

**Improving Outcomes for Workers in International Supply Chains
Using Home-State Legislation**

Hubert Lang

May 10, 2018

Policy Analysis Capstone, Harvard Extension School

Executive Summary	3
Policy Topic	4
Problem Framing	5
Background of the Problem	7
Forced Labor & Human Trafficking Globally	7
The U.S. Economy's Connection to Forced Labor	8
Legislative History	8
US Legal Framework	8
TVPA	9
Federal Acquisitions Guidelines	9
Preferential Trade Agreements	10
Tariff Act of 1930	10
Mandatory Corporate Disclosures	11
Dodd-Frank	11
California Transparency in Supply Chains Act	12
Methodology	13
Considered Alternatives	15
State Regulation of CSR Practices	15
Certification of forced-labor free supply chains	17
Corporate Criminal Liability	20
Disclosure of CSR practices	23
Targeted Disclosures	28
Policy Recommendations	31
Supplier Lists	32
Disclosure of corporate practice	33
Administration	34
Conclusions	35
Works Cited	36

Executive Summary

The globalized labor market that is the engine of the international economy has obscured the plight of the estimated 16 million women, men, and children that toil in conditions likened to modern day slavery while building products proudly sold by prominent multinational brands. The rapid rise of a globalized economy has resulted in an international labor system that is incapable of ensuring basic human rights for the people who manufacture products that are the cornerstone of American consumerism, by U.S.-based brands that are a point of national pride. Despite a strong stated commitment to attacking child labor, human trafficking, and various forms of abuse likened to contemporary slavery as a global scourge, the U.S. has taken few steps to ensure that products marketed and sold to American consumers come from labor that is free and fair. As the most powerful economy in the world, and a standard-bearer for human rights for the better part of the 20th century, the United States should commit to holding companies that do business within its borders to a basic standard of human rights, allow consumers to make informed choices about the labor behind their products, and promote decent, free, and fair working conditions for people worldwide. In pursuit of this goal this document calls for transparency from companies doing business within the United States, fully disclosing the suppliers used in the manufacturing of their products as well as all corporate practices aimed at preventing, identifying, or eliminating forced labor within their supply chains.

In the absence of a consistent governance regime for international labor, the U.S. is limited in how it can directly affect the working practices of foreign countries and the suppliers operating there. The U.S. remains committed to a variety of organizations that pursue positive change, including the International Labour Organization, the United Nations Guiding Principles on Business and Human Rights, countless international development projects, and a number of direct partnerships and trade deals intended to increase developing nations capacity and commitment to labor protections. All of these efforts have value, and should be continued. This paper calls on the United States to recognize the enormous power that multinational brands that rely on the United States as a market for its goods have in setting labor standards in the countries in which they operate, and to promote home-state legislation that would encourage these companies to collaborate with all the stakeholders in their supply chain in a way that would offer material improvements in working conditions while eliminating the worst forms of trafficking and child labor. Disclosing the names and addresses of suppliers:

- Allows consumers to see where companies source their products
- Gives activist organizations and collaborative standard setting initiatives such as the ILO access to important data about global manufacturing
- Allows workers within the supply chain to know what products they are contributing to, giving them a valuable voice in the standard-setting process

In addition, mandating disclosure of basic CSR initiatives and sustainable labor practices allows consumers to know how seriously companies take their obligation to not contribute to the worst forms of trafficking in the world. By using the power of government to shrink the information asymmetry between

the various stakeholders in this way, this proposal hopes to contribute tangible improvements to the lives of millions of workers worldwide.

Policy Topic

Instances of child labor, human trafficking, and slavery are known to exist in different industry sectors in countries around the globe. International supply chains are sprawling and complex, and consumers have a right to know if they are purchasing products that may violate fundamental norms of ethical behavior and a vested interest in seeing material improvements to the outcomes for workers within these systems.

This policy is an effort to increase transparency about labor practices within international supply chains for products sold in the United States. Companies with annual global revenue in excess of \$100 million that do business in the US are required to issue an annual disclosure of the names and addresses of all first-tier suppliers and factories that are located outside of the jurisdiction of the US. Additionally companies will be required to make public their supplier code of conduct as well as an annual statement detailing what efforts have been made to ensure that local labor standards have and are being met across their supply chains, specifically efforts to eliminate human trafficking, child labor, and other forms of forced or coerced labor. In addition to making these disclosures available on their own web sites, the federal government will maintain a register of every annual disclosure document to enable access for consumer groups, NGOs, activists, and industry organizations.

Problem Framing

The globalization of the world economy has transformed the ways in which products are created, manufactured, and ultimately delivered into our lives. Companies seeking to lower manufacturing costs have migrated to overseas markets, creating vast, complex product supply chains while governance structures have struggled to adapt and keep pace. A lack of oversight and transparency into these supply chains has allowed forced labor, human trafficking, child labor, and other violations of basic human rights to exist and persist in products that are bought and sold every day in America. Over 20 million men, women, and children worldwide are estimated to be victims of human trafficking, representing a wide array of industries.¹ The prevalence of forced labor in manufacturing states around the globe means that products sold in America are inevitably touched by slave labor; the opacity of global supply chains makes it nearly impossible for consumers to identify and avoid products that violate basic, fundamental standards of human rights.

The federal government acknowledges the existence of modern day slavery and has moved to eliminate the practice. The 2000 Trafficking Victims Protection Act requires the government to gauge the prevalence of trafficking in other countries as well as preventive efforts undertaken by local authorities.² Section 1502 of the Dodd-Frank Act established a “due diligence,” requirement for any company purchasing resources mined in certain areas at a high risk for forced labor.³ A 2015 executive order, “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” acknowledged the responsibility of the government to hold any government contractor (or their subcontractor) to a standard that seeks to eliminate human trafficking from their supply chain.⁴ Additionally, the federal government attempts to influence labor practices in foreign markets through trade deal negotiations and the annual Trafficking in Persons report.⁵ As product supply chains span the entire globe, the lack of any oversight authority severely limits the ability of the US government to directly impact any trafficking or forced labor that takes place outside of its own borders.

In the absence of a global governance structure that can reliably ensure that products brought to US markets meet basic standards of human rights, home-state regulation on the companies with direct

¹ “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains: Research on Risk in 43 Commodities Worldwide.” Verité, 2017.

<https://www.verite.org/wp-content/uploads/2017/04/EO-and-Commodity-Reports-Combined-FINAL-2017.pdf>.

² “Trafficking Victims Protection Act,” Fight Slavery Now.

<https://fightslaverynow.org/why-fight-there-are-27-million-reasons/the-law-and-trafficking/trafficking-victims-protection-act/trafficking-victims-protection-act/>.

³ “Implementation of US Dodd-Frank Act rule on conflict minerals: Commentaries, guidance, company actions,” Business & Human Rights Resource Centre.

<https://business-humanrights.org/en/conflict-peace/conflict-minerals/implementation-of-us-dodd-frank-act-rule-on-conflict-minerals-commentaries-guidance-company-actions>

⁴ “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains: Research on Risk in 43 Commodities Worldwide.” Verité, 2017.

<https://www.verite.org/wp-content/uploads/2017/04/EO-and-Commodity-Reports-Combined-FINAL-2017.pdf>.

⁵ 2017 *Trafficking in Persons Report*, U.S. Department of State. June 2017. <https://www.state.gov/j/tip/rls/tiprpt>.

relationships to these foreign suppliers is one mechanism through which consumers, advocates, and companies might weigh the risks of slavery being present in their products. Building on the established federal effort to uncover and eliminate trafficking, the proposed policy is an effort to increase transparency about labor practices within international supply chains for products sold in the United States. By mandating these disclosures, this policy aims to facilitate collaboration between consumers, workers, activist organizations, and companies themselves by resolving a crucial information asymmetry that allows substandard labor to persist in the shadows of the global economy.

This mandatory disclosure of supplier information serves a variety of functions in the interest of consumers, the federal government, human rights advocates, and the advancement of fair global product markets. Supplier transparency gives consumers and labor advocates alike information vital to ensuring ethical consumption and effective advocacy. By making the relationship between brands and suppliers public, companies that already adhere to a high standard in their supplier code of conduct will no longer be at a disadvantage to those who take advantage of blind spots allowed by globalized supply chains. Additionally, mandatory information sharing will facilitate the creation and growth of multi-stakeholder initiatives around supplier audits, labor-management relationships, and other arrangements aimed at improving the relationships between brands and suppliers

Background of the Problem

Forced Labor & Human Trafficking Globally

In both US legal parlance and international law, forced labor is considered a type of human trafficking and is widely recognized as a contemporary manifestation of slavery. US and UN legal definitions of human trafficking can include forced labor, child labor, commercial sexual exploitation, forced marriage, state-imposed labor, and a range of other forms of involuntary servitude. Of the total International Labour Organization estimate of 40 million global victims of human trafficking, 16 million are believed to be exploited through private actors in otherwise legitimate industries, with women and girls disproportionately representing 57% of this total.⁶ The forms this exploitation can take are varied, ranging from the use or threat of physical violence, fraudulent recruitment practices, child labor, debt bondage, the manipulation of the legal system (i.e. through withholding necessary travel/work documents from migrant workers) and a variety of other coercive tactics.⁷ Though these forms of exploitation take place around the world and across industries, certain regions, sectors, and types of products represent a disproportionate chunk of the estimated \$51.2 billion value of stolen labor worldwide.⁸ Though the global economy is vast and varied, specific risk factors are present that increase the likelihood of exploitation and forced labor. A report sponsored by the US State Department identified six “key risk factors” for the potential of human trafficking within global product supply chains, including especially difficult or dangerous industries, a low-skilled or easily replaceable workforce, a high number of migrant workers, the use of labor recruiters to secure workers, and product supply chains that are excessively long, complex, and opaque.⁹ A final category of risk factor specific to the country of production focuses on the willingness and ability of the government to promote and defend the rights of workers within their borders.

⁶ “Global Estimates of Modern Slavery.” International Labour Organization. 2017. <http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm> (The remaining population of trafficking victims are those in situations of forced marriage, commercial sexual exploitation, and state-imposed forced labor, and outside the scope of this policy proposal.)

⁷ *What is Modern Slavery?* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons. <https://www.state.gov/j/tip/what/index.htm>

⁸ “Profits and Poverty: The Economics of Forced Labour.” International Labour Organization. May 20, 2014. http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm

⁹ “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains: Research on Risk in 43 Commodities Worldwide.” Verité, 2017. <https://www.verite.org/wp-content/uploads/2017/04/EO-and-Commodity-Reports-Combined-FINAL-2017.pdf>.

Governance Gap

Forms of forced labor and trafficking are especially abundant in the absence of strong legal protections for workers. The movement into many developing countries in search of cheaper inputs is the driving force that has connected these forms of exploitation to global product supply chains. The pressure that multinational companies are able to exert over their suppliers in these situations results from a power imbalance, with demands on pricing, turnaround speed, and the ultimate leverage - the ability to move their operations to a different market - contributing to an environment of extreme cost-cutting that contributes to unsafe conditions and worker exploitation.¹⁰ In the absence of robust domestic legal protections international efforts in the form of trade agreements, multilateral initiatives (primarily through the UN and ILO), and other campaigns have sought to pressure developing countries to meet minimum standards for workers or develop “supranational” labor laws that would apply across state boundaries.¹¹ These efforts have in large part been resisted, often by developing countries perceiving forms of trade protectionism and an unfair projection of values from their wealthier counterparts.¹² In the absence of legal protections a number of voluntary initiatives, nongovernmental organizations, organized labor activists and other efforts that seek to bridge the governance gap that leaves many workers exposed and vulnerable has developed over the last several decades.¹³

The U.S. Economy’s Connection to Forced Labor

The massive scope of US imports combined with the prevalence of forced labor in product supply chains makes it a certainty that goods imported into the US are tainted by the worst forms of exploitation present in the global economy. As the world’s largest economy the United States annually imports trillions of dollars in goods produced by people in every corner of the globe. Along with the European Union and China, the US is consistently one of the top three importers globally, with total import of goods reaching a value of \$2.4 trillion in 2017.¹⁴ This number reflects nearly every industry and type of good, including energy, telecommunications equipment, food, raw material and mineral inputs, apparel, textiles, and a whole host of other products.¹⁵ The range of capital and consumer goods imported into the United States every year coincides with a number of industries and countries that are at high risk of forced labor, child labor, or other types of exploitation. Telecommunications equipment, consumer electronics, textiles and apparel, agriculture, fishing, and a number of other goods that are prominently represented in US imports are all at high risk of containing inputs created through forced or coercive labor practice. Even goods manufactured and sold within the US are not free of forced labor; with capital goods representing 27% of

¹⁰ Kishanthi Parella. “Outsourcing Corporate Accountability.” *Washington Law Review*. October 2014. <https://digital.law.washington.edu/dspace-law/handle/1773.1/1394>. p. 807.

¹¹ David J Doorey. “Who Made that?: Influencing Foreign Labour Practices Through Reflexive Domestic Disclosure Regulation.” *Osgoode Hall Law Journal*, Vol. 43, p. 353, 2005.: <https://ssrn.com/abstract=878671>. 360.

¹² Doorey, *Who Made That?*, 361.

¹³ O’Rourke, Dara. “Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?” *World Development*, vol. 34, no. 5. May 2006. <https://linkinghub.elsevier.com/retrieve/pii/S0305750X06000295>.

¹⁴ *U.S. International Trade in Goods and Services*. U.S. Census Bureau. April 5, 2018. https://www.census.gov/foreign-trade/Press-Release/current_press_release/exh1.pdf.

¹⁵ *Ibid.*

total inputs in 2017, the raw inputs that constitute many American-made consumer goods come from areas at high risk of trafficked labor.¹⁶ As the global economy has undergone massive changes since the latter half of the 20th century the American legal system has been slow to adapt to increasingly complex systems of international trade. Though the U.S. has long had explicit prohibitions on coercive forms of labor within its territory it is only around the turn of the century that significant attention began to be paid to the plight of people forced into work around the world.

Legislative History

US Legal Framework

The United States officially recognizes the global prevalence of human trafficking and forced labor as a distinct policy issue worthy of political action. Though laws related to forced labor, child labor, and other issues related to human trafficking date back as far as the 19th century the majority of legislation focused on forced labor in an international context is relatively recent, reflecting the changing dynamics of a globalized economy. While the US recognizes a moral and legal obligation to address the issue, forced labor that takes place outside the United States is very difficult to impact through domestic legislation. In addition to being signatories to a number of international treaties and conventions related to forced labor the US attempts to influence foreign governments to enforce basic standards of human rights primarily through trade agreements and diplomatic pressure through the State Department's annual ranking of individual countries' efforts to combat trafficking. Import restrictions on suspect goods and corporate disclosure rules are far less common in the US anti-trafficking framework, though recent years have seen rising interest in the attention paid to such tools.

TVPA

The Victims of Trafficking and Violence Protection Act of 2000 is the landmark piece of legislation around which US anti-trafficking efforts are centered. The first section of the bill, The Trafficking Victims Protection Act (TVPA), aims "To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude," and explicitly refers to trafficking as "a contemporary manifestation of slavery." Though the bill is crafted to address human trafficking as it is broadly defined (including sex trafficking), the TVPA clearly defines forced labor as a distinct phenomenon both domestically and internationally. To address the international dimension of forced labor the TVPA focuses on the obligation of foreign governments to meet minimum standards of protection, prevention, and prosecution, as well as making "serious and sustained efforts to eliminate severe forms of trafficking in persons." To this end the TVPA authorized the creation of the Office to Monitor and Combat Trafficking in Persons

¹⁶ Kimberly Amadeo. "U.S. Imports and Exports: Components and Statistics." *The Balance*, March 3, 2018. <https://www.thebalance.com/u-s-imports-and-exports-components-and-statistics-3306270>

within the State Department, tasking the agency with the responsibility to report on the efforts of foreign governments to meet certain anti-trafficking criteria. The State Department's annual Trafficking in Persons Report explores what actions individual governments around the world undertake to address human trafficking, assigning one of four tiered rankings to countries in accordance with their efforts. A ranking of Tier 3 is the lowest possible score, indicating a lack of formal legal protections against trafficking and no significant effort on behalf of the government to improve. Countries found to qualify for this lowest possible ranking are subject to a variety of monetary and diplomatic penalties from the US government, though the objectivity of the reporting system has been called into question.¹⁷ Congress has reauthorized the TVPA on five separate occasions since 2000, reaffirming the US commitment to prevent trafficking and forced labor, punish those that exploit victims, and extend legal protection to victims. The precedent and legal terminology established by the TVPA has also served as an important foundation to recent legislation to combat forced labor.

Federal Acquisitions Guidelines

The Federal Government's commitment to combating forced labor and trafficking outlined in the TVPA has influenced the creation of enhanced guidelines and increased scrutiny for companies taking on federal contracts. The *Strengthening Protections Against Trafficking in Persons in Federal Contracts* was an Executive Order issued by President Obama in 2012 designed to reduce the likelihood that federal dollars would support the practice of forced labor. Recognizing that "As the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons," the order issued a number of standards to be applied to any company holding or seeking to acquire a contract with any federal agency.¹⁸ These changes in Federal Acquisition Regulations specifically prohibited a number of behaviors linked to forced labor and trafficking, as well as requiring companies to develop and disclose compliance plans for themselves as well as any subcontractors.¹⁹ Title XVII of the *National Defense Authorization Act for Fiscal Year 2013*, signed into law only months later, reinforced much of the guidance issued in the executive order through legislative action.²⁰ An additional provision of the law establishes criminal liability for companies or individuals that deal in forced or trafficked labor in the course of executing a federal contract.²¹

¹⁷ Jason Szep, Patricia Zengerle, and Matt Spetalnick. "Exclusive - U.S. upgrades Malaysia in annual human trafficking report: sources." *Reuters*, July 9, 2015. <https://www.reuters.com/article/uk-usa-malaysia-trafficking-exclusive/exclusive-u-s-upgrades-malaysia-in-annual-human-trafficking-report-sources-idUKKCN0PJ00D20150709>. (Most recently, the decision to upgrade Malaysia's ranking to Tier 2 was decried by critics as lacking any tangible evidence of improvement in that country's anti-trafficking efforts, and instead a politically-motivated maneuver to clear the way for participation in the Trans-Pacific Partnership that was at the time being negotiated.)

¹⁸ Exec. Order No. 13627, 3 C.F.R. (2012).

¹⁹ Exec. Order No. 13627, 3 C.F.R. (2012).

²⁰ Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239)

²¹ Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239)

Preferential Trade Agreements

While the TVPA is a comprehensive contemporary framework aimed at global human trafficking issues, the United States has a long history of attempting to influence human rights and worker protection regimes abroad. Generally these efforts have focused on pressuring foreign governments to modify the relevant legal frameworks and protections to more closely align with U.S. values. Though human rights promotion had been a staple of American diplomatic and international efforts throughout the Cold War, the first Preferential Trade Agreement (PTA) linking labor rights to trade considerations came in 1994 with a NAFTA side agreement that included specific worker protections for all signatories.²² The 2002 *US Trade Act* made the linkage of PTA with workers' rights promotions a legal requirement until the provision was allowed to lapse in 2007.²³ Though the use of trade agreements to promote human rights is often unpopular with prominent business and political voices in the US as well as trading countries, wedding PTAs with human rights requirements has been shown to have some limited impact on worker protections.²⁴

Tariff Act of 1930

Import restrictions are a different mechanism by which the government attempts to reduce the use of forced labor in imported products. The *Smoot-Hawley Tariff Act of 1930* expanded an existing ban on imported goods produced with foreign prison labor to restrict the import of any good that was the result of forced or indentured labor.²⁵ Aimed directly at the imported products themselves, the 1930 Act is significant in that it is an early example of the government exercising its authority to regulate commerce in order to protect American consumers from using products tainted by forced labor rather than pressuring source countries to improve their regulatory capacity. More importantly, a broad exemption contained in the original Act, for goods “not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States,”²⁶ commonly referred to as the consumptive demand exemption, was repealed by the *Trade Facilitation and Trade Enforcement Act of 2015*.²⁷ US Customs and Border Protection is thus required to hold and investigate any import item suspected of being the product of forced labor, with regulations clearly stating that any person or actor may submit relevant information to CBP officials.²⁸

²² Emilie M. Hafner-Burton, *Forced to be Good* (Cornell University Press, 2009) page 52.

²³ *Ibid.*, 49.

²⁴ *Ibid.*, 49.

²⁵ *Ibid.*, 52.

²⁶ *Tariff Act of 1930, U.S.C. 19*

²⁷ *Trade Facilitation and Trade Enforcement Act of 2015*, (Public Law 114-125).

²⁸ *Forced Labor*. U.S. Customs and Border Protection.

<https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>.

Mandatory Corporate Disclosures

A different form of legislative action on forced labor has recently emerged as the limitations of traditional methods of governance have become clear due to the size, scope, and complexity of global supply chains. While diplomatic pressure on foreign governments to increase their anti-trafficking regimes remains a key part of U.S. strategy, the ability to detect and enforce such standards is limited by issues of jurisdiction and sovereignty. Recognition of these complexities inherent in issues of international governance has led to mandatory reporting and disclosure regulations aimed at U.S. companies whose international operations may contain forced labor within their supply chains.

Dodd-Frank

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* contained two important provisions regarding corporate disclosures. Section 1502 created requirements around minerals used in a variety of electronics that were commonly mined in conflict areas of the Democratic Republic of the Congo. The law explicitly linked the purchase of these minerals with slave labor and ongoing violence in the region and created robust requirements for companies to conduct due diligence on their mineral sourcing and certify whether their products qualified as “conflict-free.”²⁹ Section 1504 of Dodd-Frank created mandatory reporting requirements for companies engaged in “commercial development of oil, natural gas, or minerals,” in foreign countries and any payments made to foreign governments in the process of securing extraction rights.³⁰ Sections 1502 and 1504 were both rescinded in 2017 in controversial decisions. An appeals court ruling remanding 1502 back to the SEC for reconsideration caused the Republican Chair of the Commission to suspend the rule entirely,³¹ while 1504 was overturned by an entirely party-line vote signed into law by President Trump in February 2017.³²

California Transparency in Supply Chains Act

In 2010 the legislature of the state of California passed the California Transparency in Supply Chains Act. The first of its kind in the United States, the Act requires retail sellers and manufacturers who do business in the state to disclose to the California Attorney General’s office a range of actions taken internally to evaluate, detect, and eliminate forced labor and human trafficking within their product supply chains. The CTSCA explicitly acknowledges the challenges and complexities inherent in governing international supply chains and draws a connection to the interest of consumers to have access to information to

²⁹ *Dodd-Frank Wall Street Reform and Consumer Protection Act, sec. 1502* (P.L. 111-203).

³⁰ *Disclosure of Payments By Resource Extraction Issuers*. U.S. Securities and Exchange Commission. <https://www.sec.gov/info/smallbus/secg/resource-extraction-small-entity-compliance-guide.htm>.

³¹ Sarah N. Lynch, “SEC halts some enforcement of conflict minerals rule amid review,” *Reuters*, April 7, 2017. <https://www.reuters.com/article/us-usa-sec-conflictminerals/sec-halts-some-enforcement-of-conflict-minerals-rule-a-mid-review-idUSKBN1792WX?cid=12232>.

³² Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Securities and Exchange Commission relating to “Disclosure of Payments by Resource Extraction Issuers.” *H.J.Res. 41*. (P.L. 115-4).

“distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking.”³³ As a measure aimed at consumer information the CTSCA does not create anti-trafficking requirements to which companies must adhere. Rather, the Act outlines five areas of best practice in supply chain management (verification, audits, certification, internal accountability, and training) and requires companies to disclose to what extent, if at all, they engage in these practices within their supply chains.³⁴ Though technical compliance with the law could come from a disclosure of no anti-trafficking efforts whatsoever, companies both with and without established sourcing guidelines have demonstrated sensitivity to the potential negative fallout from action deemed insufficient by a newly-informed consumer base.³⁵

³³ *The California Transparency in Supply Chains Act*. State of California, Department of Justice. <https://oag.ca.gov/SB657>.

³⁴ *The California Transparency in Supply Chains Act*. State of California, Department of Justice. <https://oag.ca.gov/SB657>.

³⁵ Marieke Koekkoek, Axel Marx, & Jan Wouters. “Monitoring Forced Labour and Slavery in Global Supply Chains: The Case of the California Act on Transparency in Supply Chains.” *Global Policy* vol. 8 (issue 4). November 29, 2017. <https://onlinelibrary-wiley-com.ezp-prod1.hul.harvard.edu/doi/full/10.1111/1758-5899.12512>.

Methodology

In dealing with issues of international governance outside its own jurisdiction the United States government is limited in its ability to directly influence or monitor the many thousands of contract suppliers around the world who are involved in global supply chains. The brands and retailers that import and sell these products within the United States, however, are subject to US regulation aimed at protecting consumers from products tainted by slavery and child labor. As the multinational actors with the most direct relationships with their supplier networks, as well as a duty to abide by United States consumer protection law, these companies are the most logical target of any domestic or “home-state” regulatory effort aimed at reducing human trafficking in global supply chains. Global product supply chains in the 21st century are sprawling and complex, and any attempt at regulation must be carefully considered in order to assess the range of potential impacts across a set of stakeholders. A set of criteria built around the costs of policy implementation, its effect on corporate practice, and the potential impacts on workers and suppliers within these supply chains is necessary to properly evaluate any potential policy option.

Costs: The potential cost of implementation, both to the government and to affected companies

Corporate practice: The response of companies directly affected by the policy is critical to its success. The best policy options will encourage and allow companies to adopt best practices with regards to positive supplier agreements and relationships, stakeholder engagement, supplier monitoring and auditing efforts.

Actual labor impacts: The ultimate downstream test of any policy effort will be how it impacts labor conditions in the targeted product supply chains. Incidences of child labor and forced labor should be measured, as well as other forms of labor malpractice such as nonpayment of wages, excessive or compulsory overtime hours, the use of recruitment fees to hire employees, access to grievance mechanisms, and any violations of local labor laws. As the intended beneficiaries of policy aimed at improving their labor conditions, a consideration for the nuances of local conditions, customs, and desires is crucial to crafting an effective policy solution. Empowering local actors to engage in dialogue over policies and practices that impact them directly will enable a more robust formulation of policy.

Costs

- To government (administration and enforcement)
- Of compliance for affected companies

Corporate practice

- Adopt policies requiring supplier agreements specifically prohibiting certain types of labor malpractice
- Implement more robust supply chain management practices aimed at improving sourcing practices, increased audits, and supplier monitoring

Actual labor impacts

- Real impacts on human trafficking (child labor, forced labor) and other labor malpractice within supplier networks
- Empowerment of workers within these supply chains

These specific goals serve as a baseline for evaluating the potential impact of any policy aimed at improving the labor conditions of workers in international product supply chains and limiting the possibility that U.S. consumers will unwittingly support human trafficking through their purchasing choices.

Considered Alternatives

State Regulation of CSR Practices

The most direct answer to the question of how to reduce human trafficking and improve working conditions within global value chains is to develop mandatory standards that regulate the conduct of U.S. companies that utilize these supplier networks. Existing voluntary corporate social responsibility programs, commitments to human rights and basic standards, and strict supplier agreements to secure compliance could be codified into law and made a strict requirement for companies that operate with overseas suppliers. In addition to a number of anti-trafficking sourcing guidelines that apply to companies that sell directly to federal agencies³⁶, the federal government also develops and offers guidance on responsible business conduct to companies that operate overseas. The State Department's 2014 *National Action Plan* outlined a number of these existing efforts across nearly a dozen agencies, outlining applicable laws, resources, and voluntary guidelines intended to promote and facilitate socially responsible international business practice. Requiring companies to conform to these responsible business practices would standardize diffuse and inconsistent voluntary CSR practices and create a baseline of practice to which companies would have to conform.

This familiar form of direct regulation is largely unsuitable for governing multinational actors operating in a variety of countries. In addition to being expensive, burdensome, and inflexible, such a policy would risk returning worse outcomes for the most vulnerable workers at the bottom of the supply chain. The scale at which multinational companies operate is beyond the scope of what any regulatory agency would be capable of monitoring and responding to. Products sold within the United States come from any number of hundreds of different labor markets around the world, each with unique needs, host state laws, and customs. Brands manage relationships with their suppliers through traditional market mechanisms interpreted through local laws, pressure from organized labor, and local custom³⁷. Crafting specific regulations for individual countries, industries, companies, or buyer-seller relationships would be impossible for any regulatory body; regulations built to be broad enough to encompass the diversity of operating environments is likely to boil down to largely aspirational rhetoric to little effect.³⁸ Even in the absence of these substantial impediments such a system would likely be unable to deliver desired outcomes through such complex arrangements, with a U.S.-based regulatory agency attempting to determine desired outcomes for workers in foreign contexts.³⁹ Labor markets in countries with a high risk

³⁶ Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239).

³⁷ Kishanthe Parella. "Outsourcing Corporate Accountability." *Washington Law Review*. October 2014. <https://digital.law.washington.edu/dspace-law/handle/1773.1/1394>. p. 777.

³⁸ Genevieve LeBaron and Andreas Rühmkorf. "Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance." *Global Policy* vol. 8, issue S3 (May 2017). <https://doi-org.ezp-prod1.hul.harvard.edu/10.1111/1758-5899.12398>. 23-24

³⁹ "Such regulation is bound to be haphazard in its ability to improve worldwide working conditions, and raises questions about the degree to which standards developed in one country—say a wealthy industrialized one—are appropriate for another whose central problem is economic development" Charles Sabel, Dara O'Rourke, and Archon Fung. "Ratcheting Labor Standards: Regulations for Continuous Improvement in the Global Workplace."

of forced labor and human trafficking would necessarily be subject to additional levels of scrutiny and regulation, complicating the costs of conducting business and possibly leading firms to withdraw completely - a worst case scenario outcome for workers there.⁴⁰

Evaluation of State Regulation of CSR Practices

Cost to government	High	Crafting specific regulations to accommodate the variety of industries, legal regimes, and needs across the global economy would be extremely difficult for any regulatory body. Existing efforts to establish much less ambitious CSR standards through home-state regulation have proven expensive for governments to implement. ⁴¹
Compliance costs for affected companies	High	While standard-setting for companies obligations would remove some cost from due to cutting voluntary governance initiatives these would be offset by the need to regularly communicate with an additional regulatory body in the US, affecting the flexible buyer-supplier relationship many companies rely on. ⁴²
More stringent supplier agreements for affected companies	Highly likely	Standard-setting and increasing the legal obligations companies have has been shown to have significant impact on how organizations implement positive reforms in managing their relationships with foreign suppliers. ⁴³
Increased supply chain due diligence, auditing and monitoring efforts	Possible	Dependent on how regulations are crafted. Implementing mandatory baselines for socially responsible practice has been shown, in some cases, to reduce voluntary initiatives as companies opt to comply with minimum standards. ⁴⁴
Real reductions on trafficking within supply chains	Possible	The quality of social audits mandated by regulations will be determinative. Requiring third-party audits conducted by highly capable auditors will be necessary to overcome the shortcomings of insufficient audits enabling bad actors to obscure problems at their facilities. ⁴⁵
Empowerment of workers within supply chain; opportunity to collaborate on standard-setting	Unlikely	Standard-setting at the US federal level will be among the least responsive to the voices of workers in foreign countries. No channels of communication exist, and regulators will be reliant on company reports, auditors, and diplomatic efforts to understand local working conditions.

KSG Working Paper No. 00-010; Columbia Law and Economic Working Paper No. 185; Columbia Law School, Pub. Law Research Paper No. 01-21. (2000).<http://dx.doi.org/10.2139/ssrn.253833>, 13.

⁴⁰ Parella, 777.

⁴¹ Susan A. Aaronson and Ethan Wham. "Can Transparency in Supply Chains Advance Labor Rights? Mapping of Existing Efforts." Institute for International Economic Policy Working Paper Series, Elliott School of International Affairs, 2016. <https://www2.gwu.edu/~iiep/assets/docs/papers/2016WP/AaronsonIIEPWP2016-6.pdf>. 18.

⁴² Parella, 780.

⁴³ LeBaron, 24.

⁴⁴ Reinhard Steurer. "The role of governments in corporate social responsibility: characterising public policies on CSR in Europe." *Policy Sciences vol. 42, issue 1*. March 2010. <https://link-springer-com.ezp-prod1.hul.harvard.edu/article/10.1007/s11077-009-9084-4>. 67.

⁴⁵ Parella, 774-775.

If the task of mandating specific socially responsible guidelines for companies operating in the global economy is too vast, surely requiring basic general principles of socially responsible conduct is a reasonable alternative. State Department guidelines on Responsible Business Conduct are deliberately nonspecific, calling for stakeholder engagement, supplier agreements built around basic human rights and environmental standards, and commitment to OECD and UN conduct guidelines as a baseline for companies operating globally.⁴⁶ Where basic principles of CSR have been mandated through home-state regulation the results have been mixed; codifying basic principles of conduct into law is positive, though enforcement of actual practice is difficult, and transforming largely voluntary practice into hard-law regulation may risk removing additional, above and beyond social practice from the equation.⁴⁷

Certification of forced-labor free supply chains

A second option available to policymakers is to require that companies selling products within the United States sourced from overseas certify that their supply chains are free of any form of forced labor. As the primary importers of products from potentially problematic supply chains, companies that partner with overseas suppliers have a duty to ensure that American consumers are not inadvertently supporting forced labor or other forms of labor malpractice with their purchasing decisions. Requiring an affirmative statement that products are made entirely with free and fair labor would impose on companies a need to evaluate their supply chains, impose strict requirements on supplier partners, and reform or cut ties entirely with those that are unable to meet basic labor standards. Companies unable to certify that individual products meet this standard would be required to disclose this shortcoming, giving consumers the ability to choose if they wish to support products that may be compromised in this way. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protections Act contained a potential model for such a rule. The rule required companies to uncover to what extent their products contained “conflict minerals,” often sourced from the Democratic Republic of the Congo, and to affirmatively state if products using those specific minerals came from that region of the DRC.⁴⁸

Imposing a broad requirement on companies to certify forced-labor free supply chains creates logistical and legal challenges that are uniquely difficult to overcome and would likely be near impossible for most companies to completely comply to. The size and complexity of supply chains makes strict governance and oversight of the potentially hundreds of suppliers and sub-suppliers, spanning multiple countries and jurisdictions, a daunting task. Government enforcement of the rule would be extraordinarily difficult, as

⁴⁶ *Responsible Business Conduct: First National Action Plan for the United States of America*. U.S. Department of State. December 16, 2016. <https://www.state.gov/documents/organization/265918.pdf>.

⁴⁷ Steurer, 67.

⁴⁸ *Dodd–Frank Wall Street Reform and Consumer Protection Act*, sec. 1502 (P.L. 111-203).

there currently exists no mechanism by which the federal government can investigate factories and manufacturers outside of its own territory. Further, a requirement to certify products as “forced-labor free,” would likely face intense opposition by affected businesses and a number of legal challenges that would undermine its overall effectiveness.

Many companies - whether part of a voluntary agreement or as part of a self-guided socially responsible practice - have made efforts to root out and eliminate human trafficking from their supply chains. Even among companies considered to have best practices within their industries the results have been disappointing, uncovering hundreds of cases of trafficked labor within their supplier networks even after years of refining their attempts to root out bad actors.⁴⁹ The Dodd-Frank Conflict Minerals rule revealed similar challenges, as Intel was the only company able to certify that its supply chain did not contain minerals sourced from the region, and larger companies generally had a much greater advantage in their ability to afford compliance with the law.⁵⁰ A Government Accountability Office report found that most multinationals did not directly deal with their suppliers below the 2nd tier, further straining their ability to accurately report on sourcing practices.⁵¹ Furthermore, any such regulation is likely to face a similar legal challenge to that posed against Dodd-Frank section 1502. Upon review by an appeals court the ruling was found to violate the Constitutional protection against compelled speech and remanded to the SEC to be reconsidered and altered in a way that satisfied the courts.⁵²

Evaluation of Certification of Supply Chains

Cost to government	Moderate	Enforcement and compliance checks would be difficult and expensive. Such a policy would likely rely on civil society actors to report and expose dishonest actors.
Compliance costs for affected companies	Very High	The experience of the Dodd-Frank Conflict Minerals rule showed a huge advantage to larger companies with high capacity. Even of these only one was able to fully comply with certification, highlighting the difficulties of supply chain governance. ⁵³
More stringent supplier agreements for affected companies	Yes	Strict supplier agreements would be the most first mechanism companies would use to ensure a clean supply chain, imposing on their suppliers the strict obligation to meet base standards.
Increased supply chain due diligence, auditing and monitoring efforts	Yes	Auditing would become the most important tool in supply chain management as companies sought to certify with confidence that trafficking did not exist within their supply chain. This combination of incentives for companies and suppliers could,

⁴⁹ Clothing retailer Patagonia’s years-long effort to eliminate labor trafficking from its supply chain has met with only moderate success; a 2015 audit uncovered high numbers of violations deep within the supply chains of their 75+ first-tier suppliers despite robust supplier agreements, third-party monitoring and audits, and a partnership with labor NGO Verité. White, "All Your Clothes Are Made With Exploited Labor."

⁵⁰ Aaronson, 11.

⁵¹ Ibid, 11.

⁵² Lynch.

⁵³ Aaronson, 11.

Real reductions on trafficking within supply chains	Highly likely	however, have the unintended consequence of less-reliable social audits. ⁵⁴ Even with the increased possibility of faulty audits mentioned above the increase in strict supplier agreements and monitoring efforts would likely lead to overall reductions in forced labor. ⁵⁵
Empowerment of workers within supply chain; opportunity to collaborate on standard-setting	Possible	In pursuing more robust due diligence practice, some companies find it necessary to establish dialogue with workers that was previously lacking in order to best certify their supply chains. These programs are rare, however, and mostly implemented by the most well-resourced companies through voluntary initiatives. ⁵⁶

The fact that the majority of companies operating internationally lack the capability to routinely monitor their supplier networks and guarantee a clean supply chain is likely to strike critics as a failure of proper incentives rather than logistical impossibility. As voluntary self-governance has come to dominate how international brands manage their supplier networks the system of socially responsible sourcing practice that has been adopted by many brands exists in tension with the financial demands that the firm places on its suppliers.⁵⁷ Even best practices of voluntary auditing and monitoring efforts are shown to have drawbacks, and many global firms manage their supplier relationships with a much “softer” touch.⁵⁸ Requiring companies to certify if their supply chains met basic worker safety and human rights standards might push more companies to adopt best practices, partnering with organizations that could help reform their supply chains and developing more internal capacity to manage their supplier relationships. With no ability to guarantee this certification, and with potential court challenges to the legitimacy and authority of the federal government to require such a guarantee, the ability of such a law to promote positive changes is in question.

⁵⁴ Parella, 788, 803.

⁵⁵ Aaronson, 17-18.

⁵⁶ Doorey, *Who Made That?*, 401.

⁵⁷ Parella, 779-782.

⁵⁸ Wal-Mart, Tesco, and Carrefour were three major signatories to the Global Social Compliance Program in 2006; the GCSP’s auditing methodology specified that unannounced audits “...can undermine the relationships along the supply chain, reducing the ability of the buying company to remediate,” and thus only to be used in specified high-risk circumstances. Jill Esbenshade, “Corporate Social Responsibility: Moving from Checklist Monitoring to Contractual Obligation?” in *Achieving Workers’ Rights in the Global Economy*, ed. Richard Appelbaum and Nelson Lichtenstein (Cornell University Press, 2016), 55.

Corporate Criminal Liability

One potential course of action would be for the US government to start holding companies to a standard of strict accountability for the labor conditions within their supply chains. Enhancing corporate liability in this way could be the result of newly-created legislation, though existing federal regulations may already serve as a strong basis to hold companies to this high level of accountability. The TVPA makes it illegal for any actor to knowingly profit off of forced labor within or outside US borders, while the Tariff Act of 1930 makes it illegal for any good that is the product of forced labor to be imported into the country. The State Department as well as the Department of Labor already devote significant resources to broad, country and industry-specific investigations about human trafficking, forced labor, and child labor in international contexts.⁵⁹ These efforts could be refocused to the labor conditions within supply chains of products that are sold in the U.S., triggering existing criminal liabilities for companies found to be profiting off of forced labor. As companies expand their capacity to govern their supply chains in response to a shift in liability, existing global partnerships and networks of which the U.S. government is a party could be utilized to help monitor and enforce these new rules.⁶⁰ Moving the burden of liability for their suppliers' actions to buyers and brands would be a dramatic shift in established policy and likely to meet stiff resistance. In other contexts, however, opening companies to new liabilities for conduct taken on their behalf has proven to be highly effective in driving changes in corporate practice.⁶¹

Holding companies to a strict accountability standard for the actions of their suppliers could potentially spur companies to exercise much more due diligence in managing those relationships. Such a policy would come at significant public cost to ensure enforcement, be very difficult and expensive for companies to pursue compliance, and possibly fail to result in positive changes for the most vulnerable workers within the supply chain.

⁵⁹ The State Department budget for the Office to Monitor and Combat Trafficking in Persons was \$20.7 million in 2017; the Department of Labor's Bureau of International Labor Affairs was \$86 million in the same year. *Congressional Budget Justification: Department of State, Foreign Operations, and Related Programs: Fiscal Year 2017*. U.S. Department of State. February 2016. <https://2009-2017.state.gov/documents/organization/252179.pdf>; *Summary of Discretionary Funds, FY 2008-2017*. U.S. Department of Labor. <https://www.dol.gov/sites/default/files/documents/general/budget/CBJ-2017-V1-02.pdf>.

⁶⁰As outlined in the Secretary of State's 2016 "First National Action Plan," for Responsible Business Conduct, the federal government (through a variety of agencies) partners with dozens of stakeholder organizations in the pursuit of a variety of goals related to international trade. *Responsible Business Conduct: First National Action Plan for the United States of America*. U.S. Department of State. December 16, 2016. <https://www.state.gov/documents/organization/265918.pdf>.

⁶¹ A comparison of the UK Bribery Act and the UK Modern Slavery Act illustrate the power of expanded liability. Expanding corporate criminal liability for bribes paid to foreign operatives by the corporation or any of its agents, the UK showed significant and substantial changes in the rhetorical and actual conduct of companies operating under this enhanced liability. The Modern Slavery Act, by contrast, created no additional corporate liabilities and instead relied on largely voluntary efforts of reporting. Little substantive change in supplier agreements, purchasing practices, or auditing and monitoring was demonstrated by companies responding to this initiative. LeBaron, 18.

Monitoring and enforcement of a strict accountability standard for international supply chains would strain the limits of regulatory capacity. Supply chain audits are complex, expensive, and difficult to conduct in ways that reveal reliable information about actual conditions, even for companies and organizations that have existing relationships with their suppliers. For the federal government to try to unilaterally implement an international labor governance scheme would likely be a logistical non-starter. Even if funding for such a program could be secured (and it would be expensive) trying to monitor even a fraction of the world global value chains would be impossible. Such a scheme would likely attempt to collaborate with and use the expertise of the existing infrastructure around global labor governance in the form of international institutions such as the ILO, the various voluntary standard-setting schemes, and activists and NGO networks that exist to monitor labor compliance. The exposure that these existing organizations bring to global labor issues is inconsistent across countries, regions, and industries, and would likely lead to stiff resistance from local authorities with vested interest in limiting exposure of labor violations. In addition to these logistical setbacks, host countries are certain to object to a foreign government's attempts to directly monitor the conditions of laborers within their borders.

The experience of the UK Bribery Act shows that creating strict liability for upstream malfeasance within or on behalf of a corporation does have the ability to push companies to significantly alter behavior and due diligence within the organization.⁶² Strict liability would push companies to adopt more robust and aggressive forms of existing supplier codes of conduct, while the threat of external audits exposing potential problems would push them to pursue more regular and deeper compliance checks. Reforms of this type are massively expensive, and potentially impossible to fully comply with. Across different industries many companies have committed to a (largely voluntary) program of a forced labor-free supply chain. Though the incentives created by strict accountability are far greater, the same problems confronting the certification scheme are at play here. In areas of low oversight and stiff competition, even companies with the most robust social responsibility programs have found limits to their ability to eliminate malpractice.

Pushing companies to more strictly monitor and enforce the conduct of their upstream suppliers may not even result in the positive changes desired for the most vulnerable that such a law would be attempting to impact. Compliance and monitoring efforts have limits, especially when they run counter to the operational incentives facing suppliers.⁶³ The pressures that put many suppliers in the position of cutting corners on safety, wage payments, and other forms of malpractice exist despite many brands' commitments to strict codes of conduct. Suppliers faced with the possibility of losing a contract with a major client because of downstream liability have an incentive to hide abuses from auditors, a practice that contributes to the overall difficulty of successful supply chain monitoring.⁶⁴ For many brands, a strict liability system may make the cost of doing business with certain supplier factories too expensive. Rather than pursuing expensive programs to improve conditions for workers, the most prudent move may be cutting off the relationship entirely - a worst case scenario for many workers who rely on manufacturing work despite the shortcomings in labor protections.

⁶² LeBaron, 19-22

⁶³ Parella, 779-782.

⁶⁴ Parella, 788.

Evaluation of Corporate Criminal Liability

Cost to government	High	Establishing criminal liability for the behavior of agents of a corporation would require the government to investigate any allegations and pursue cases through proper legal channels. Such a system could not rely on civil society actors beyond the initial reporting, and would be very expensive to establish.
Compliance costs for affected companies	High	A new standard of domestic corporate liability for the behavior of its agents or on its behalf would necessarily cause companies to reorient their operations. In addition to the additional expense of enhanced monitoring and compliance checks, companies would likely cut ties with suppliers deemed too risky to continue working with.
More stringent supplier agreements for affected companies	Yes	The contrasting experiences of the Bribery Act (which established a level of criminal liability for violators) and the Modern Slavery Act (which did not) in the UK clearly shows that companies will respond much more robustly to a standard of criminal liability. ⁶⁵
Increased supply chain due diligence, auditing and monitoring efforts	Yes	The higher standard of liability would push companies to conduct much more robust audits of their supply chain.
Real reductions on trafficking within supply chains	Uncertain	Within product supply chains it is likely that forced labor would be reduced. This reduction would likely come as a result of companies ending relationships with suppliers at high risk of compromising their supply chain rather than working to reform their practices.
Empowerment of workers within supply chain; opportunity to collaborate on standard-setting	Unlikely	As mentioned above, the most problematic suppliers would be more likely to have their contracts ended completely. The workers within these companies would have no input on this process, losing their jobs and likely ending up in worse outcomes than before. ⁶⁶

It is possible that promoting strict corporate liability would be an effective way to prevent forced labor within supply chains, and the potential efficacy and positive benefits of such a policy might justify high costs of enforcement and compliance. The lack of existing capacity to regulate and monitor supply chains is at least partially connected to insufficient incentives pushing companies in that direction. Strict liability would necessarily force companies to increase collaboration with suppliers, ramp up enforcement of existing codes of conduct and develop capacity to identify problems within their supplier networks. The federal government could attempt to reorient its existing international anti-trafficking efforts to promote and monitor compliance, partnering with existing institutions. Where corporate liability would jeopardize business relationships within their borders, host countries could see an advantage to increased protections

⁶⁵ LeBaron, 19-22.

⁶⁶ Parella, 788.

and enforcement of local labor laws - though historically many countries (particularly developing nations) have been strongly opposed to such pressures as a form of outsider interference that threatens their economic advancement and violates sovereignty.⁶⁷

Disclosure of CSR practices

Mandatory disclosure of corporate efforts to reduce trafficking within the supply chain is one tool policymakers could use to allow consumers to make informed choices and encourage companies to adopt best practices. Requiring companies to disclose to the public the steps they take to ensure that workers within their supply chains are treated fairly attempts to solve the information asymmetry that is inherent in complex, multinational supply chains. Such disclosures would also incentivize companies that do not engage in socially responsible supply chain management to increase their efforts, while giving those that do a platform to showcase their programs to the public. Disclosures of this type are built around theories of transparency that have roots in financial regulations, public safety, consumer advocacy, and political governance.⁶⁸ Rather than identifying specific requirements for organizations with complex operations, transparency regulation aims instead to use the power of government to reduce the information gap between users (here, consumers) and producers (companies importing products from overseas), relying on existing civil society organizations - activists, organized consumer interest groups, NGOs, etc. - to use newly available information to fill in the gaps.⁶⁹ Disclosure regulation of this type is an implicit acknowledgement of the limits of the state's ability to regulate in an efficient and fair way multinational companies operating at a global scale with hundreds of individual supplier relationships. Mandatory disclosure instead aims to influence this behavior through market forces, consumer choice, and public pressure that will reward the best actors while pushing the worst to improve or be punished by the market.

⁷⁰

Two pieces of legislation serve as a model for potential federal action: the UK Modern Slavery Act and the California Transparency in Supply Chains Act. The core requirement of both laws is the same, mandating that companies of a certain size that sell products in their respective jurisdictions (the United Kingdom and the state of California) disclose “voluntary efforts to address and prevent forced labour in

⁶⁷ Hafner-Burton, 6.

⁶⁸ Archon Fung, Mary Graham, and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press, 2007, 5.

⁶⁹ Fung, 5.

⁷⁰ “The theory is that a state can influence through indirect means the practices of multinational private actors beyond the borders of the regulating state. The principal regulatory tool to accomplish this task is mandatory disclosure of information about the foreign practices of the multinational actors...In theory, requiring transparency about global labour practices could contribute to a climate in which the worst employers are punished, and the best rewarded. This could in turn contribute to the creation of a normative system of labour practices that encourages improved labour practices outside of formal regimes of state-based or supranational substantive labour standards.” Doorey, *Who Made That?*, 357.

global supply chains.”⁷¹ Neither law establishes any additional extraterritorial liability or obligation to action on behalf of companies, relying instead on the disclosure of due diligence efforts - or the lack of them - to inform consumer choice, and the threat of exposure to improve corporate practice. The response to these laws informs the consideration of establishing a similar rule at the federal level in United States.

The response to broad corporate disclosure regulations reveals several important shortcomings in the structure of both laws. The primary failing centers around the usefulness of information required to be disclosed and the failure to induce significant new action on behalf of companies affected by the rules. Though both laws outline specific areas of practice in order to help companies structure their reports, the new information generated is decontextualized and of little significance to consumers, often resulting in general commitments to CSR practice with little substantive content.⁷² To the individual consumer and organized civil society this information is of limited use while being in full compliance with the law, creating a system of technical compliance that spurs little change in behavior on behalf of consumers or companies.⁷³ High levels of compliance on behalf of companies comports with one of the goals of transparency regulation, to remain “light-handed,”⁷⁴ and not onerous to companies. Where the regulation invites no significant additional action on behalf of companies, the value can mostly be found in establishing a normative baseline for CSR reporting.

A key element in effective disclosure regulation is ensuring that the mandated information is of some material use to its intended recipients.⁷⁵ Taken together, both the UK Modern Slavery Act and the CTSCA have produced information with little value, largely amounting to “broad statements and general commitments,” by affected companies.⁷⁶ While the California Act achieved relatively high compliance, “analysis of the extensiveness of the disclosure suggests that, overall, the responses tend to be more symbolic than substantive,” with the majority of responding companies describing their efforts in aspirational language about socially responsible practice with little concrete information about supplier agreements, auditing efforts, or penalties for problematic suppliers.⁷⁷ A number of problems specific to the CTSCA could be relatively easily addressed in formulating a new national policy. The lack of a centralized platform for disclosed information, no supplied list of affected companies, and a “one time only” rather than annual requirement would be clear improvements to the usefulness of revealed information and offer clear lessons for any future transparency initiatives.⁷⁸ Ultimately however the clear failing of the law is its inability to require useful information to inform consumer choice.

Disclosure regulation that fails to provide meaningful information to key actors fails to incentivize positive change within affected organizations. Where disclosure regulation hopes to spur “self-reflection”

⁷¹ LeBaron, 16.

⁷² Aaronson, 17-18.

⁷³ Birkey et al., “Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010.” *Journal of Business Ethics*, 2016.
https://link-springer-com.ezp-prod1.hul.harvard.edu/article/10.1007/s10551-016-3364-7#Fn1_source.

⁷⁴ Fung, 5.

⁷⁵ Doorey, *Who Made That?*, p. 379.

⁷⁶ Aaronson, 1.

⁷⁷ Birkey, 9.

⁷⁸ Koekkoek, 526-527.

on behalf of companies who are required to make previously internal processes public, bare-minimum requirements with little substantive information offer little reason to alter process.⁷⁹ While mandatory disclosure of CSR practice is likely to do little inspire significant and substantive changes in how companies behave internationally there is some benefit to the implementation of such laws. While the material information disclosed by the majority of affected companies may be of limited use, the response of firms affected by transparency initiatives shows an increased awareness of potential exposures caused by lax CSR practice.⁸⁰ As more companies are affected by transparency initiatives - even limited ones - capacity and technology to properly track and monitor product life cycles enters the market, spurred on by industry needs as well as initiatives by nonprofit organizations.⁸¹ Finally, creating a baseline of information required to be disclosed by multinational companies establishes a new normative understanding of the obligations these companies have to their stakeholders.⁸² Establishing this new norm through legislation underlines an ethical and legal commitment to a high level of socially responsible practice for any company selling products in the United States.

Evaluation of Disclosure of CSR Practice

Cost to government	Low	By not creating new requirements for companies beyond transparency about existing practice, well designed disclosure regulation minimizes the cost to government. ⁸³
Compliance costs for affected companies	Low to Moderate	Similarly, companies asked to reveal their existing anti-trafficking conduct could be in technical compliance with the law by simply stating they take no action. This is a risky course of action due to potential public backlash; companies faced with new transparency rules around labor in their supply chains in both the UK and California showed increased interest in developing at least basic practices. ⁸⁴
More stringent supplier agreements for affected companies	Likely	By being asked to make public their policies towards identifying and preventing forced labor within their supply chains, companies that have no existing practice will engage in "self-reflection," as they weigh the risks that exposure brings. ⁸⁵
Increased supply chain due diligence, auditing and monitoring efforts	Possible	Where supplier agreements are valuable and important, they are also easier for companies to implement - particularly if both company and supplier know there is little enforcement behind them. ⁸⁶ Some companies have offered little substantive changes where the perceived risk of exposure can be mitigated by offering aspirational language and vague commitments to human rights. ⁸⁷

⁷⁹ Aaronson, 17-18.

⁸⁰ Birkey, 8-9.

⁸¹ Koekkoek, 527.

⁸² Birkey, 1.

⁸³ Fung, 5.

⁸⁴ LeBaron, 22-26; Birkey, 8-9.

⁸⁵ Doorey, *Who Made That?*, 372.

⁸⁶ Parella, 779-782.

⁸⁷ LeBaron, 23-24.

Real reductions on trafficking within supply chains	Uncertain	Although it is difficult to connect outcomes in working conditions to the passage of specific home-state disclosure regulation, there is correlation between more robust supplier agreements, monitoring efforts by buying companies, and increased social audits. ⁸⁸ Working conditions can be expected to improve to the extent that disclosure regulation promotes these tools.
Empowerment of workers within supply chain; opportunity to collaborate on standard-setting	Uncertain	One of the most salient criticisms of disclosure regulation is its potential to have unintended consequences on affected populations. If public awareness campaigns led by developed nations lead brands to make decisions about supplier relationships without including the voices of workers within those networks, disclosures have shut out the most important - and least powerful - voices in the discussion. ⁸⁹

The benefits of limited disclosure laws that avoid creating complicated regulatory requirements for companies are clear. Higher possibility of compliance, lower levels of political resistance, and the opportunity to reinforce and support companies with effective CSR practice and punish those without. Ultimately, however, such initiatives cannot be considered successful when they fail to produce material improvements in the working conditions for laborers throughout product supply chains. Where the relationship between buyer and supplier is the key leverage point that government is attempting to utilize through disclosures, existing social reporting fails to properly understand the incentive structures that push suppliers in overseas labor markets to use unacceptable labor practices. Purchasing companies may simultaneously transmit to suppliers an obligation to enforce certain labor standards and pressures to return product faster, cheaper, and of a higher quality.⁹⁰ Even if the corporate “self-reflection” and adoption of better practice internally is genuine, the pressures on suppliers remain of material concern, and carelessly designed disclosure rules may unintentionally cause more harm than good in a material way to workers at the bottom of these supply chains.⁹¹

⁸⁸ Parella, 802.

⁸⁹ Doorey, 388.

⁹⁰ Parella, 779-782.

⁹¹ Doorey, *Who Made That?*, 386.

Theories of Reflexive or Decentered Governance

The complexity of modern product supply chains, that may touch dozens of countries for a single consumer good, demonstrate the limitations of traditional regulatory tools. The effectiveness of traditional command-and-control regulation on companies is limited, and even brands that voluntarily go to great lengths to adopt a system of robust supplier labor practices face enormous logistical challenges to trace and audit their supply chains.⁹² Mandatory disclosure regulations like those demonstrated in the California Transparency in Supply Chains Act show the emergence of new regulatory tools built around theories of reflexive governance. Already popular in the fields of sustainable development and international environmental regulation, reflexive governance theory is built around bridging the information gap between actors in civil society in ways that develop more flexible capacities to address increasingly complex systems which government is ill-equipped to handle.⁹³

Reflexive law, therefore, seeks not to order specific social or economic outcomes, but to facilitate communication between subsystems and social actors in a manner that will lead to the private creation of socially desirable norms and practices. It ‘attempts to guide human action by redefining and redistributing property rights’ and by compensating for ‘inequality of power and information’ in society.⁹⁴

In the context of human trafficking and forced labor within product supply chains, mandatory disclosures are not solely aimed at giving consumers access to make informed decisions about the products they purchase. Instead, a range of governmental, civil society, and private actors in source and destination countries are empowered by access to relevant information in ways that allow them to wield influence and lobby for change in a manner more flexible and responsive than government is traditionally capable of. As with any policy tool or government action challenges arise from poorly designed and ill-considered regulatory action.⁹⁵ But targeted disclosure requirements built around reflexive theory may hold the best promise to address the challenge of forced labor in the global economic system.

⁹² Gillian B. White. “All Your Clothes are Made with Exploited Labor.” *The Atlantic*, Jun. 3, 2015. <https://www.theatlantic.com/business/archive/2015/06/patagonia-labor-clothing-factory-exploitation/394658/>

⁹³ Eric Brousseau, Tom Dedeurwaerdere, & Bernd Siebenhuner, *Reflexive Governance for Global Public Goods*, (Cambridge, Massachusetts, MIT Press), 86.

⁹⁴ Doorey, *Who Made That?*, 371.

⁹⁵ *Ibid*, 400.

Targeted Disclosures

A more targeted form of disclosure regulation may have the advantage of addressing the shortcomings of the policy outlined above while retaining most of the advantages. The theory underpinning disclosure regulation (also called reflexive, or decentered regulation; see sidebar) relies on the existence and mobilization of a robust collection of civil society organizations to utilize uncovered information to advocate for change from private actors.⁹⁶ By carefully selecting what kind of information will be required by private companies, how it will be contextualized, and knowing the intended targets, states can use disclosure-based regulation to “...aggregate leverage from a variety of actors and, as such, it offers a superior form of governance of transnational CSR norms compared to traditional command and control regulation.”⁹⁷ The shortcomings of existing transparency laws is due at least in part to the failure to offer useful information that empowers key stakeholders - in this case workers within supply chains, and the community groups that serve them - while giving voice to others (usually consumers in Western receiving countries).⁹⁸ As a result of research into various transparency schemes, David Doorey concludes that a policy of requiring names and addresses of at least first-tier supplier factories retains the benefits of a low-risk, low-cost system while offering potentially powerful information to local actors.⁹⁹

The benefits of a names and address system of supplier disclosure is in its simplicity for companies to comply, the neutrality of the information, and the impact on amplifying worker voices in the decision making process. Case studies of companies who have voluntarily revealed their supplier lists have received benefits, not just in the public goodwill that has been engendered but by lowering costs of monitoring through collaboration. By encouraging both civil society organizations as well as other brands to identify factories where they had shared interests, both Nike and Levi-Strauss were able to develop partnerships that lowered costs of monitoring and compliance while raising the quality of audits and working conditions.¹⁰⁰ The cost to companies of generating a list of authorized suppliers is modest, usually requiring little more than a gathering of information already contained within different departments. By requiring the list be made public the policy hopes to push companies to pursue more aggressive due diligence measures in order to stave off potential public backlash. In the case of Nike and Levi-Strauss, the decision to disclose their full supplier list was a choice made well in advance and after years of efforts to “clean up” their operations - a time frame that would obviously be shortened for companies affected by new regulation.¹⁰¹ In the apparel industry in particular, unauthorized subcontracting is a persistent problem that can be mitigated at less cost to companies by supplier list disclosures as employees and activists connected to individual factories can check on their official relationship.¹⁰² Finally, and central to the design of this sort of disclosure regulation, is the chance to

⁹⁶ Doorey, *Who Made That?*, 365.

⁹⁷ Parella, 801.

⁹⁸ Aaronson, 20.

⁹⁹ Doorey, *Who Made That?*, 404-5.

¹⁰⁰ Doorey, *Can Factory List Disclosure Improve Labor Practices in the Apparel Industry? A Case Study of Nike and Levi-Strauss*, 56.

¹⁰¹ Doorey, *Can Factory List Disclosure Improve Labor Practices*, 57.

¹⁰² Stauffer, *Follow the Thread*.

engage workers within supply chains in the advocacy process. Allowing local workers and people closest to them to know what multinational brands they are working for allows them to have a voice in public debates about issues that affect them directly.¹⁰³ Rather than top-down initiatives led by well-meaning (but oftentimes distant, both geographically and in their understanding) activists from developed countries, knowing who benefits from the fruits of their labor gives workers a necessary voice in the design and message of advocacy.

The employees who are the targeted beneficiaries of market-based campaigns must surely be involved in the decision as to whether and when foreign market forces should be brought to bear on their employer. If the employees are involved in the process of gathering the facts about their employment conditions, and have a voice in how that information is to be used, then they are more likely to have a real say in shaping a response to those conditions.¹⁰⁴

Corporate resistance to disclosing suppliers is often framed as proprietary information that offers an advantage to competitors. Further, companies are likely to be wary of any action that might potentially expose their brand to vulnerabilities. Critics may also be skeptical of the potential effectiveness of a policy that relies not on specific actions directed by a central authority but instead on emergent norms of behavior arising from diffuse actors.

The idea that supplier relationships are entirely secret, especially within and across industry (where the competitive disadvantage would theoretically be greatest) is untrue. Between industry insiders changing companies, suppliers advertising their previous brand relationships, exposures by third-party activists, and databases designed specifically to share this information, brands do not operate their relationships in total anonymity.¹⁰⁵ When companies have chosen to reveal their full supplier lists no competitive disadvantage could be detected; instead, as mentioned above, collaboration with other inspection regimes created new opportunities for collaboration.¹⁰⁶ The same can be said for potential vulnerabilities, though that argument is tempered by the fact that these disclosures were voluntary and came after years of shoring up CSR practice.¹⁰⁷ Finally, ample evidence from the world of international environmental governance points to the strong potential for targeted disclosures to mobilize existing structures in a positive way.¹⁰⁸ While these theories have less practice in the field of global labor governance the relative affordability to both industry and government mitigates the potential downsides of experimenting with such a policy.

¹⁰³ Doorey, *Who Made That?*, 401-402.

¹⁰⁴ “For example, workers might believe that their employer is paying them too little and exposing them to dangerous conditions. Those workers might be prepared to accept the assistance of foreign consumers, investors, and activists if it could create pressure on their employer to correct those problems. They may not want that ‘help,’ however, if it could cause their employer to lose a major contract, or lay off dozens of workers, or close down and move to another location.” Doorey, *Who Made That?*, 401-402.

¹⁰⁵ Doorey, *Who Made That?*, 55.

¹⁰⁶ Doorey, *Can Factory List Disclosure Improve Labor Practices?*, 54-55.

¹⁰⁷ *Ibid.*, 20; Appelbaum, 8.

¹⁰⁸ Brousseau, 159-177.

Evaluation of Targeted Disclosures

Cost to government	Low	Targeted transparency would rely on companies to do the bulk of reporting, with government acting simply to ensure the information is reported and centrally stored.
Compliance costs for affected companies	Low to Moderate	Names and addresses of suppliers requires little more than a gathering of existing information; where companies identify potential exposures they may spend resources addressing them, though the experience of other companies demonstrates the potential for long term cost-savings by increased collaboration and better information gathering. ¹⁰⁹
More stringent supplier agreements for affected companies	Likely	By being asked to make public their entire supplier list, companies will be strongly incentivized to ensure that their suppliers are engaged in the best possible practice. ¹¹⁰
Increased supply chain due diligence, auditing and monitoring efforts	Yes	Publicly disclosing the full supplier list creates the opportunity to address some of the most persistent challenges facing auditors by involving workers in the process. ¹¹¹ These collaborative efforts should increase and improve monitoring. ¹¹²
Real reductions on trafficking within supply chains	Likely	Exposing information about the relationship between brands and their suppliers opens those suppliers up to increased scrutiny from brands themselves, consumers, and local stakeholders - the workers and organizers directly connected to factories. This increased scrutiny from multiple angles will limit the ability to obscure problematic conditions and encourage genuine positive reform. ¹¹³
Empowerment of workers within supply chain; opportunity to collaborate on standard-setting	Likely	Giving workers access to the information about the brands they are working for opens up the opportunity for dialogue with regards to any corrective actions that need to be taken in that brands supply chain. This potential for empowering workers is at the heart of targeted disclosures. ¹¹⁴

¹⁰⁹ Doorey, *Can Factory List Disclosure Improve Labor Practices in the Apparel Industry? A Case Study of Nike and Levi-Strauss*, 54-56.

¹¹⁰ Doorey, *Who Made That?*, 394.

¹¹¹ Parella, 805-808.

¹¹² Doorey, *Who Made That?*, 401-402.

¹¹³ Parella, 803-805; Doorey, *Who Made That?*, 401-402.

¹¹⁴ Doorey, *Who Made That?*, 401-402.

Policy Recommendations

Building on the lessons of previous efforts to reduce forced labor in international product supply chains, this paper recommends a policy built around targeted disclosures of authorized suppliers and broad disclosure of corporate social responsibility practice. Recognizing the stated interest of the U.S. government to not contribute to human trafficking globally, the limited ability of government to directly monitor and regulate the relationship between U.S. companies and their supplier networks, and the existence of a vast network of civil society organizations (both domestically and abroad) built to expose labor violations and improve the lives of working people, this proposal enables the transfer of valuable information that will empower local actors, inform consumer choice, and empower existing international governance mechanisms. This recommendation consists of two parts: first, annual disclosures of all authorized first-tier supplier factories (including their subcontractors), including names, addresses, and basic demographic information, by large retailers and manufacturers selling products sourced from outside the United States. Second, a general disclosure of socially responsible sourcing practices in regards to reducing forced labor, human trafficking, or other forms of labor malpractice persistent in international supply chains. These two categories of disclosures are designed to produce useful and necessary information while imposing modest costs on affected companies as well as government, empowering consumers and workers in the global economy.

Supplier Lists

The publication of a complete list of suppliers is the core of this policy recommendation. The specific information required about each supplier is a combination of existing voluntary disclosures already undertaken by some major brands as well as recommendations by Human Rights Watch to improve supply chain outcomes.¹¹⁵ About each of their suppliers, companies will be asked to disclose:

Recommended Supplier Disclosure Requirements

1. Name of the production facility, including authorized sub-contractors*
2. Parent company that owns or operates the site
3. Full address of the facility
4. Total workers employed at facility**
5. Type of products manufactured***
6. Length of relationship between buyer and supplier, indicating exact years

* Indicating any previously known names of the facility or parent company

** Fewer than 1,000 workers; 1,001 to 5,000; 5,001 to 10,000; more than 10,000

¹¹⁵ Doorey, *Can Factory List Disclosure Improve Labor Practices in the Apparel Industry? A Case Study of Nike and Levi-Strauss*, 54-56; Brian Stauffer. "Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry." Human Rights Watch, 2017. <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry>.

Disclosure of corporate practice

The second half of this proposal is centered around disclosure of general practice towards supply chain governance and supplier management. The policy calls for companies to annually report on specifics regarding supplier relationship management, including specific labor standards and broad auditing efforts to identify and address vulnerabilities and shortcomings within their supply chains. Some of the specific areas outlined are drawn from the literature around corporate social responsibility and industry best practices; as a result, many companies already issue reports on these areas. This requirement is an effort to establish a national baseline of expected reporting, communicating both to companies and to consumers the minimum standard that is expected of products sourced outside of the United States.

Disclosure of Anti-Trafficking Efforts

- 1. Supplier code of conduct, including specific language related to**
 - a. Child labor
 - b. Forced labor or human trafficking
 - c. Wages and payments
 - d. Overtime policies, including compensation and limits
 - e. Policies on the use of labor brokers and restriction of recruitment fees charged to workers
 - f. Worker access to grievance mechanisms
 - g. Responsible sourcing of materials

- 2. Supply chain auditing**
 - a. Frequency
 - b. Independent or internal
 - c. Methodology
 - d. Anonymized results
 - e. Corrective action(s) taken

Administration

Taking a cue from the California Transparency in Supply Chains Act, companies affected by this policy will be retail sellers or manufacturers doing business in the United States with annual worldwide revenues in excess of \$100,000,000. Though the obligations placed on companies are modest, an appropriate minimum revenue ensures that less well-resourced companies will not be unfairly disadvantaged, either by revealing information about potentially vulnerable supplier relationships¹¹⁶ or other expenses relating to compliance with the law.

The Department of Commerce will be recommended as the agency responsible for administration and enforcement of the policy. Commerce will be responsible for coordinating with the Internal Revenue Service to identify companies affected under the law based on reported revenue in tax filings. Commerce will:

- Communicate with companies to notify them of their obligation to report under the law
- Develop disclosure forms in order to standardize how companies will report information; additional, voluntary reporting in a non-standardized format will be encouraged
- Develop a public online platform to house company filings, archiving annual filings in a searchable database

The most significant regulatory hurdle facing regulators will be determining how specific rules and definitions should be written to apply to different industries and companies. The definitions of first-tier suppliers and authorized subcontractors, the type of work done at different facilities, and other applications of the law will need to be considered on an industry-specific basis. As the policy is intended to apply to importers of both consumer and capital goods a wide range of industries must be considered.

In addition to submitting to the Department of Commerce, companies with a public-facing website will be required to make disclosures available to consumers on their own platform. Disclosures for the previous calendar year will be both submitted to Commerce and published online no later than February 1st of the following year. (e.g. disclosures for 2018 made available by February 1st, 2019).

The ability of the Department of Commerce to verify the supplier lists submitted by affected companies will be necessarily limited. However, the same reflexive mechanism on which the policy is built is expected to aid in verifying that supplier information is complete and that companies will increase their efforts to clean up their supply chains. Here the presence of existing U.S. law is critical in giving real impact to the proposed policy. In addition to several existing prohibitions on profiting off of any good exposed to forced labor, child labor, or slavery - especially those laid out in the TVPA - the Smoot-Hawley Tariff Act is crucial to exposing companies to real consequences for ignoring issues within their supply chains. Though the Act has been valid U.S. law since 1930, the lack of transparency

¹¹⁶ The evidence for supplier relationships being proprietary information that must be guarded is weak; nevertheless, smaller firms will be afforded some protection as they develop capacity. Doorey, *Can Factory List Disclosure Improve Labor Practices in the Apparel Industry?*, 57.

within supply chains combined with the “consumptive demand exemption,” mentioned earlier made the explicit prohibition against importing goods produced by slavery almost entirely inconsequential to importing companies. The repeal of that exemption in the *Trade Facilitation and Trade Enforcement Act of 2015* along with newly transparent supply chains opens up importers to potentially serious disruptions to their business. Customs and Border Protection has a legal obligation to respond to reports by any actor of an incoming shipment that was sourced in a facility or from an entity that compels labor by holding the shipment and conducting a full investigation to determine legitimacy; if the reports are found to be credible, the products can be held by the government or returned to the sending country.¹¹⁷ Giving civil society organizations access to supplier information invites scrutiny that will expose bad actors and jeopardize delivery of products. As nongovernmental organizations, local labor organizers, and other civil society actors begin to access supplier disclosure forms they will identify and report bad actors, as well as discrepancies in reporting from companies.

¹¹⁷ *Forced Labor*. U.S. Customs and Border Protection.
<https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>.

Conclusion

The scourge of forced labor is a pervasive issue related to political failings, economic inequality, and complex systems that will not be solved by a single policy action by a single actor. The United States, however, is uniquely situated within this international system to have enormous impact in real consequential terms for workers as well as in leading the way in setting standards and expectations for what is expected of powerful brands that do business within its borders. By using the power of the government to bridge the information gap between stakeholders, this policy proposal hopes to empower workers, activist organizations, and consumers to be able to make informed decisions and take decisive action about the products they buy and the practices they support in otherwise opaque supply chains. Mandating supplier disclosures by companies meeting the criteria sets a strong standard that those with the resources to be serious players in the international economy that wish to do business within the United States have an obligation to be mindful of the downstream consequences of their working practices and observe the fundamental rights of working people. By setting this standard this proposal hopes to offer a powerful tool that will aid in the effort to abolish the worst forms of exploitation in the global economy.

Works Cited

2017 Trafficking in Persons Report, U.S. Department of State. June 2017.

<https://www.state.gov/j/tip/rls/tiprpt>.

Aaronson, Susan A. and Ethan Wham. "Can Transparency in Supply Chains Advance Labor Rights? Mapping of Existing Efforts." *Institute for International Economic Policy Working Paper Series, Elliott School of International Affairs*, 2016.

<https://www2.gwu.edu/~iiep/assets/docs/papers/2016WP/AaronsonIIEPWP2016-6.pdf>.

Amadeo, Kimberly. "U.S. Imports and Exports: Components and Statistics." *The Balance*, March 3, 2018. <https://www.thebalance.com/u-s-imports-and-exports-components-and-statistics-3306270>

Birkey, Rachel N., Ronald P. Guidry, Mohammad Azizul Islam, and Dennis M. Patten. "Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010." *Journal of Business Ethics*, 2016.

https://link-springer-com.ezp-prod1.hul.harvard.edu/article/10.1007/s10551-016-3364-7#Fn1_source.

Brousseau, Eric, Tom Dedeurwaerdere, & Bernd Siebenhuner, *Reflexive Governance for Global Public Goods*, (Cambridge, Massachusetts, MIT Press) page 86.

Business & Human Rights Resource Centre. "Implementation of US Dodd-Frank Act rule on conflict minerals: Commentaries, guidance, company actions."

<https://business-humanrights.org/en/conflict-peace/conflict-minerals/implementation-of-us-dodd-frank-act-rule-on-conflict-minerals-commentaries-guidance-company-actions>

The California Transparency in Supply Chains Act. State of California, Department of Justice.

<https://oag.ca.gov/SB657>.

Congressional Budget Justification: Department of State, Foreign Operations, and Related Programs: Fiscal Year 2017. U.S. Department of State. February 2016.

<https://2009-2017.state.gov/documents/organization/252179.pdf>.

Disclosure of Payments By Resource Extraction Issuers. U.S. Securities and Exchange Commission.

<https://www.sec.gov/info/smallbus/secg/resource-extraction-small-entity-compliance-guide.htm>.

Doorey, David J. "Can Factory List Disclosure Improve Labor Practices in the Apparel Industry? A Case Study of Nike and Levi-Strauss." *Comparative Research in Law & Political Economy*. Research Paper No. 1/2008. <http://digitalcommons.osgoode.yorku.ca/clpe/214>.

Doorey, David J. "Who Made that?: Influencing Foreign Labour Practices Through Reflexive Domestic Disclosure Regulation." *Osgoode Hall Law Journal*, Vol. 43, p. 353, 2005.:

<https://ssrn.com/abstract=878671>.

Esbenshade, Jill. "Corporate Social Responsibility: Moving from Checklist Monitoring to Contractual Obligation?" in *Achieving Workers' Rights in the Global Economy*, ed. Richard Appelbaum and Nelson Lichtenstein (Cornell University Press, 2016), 51-69.

Fight Slavery Now. "Trafficking Victims Protection Act."
<https://fightslaverynow.org/why-fight-there-are-27-million-reasons/the-law-and-trafficking/trafficking-victims-protection-act/trafficking-victims-protection-act/>.

Forced Labor. U.S. Customs and Border Protection.
<https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>.

Fung, Archon, Mary Graham, and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press, 2007.

Hafner-Burton, Emilie M. *Forced to be Good*. Cornell University Press, 2009.

H.J.Res. 41. Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Securities and Exchange Commission relating to "Disclosure of Payments by Resource Extraction Issuers." (P.L. 115-4).

International Labour Organization. "Global Estimates of Modern Slavery." 2017.
<http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>

International Labour Organization. "Profits and Poverty: The Economics of Forced Labour." May 20, 2014.
http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm

Koekkoek, Marieke, Axel Marx, & Jan Wouters. "Monitoring Forced Labour and Slavery in Global Supply Chains: The Case of the California Act on Transparency in Supply Chains." *Global Policy* vol. 8 (issue 4). November 29, 2017.
<https://onlinelibrary-wiley-com.ezp-prod1.hul.harvard.edu/doi/full/10.1111/1758-5899.12512>.

LeBaron, Genevieve, and Andreas Rühmkorf. "Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance." *Global Policy* vol. 8, issue S3 (May 2017).
<https://doi-org.ezp-prod1.hul.harvard.edu/10.1111/1758-5899.12398>.

Lynch, Sarah N. "SEC halts some enforcement of conflict minerals rule amid review," *Reuters*, April 7, 2017.
<https://www.reuters.com/article/us-usa-sec-conflictminerals/sec-halts-some-enforcement-of-conflict-minerals-rule-amid-review-idUSKBN1792WX?cid=12232>.

O'Rourke, Dara. "Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?" *World Development*, vol. 34, no. 5. May 2006.
<https://linkinghub.elsevier.com/retrieve/pii/S0305750X06000295>.

Parella, Kishanthi. "Outsourcing Corporate Accountability." *Washington Law Review*. October 2014.
<https://digital.law.washington.edu/dspace-law/handle/1773.1/1394>.

Responsible Business Conduct: First National Action Plan for the United States of America. U.S. Department of State. December 16, 2016. <https://www.state.gov/documents/organization/265918.pdf>.

Sabel, Charles, Dara O'Rourke, and Archon Fung. "Ratcheting Labor Standards: Regulations for Continuous Improvement in the Global Workplace." KSG Working Paper No. 00-010; Columbia Law and Economic Working Paper No. 185; Columbia Law School, Pub. Law Research Paper No. 01-21. (2000).<http://dx.doi.org/10.2139/ssrn.253833>.

Stauffer, Brian. "Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry." *Human Rights Watch*, 2017.
<https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry>.

Steurer, Reinhard. "The role of governments in corporate social responsibility: characterising public policies on CSR in Europe." *Policy Sciences vol. 42, issue 1*. March 2010.
<https://link-springer-com.ezp-prod1.hul.harvard.edu/article/10.1007/s11077-009-9084-4>.

Summary of Discretionary Funds, FY 2008-2017. U.S. Department of Labor.
<https://www.dol.gov/sites/default/files/documents/general/budget/CBJ-2017-V1-02.pdf>.

Szep, Jason, Patricia Zengerle, and Matt Spetalnick. "Exclusive - U.S. upgrades Malaysia in annual human trafficking report: sources." *Reuters*, July 9, 2015.
<https://www.reuters.com/article/uk-usa-malaysia-trafficking-exclusive/exclusive-u-s-upgrades-malaysia-in-annual-human-trafficking-report-sources-idUKKCN0PJ00D20150709>

U.S. International Trade in Goods and Services. U.S. Census Bureau. April 5, 2018.
https://www.census.gov/foreign-trade/Press-Release/current_press_release/exh1.pdf.

Verité. "Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains: Research on Risk in 43 Commodities Worldwide." 2017.
<https://www.verite.org/wp-content/uploads/2017/04/EO-and-Commodity-Reports-Combined-FINAL-2017.pdf>.

What is Modern Slavery? U.S. Department of State, Office to Monitor and Combat Trafficking in Persons. <https://www.state.gov/j/tip/what/index.htm>

White, Gillian B.. "All Your Clothes are Made with Exploited Labor." *The Atlantic*, Jun. 3, 2015.
<https://www.theatlantic.com/business/archive/2015/06/patagonia-labor-clothing-factory-exploitation/394658/>.