Corporate liabilities for modern-day slavery in supply and service chains:

A transnational framework

Authored by:
Chris N. Bayer, PhD
Principal Investigator
Development International

First published on:
April 21, 2016

Revised version, published on:
November 10, 2016

Funded by:

Table of Contents

Executive Summary

While civil society has championed the cause of ethical sourcing for decades, the responses of the private sector have been mixed. To date, aggregate corporate action has yet to reach critical mass on the issue of modern-day slavery.

Recent legislative developments in the U.S., E.U. and U.K. challenge the status quo. Sunshine laws in each jurisdiction now shine a notably brighter light on the issue of slavery in supply chains and service provision. U.S. government contractors are now charged with pro-active anti-slavery action in their goods and service provision abroad. Also, goods produced with forced or indentured labor may be now barred from entering the U.S. through a public petition mechanism.

This analysis investigates fifteen laws on the books that provide a legal basis in these three jurisdictions for regulating corporate action vis-a-vis human trafficking and modern-day slavery. Seven of them have direct bearing on corporate legal liability.

The resulting liability framework identifies how these seven laws thematically overlap, such that companies subject to multiple laws may orient themselves. A company subject to all seven laws would hypothetically implement – if it opted to adopt the affirmative minimum – and report on a 12-point plan of action.

I. Introduction

Systemic labor rights issues continue to plague the global labor workforce. According to the International Labour Organization (ILO), over 14 million people are estimated to be victims of forced labor exploitation, generating an estimated US$ 51 billion in profits per year.[1]

In its sixth edition, the 2014 U.S. Department of Labor's (DOL) *List of Goods Produced by Child Labor or Forced Labor* identified 136 goods produced by child labor or forced labor in violation of international standards, in 74 countries across the world.[2]

New laws on the books of the United States of America, the European Union, and the United Kingdom inter alia require affected companies to report what measures – if any – they are taking to mitigate human trafficking and slavery in near or entire supply chains and service provision.

A precondition for reporting is data. Indeed, this new overarching legal framework is making it increasingly difficult – and under certain laws illegal – not to know that modern-day slavery is taking place in one's supply chain. Not only is know-your-customer ("KYC") savvy needed, but know-your-source ("KYS"). As stated by the Honorable U.K. Home Secretary Theresa May: "*It is simply not acceptable for any organisation to say, in the twenty-first century, that they did not know*."[3]

However, it is not only ethical imperatives driving these legislative initiatives. Indeed, shareholders increasingly argue that their interests are better served and – in some cases – protected through the material disclosures that inform investor expectations and risk appraisal. Investors, especially in the ethical investment community, are associating Environmental, Social and Governance (ESG) performance with materiality. Ethics, meet sustainability.

Given the emerging norms and new laws concerning human trafficking and modern-day slavery, a framework is needed to understand the nature of these laws and how they relate to one another.

---

[1] ILO, *ILO Global Estimate of Forced Labour: Results and Methodology*, International Labour Office, Special Action Programme to Combat Forced Labour, Geneva, 2012, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf

[2] USDOL, *List of Goods Produced by Child Labor or Forced Labor*, Bureau of International Labor Affairs, December 1, 2014, http://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf

[3] U.K. Home Office, *Transparency in Supply Chains etc. – A practical guide*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

II. Objective

The objective of this analysis is to identify, compare, and contrast the laws on the books in the U.S., E.U. and U.K. that open up corporate liabilities vis-a-vis human trafficking and modern-day slavery. A framework that identifies how these laws overlap may orient companies subject to several of these laws.

III. Methods

Given this paper's objective, the following steps are required:

A. Definition of thematic scope

As a first order of business, the thematic scope needs to be defined according to widely accepted taxonomy. What comprises in-scope phenomena and what comprises out-of-scope phenomena? A definition framework is offered.

B. Specification of legal scope and jurisdictions

Once the thematic scope has been defined, pertinent laws addressing the in-scope phenomena with liability provisions for companies are identified.[4] The jurisdiction of the law then is considered automatically in-scope.

C. Analysis of legal liability

The current liability for companies which are law-facing, or are situated in supply chains supplying companies which are legally liable, is analyzed. Only laws that fall within the immediate thematic scope will be taken into account. One type of law, disclosure law, merits special attention as they require disclosure or potentially require the communication of information: either business-to-business (B2B), business-to-government (B2G), or business-to-public (B2P). Current enforcement, e.g. through injunctive relief, and relevant lawsuits will also be taken into account to assess trends in legal application and outcomes. A thematic framework as well as an affirmative implementation framework is offered to illustrate the findings.

[4] Possibly biasing the process of arriving at the final set of *pertinent laws addressing the in-scope phenomena with liability provisions for companies*, however, is that only literature in English, French, and German was taken into account.

IV. Results and discussion

A. Thematic scope

1. Labor vs. sex slavery

The thematic scope of this framework concerns "human trafficking" and "modern-day slavery" as it relates to the production of goods or the rendering of services in the mainstream, formal economy. Thus, the scope is "labor trafficking" and "labor slavery." Victims of forced labor, for example, work in the cotton, cocoa, cobalt, rubber, sugar, and seafood industries, and it is no secret that many products are manufactured with slave labor and end up on store shelves.

Out-of-scope, however, is human trafficking for the purposes of sex slavery. The U.S. *Victims of Trafficking and Violence Protections Act* (TVPA) of 2000, for instance, creates a distinct category of trafficking: sex trafficking. "The term 'sex trafficking' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."[5] Sex trafficking commonly involves forced prostitution, stripping, mail-order marriages, and pornography.

Sex trafficking/sex slavery is fundamentally a distinct "industry" that does not produce goods or render services for the mainstream bread-and-butter economy. Generally speaking, most legitimate companies in the world will not be purposefully engaging in – and profiting from – the practice of organized sex slavery. While companies may influence the behavior of employees through corporate culture, employee codes of conduct, etc., anti-slavery efforts in a company's supply chain will hardly systemically counter the practice of sex trafficking and sex slavery. Also the TVPA of 2000 observed that the business of human trafficking involved organized crime, often enabled by corrupt officials:

> *(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.*[6]

Nigeria's sex-trafficking "Air Lords," for example, would not be in the least affected, e.g., by Nestlé's anti-slavery supply chains initiatives. Nestlé's anti-slavery actions may, however, have a large impact on mitigating the risk of labor slavery practices taking place in its supply chains. In sum, sex trafficking is considered a discrete "enterprise" usually executed by organized crime that would not usually overlap with mainstream businesses' interest and pursuits.

---

[5] 106th Congress Public Law 386, *Victims of Trafficking and Violence Protection Act of 2000*, Oct. 28, 2000, http://www.state.gov/documents/organization/10492.pdf

[6] Ibid.

Further support for this approach, as we shall see in the analysis to follow, is that US law makes a distinction between trafficking/slavery for the purposes of sexual exploitation and trafficking/slavery for the purposes of labor exploitation.

2. Goods & services

This framework will not only limit itself to the production or extraction of physical commodities. While a large portion of slave labor is associated with goods from which companies derive a profit, products that end up on the shelves of stores and are ultimately consumed, there are instances of human trafficking and modern-day slavery in non-sexual service provision, e.g. in hotel or restaurant work. The U.S. Department of Defense (DOD) admits that "labor trafficking" occurs in its contracts with service providers, including those rendering food services, domestic services, janitorial services, driving services, construction, and hospitality.[7] What these industries have in common is that they are particularly labor-intensive. The E.U. NFR Directive, the U.S. FAR rule, and the U.K. Modern Slavery Act, to be discussed in detail below, include in their respective scopes service provision.

Therefore, in-scope are (1) products for which there are supply chains, and goods flowing to countries with ethical procurement-related laws on the books, and (2) services carried out and "consumed" in-country.

3. Child labor vs. worst forms of child labor

Child labor is an undesirable practice, commonly linked with poverty. With the ILO's *Minimum Age Convention* (C138), member states commit to the effective abolition of child labor. It stipulates that the minimum age for admission to employment "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years." Article 3 stipulates that the "minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years."[8] These principles are reiterated, for example, in Article 32 of the *EU Charter of Fundamental Rights*, where the "employment of children is prohibited," the "minimum age of admission to employment may not be lower than the minimum school-leaving age."[9]

---

[7] U.S. Department of Defense, *Combating Trafficking in Persons (CTIP) General Awareness Refresher Training for Department of Defense Personnel*, July 23, 2014, http://ctip.defense.gov/Portals/12/Documents/ppt_Refresher_script_072314.pptx

[8] ILO, *International Labour Organization Convention 138, 'Minimum Age Convention'*, 1973, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

[9] European Convention, EU Charter of Fundamental Rights, *Title IV: Solidarity*, Article 32, October 2, 2000, http://fra.europa.eu/en/charterpedia/title/iv-solidarity

Child laborers are, however, not necessarily subjected to practices and conditions that fall within the purview of modern-day slavery definitions. It is when work is performed that could likely harm the "health, safety or morals of children"[10] that the practice is considered the *worst forms of child labor* (WFCL), defined in the next section.

B. Definitions

The imagery of slavery in history is synonymous with people in chains. However, modern forms of slavery are more nuanced, and while chains may not be visible, they are metaphorically present.

The modern understanding is that there is much overlap between the phenomena of human trafficking and slavery. The United States Congress declared: "Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today."[11]

The international community agreed upon an encompassing definition of "human trafficking" in the *Trafficking in Persons Protocol*,[12] also known as the "Palermo Protocol." Article 3, under "Use of terms," defines the crime as follows:

> *(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
> *(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
> *(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;*
> *(d) "Child" shall mean any person under eighteen years of age.*[13]

---

[10] ILO, *International Labour Organization Convention 182 - Worst Forms of Child Labour Convention*, 1999, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

[11] 22 U.S.C. § 7101(b)(1) (2000).

[12] The "Palermo Protocol" refers to UN General Assembly resolution 55/25 of 15 November 2000, which entered into force on 25 December 2003.
United Nations Office on Drugs and Crime, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, New York, 2004, https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

The TVPA of 2000 hones in on "severe forms of trafficking in persons," which it defines as: "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."[14]

We thus observe large agreement between the definitions offered by the Palermo Protocol and TVPA of 2000. Also, both the Palermo Protocol and TVPA of 2000 distinguish between slavery for the purposes of sexual exploitation and for the purposes of forced labor/slavery.

As the scope of this inquiry is goods-producing or contracted labor performed in or on behalf of the mainstream, formal economy, for the purpose of this report the term "human trafficking" refers to actions that fall within definition (B) in the TVPA, which is also the meaning of trafficking adopted by most companies complying e.g. with the California *Transparency in Supply Chains Act* of 2010.

Let us zoom in on the key terms highlighted in the Palermo and TVPA definitions:
"… the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion."[15]

Coercion / force:
As defined by the TVPA of 2000, the term "coercion" means: "(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.

Elements related to the application of force in the Palermo Protocol include the trafficker's application of: (1) threat, (2) use of force, (3) other forms of coercion, (4) of abduction, and (5) giving or receiving of payments or benefits to achieve the consent of a person having control over another person. In addition, Executive Order 13627 provides a specific example of coercive recruitment, which involves "(iii) destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity documents, such as passports or drivers' licenses."[16]

Fraud / deceptive recruitment may be present, to reference Executive Order 13627, when "misleading or fraudulent recruitment practices during the recruitment of employees, such as

---

[13] Ibid.
[14] 106th Congress Public Law 386, *Victims of Trafficking and Violence Protection Act of 2000*, Oct. 28, 2000, http://www.state.gov/documents/organization/10492.pdf
[15] Ibid.
[16] Administration of Barack Obama, *Executive Order 13627—Strengthening Protections Against Trafficking in Persons in Federal Contracts*, Federal Register Volume 77 No. 191, September 25, 2012, http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/html/2012-24374.htm

failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work" is applied.[17]

Further definitions for the other key terms in the Palermo and TVPA are available:
"… for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."

Forced labor/slavery: The 1930 ILO *Forced Labor Convention* (C29) 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 voluntarily."[18] Examples include forced overtime and retention of identity documents. Many organizations' standards have since adopted this definition.

Involuntary Servitude: The TVPA of 2000 defines involuntary servitude to include "a condition of servitude induced by means of – (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process."[19]

Debt bondage/peonage: Bonded or indentured labor is a practice whereby people are tied to their work through debt, e.g. if they had been sold by their parents, relatives, guardian, pimp, etc. Article 1(a) of the UN's 1956 *Supplementary Convention on the Abolition of Slavery* and the TVPA of 2000 defines debt bondage as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."[20] Debt bondage may involve a vicious cycle of debt, where, for example, workers are excessively charged for room and board. A worker may also fall into a debt bondage trap whereby s/he is charged excessive recruitment fees which s/he is made to repay. Also known as "debt slavery" or "debt servitude," peonage is a system where an employer compels a worker to pay off a debt with work. The Peonage Act of 1867 defined Peonage as the "voluntary or involuntary service or labor of any persons . . . in liquidation of any debt or obligation."[21] Peonage is also commonly associated with a situation where laborers have little-to-no control over work conditions.

---

[17] Ibid.
[18] ILO, *International Labour Organization Convention 29 - Forced Labour Convention, 1930*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO
[19] 106th Congress Public Law 386, *Victims of Trafficking and Violence Protection Act of 2000*, Oct. 28, 2000, http://www.state.gov/documents/organization/10492.pdf
[20] United Nations, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, September 7, 1956, No. 3822, Treaty Series , vol. 266, https://treaties.un.org/doc/Publication/UNTS/Volume%20266/v266.pdf
[21] United States Statutes at Large, 39th Cong., Sess. II., Chapter 187, p. 546

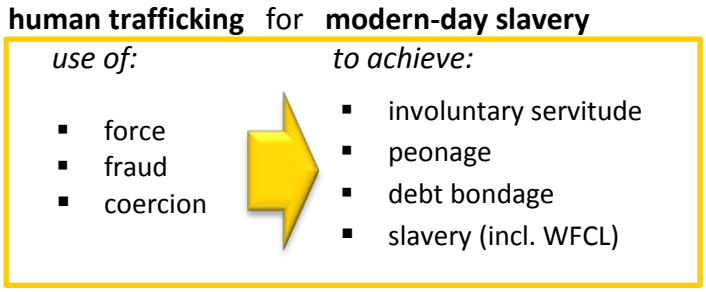
Worst Forms of Child Labor: A sub-category of modern-day slavery is reserved certain child labor practices known as the *worst forms of child labor* (WFCL). Given that children are not spared from "involuntary servitude, peonage, debt bondage, or slavery," special consideration for children is provided for e.g. in the 2000 amendment of the U.S. *Tariff Act* of 1930, explicitly clarifying that the term "forced labor or/and indentured labor" included "forced or indentured child labor."

ILO Convention 182 defines the *worst forms of child labour* (WFCL) as including: "(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;" as well as "(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."[22] Thus, the practice of WFCL is elevated as a special case of modern-day slavery.

Article 32 of the *EU Charter of Fundamental Rights* also guards against such practices, stipulating: "Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education."[23]

The graphical depiction of how these themes relate, based on the TPVA definition, may be illustrative (see *Figure 1*).

Figure 1:



C. Jurisdictional and legal scope

The phenomenon of human trafficking and modern-day slavery has been the subject of multiple recent U.S., E.U. and U.K. legislation. These laws either directly or indirectly target the supply chains of companies importing goods from countries where such practices are prevalent, or target contractors supplying goods or services to the government. Together, these laws

[22] ILO, *International Labour Organization Convention 182 - Worst Forms of Child Labour Convention*, 1999, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

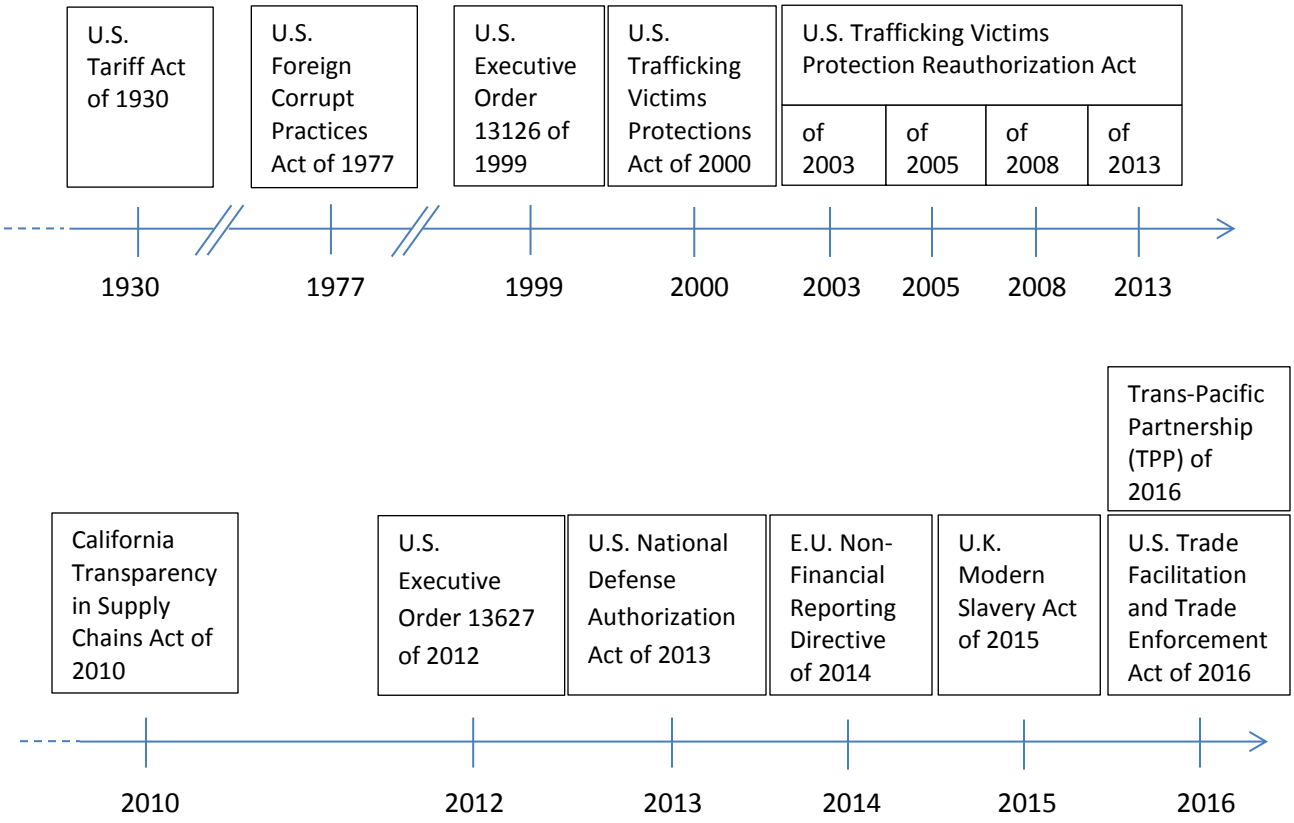
[23] European Convention, *EU Charter of Fundamental Rights, Title IV: Solidarity*, Article 32, http://fra.europa.eu/en/charterpedia/title/iv-solidarity

create significant new supply chain liabilities and responsibilities for affected companies. With these laws thematically in-scope, according to the methodology these law's jurisdiction is considered automatically in-scope. Thus, the jurisdictions of the U.S., E.U. and U.K. will be considered in this framework.

D. Liabilities under statutory laws

The laws to be considered either directly create some form of liability or social accountability for companies vis-à-vis human trafficking and modern-day slavery, or lay regulatory foundations. Both the statutory law landscape as well as its enforcement is rapidly evolving in the U.S., E.U. and U.K. *Figure 2* below illustrates the time sequence of the laws considered in this analysis.

Figure 2:



In chronological order of the legal precedent, let us explore the specific liability for companies according to the provisions in these fifteen statutory laws and orders.

1. U.S. *Tariff Act* of 1930

Oh the irony! The U.S. *Tariff Act* of 1930, which played a role in precipitating World War II, is now being used as an instrument to fight modern-day slavery. More infamously known as the *Smoot-Hawley Tariff Act*, the act significantly catalyzed tariff wars, further shrinking global economic trade after the Great Depression. Economic hardship in Germany, already strained under the Versailles Treaty, was further exacerbated, which aided National Socialism in gaining traction. While many provisions of the act were since repealed, one entitled "Convict-made goods; importation prohibited" (19 U.S. Code § 1307) survived.

Section 307 of the *Tariff Act* of 1930 prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labor – including prison labor and forced child labor. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s). Section 307 of the original act stipulated that:

> *All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.*[24]

The law was amended in 2000 to expand the scope explicitly including children: "'Forced labor', as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term 'forced labor or/and indentured labor' includes forced or indentured child labor."[25]

There remained, however, one exemption: the consumptive demand loophole. As long as the good, wares, articles or merchandise were not mined, produced or manufactured in sufficient quantities to meet the "*consumptive demands"* of the U.S. economy, the good could be imported regardless. Indeed, in the 86 years the law was in effect, it was used only 39 times. However, as we shall see, the days of this exemption were numbered.

---

[24] Tariff Act of 1930 (19 U.S. Code § 1307)

[25] 19 USC 1307, *Convict-made goods; importation prohibited*, June 17, 1930, ch. 497, title III, §307, 46 Stat. 689 ; Pub. L. 106–200, title IV, §411(a), May 18, 2000, 114 Stat. 298, http://uscode.house.gov/view.xhtml?req=(title:19%20section:1307%20edition:prelim)#sourcecredit

2. U.S. *Foreign Corrupt Practices Act* of 1977

Precipitated by the Watergate scandal and the realization what dangers unchecked slush funds presented, the U.S. *Foreign Corrupt Practices Act* ("FCPA") was signed into law in 1977. Ever since, the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) has applied the act to prosecute U.S. companies which make questionable or illegal payments in excess of $300 million to foreign government officials, politicians, and political parties. Successive amendments to the act have effected changes, notably Title V of the *Omnibus Trade and Competitiveness Act* of 1988 which amended the FCPA to introduce a "knowing" standard encompassing "conscious disregard" and "willful blindness" in order to establish thresholds for violations of the Act.

In their 2012 *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, which provides detailed information about the FCPA, its provisions, and enforcement, the DOJ and the SEC state that corruption "threatens stability and security by facilitating criminal activity within and across borders, such as the illegal trafficking of people, weapons, and drugs."[26] Thus, with the link between trafficking of people and corruption firmly in the cross-hairs of law enforcement, being implicated in a case of corruption and human trafficking may subject a company to FCPA liability. The *Guide* also outlines the hallmarks of an effective corporate compliance program (see *Table 1*), and the different types of civil and criminal resolutions available in the FCPA context.

Table 1:

These 10 hallmarks, as outlined in the DOJ's and SEC's FCPA *Resource Guide*, are:

1. Commitment from Senior Management and a Clearly Articulated Policy Against Corruption
2. Code of Conduct and Compliance Policies and Procedures
3. Oversight, Autonomy, and Resources
4. Risk Assessment
5. Training and Continuing Advice
6. Incentives and Disciplinary Measures
7. Third-Party Due Diligence and Payments
8. Confidential Reporting and Internal Investigation
9. Continuous Improvement: Periodic Testing and Review
10. Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Source: DOJ and SEC's FCPA Resource Guide [27]

An FBI International Corruption Unit representative, speaking at the October 2, 2015 ThomsonReuters Governance and Risk Seminar on the current enforcement of the FCPA, stated

[26] U.S. Department of Justice (Criminal Division) and the U.S. Securities and Exchange Commission (Enforcement Division), *FCPA – A Resource Guide to the U.S. Foreign Corrupt Practices Act*, November 14, 2012, https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf

[27] Ibid.

that the FBI: (1) had an increasing interest in human rights matters, (2) has already identified linkages between known instances of FCPA violations/concerns (corruption in "low integrity countries") and human trafficking/human rights abuses, (3) FCPA enforcement resources had grown dramatically in recent years, and (4) the FBI has unlimited global reach for FCPA compliance enforcement.[28]

3. U.S. *Executive Order 13126* of 1999

Executive Order (EO) 13126 of 1999 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor") seeks to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor notably through two means: (1) the EO requires the U.S. Department of Labor (DOL), in consultation and cooperation with the Departments of Homeland Security (DHS) and State (DOS), to publish a list of products (EO List), identified by their country of origin, "that those departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor."[29] (2) The Executive Order requires that federal contractors, who supply products on the EO list, "must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed."[30] Termination of the contract, suspension of the contractor; or debarment of the contractor for a period not to exceed 3 years are the remedies available for violations.[31] Since the EO's issuing, DOL accepts for review allegations of forced child labor in the production of goods. The minimum standard of evidence involves recent, credible, and appropriately corroborated information.[32]

4. U.S. *Trafficking Victims Protections Act* of 2000

The U.S. *Trafficking Victims Protection Act* ("TVPA")[33] of 2000 is considered to be the cornerstone of U.S. Federal legislation on human trafficking. Upon defining human trafficking, the TVPA establishes that the trafficking of humans into the United States and related offenses constitute federal crimes, and attaches severe penalties to them.[34] The act also established the *Office to Monitor and Combat Trafficking in Persons* and the *Interagency Task Force to Monitor*

---

[28] Heim, Lawrence. *Three More Letters to Add to Your Conflict Minerals Lexicon – FBI*. October 2, 2015, http://www.elmsustainability.com/three-more-letters-to-add-to-your-conflict-minerals-lexicon-fbi/

[29] Executive Order 13126 of June 12, 1999, *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*, Federal Register, Vol. 64, No. 115, June 16, 1999, https://www.gpo.gov/fdsys/pkg/FR-1999-06-16/pdf/99-15491.pdf

[30] Ibid.

[31] See 48 CFR 22.1504(b).

[32] U.S. DOL, *Frequently Asked Questions: Executive Order 13126 of 1999*, September 30, 2013 http://www.dol.gov/ilab/reports/pdf/2013eo_faq.pdf

[33] 106th Congress Public Law 386, *Victims of Trafficking and Violence Protection Act of 2000*, Oct. 28, 2000, http://www.state.gov/documents/organization/10492.pdf

[34] Technically speaking, the difference between human trafficking and human smuggling is that in the latter case the victim is moved across nation-state borders.

and Combat Trafficking. According to Congress, the law did allow the U.S. government to make "significant progress in investigating and prosecuting acts of trafficking and in responding to the needs of victims of trafficking in the United States and abroad."

The TVPA of 2000 further required the Secretary of State to submit to Congress a report on the status of human trafficking worldwide, including the United States. A notable feature of the Trafficking in Persons (TIP) reports is that they, pursuant to TVPA, classify countries according to three tiers, associating the third tier with countries which do not fully comply with the law's minimum standards and which are not making significant efforts to bring themselves into compliance. Countries on *Tier 3* may be subject to certain sanctions, whereby the U.S. government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance, even assistance channeled through the International Monetary Fund (IMF) and the World Bank. Since 2000, the U.S. Department of State (DOS) has published 15 TIP reports, the latest also honing in on human trafficking in the marketplace of jobs.

It is the opinion of the author that the country ratings in the State Department's TIP report, in conjunction with the U.S. Department of Labor's (DOL) *List of Goods Produced by Child Labor or Forced Labor*[35] and the DOL's *List of Products Produced by Forced or Indentured Child Labor*,[36] will likely be used by Customs officials to identify "*problem industries"* and help delineate what products pose a higher risk of child or forced labor when assessing petitions against importers in violation of the recently amended *Tariff Act of 1930* (see section *14. Trade Facilitation and Trade Enforcement Act of 2016*). The TVPA furthermore serves as a legislative foundation for further laws, such as the 2012 U.S. Executive Order 13627 *Strengthening Protections Against Trafficking in Persons in Federal Contracts* (see section *10. U.S. Executive Order 13627 of 2012*).

5. U.S. *Trafficking Victims Protection Reauthorization Act* of 2003

The *Trafficking Victims Protection Reauthorization Act* ("TVPRA") of 2003[37] and the TVPRA of 2005[38] stipulated that Federal contracts be terminated where a contractor or subcontractor engages in severe forms of trafficking in persons or uses forced labor in the performance of the grant, contract, or cooperative agreement. In addition, the TVPRA of 2003 highlighted the link between corruption and human trafficking: "(5) Corruption among foreign law enforcement

[35] DOL's *List of Goods* includes 353 items (as of April 15, 2016), from Indian cigarettes to Panamanian coffee to Egyptian limestone. ILAB's list of products can be found here: *www.dol.gov/ilab/reports/child-labor/list-of-goods/*

[36] Pursuant to Executive Order 13126, ILAB also "maintains a list of products (and their source countries) that it has a reasonable basis to believe are produced by forced or indentured child labor."
U.S. DOL, *List of Products Produced by Forced or Indentured Child Labor*. December 1, 2014,
http://www.dol.gov/ilab/reports/pdf/EO_Report_2014.pdf
The difference between the TVPRA List of Goods and the EO 13126 List of Products is explained in DOL's FAQ:
http://www.dol.gov/ilab/reports/pdf/2013eo_faq.pdf

[37] 108th Congress Public Law 193, *Trafficking Victims Protection Reauthorization Act of 2003*, U.S. Government Printing Office, http://www.gpo.gov/fdsys/pkg/PLAW-108publ193/html/PLAW-108publ193.htm

[38] 109th Congress Public Law 164, *Trafficking Victims Protection Reauthorization Act of 2005*, U.S. Government Printing Office, http://www.gpo.gov/fdsys/pkg/PLAW-109publ164/html/PLAW-109publ164.htm

authorities continues to undermine the efforts by governments to investigate, prosecute, and convict traffickers."[39]

6. U.S. *Trafficking Victims Protection Reauthorization Act* of 2005

The *Trafficking Victims Protection Reauthorization Act* (TVPRA) of 2005 charges DOL with issuing a list of products that DOL believes are being made or harvested by child or forced labor. While DOL is not given the mandate to investigate facilities abroad, the law does charge the agency of working with producers of the goods on the list to set standards to eliminate such practices, and to work with other U.S. government agencies to "ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States."[40]

7. U.S. *William Wilberforce Trafficking Victims Protection Reauthorization Act* of 2008

The *William Wilberforce Trafficking Victims Protection Reauthorization Act* of 2008 built on the previous trafficking acts, notably included a provision that establishes a two-year time limit for countries on *Tier 2 special watch list* before they are re-classified, as well as required DOL to provide a list of goods that it has reason to believe were made with forced labor or child labor.[41]

8. U.S. *Trafficking Victims Protection Reauthorization Act* of 2013

The TVPRA of 2013 (Title XII of the *Violence Against Women Reauthorization Act* of 2013) notably provides resources for services for survivors and imposes reporting and compliance requirements on Federal agencies, including the U.S. Department of Defense (DOD).[42] The law furthermore charges relevant officials of the U.S. government to "promote, build, and sustain partnerships between the United States Government and private entities, including foundations, universities, corporations, community-based organizations," … "to ensure that -- (1) United States citizens do not use any item, product, or material produced or extracted with the use and labor from victims of severe forms of trafficking; and (2) such entities do not contribute to trafficking in persons involving sexual exploitation."[43]

---

[39] 108th Congress Public Law 193, *Trafficking Victims Protection Reauthorization Act of 2003*, U.S. Government Printing Office, http://www.gpo.gov/fdsys/pkg/PLAW-108publ193/html/PLAW-108publ193.htm
[40] 109th Congress Public Law 109-164, *Trafficking Victims Protection Reauthorization Act of 2005*, https://www.congress.gov/bill/109th-congress/house-bill/972/text
[41] 110th Congress Public Law 110-457, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, https://www.congress.gov/bill/110th-congress/house-bill/7311/text
[42] 113th Congress Public Law 113-4, *Violence Against Women Reauthorization Act of 2013*, https://www.gpo.gov/fdsys/pkg/PLAW-113publ4/html/PLAW-113publ4.htm
[43] Ibid.

9. *California Transparency in Supply Chains Act* of 2010

Requiring large retail sellers and manufacturers doing business in the state of California to publicly disclose on their website efforts – specific to mandatory indicators – regarding measures to counter slavery and human trafficking in their supply chains, on October 18, 2010, Arnold Schwarzenegger signed Senate Bill 657 – the *California Transparency in Supply Chains Act* (CA-TISCA)[44] – into Californian law.

CA-TISCA requires companies with over US$ 100 million in gross sales to disclose on their website efforts taken (if any) to "eradicate slavery and human trafficking" from the supply chain. This unprecedented legislation, which went into effect January 1, 2012, was the first to apply disclosure law to the issue of trafficking and slavery in commercial supply chains. According to a January 2016 *The Guardian* article, the California Attorney General's office reported that more than 2,400 companies are subject to the law.[45]

To be very clear: the law does *not* mandate that retailers or manufacturers implement new measures to ensure their supply chains are free from slave labor. Whether or not a business takes affirmative action to safeguard its supply chain, the act only requires that businesses make the statutorily required disclosures. Under CA-TISCA, qualifying companies need to report on the *VACIT criteria* which, are: (a) human trafficking and slavery risk assessment and **V**erification, (b) **A**udits, (c) supplier **C**ertification of adherence to local laws, (d) **I**nternal accountability, and (e) **T**raining. *VACIT* for short. Careful scrutiny yields 8 points that a company, per CA-TISCA, must do or report, noted in *Table 2*.

The first macro and micro evaluation of individual company's CA-TISCA compliance and affirmative conduct was analyzed, on a company-by-company basis, in a recent report by Development International.[46] This benchmarking study, five years after the signing of the act, comprehensively evaluated individual companies on their disclosure compliance and their affirmative conduct vis-à-vis the 5 VACIT reporting criteria as per the law. 2,126 "potentially qualifying" companies were identified, of which 1,504 had relevant statements. Development International consequently evaluated all 1,504 statements. The evaluation revealed that, overall, the average disclosure compliance score was 60%. Yet only forty-one (41%) percent of companies were found to have a corporate disclosure score on or above the 70% mark.[47]

---

[44] Steinberg, Darrell, *California SB 657 - Transparency in Supply Chains Act of 2010*, California Civil Code, § 1714.43, http://www.state.gov/documents/organization/164934.pdf

[45] Messinger, Leah, *California law aimed at slowing human trafficking and forced labor should do more, report says*, The Guardian, January 22, 2016, http://www.theguardian.com/sustainable-business/2016/jan/22/california-anti-slavery-law-development-international-sun-maid-asia-human-trafficking

[46] Development International, *Corporate Compliance with the California Transparency in Supply Chains Act of 2010*, November 02, 2015, *http://media.wix.com/ugd/f0f801_0276d7c94ebe453f8648b91dd35898ba.pdf*

[47] Ibid.

In order to protect companies against frivolous lawsuits, the law stated that the California Attorney General has the authority to sue violators of the act.[48] Yet, to date, the Attorney General has not initiated any enforcement proceedings. However, in 2015 its office did send warning letters to multiple retailers and manufacturers asking them to demonstrate compliance.[49] It also issued a consumer alert, which provided an online form to report suspected violations.[50]

While a lawsuit cannot be brought by a third party solely on the basis of non-compliance or misrepresentation under CA-TISCA, lawsuits alleging violations of the California *Unfair Competition Law* ("UCL"),[51] the California *Legal Remedies Act* ("LRA"),[52] and the California *False Advertising Law* ("FAL")[53] based on a company disclosure made under CA-TISCA, can be brought.

Table 2:

The CA-TISCA reporting requirements are:

1. have a conspicuous and easily understood link on the business's homepage;
2.A. note whether company performed verification of product supply chains to evaluate and address risks of human trafficking and slavery;
2.B. note whether company had such verification performed by 3rd party;
3.A. note whether company conducted audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains;
3.B. note whether company's verification involved independent and unannounced audits;
4. note whether company requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
5. note whether company maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking;
6. note whether company provides employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Source: California SB 657 - Transparency in Supply Chains Act of 2010 [54]

[48] The California Attorney General "has the exclusive jurisdictional authority to bring an injunctive relief action for any alleged violation." Cal. Civ. Code, § 1714.43, subd. (d).
[49] For a copy of the template letter see: https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/letter.pdf
[50] California Department of Justice, *Attorney General Kamala D. Harris Issues Consumer Alert on California Transparency in Supply Chains Act,* April 13, 2015, https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-consumer-alert-california-transparency
[51] Cal. Bus. & Prof. Code § 17200 et seq.
[52] Cal. Civ. Code § 1750, et seq.
[53] Cal. Bus. & Prof. Code § 17500, et seq.
[54] Steinberg, Darrell, *California SB 657 - Transparency in Supply Chains Act of 2010*, California Civil Code, § 1714.43, http://www.state.gov/documents/organization/164934.pdf

In the 2015 lawsuit *Barber v. Nestlé USA, Inc., et al.,* the plaintiffs *inter alia* alleged that "certain representations made by Nestlé on its website are false or misleading."[55] In essence, the "thrust of Plaintiffs' misrepresentation allegations is that Nestlé makes a number of statements online which would persuade a reasonable consumer that forced labor is not present in Nestlé's supply chains."[56] According to the court order, "Plaintiffs specifically point to eight statements, sourced from four separate documents, which they believe mislead consumers as to the presence of forced labor in Nestlé's supply chain."[57]

United States District Judge Cormac J. Carney however dismissed the claims on December 9, 2015:

> *no reasonable consumer who reads the four documents Plaintiffs identify in context could conclude that Nestlé's suppliers comply with Nestlé's requirements in all circumstances. On the contrary, Nestlé seems to anticipate a certain level of non-compliance. It is not shy about identifying for consumers the rules and expectations for its suppliers, but it does not mislead them into thinking that its suppliers abide by those rules and meet those expectations in every instance.*[58]

Regardless of the outcome of this lawsuit, disclosing entities ought to take special care in crafting the language of their statement. A company may best shield itself from reputational risk and potential lawsuits by disclosing the required information, being sure that it does what it says it does, and amending its disclosure statement if it changes its practices.[59]

Particular attention should be paid to the "C" in VACIT, which involves direct suppliers certifying that "materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business."[60] If a reporting company answered this disclosure requirement in the affirmative, and if the source country had ratified pertinent ILO conventions including Convention 29,[61] Convention 105,[62] and

---

[55] United States District Court, Central District of California Southern Division*, MELANIE BARBER et al. v. NESTLÉ USA, INC. and NESTLÉ PURINA PETCARE CO, Order Granting Defendants' Motion to Dismiss*, Case No.: SACV 15-01364-CJC(AGRx), http://www.csrandthelaw.com/wp-content/uploads/sites/2/2016/01/Nestle-dismissal.pdf

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Squire Patton Boggs advocated just that in a "bootcamp" for companies regarding compliance with the CA-TISCA. They explained that the best way to: (1) protect brand value, (2) reduce the likelihood of high-profile and costly litigation, and (3) provide a response to criticisms about ethical sourcing efforts, was to develop and implement an integrated compliance program to address sourcing and supply chain risks.
See: Squire Patton Boggs, *30-Minute Supply Chain Disclosure Risk Boot Camp*, http://www.squirepattonboggs.com/insights/events/2015/09/30-minute-supply-chain-disclosure-risk-boot-camp%20

[60] Steinberg, Darrell, *California SB 657 - Transparency in Supply Chains Act of 2010*, California Civil Code, § 1714.43, http://www.state.gov/documents/organization/164934.pdf

[61] ILO, *International Labour Organization Convention 29 - Forced Labour Convention, 1930*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO

[62] ILO, *International Labour Organization Convention 105* - Abolition of Forced Labour Convention, 1957 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO

Convention 182,[63] the company would be holding suppliers accountable to these labor standards.

10. U.S. *Executive Order 13627* of 2012 &

11. U.S. *National Defense Authorization Act* of 2013

In 2012, federal procurement rules were strengthened in line with the U.S. government's zero-tolerance policy regarding human trafficking, affecting all U.S. government contractors and subcontractors. Issued by President Obama, Executive Order 13627 "Strengthening Protections Against Trafficking in Persons in Federal Contracts"[64] and the 2013 *National Defense Authorization Act*[65] instructed the Federal Acquisition Regulation (FAR) Council and DOD to amend its rules. The new FAR Council rule, effective March 2, 2015, charges contractors and subcontractors to act affirmatively to prevent human trafficking and forced labor in government contracts over $500,000 performed outside of the United States.[66]

If the estimated value of the contract is over $500,000, and any part of the contract is for supplies acquired outside the United States [other than commercially available off-the-shelf (COTS) items][67] or services to be performed outside the United States, the prospective contractors must certify before the contract may be awarded that: (1) it has implemented an anti-human trafficking compliance plan (see *Table 3*) and procedures to prevent human trafficking violations; and (2) has performed due diligence on its agents and subcontractors and taken remedial actions, if necessary. After receiving the contract, the contractor must then annually certify during the course of the contract that, to the best of its knowledge, neither it, nor any of its agents or subcontractors has engaged in human trafficking violations, or if such violations have been identified, they have been reported to the government contract officer and appropriate remedial actions have been taken.

This compliance plan is to be (1) provided to the contracting officer upon request, (2) posted at the workplace, and (3) posted on the contractor's or subcontractor's website (if one is maintained). The FAR Council rule however provides a disclosure exception not envisioned in the *Executive Order 13627*. The FAR Council rule states: "If posting at the workplace or on the

---

[63] ILO, *International Labour Organization Convention 182 - Worst Forms of Child Labour Convention*, 1999, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

[64] Administration of Barack Obama, *Executive Order 13627—Strengthening Protections Against Trafficking in Persons in Federal Contracts*, Federal Register Volume 77 No. 191, September 25, 2012, http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/html/2012-24374.htm

[65] 112th Congress Public Law 239, *Title XVII— Ending Trafficking in Government Contracting*, National Defense Authorization Act for Fiscal Year 2013, H.R. 4310, January 3, 2012, http://www.gpo.gov/fdsys/pkg/PLAW-112publ239/pdf/PLAW-112publ239.pdf

[66] Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), *Federal Acquisition Regulation; Ending Trafficking in Persons*, Final rule, January 22, 2015, Federal Register, Vol. 80, No. 19, January 29, 2015, https://www.gpo.gov/fdsys/pkg/FR-2015-01-29/pdf/2015-01524.pdf

[67] Exempt from these requirements are "contracts or subcontracts for commercially available off-the-shelf items" (COTS). See: Ibid.

Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing."

In the event of a possible violation,[68] mandatory reporting to the government in the case of any is prescribed; the onus to notify the authorities resting with the contractor. Furthermore, simply adopting an awareness program is not enough to mitigate contractor liability for a human trafficking violation. A compliance plan may be considered a mitigating factor only if the contractor (a) had the plan in place at the time of the violation; (b) was in compliance with the plan; and (c) took appropriate remedial actions to address the violation, including making reparations to victims.

Table 3:

FAR-specified contractor compliance plan
"(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

i. An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations.
ii. A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1–844–888–FREE and its email address at help@befree.org.
iii. A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance.
iv. A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
v. Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees."

Source: DOD, GSA, and NASA, Federal Acquisition Regulation; Ending Trafficking in Persons [69]

In the FAR rule, there is no safe harbor provision absolving prime contractors from compliance plan, certification, and flowdown responsibility, or even liability for acts performed by its subcontractors. As the rule clarifies: "Neither the statute nor the E.O. fully shield a prime contractor or create an affirmative defense. Culpability is determined on a case-by-case basis."

[68] "activities that would justify termination"
[69] Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), *Federal Acquisition Regulation; Ending Trafficking in Persons*, Final rule, January 22, 2015, Federal Register, Vol. 80, No. 19, January 29, 2015, https://www.gpo.gov/fdsys/pkg/FR-2015-01-29/pdf/2015-01524.pdf

Sections 1701-1708 of the *National Defense Authorization Act for Fiscal Year 2013* amends the *Trafficking Victims Protection Act* of 2000 such that governmental agencies have the ability to terminate, without penalty, any contract or grant with any organization or individual that engages in human trafficking and associated practices. It does not stop there. The *National Defense Authorization Act* ("NDAA") now requires contractors to include a condition in their contracts that authorizes the government to take punitive action against a contractor, subcontractor, their employees, or their agents if they engage in certain activities related to sex or labor trafficking. The NDAA also imposes mandatory disclosure obligations on contractors that receive "credible information" from "any source" that an employee has engaged in trafficking-related activities.

Table 4:

Defense Contract Management Agency, Afghanistan
Universal Examination Record Combating Trafficking In Persons

9-question sample checklist for auditing compliance with the Combating Trafficking in Persons policy:

1. "Has the contractor informed its employees of the United States Government's zero tolerance CTIPs policy, to include informing employees of the actions that will be taken against them for violations of this policy? FAR Para (c)(1)
2. Has the contractor informed the contracting officer of any information it receives (including from host country law enforcement) that alleges a contractor employee or subcontractor employee has engaged in conduct violating the CTIPs policy? FAR Para (d)(1)
3. Has the contractor informed the contracting officer of any actions taken against contractor employees, subcontractor's or subcontractor employees pursuant to this clause? FAR Para (d)(2)
4. Does the contractor knowingly destroy or posses [sic] any employee passport (or other immigration document) to prevent an employee's liberty to travel – in order to maintain the labor or services of that person? LOGCAP JCC-I/A Para (a)
5. Does the contractor only hold employee passports and other identification documents for the shortest period of time reasonable for administrative processing purposes? LOGCAP JCC-I/A Para (b)(1)
6. Does the contractor provide all employees with a signed copy of their employment contract, in English as well as the employee's native language – that defines the terms of their employment/ compensation? LOGCAP JCC-I/A Para (b)(2)
7. Does the contractor provide adequate living conditions (sanitation, health, safety, living space) for their employees? LOGCAP JCC-I/A Para (b)(4)
8. Does the contractor's Quality Control program incorporate checks of life support areas to ensure compliance with the requirements of this Trafficking in Persons Prohibition? LOGCAP JCC-I/A Para (b)(5)
9. Does the contractor advise the Contracting Officer if they learn of their employees violating the human trafficking and inhumane living conditions? LOGCAP JCC-I/A Para (c)"

Source: Defense Contract Management Agency, Afghanistan, Universal Examination Record Combating Trafficking In Persons [70]

[70] Defense Contract Management Agency, Afghanistan, *Universal Examination Record Combating Trafficking In Persons*, May 10, 2011.

The DOD rule, amending the Defense Acquisition Regulations System, further implements DOD's anti-trafficking policy and supplements government-wide changes. The Defense Federal Acquisition Regulation Supplement (DFARS) points to a 9-question sample checklist for auditing compliance with the Combating Trafficking in Persons policy applied, e.g. in Afghanistan[71] (see *Table 4*).

12. E.U. *Non-Financial Reporting Directive* of 2014

Adopted by the E.U. in 2014, the *EU Non-Financial Reporting Directive* of 2014 ("E.U. NFR Directive") amends Directive 2013/34/EU and applies to the laws, regulations and administrative provisions of its 28 Member States. This directive is squarely line with the trend of government-mandated Environmental, Social and Governance (ESG) disclosures. There are at least two salient rationales for this: One, by requiring mandatory ESG disclosures, lawmakers are enhancing symmetry of information concerning business practices in general, in this case specifically relevant to the subject human trafficking and modern-day slavery. Two European Parliament resolutions[72] indeed highlight that disclosure of non-financial information is "vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection." More specifically, "disclosure of non-financial information helps the measuring, monitoring and managing of undertakings' performance and their impact on society." Second, investors have the information in the first place to ask the question if it is relevant to materiality,[73] and may also weigh the information against other interests and goals. These same two resolutions underlined "the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust."[74]

The directive requires that "large undertakings" "include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters" (see *Table 5*). Also, if undertakings relied on national, union-based or international frameworks, they "shall specify which frameworks they have relied

---

[71] Ibid.

[72] European Parliament, *Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth* and *Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery,* February 6, 2013

[73] A common understanding of "materiality" was formulated by the SASB, using a judgement from the U.S. Supreme Court as a basis, defines information as material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." See TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976)

[74] Official Journal of the European Union, *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014*, L 330/1, November 15, 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN

upon." The following exemptions are, however, provided: in the case of (1) nonexistence of policy,[75] (2) commercial harm,[76] (2) subsidiary status,[77] and/or (4) a separate report.[78] The law thus generally adopts a "comply or explain" approach.

The Directive is due to be transposed into Member States' national laws by 6 December 2016, and affected companies will need to comply with the national rules from 2017 onwards. Denmark was, on 21 of May 2015, the first country to put the Directive into force by adopting an amendment to the Danish *Financial Statements Act*. Companies have to comply with the reporting requirements for accounting periods commencing on or after January 1st, 2017.

Given that it targets "large undertakings which are public-interest entities" (PIEs) exceeding "the average number of 500 employees during the financial year," the directive provisionally affects an estimated 6,000 European companies.

Table 5:

The statement of the "large undertaking," under the *EU NFR Directive,* "shall include":
"(a) a brief description of the undertaking's business model; (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; (c) the outcome of those policies; (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; (e) non-financial key performance indicators relevant to the particular business."

Source: E.U., Directive 2014/95/EU of the European Parliament and of the Council [79]

[75] "Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so."

[76] "Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity."

[77] "3. An undertaking which is a subsidiary undertaking shall be exempted from the obligation set out in paragraph 1 if that undertaking and its subsidiary undertakings are included in the consolidated management report or the separate report of another undertaking, drawn up in accordance with Article 29 and this Article."

[78] "4. Where an undertaking prepares a separate report corresponding to the same financial year whether or not relying on national, Union-based or international frameworks and covering the information required for the non-financial statement as provided for in paragraph 1, Member States may exempt that undertaking from the obligation to prepare the non-financial statement laid down in paragraph 1, provided that such separate report: (a) is published together with the management report in accordance with Article 30; or (b) is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertaking's website, and is referred to in the management report."

With respect to the formulation of specific KPIs, materiality is decisive. Chapter 2 stipulates that non-financial matters have to be disclosed to the "extent necessary for an understanding of the undertaking's development, performance, position, and impact of its activity." Paragraph 8 of the preamble to the Directive also specifies that information should be provided in "relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity." The European Commission is currently in the process of developing non-binding guidelines to further inform companies how to comply with these requirements.

13. U.K. *Modern Slavery Act* of 2015

The U.K. *Modern Slavery Act* ("MSA"), which received "Royal Assent" on 26 March 2015, comprehensively updates and sets new provisions for matters related to modern-day slavery and human trafficking in the United Kingdom.[80] The law is divided into seven parts,[81] the sixth of which requires certain businesses to release a statement concerning what actions they are undertaking – if any – to eliminate slavery and trafficking from their supply chains and their own business.

Given that the MSA applies to all commercial organizations that conduct business in the U.K., supply goods or services, and have a total worldwide annual turnover of £36m or more, 17,000 companies are prospectively affected.[82]

As with CA-TISCA and the E.U. NFR Directive, the provision does not require businesses to take any affirmative actions. But it does provide clear expectations as to what a business "may"

---

[79] Official Journal of the European Union, *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014*, L 330/1, November 15, 2014.

[80] The Stationery Office, *Modern Slavery Act 2015*, March 2015, http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf

[81] "Part 1 consolidates and clarifies the existing offences of slavery and human trafficking whilst increasing the maximum penalty for such offences. Part 2 provides for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order. Part 3 provides for new maritime enforcement powers in relation to ships. Part 4 establishes the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner. Part 5 introduces a number of measures focussed on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings. Part 6 requires certain businesses to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business. Part 7 requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement."
See: The Stationery Office, *Modern Slavery Act 2015 Explanatory Notes*, April 2015, http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpgaen_20150030_en.pdf

[82] Wallis, Andrew, Conversation with author on March 5, 2016.

include. The law rather intends to create a "race to the top" by fostering competition between companies to drive up standards, as articulated in the U.K. Home Office guidance.[83]

According to Andrew Wallis, an advocate of the law, the specific disclosure requirements are not fixed, such that the law would also include service provision into the scope of the disclosure law, and not to limit the law to focus on manufacturers and retailers as is the case with CA-TISCA.[84] The law's subsection 5 of Part 6 outlines six areas of information that a slavery and human trafficking statement may include (see *Table 6*).

Table 6:

U.K. Modern Slavery Act:
"(5) An organisation's slavery and human trafficking statement may include information about—

(a) the organisation's structure, its business and its supply chains;
(b) its policies in relation to slavery and human trafficking;
(c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
(d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
(e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
(f) the training about slavery and human trafficking available to its staff."

Source: The Stationery Office, Modern Slavery Act 2015 [85]

Unique to the U.K.'s MSA is that a company's statement must be approved and signed at a senior level within the business – which is modelled after the Companies Act 2006 and requires approval by the Board and a director's signature.[86] "This would ensure," according to the law's accompanying Explanatory Notes, "that these statements have appropriate support and approval from senior management, who are best placed to implement changes in the business."

Unlike the E.U. NFR Directive, the U.K.'s MSA does not make any exceptions regarding the requirement to publish the slavery and human trafficking statement on its website, except if

[83] UK Home Office, *Transparency in Supply Chains etc. – A practical guide,* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf
[84] Wallis, Andrew, Conversation with author on March 5, 2016.
[85] The Stationery Office, *Modern Slavery Act 2015*, March 2015, http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf
[86] See MSA's subsection 6.

the company does not have a website. And as with CA-TISCA, there must be a prominent link to the statement on the company's homepage.

Subsection 11 specifies the enforcement mechanism for the disclosure duty. The U.K.'s Secretary of State may bring civil proceedings in the High Court for an injunction requiring that organization to comply, in the event of compliance failure.

14. U.S. *Trade Facilitation and Trade Enforcement Act* of 2016

Eighty-six (86) years after its signing into law, one particular provision of the "Smoot-Hawley Tariff Act of 1930" has made a blazing comeback. The bi-partisan *Trade Facilitation and Trade Enforcement Act* amends the 1930 *Smoot-Hawley Tariff Act* (19 U.S.C. § 1307) by eliminating the "consumptive demand" exception.[87]

Furthermore, the Act charges the Commissioner to submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on compliance with section 307 of the *Tariff Act* of 1930 that includes: (1) the number of instances in which merchandise was denied entry pursuant to that section during the 1-year period preceding the submission of the report, (2) a description of the merchandise denied entry pursuant to that section, and (3) other information as the Commissioner considers appropriate with respect to monitoring and enforcing compliance with that section.

Which brings us to Title 19 (Custom Duties) CFR Section 12.42.[88] Customs and Border Protection (CBP) "encourages anyone with reason to believe that merchandise produced by forced labor is being, or is likely to be imported into the United States, to communicate his or her belief to any U.S. port director or the commissioner of CBP."[89] This may be accomplished by submitting a detailed formal petition to CBP. Any such petition must, however, completely satisfy the requirements of 19 C.F.R. § 12.42(b).[90] In short, anyone – a business, an agency, even a non-citizen – may submit to U.S. Customs (under the Department of Homeland Security) a petition showing "reasonably but not conclusively" that imports were made at least in part with forced labor.

---

[87] One entire sentence is struck: "The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States."

[88] U.S. Government Publishing Office, *Merchandise Produced By Convict, Forced, or Indentured Labor*, Title 19: Customs Duties, Part 12—Special Classes of Merchandise, http://www.ecfr.gov/cgi-bin/text-idx?SID=a4481bd333acdfc4f534f3d73993b732&mc=true&node=sg19.1.12_141.sg16&rgn=div7

[89] CBP, *Trade Facilitation and Trade Enforcement Act of 2015 -- Repeal of the Consumptive Demand Clause* http://www.cbp.gov/sites/default/files/assets/documents/2016-Mar/TFTEA_Consumptive%20Demand_FINAL.pdf

[90] The CBP states that a "next step" is to "Amend the regulations at 19 CFR § 12.42(b), which require certain information pertaining to consumptive demand, in order to comport with the updated law." Ibid.

Enter the federal Immigration and Customs Enforcement (ICE) agency. An investigation is launched and if the "Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported,"[91] the article(s) may be detained under §12.42(e) or (g).[92] In sum, the law empowers the Department of Homeland Security (DHS) to block – with a detention order – the importation of goods tied to forced labor.

The importer may challenge the petition by establishing "by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding."[93] Specifically, the importer would need to (1) submit a "certificate of origin,"[94] and (2) a statement addressing the source of the merchandise and of every component thereof, the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.[95] If the Commissioner finds that the merchandise is admissible, the merchandise is released. Conversely, the Commissioner of Customs advises the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter. Thus, if the petition succeeds, civil society can effect a targeted, government-enforced boycott of specific products tainted with labor abuses.

---

[91] 19 CFR 12.42 - *Findings of Commissioner of Customs*, 28 FR 14710, Dec. 31, 1963, as amended by T.D. 89-1, 53 FR 51253, Dec. 21, 1988; T.D. 00-52, 65 FR 45875, July 26, 2000, https://www.law.cornell.edu/cfr/text/19/12.42

[92] See also *Convict, Forced or Indentured Labor Product Importations* http://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations

[93] The full sentence reads: "(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specifed [sic] in the findings and has not been released from Customs custody before the date of publication of such finding in the *Federal Register* shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding."

[94] "(a) If an importer of any article detained under §12.42(e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in section 307, Tariff Act of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin, or its electronic equivalent, in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate, or its electronic equivalent, in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted."

[95] "(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement, or its electronic equivalent, of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components."

15. *Trans-Pacific Partnership* of 2016

After five years of negotiations, the *Trans-Pacific Partnership* (TPP)[96] was signed by 12 member nations on February 4, 2016 (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam). The trade zone covers 40 percent of the world economy. The TPP is now in a two-year ratification period during which at least six countries – that account for 85 percent of the combined gross domestic production of the 12 TPP nations – must approve the final text before the agreement is to be implemented.

In what is a case of legal adoption of international standards, one particularity of the TPP is that it invokes the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998)[97] as the basic labor standard. This ILO Declaration builds upon the eight core Conventions of the ILO, including Conventions 29, 105, 138 and 182.

The TPP however further hones in on specific undesirable practices. Article 19.3 states that each party should adopt and maintain in its statutes and regulations, and practices thereunder, "(b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour."[98]

The TPP does not stop there; it allows for targeted embargos of tainted goods: "each Party shall also discourage … the importation of goods … produced in whole or in part by forced or compulsory labour."[99] The TPP could be used by governments to *elevate* labor rights scrutiny of working conditions in fellow TPP member countries.

In the event of a dispute, the TPP prescribes direct bi-lateral "labor consultations" between the two parties[100] in which the "requesting party" shall "provide sufficient information to enable a

---

[96] TPP, Chapter 19 *Labour*, https://ustr.gov/sites/default/files/TPP-Final-Text-Labour.pdf

[97] International Labour Organization (ILO) Declaration, 'Declaration on Fundamental Principles and Rights at Work', 1998

[98] Chapter 19, Article 19.3: Labour Rights states that: "1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration[3,4]: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

[99] It states in Article 19.6: "Forced or Compulsory Labour" that "Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour."

[100] "2. A Party (requesting Party) may, at any time, request labour consultations with another Party (responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter."

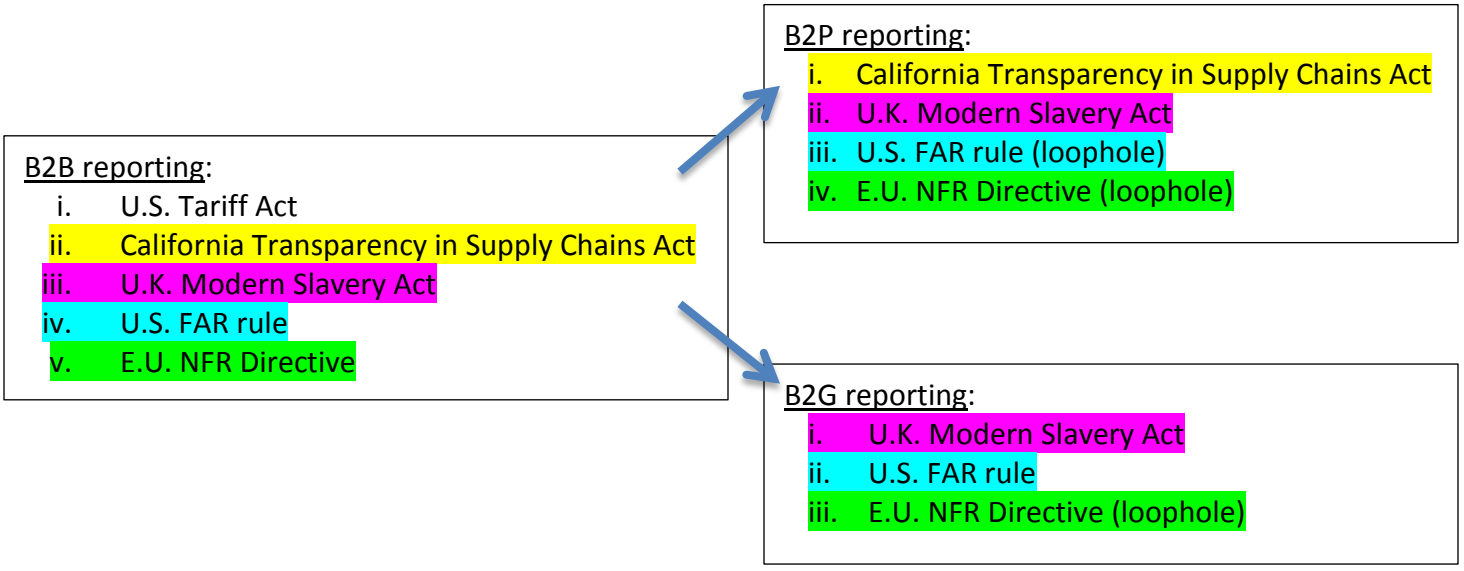
full examination of the matter."[101] The agreement further notes that: "To establish a violation of an obligation under Article 19.3.1 or Article 19.3.2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties."[102]

E. Communication requirements of mandatory disclosure laws

The new disclosure laws on the books of the State of California, the European Union, and the United Kingdom make it illegal to not publicly report certain practices related to human trafficking and modern-day slavery. Among these laws, CA-TISCA is the most prescriptive, requiring the disclosure of specific key performance indicators (KPIs), whereas the U.K.'s MSA only provides suggested KPIs. While in principle the FAR rule and the E.U. NFR Directive are to be made public, both however contain loopholes on the public reporting requirements through which a Boeing 787 could fly.

A precondition of reporting is knowledge of the subject matter. By extension, *it is no longer legal not to know*. Furthermore, Business-to-Public (B2P) and Business-to-Government (B2G) reporting requires Business-to-Business (B2B) reporting! Corporate knowledge of phenomena and mitigation systems would need to be in place for accurate reporting to occur in the first place.

Figure 3:



[101] "6. In labour consultations: (a) each consulting Party shall provide sufficient information to enable a full examination of the matter"
[102] Ibid.

F. Frameworks

1. Thematic liability framework

The liability framework shows the thematic overlap between the seven laws that have direct bearing on corporate legal liability vis-à-vis human trafficking and modern-day slavery (see *Figure 4*).

2. Legal compliance & affirmative conduct framework

Since there is no overarching international framework knitting these separate laws into one coherent unit, companies would need to piece together their own liability framework on a case-by-case basis. These 12 action points listed below however represent what a company, subject to all seven laws, would hypothetically need to implement and disclose – if it opted to adopt the affirmative minimum.

If subject to all seven laws in all three jurisdictions, full affirmative conduct on all liability items – whether a prescribed action or a disclosure criteria – would mean a company:

1. **Policy**:
   Issues and enforces a policy for "all forms of forced or compulsory labour" and for "the worst forms of child labour" (TPP, MSA, NFR);

2. **Risk assessment and verification**:
   "Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery", "conducted by a third party," also drawing on the country ratings in the State Department's Trafficking in Persons (TIP) report as well as USDOL's List of Goods Produced by Child Labor or Forced Labor (CA-TISCA, NFR, MSA);

3. **Due diligence**:
   Performs due diligence on its agents / subcontractors / suppliers (FAR, NFR, MSA);

4. **Contracting**:
   Issues contracts and orders according to new policy, also with clauses on consequences if found to be in violation of policy (FAR);

5. **Employee plans**:
   (a) Devises a recruitment and wage plan that "permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance" (FAR), and
   (b) Devises a "housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards" (FAR);

6. **Training**:
   Provides training: (a) of company's own "employees and management, who have direct responsibility for supply chain management" "on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products" (CA-TISCA), and (b) of contractor employees on "policy prohibiting trafficking-related activities," "the activities prohibited, and the actions that will be taken against the employee for violations" (FAR);

7. **Accountability standards and procedures**:
   "Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking" (CA-TISCA), and implements "Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees" (FAR, NFR);

8. **Supplier/provider conduct verification**:
   (a) conducts "audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains," through "independent and unannounced audits" (CA-TISCA)
   (b) engages product and service certification programs in order to be in a position to provide "satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding If sourcing from countries listed in the TIP report and for goods listed in the ILAB report" (Tariff Act);

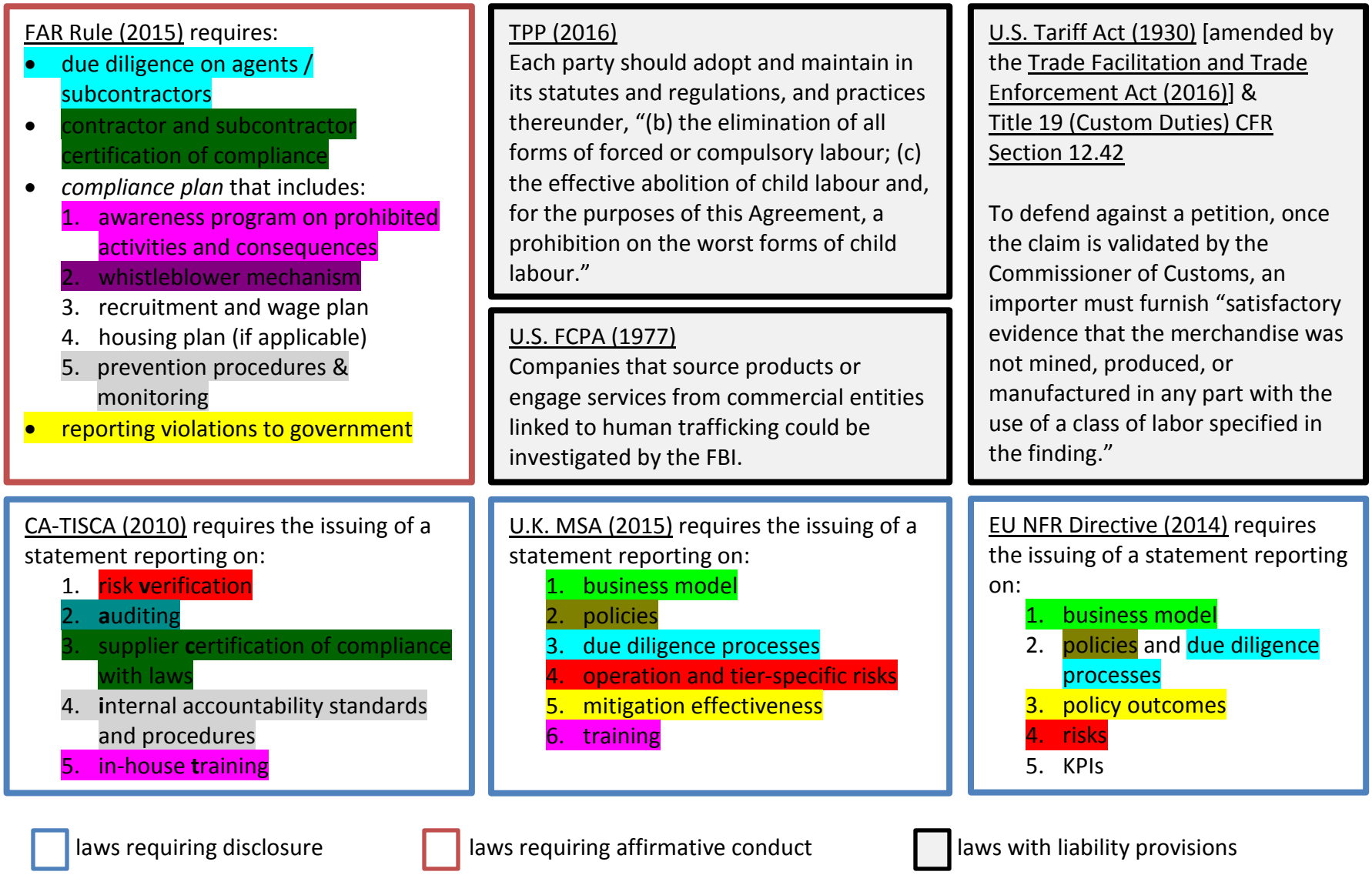
9. **Certification**:
   Requires supplier/provider to **certify (sign) compliance** with policy and non-engagement in prohibited conduct (FAR), and compliance with the "laws regarding slavery and human trafficking of the country or countries in which they are doing business" (CA-TISCA);

10. **Whistleblower mechanism**:
    Provides a **whistleblower mechanism**, i.e. a "process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons" (FAR);

11. **KPIs**:
    Selects and measures process and outcome indicator KPIs (NFR), including mitigation effectiveness (MSA) and policy outcomes (NFR);

12. **Reporting:**
    Reports to government on violations (FAR), and/or to their customers on all of the above (points 1-12), and/or to public on required disclosure items as applicable (CA-TISCA, NFR, MSA).

Figure 4: Liability framework



Acronyms

B2B	Business-to-Business
B2G	Business-to-Government
B2P	Business-to-Public
CA-TISCA	California Transparency in Supply Chains Act
CBP	Customs and Border Protection
CFR	Committee of the Federal Register
COTS	Commercial off-the-shelf
DFARS	Defense Federal Acquisition Regulation Supplement
DHS	U.S. Department of Homeland Security
DOD	U.S. Department of Defense
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
DOS	U.S. Department of State
EO	Executive Order
ESG	Environmental, Social and Governance
E.U.	European Union
FAL	False Advertising Law (California)
FAR	Federal Acquisition Regulation
FCPA	Foreign Corrupt Practices Act
ICE	Immigration and Customs Enforcement
ILO	International Labour Organization
IMF	International Monetary Fund
KPIs	Key Performance Indicators
KYC	Know-Your-Customer
KYS	Know-Your-Source
LRA	Legal Remedies Act (California)
MSA	U.K. Modern Slavery Act
NDAA	The National Defense Authorization Act
NFR	Non-Financial Reporting Directive (E.U.)
PIE	Public-Interest Entity
SEC	Securities and Exchange Commission
TIP	Trafficking in Persons
TPP	Trans-Pacific Partnership
TVPA	Trafficking and Violence Protections Act
TVPRA	Trafficking Victims Protection Reauthorization Act
UCL	Unfair Competition Law (California)
UN	United Nations
VACIT	risk **V**erification, **A**udits, supplier **C**ertification, **I**nternal accountability, and **T**raining
WFCL	Worst Forms of Child Labor