisational ability to identify, prevent, remediate, and prove the absence of forced labour. This includes recruitment-fee remediation, control over labour brokers, worker interviews, grievance mechanisms, documentation of employment conditions, traceability of inputs, and credible evidence that can be submitted to customs authorities. At the enterprise level, capacity building includes management systems, worker interview mechanisms, corrective action processes, recruitment-fee remediation, and traceable documentation systems. At the public level, it includes labour monitoring capabilities, data systems, public guidelines, and institutional infrastructure to support credible verification. Compliance research emphasises that coercion alone is unlikely to produce sustainable improvement. Locke, Amengual, and Mangla argue that compliance and commitment are complementary rather than mutually exclusive: the background threat of punishment can open up space for cooperation, but long-term improvement requires rectification, joint problem solving, information sharing, and counselling.¹⁹ This is directly significant to the UFLPA environment. If an enterprise regards law enforcement only as a risk-management issue, the response may be box-ticking, avoidance, or supplier replacement. If law-enforcement pressure is combined with capacity building, it may promote investment in practices that improve working conditions and reduce forced-labour risks.

However, the capacity-building route centred on audits is controversial. LeBaron, Lister, and Dauvergne argue that audit projects are often unable to identify problems effectively, that audit systems may protect business interests, and that enterprises retain a high degree of discretion over the depth and visibility of audits.²⁰ Their interview-based evidence further points out that auditing is often used as a diagnostic tool and does not solve organisational problems by itself.²¹ Benstead, Hendry, and Stevenson also identify the common position of audit in transparency and monitoring, but emphasise that further research is needed on how to use audits appropriately in the context of modern slavery, given the known shortcomings of standard social audits.²² Therefore, in this framework, capacity building cannot be reduced to more audits. A more appropriate understanding is that capacity building involves public and private investment in the production of credible evidence and in remediation capabilities. Under the rebuttable presumption system, evidence is not only a by-product of compliance, but also a key currency for market access.²³ This may promote data-system construction and stronger recruitment governance, but it may also exacerbate uneven burdens, especially for small and medium-sized suppliers whose resources may be insufficient to meet documentation and system requirements.

In summary, putting the three mechanisms together clarifies the meaning of policy dynamism in Vietnam and Malaysia in the UFLPA era. Dynamism means the selective adaptation of states and enterprises under the conditioning effect of external pressure: deciding which industries to prioritise, which verification infrastructure to invest in, how to negotiate buyer requirements, and how to align domestic labour governance with trade-related compliance expectations. At the same time, the

framework anticipates ongoing frictions: market coercion may encourage exit, contractualisation may push risks downward, and audit-centred capacity building may slide towards performative compliance. Therefore, the empirical task of the case study is to identify what combinations of coercion, contract, and capacity building occur in reality, who bears the cost, and whether these reforms are robust enough to survive beyond short-term interception risks.

Pre-UFLPA Compliance Legacies in Malaysia and Vietnam

	Mechanism 1: Market coercion	Mechanism 2: Contractualisation	Mechanism 3: Capacity building
Malaysia	Acute market-access shocks via import restrictions/enforcement signals (e.g., medical gloves)	Buyers translate enforcement risk into audit/CAP/remediation clauses (gloves)	Firm-level evidence routines (documentation, fee remediation, grievance systems) (gloves)
	Standards-linked pressure shaping export legitimacy (e.g., palm oil)	Certification regimes function as quasi-contractual access conditions (palm oil)	State-anchored standard + audit infrastructure (MSPO as reusable compliance machinery)
	Trade-linked incentives where leverage varies over time (CPTPP/EVFTA dynamics)	Treaties ‘carry’ labour obligations into domestic agendas (CPTPP/EVFTA)	Legal-institutional reform with uneven activation (2019 Labour Code; limited uptake of new representation)
Vietnam	Sectoral exposure to monitoring/eligibility pressures (garments; fisheries)	Programmatic/documentary regimes as repeatable compliance contracts (Better Work; IUU traceability)	Iterative monitoring + traceability systems (Better Work cycles; fisheries surveillance/traceability)

Table 1: Pre-UFLPA legacies mapped to the three mechanisms

This section examines the spectrum of compliance experience formed by Vietnam and Malaysia before the UFLPA. At this stage, forced-labour governance had already entered producer countries through cross-border spillover mechanisms. Its pressure sources included U.S. border-enforcement signals and interception risks under Section 307, EU-centred trade and sustainability conditionalities such as EVFTA labour commitments and IUU traceability requirements, and buyer and public procurement standards that translated external concerns into company-level compliance tasks. The cases of the two countries adopt a consistent three-mechanism framework: market coercion, contractualisation, and capacity building. For each mechanism, however, this article selects only one or two key episodes to track the specific causal chain: external triggering, pressure transmission, domestic response, and the distribution of compliance costs. The identification of these pre-UFLPA patterns provides a benchmark for testing how the mechanisms are altered under the UFLPA rebuttable presumption system. Table 1

presents the key compliance legacies formed by Malaysia and Vietnam before the UFLPA with reference to the three-mechanism framework.

Malaysia

Malaysia's pre-UFLPA experience shows that forced-labour governance spills into producing countries through three interconnected channels: market coercion anchored in border risks, contractualisation through buyer governance, and compliance capabilities and infrastructure built by the state. These mechanisms mainly occur in sectors that are highly dependent on migrant labour, especially medical gloves and palm oil. In these sectors, the flexible labour system helps sustain low costs over time, but also reproduces vulnerabilities that external actors define as forced-labour risks.²⁴

In the medical glove sector, market coercion constitutes a direct trigger. Before the UFLPA, the threat of U.S. customs enforcement and import restrictions could quickly produce market-access denial, thereby converting forced-labour allegations into substantial economic losses for firms and the national export economy.²⁵ During the COVID-19 pandemic, the surge in demand for gloves and the decline in buyers' tolerance for supply interruptions further amplified external leverage and propelled suppliers to respond more directly to forced-labour issues. In this situation, external pressure did not remain at the border, but flowed upstream along the global value chain. Even if domestic governance was uneven, the external system could still change the behavioural boundaries of enterprises and industries.²⁶

Contractualisation translates enforcement risks into enterprise-level compliance obligations.²⁷ This forms a layered governance environment: enterprises must not only respond to domestic supervision, but also produce auditable materials required by buyers.²⁸ Public procurement further strengthens this channel because concern over procurement's encroachment on labour rights has already been indicated. If procurement focuses only on price and supply stability, it may reproduce global inequality by sacrificing labour rights upstream.²⁹ Therefore, Malaysia's compliance in the pre-UFLPA era relied largely on buyer-driven necessity.

At the same time, in the palm oil sector, capacity building and compliance infrastructure are more prominent. Malaysia's strategy has included the construction of a national certification regime, the Malaysian Sustainable Palm Oil (MSPO) scheme, through which the state positions itself as an active governor rather than a passive follower of external standards. As Rahmat et al. note, the establishment of MSPO partly responds to criticisms of transnational certification systems while also seeking to demonstrate a more proactive governmental role in safeguarding domestic producers and the legitimacy of the sector.³⁰ Broader literature further indicates that Malaysia's push toward the institutionalisation of certification, culminating in the transition of MSPO to a mandatory requirement around late 2019, reflects an effort to construct standardised governance capacity in a sector characterised by high fragmentation.³¹ In this sense, even prior to the implementation of the UFLPA, Malaysia had already developed a compliance apparatus capable of repeated operation and to some extent applicable to the shifting environment brought by the UFLPA.

However, these compliance capacities remain structurally constrained. Research on plantation labour systems emphasises that production relies on the continuous mobilisation of low-cost and replaceable migrant workers, sustained through segmentation, legal status hierarchies, and everyday labour control.³² Biographical studies of migrant workers in palm oil production similarly document prolonged livelihood insecurity and survival strategies under unsafe conditions, reinforcing the conclusion that vulnerability is not produced by a handful of “bad employers,” but is institutionally generated.³³ Puder further argues that even where migrant workers constitute the core of the industrial labour force, they may remain structurally excluded from national development narratives such as the “bioeconomy,” rendering standards- and certification-based approaches insufficient to address the deeper conditions of labour improvement.³⁴ Taken together, Malaysia had already exhibited a clear trajectory prior to the UFLPA: enforcement shocks and buyer-driven conditionality pushed high-risk export sectors towards contractualised remediation, while the state sought legitimacy and market protection through certification and standards infrastructure. Yet structural dependence on migrant labour constitutes a long-term limitation in state agency, foreshadowing that under the more stringent UFLPA regime, compliance is more likely to evolve towards intensified documentation and evidence production than towards a fundamental reconfiguration of the political economy of labour.

Vietnam

Vietnam's pre-UFLPA experience suggests that while external market pressure can induce visible labour and supply-chain reforms, the state and firms retain substantial room to define, frame, and selectively implement what counts as compliance. Under trade-labour linkage frameworks such as the CPTPP and the EU–Vietnam Free Trade Agreement (EVFTA), Vietnam's labour governance was structured more by external incentives than by endogenous demands for labour rights. Meanwhile, implementation remained contested and incomplete, and the political logic of labour governance continued to be filtered through domestic political and industrial structures that determined which changes could be accommodated and which had to be constrained.³⁵

A key feature of this period is that trade agreements were widely understood as external catalysts, providing domestic reformists with a window of opportunity, while incentives for implementation became strategically ambiguous once external pressure is lifted. For example, following the U.S.'s withdrawal from the original TPP, such momentum was immediately extenuated, despite the continuous functioning of the CPTPP and EVFTA.³⁶

From a legal-institutional perspective, Vietnam's new Labor Code, which was adopted in 2019 and entered into force in 2021, introduced a form of controlled expansion of worker voice by allowing enterprise-level employee representative organisations (EROs) to exist outside the traditional trade union system. In practice, however, the establishment and operation of such new channels have remained extremely limited. Key studies indicate that no genuinely independent worker representative organisations were effectively formed during this period.³⁷ This gap highlights the distance between formality and substantiality, as formal rules would not be so effective if required resources, protections, and credible enforcement conditions are still lacking.

Vietnam's long-standing corporatist labour-relations structure further explains this divergence. Although legal reforms broadened the range of permissible representative forms, the overall system continues to impose strong political constraints on independent labour organisation. Historically, strikes have promoted minimum-wage adjustments and policy recalibration, but they have also encouraged the government and employers to prioritise reforms aimed at stability and strike reduction, often framed as promoting "harmonious labour relations."³⁸ In this sense, Vietnam exhibits a pattern of managed pluralisation: meeting external benchmarks while preserving governance priorities centred on stability and political control.

Beyond legal reform, Vietnam has also pursued an alternative compliance pathway by establishing compliance through monitoring systems and quantifiable indicators, particularly in globally exposed sectors such as apparel. Evidence from the ILO/IFC Better Work programme shows that unionisation and collective bargaining are associated with lower rates of non-compliance, though the evidence regarding working hours remains more mixed.³⁹ This finding is crucial from a forced-labour perspective because it suggests that compliance is more likely to materialise when monitoring cycles are repeatable, capacity building is structurally embedded, and labour-relations structures exist to translate audit findings into continuous improvement rather than relying solely on documentation and one-off inspections.

Vietnam's fisheries governance provides a further case of state-led traceability-based compliance, shaped strongly by EU market power. Existing research shows that Vietnam reconfigured its governance structures to align with the EU Catch Certificate (CC) traceability system, yet mismatches between top-down enforcement and everyday fishing practices have generated violations and imposing disproportionate costs on small and medium-sized operators.⁴⁰ Studies of anti-IUU reforms also describe a similar concern about the social costs of enforcement and whether traceability necessarily equates to sustainability.⁴¹

Taken together, Vietnam's pre-UFLPA experience yields three transferable insights. First, trade-linked pressure can accelerate formal reform, but the intensity and credibility of external leverage determine whether reform translates into substantive implementation or merely procedural compliance. Second, compliance improvements are more likely to emerge from combinations of monitoring systems, workers' activities, and iterative evaluation cycles than from isolated audits. Third, states and firms can reconfigure compliance as a governance project oriented towards stability, strengthening documentation, surveillance, and managed representation while limiting deeper transformations of power relations in labour issues, even though these relations are central to the structural production of forced-labour risk.

Agency under the UFLPA Era

This article argues that the UFLPA constitutes a key instrument through which the U.S. sanctions China within the broader context of Sino-US trade conflict and economic coercion. More fundamentally, the UFLPA has reconfigured the United States' model of international economic governance grounded in human rights and forced labour concerns. Governance has shifted from passive interception at the border towards a due-diligence regime that is capable of travelling along

global supply chains: compliance requirements are displaced upstream and ultimately materialise in exporting countries through documentation, traceability systems, and evidence designed to render goods “cleared for entry”.

The core institutional foundation of this system lies in the UFLPA’s rebuttable presumption, as stated in the introduction section.⁴² This framework effectively reverses the burden of proof, where the state no longer bears the primary responsibility to establish the existence of forced labour, while firms are instead required to generate extensive affirmative evidence of “clean” supply chains.⁴³ The regime is able to “travel” precisely because its scope extends to downstream products incorporating inputs linked to Xinjiang or listed entities, including goods manufactured in or trans-shipped through third countries.⁴⁴

At the same time, as an expanded sanctions instrument, the UFLPA delegates significant discretion over designation and enforcement to agencies such as the Forced Labor Enforcement Task Force and CBP, thereby providing the U.S. with substantial flexibility to recalibrate its strategic priorities. Public enforcement data indicate a marked shift in recent years in the sectors targeted, from apparel, textiles, and plastic products towards metals and electronic goods. By mid-2025, the Trump administration explicitly signalled that enforcement would prioritise eight strategic industries, further emphasising the strategic importance of electronics and metals.⁴⁵ This reorientation of enforcement focus has generated heightened compliance pressures for countries such as Vietnam and Malaysia, requiring continuous upgrading and reconfiguration of their value-chain governance systems.

Beyond these structural features of the UFLPA, Vietnam and Malaysia face a further dilemma arising from the expanded operation of Section 307. Such mode of governance cannot be directly addressed on a state-to-state level. On the one hand, because the law is framed around China as its notional target, its effects on third-party countries are indirect, leaving Vietnam and Malaysia no justified grounds for counter-sanctions or direct contestation. On the other hand, these countries’ structural positioning within global value chains predisposes them to pursue hedging strategies amid great-power rivalry, rendering overt responses to a single piece of U.S. legislation misaligned with their broader strategic interests.

As a result, conventional indicators of policy agency, such as formal labour law reform or intensified state enforcement, are ill-suited to capturing how Vietnam and Malaysia act in the UFLPA era. Analyses by research institutions and law firms instead suggest that agency increasingly manifests through informal industrial adjustment, negotiation, and coordination. More concretely, this takes the form of how states and industries reposition themselves within the evidentiary architecture of the UFLPA, which is by constructing compliance infrastructure, standardising traceability and remediation procedures, and strategically allocating regulatory resources towards export nodes most likely to trigger interception or exclusion.⁴⁶

Market-Access Coercion Becomes More Institutionalised, Yet with Greater Uncertainty

Prior to the UFLPA, external pressure most often took the form of reputational accountability or sporadic import measures. Under the UFLPA, constraint has become more systematised. The

rebuttable presumption extends a logic of default denial to all covered goods unless sufficient evidence is provided to overturn the presumption.⁴⁷ The UFLPA Strategy explicitly acknowledges obstacles in due diligence, traceability, and evidence collection, noting that such obstacles may prevent importers from qualifying for exceptions and may expose goods to detention or exclusion.⁴⁸ For exporting countries, market-access conditions thus shift from an expectation to improve labour conditions to a requirement to render labour conditions provable and acceptable to customs authorities. Coercion no longer operates as an episodic shock, but as an institutionalised and continuous pressure. At the same time, limitations in institutional design generate new forms of uncertainty for importing and exporting firms alike. International law firms have observed that the UFLPA provides neither sufficiently clear compliance guidance nor transparent standards and procedures, leaving firms facing substantial uncertainty, ranging from the inability to anticipate review outcomes to difficulties in recalibrating compliance systems in response to enforcement practices.⁴⁹ While firms are afforded opportunities to adjust supply-chain structures, enhance traceability, and produce exculpatory evidence, decisive authority ultimately remains concentrated in U.S. enforcement bodies. As a result, firms continue to occupy a largely reactive position, with their room for manoeuvre structurally constrained.

Capacity Building and Technocratic Governance Become Tightly Coupled with Enforcement

The UFLPA Strategy places strong emphasis on tools, technologies, and outreach-based training, including the issuance of guidance, the organisation of training programmes covering both domestic and overseas stakeholders, and the enhancement of supply-chain traceability capacities.⁵⁰ This does not imply that capacity building substitutes for coercion; rather, it is embedded within enforcement itself. Compliance capacity becomes a necessary condition for firms and regulatory actors to operate within the evidentiary regime. RAND similarly underscores the necessity of multi-stakeholder participation and coordination in governing forced labour risks, while also highlighting the practical difficulties of relying on verification tools such as audits in contexts characterised by limited information or high levels of contestation.⁵¹ For Vietnam and Malaysia, this dynamic reopens space for agency. States are not merely reactive but can selectively adopt governance tools that reduce detention risk while signalling “clearance readiness” within the UFLPA’s evidentiary framework.

Treaty- and Trade-Based Governance Intensifies Extraterritorial Extension

The UFLPA does not operate in isolation. U.S. policy documents situate forced-labour governance within a broader trade strategy, reinforcing enforcement through trade instruments, cross-departmental coordination, and cooperation with external partners.⁵² The U.S. Government Trade Strategy to Combat Forced Labor articulates a “whole-of-government” framework linking trade policy with customs enforcement, as well as collaboration with partner governments and the private sector.⁵³ These expectations are transmitted not only through corporate contracts and buyer requirements, but also through intergovernmental interaction and trade-governance channels, prompting exporting countries to converge, at least partially, around due-diligence and transparency frameworks.

Comparison: Where Vietnam and Malaysia Can Still Exercise Agency

Under the UFLPA, the agency demonstrated by Vietnam and Malaysia in earlier periods is being transformed. The domains in which agency is most likely to persist include the reconfiguration of their positions within global value chains, the upgrading of standard-setting and evidence production, and government-led institutional coordination. A 2025 update reports that CBP inspected more than 16,000 shipments with a total value exceeding \$3.6 billion, generating a clear distribution across release, exclusion, and detention outcomes.⁵⁴ The same update notes that the UFLPA Entity List has expanded to 144 entities across multiple sectors.⁵⁵ These statistical signals indicate that agency is being challenged by the more active and discursive enforcement of the UFLPA.

First, value-chain restructuring and management are primary options. Export-oriented manufacturing constitutes the backbone of both Vietnam's and Malaysia's economies, and the U.S. remains one of their principal export markets. Under these conditions, the risk of shipment interception under the UFLPA translates directly into economic cost. Shortly after the onset of the Sino-US trade war, China relocated parts of its value chains to Southeast Asia in order to mitigate the impact of U.S. sanctions. As trade conflict has further intensified, Southeast Asian countries have in turn been compelled to create some distance from upstream Chinese suppliers in order to safeguard their own positions in international supply chains. This study also observes that Vietnamese apparel companies have actively sought alternative markets, such as Japan, South Korea, India, and the Middle East, to reduce dependence on the U.S. market. As relatively neutral or moderate actors within the Sino-US bipolar structure, these countries and regions have become increasingly attractive to Southeast Asian exporters.

Despite such volatility and reconfiguration, Vietnam's and Malaysia's economic dependence on both China and the U.S. remains substantial, rendering large-scale decoupling unrealistic. Accordingly, this article argues that alongside value-chain diversification and restructuring, both countries are likely to pursue domestic industrial upgrading and renewed adaptation to the escalated trade tensions, for example, by developing potential sectors outside those prioritised under the UFLPA's enforcement focus.

Second, external pressure has driven the upgrading of domestic standard-setting and evidence production. The UFLPA Strategy requires importers to respond "fully and substantively" to CBP information requests, noting that documentation in English may expedite review.⁵⁶ It also specifies core elements of due-diligence systems, including stakeholder engagement, risk assessment, codes of conduct, training and communication, monitoring, remediation, independent review, and reporting, thereby effectively defining the contours of what counts as "credible evidence".⁵⁷ As rapidly growing emerging markets, Vietnam and Malaysia have long developed corporate regulation and compliance in response to demand, yet gaps remain relative to advanced economies. Under external pressure and with the involvement of international commercial actors, the diffusion and penetration of European and U.S. legal-regulatory standards have, to some extent, accelerated the maturation of domestic compliance systems, strengthened firms' visibility over upstream and downstream supply chains, and facilitated alignment with international benchmarks. At the policy level, both countries may move towards constructing documentary chains covering production, export, and import stages, gradually forming self-certification or counter-investigation narratives that could, over time, crystallise into traceability and compliance credentials acceptable to the U.S. and other advanced-economies.

Third, government-led institutional coordination remains a critical form of agency. The governance regime represented by the UFLPA does not exist in isolation; rather, it forms part of a broader architecture of global trade and human-rights regulation led by advanced economies. Correspondingly, Vietnam and Malaysia have shown tendencies to embed UFLPA-related requirements within existing policy directives, using this moment to refine their trade and human-rights governance frameworks. Malaysia's National Action Plan on Forced Labour (NAPFL) 2021–2025 explicitly foregrounds national coordination and multi-stakeholder implementation, articulates a vision of “zero forced labour” by 2030, and organises action across multiple pillars.⁵⁸ Although the NAPFL predates the formal implementation of the UFLPA, its governance architecture and policy language enable Malaysia to translate external demands into domestic administrative programmes, thereby expressing agency through institutional scaffolding rather than through narrowly legalistic reform. At the same time, analyses by ISEAS caution that the structural characteristics of Malaysia's labour and migrant governance regime complicate implementation, indicating that agency remains constrained by deeper political-economic arrangements.⁵⁹

A similar pattern is observable in Vietnam, where responses to the UFLPA likewise reflect a state-centred coordination pathway, albeit one more clearly embedded within existing national development and external trade governance frameworks. In recent years, Vietnam has not pursued legislative reform explicitly framed as a response to the UFLPA. Instead, it has integrated anti-forced labour objectives into broader agendas of labour compliance and industrial upgrading through revisions to the Labour Code (2019), the National Action Plan on Human Rights, and labour and sustainability commitments under the EU-Vietnam Free Trade Agreement (EVFTA).⁶⁰ In practice, the Ministry of Industry and Trade, the Ministry of Labour, Invalids and Social Affairs (MOLISA), and the customs system have intensified administrative scrutiny over employment records, subcontracting chains, and recruitment intermediaries in export-oriented sectors—particularly garments, footwear, furniture, and selected electronics assembly.⁶¹ These measures aim not only to mitigate potential US enforcement risks but also to preserve Vietnam's international image as a “reliable manufacturing base”.⁶² Nevertheless, as multiple regional studies observe, this governance approach, anchored in administrative coordination and developmentalist logic, tends to frame forced labour primarily as a trade and industrial-policy issue rather than as a human-rights concern. As a result, implementation continues to be constrained by local government incentives, recruitment-intermediary structures, and patterns of dependence on foreign capital.

Boundaries: Structural Conditions That Constrain Agency

The UFLPA simultaneously limits the boundaries of agency available to small and medium-sized states. Under Section 307 and the contemporary UFLPA regime, the U.S. continues to hold the initiative, while other countries lack alternative trading partners capable of fully substituting for China. For Vietnam and Malaysia, the condition under which they could largely escape the effects of the UFLPA would be the attainment of advantageous positions in supply-chains and sectoral irreplaceability, conditions that remain exclusive to only a small number of advanced economies.

A primary constraint on agency comes from the law's demanding requirements for traceability and evidence production. The UFLPA Strategy explicitly acknowledges that obstacles to traceability and evidentiary collection may result in the failure of exemption applications.⁶³ Feldman's analysis of the rebuttable presumption further highlights that the reversal of the burden of proof, combined with the absence of a *de minimis* exception, renders "proof" the central bottleneck of market access, while pathways for removal from the Entity List remain highly opaque and costly.⁶⁴ RAND's findings reinforce this diagnosis, indicating that where governance relies on evidence under conditions of limited information, verification bottlenecks emerge, audits struggle to penetrate multi-tier supply chains, data remain incomplete, and trust relations remain fragile.⁶⁵

These constraints shape the form that consequential compliance strategies take. Firms tend to prioritise production stages that are more readily "provable", a dynamic that may drive market concentration towards suppliers capable of generating documentation and traceability records more easily. In an idealised scenario, "agency" would thus take the form of codifiable technocratic capacity. In practice, however, this is constrained by the governance capacities of the Vietnamese and Malaysian governments, requiring trade authorities capable of building data systems, managing documentation, and coordinating across firms and government departments.

The political nature of the UFLPA further subjects exporting countries to risks. Update reports describe the continuous development of new technologies and methods to identify entities, alongside rolling updates to the Entity List published through the Federal Register and the expansion of evidence-based designation procedures.⁶⁶ As list expansion and revision become institutionalized, with additions, removals, and technical corrections all processed via the Federal Register, exporting countries' compliance governance must continually adjust in response.⁶⁷

Market complexity and governmental defects in Vietnam and Malaysia further limit the scope for agency. Even where the UFLPA generates higher standards, action plans, and incentives, supply-chain and human-rights governance in both countries continues to rely heavily on intermediaries such as international law firms and consulting firms. This reliance makes it difficult for states to independently construct and manage a fully integrated, modern compliance system. Instability in documentation flows and the fragmentation of industries characterised by large numbers of actors further complicate the maintenance of complete and timely traceability systems. Where supply chains fail to generate continuous records, or where intermediary systems obscure financial flows, the evidentiary threshold imposed by the UFLPA becomes harder to cross, and policy space correspondingly contracts.

What emerges, therefore, is a mutually reinforcing relationship between a country's position within global supply chains and the internal complexity and fragmentation of its economy. While countries may seek to upgrade compliance governance, their capacity to do so is constrained by firm structure, industrial organisation, and the intermediation of transnational governance pressures.⁶⁸ Under the UFLPA, this pressure is particularly "hard": customs clearance decisions directly translate documentary failure into market exclusion. The boundary of agency thus lies not merely in political will, but in whether domestic governance systems are capable of rendering labour processes traceable, auditable, and convertible into evidence acceptable for market access.

Conclusion: Treaty-Backed Travelling Due Diligence Governance

In sum, by comparing Vietnam's and Malaysia's responses in the UFLPA era, this article demonstrates how forced-labour governance has evolved from law enforcement at the border into a travelling due-diligence regime backed by treaty and trade governance. By definition, the core concept advanced in this article, treaty-backed travelling due diligence governance, refers to a system in which compliance expectations circulate transnationally along supply chains and are ultimately enforced through evidentiary standards applied by the importing countries' customs authorities. The notion of "treaty- and trade-based backing" underscores that this is not merely a form of external pressure; rather, it is consolidated through cross-departmental trade strategies and state procedures that normalise and stabilise the transnational transmission of due-diligence expectations.⁶⁹

In recent years, legal and regulatory instruments from advanced economies have increasingly transcended conventional sovereign boundaries, penetrating international commercial activities. With the same logic, although the UFLPA is not recognised as international law, it has *de facto* come to function as part of it, and has been shaping the behaviour of non-American government branches, companies and individuals. Notably, while the UFLPA is formally directed at China, the complexity and interconnectivity of global supply chains enable it to generate significant spillover effects for small and medium-sized economies, including not only Vietnam and Malaysia but also Japan and South Korea. During the process, it simultaneously propels transformations in the countries compliance systems and governance capacities. In this sense, treaty-backed travelling due diligence governance represents a form of extraterritorial impact produced by the legal regimes of advanced economies under economic globalisation, and reflects structural inequalities embedded within the trend.

Yet this article argues that small and medium-sized export-oriented economies are not merely passive recipients of such extraterritorial laws. Under structural constraints, they exercise limited agency through selective institutional embedding, policy coordination, and the construction of evidentiary infrastructures. Vietnam and Malaysia illustrate how external pressure and sanctions can be transformed into governance arrangements shaped jointly by external and internal forces. This finding contributes to a more nuanced understanding of power allocation and institutional change in global supply chains and labour governance, under the geoeconomic rivalry between China and the U.S. At the same time, such agency remains circumscribed. Even where states succeed in building compliance infrastructures capable of producing customs-grade evidence, and in translating external pressure into domestically executable programmes through cross-departmental and trade-governance channels, they remain positioned asymmetrically within the UFLPA's institutional design and constrained by domestic industrial structures and labour-market configurations.

By advancing treaty-backed travelling due diligence governance as an analytical framework, this article also calls for closer attention to its normative implications, which help explain why improvements in compliance capacity do not necessarily translate into substantive improvements in labour conditions. UFLPA-style governance may improve the production of customs-grade evidence without necessarily producing equivalent improvements in workers' lived conditions. Its normative significance therefore lies in the gap between provable compliance and substantive labour protection. In practice, UFLPA-style governance tends to prioritise investment by firms and states in

documentation, traceability, and risk-transfer mechanisms rather than addressing the structural roots of forced labour or power asymmetries within local supply chains and labour relations. Put differently, under UFLPA pressure, small and medium-sized export-oriented states are more likely to reinforce technocratic and bureaucratised governance as an intermediate response to formal compliance demands. These demands are filtered through political and administrative layers, and therefore may not reach the foundational labour-rights issues or the geoeconomic structures intertwined with them.

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