

The Impact of the California Transparency in Supply Chains Act

by

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Dedication

To the helpers: the essential people working during the Covid-19 outbreak.

Abstract

The California Transparency in Supply Chains Act (CTSCA) as enacted gives a platform for companies in California making over 100 million dollars a year to display their readiness to cope with the ongoing problem of forced labor globally. Slavery has been outlawed in the United States at both state and federal levels since the American Civil War. The CTSCA is not trying to outlaw slavery. California legislators enacted the CTSCA to tackle where supply chain slavery was involved in consumer shopping. The CTSCA has and will continue to influence lawmakers, corporations, and non-governmental agencies in the United States and abroad.

(keywords: slavery, forced labor, globalism, disclosure, consumer awareness)

Contents

DEDICATION	III
ABSTRACT	IV
CONTENTS	V
INTRODUCTION	1
THESIS STATEMENT	4
CHAPTER 1	5
CHAPTER 2	10
CHAPTER 3	15
DISCUSSION	17
CONCLUSION	19
REFERENCES	21
APPENDIX I	27

INTRODUCTION

According to the California Transparency in Supply Chains Act (CTSCA) website (<https://oag.ca.gov/SB657>), transparency in supply chains may help to curtail some forms of modern slavery. There is evidence that, despite its criminal status, slavery exists within the state and in most other countries. Californians reaffirmed that slavery is a crime under the laws of the state, of the United States, and in international trade. Evidence shows the difficulty of uncovering slavery because of the past century's global population boom and economic and political instability in less-developed countries undermine efforts to reduce the vulnerability of individuals within the victims' countries of origin (Whitaker, & Hinterlong, 2008). Californians found that businesses within its borders inadvertently purchase goods and products created by slave labor within their supply chains. Consumers in California were unknowingly enabling slavery through the purchase of products from businesses that were reliant upon slavery through their supply chains. As a result, citizens of California were often unable to distinguish between products that were made from slavery within supply chains and products that were made by free people. California passed the Transparency in Supply Chains Act in 2010 in order to enable consumers to have the chance to buy products that were made slavery free.

California is one of the largest economies in the world. It is home to many of the most successful companies in all sectors, especially health and technology (Vlahoyiannis, [n.d.]). As such, California and its economy should not be ignored by other states or even the federal government in the legislative acts they pass and enforce. Transparency in government and/or economic policy describes the ease with which products move from

person to person through the supply chain. According to Koekkoek, Marx, and Wouters the authors of a recent paper:

Transparency measures should accommodate for the establishment of mechanisms which gather and compare the information creating perspective with regards to the performance of individual companies. Such a comparative mechanism should be easily accessible and, preferably, monitored and updated by an objective organ (pg. 522).

An important modern definition of slavery appeared in the 1926 League of Nations Slavery Convention, which defined slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (Allain, 2009; Crane, 2013). According to Beaman (1998) a supply chain is, “a structured manufacturing process wherein raw materials are transformed into finished goods, then delivered to end customers” (Beamon, p, 1998).

Included in the definition is the number of times a product changes hands before it gets to the consumer. Consumers and investors have an inherent interest in supply chain costs. Supply and demand affect the cost of the good. Input costs (which are determined by supply and demand for input prices) affect production costs. Resource restraints, along with supply and demand will determine how much there is to consume. There are other factors that can impact demand other than just how much exists of a particular product. Investors are looking at products that have a good return on investment (ROI). However, if the product is produced from forced labor, there is a likelihood that some investors will

reconsider putting money into such an enterprise. As a result of heightened negative attention to exploitative labor practices, there is growing interest among mainstream asset managers, private equity funds, venture capital firms, and investment banks to address risks posed by forced labor (Labor Lens Investing: Promising New Investment Tools to Improve Global Supply Chains. 2018, March 6).

THESIS STATEMENT

This thesis will examine how the CTSCA's influence on labor practices in supply chains affects products bought and sold in the United States. The CTSCA requires that retailers and manufacturers doing business in California, with annual worldwide gross receipts of \$100 million or more, must explicitly disclose their efforts to eradicate slavery and human trafficking, and protect basic human rights, along their entire supply chain (California, 2010) This thesis will also look at:

- The history of the CTSCA
 - Influence of past legislation
 - The impact and changes because of the CTSCA
- The Challenges of the CTSCA
 - Support for more responsible labor practices.
- The future impact of the CTSCA on legislatures around the country and throughout the world

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CHAPTER 1

The History of the CTSCA

In 2010, the California State Legislature passed the CTSCA requiring certain large firms to provide on their websites disclosures related to efforts the companies are taking to eradicate slavery and human trafficking from their supply chains (Birkey, Guidry, Islam, & Patten, 2018). The CTSA was signed into law in 2010 by then-Governor Arnold Schwarzenegger, who worked with Darrell Steinberg to enact the law. An early concept of what is now known as the CTSCA was advocated for by Julia Ormond.

Rep. Chris Smith, R-Mercer, was presiding over a hearing and praising actress Julia Ormond. Ormond, who starred in such films as *The Curious Case of Benjamin Button* and *Sabrina*, told a commission that Smith heads about a California law she helped get passed to combat human trafficking (Jackson, p, 2011).

The CTSCA 2010 was enacted on January 1, 2012, ensuring corporations comply with the law. According to Julie Tanner, Assistant Director of Socially Responsible Investing (SRI) at CBIS (Christian Brothers Investment Services):

This bill reflects the realities of the marketplace, which increasingly requires that companies be sensitive to social and ethical issues, including labor and supply

chains, and create human rights policies as well as processes to evaluate, monitor and strengthen those policies.

The CTSCA had the legislative intent [...] to provide consumers with information regarding efforts to eradicate slavery and human trafficking from their supply chains (S.B. 657, 2010 Leg. Reg. Sess. Cal. 2010, enacted), (Greer & Purvis, 2016). Seventy-one percent of global companies believe that there is a likelihood of modern slavery occurring in their supply chains (Hodge, 2017).

Influence of past legislation

There have been several laws prior to the CTSCA which addressed forced labor since the United Nations' adoption of the Palermo Protocol in 2000 (UN Office on Drugs and Crime, 2004), the first international effort to define and address human trafficking), (Todres, 2012). California's CTSCA follows The Tariff Act (also known as the Smoot-Hawley Act) that explicitly addresses slavery in international supply chains through legislation that has the potential to change compliance throughout the country (Brewer, 2018). In the late 1920s and early 1930s, the Republicans held sway in the United States Congress. Herbert Hoover relates in his memoirs of the feeling of the party at that time:

We realized that there are certain industries which cannot now successfully compete with foreign producers because of lower foreign wages and a lower cost of living abroad, and we pledge the next Republican Congress to an examination and where necessary a revision of these schedules to the end that American labor in these industries may again command the home market, may maintain its

standard of living, and may count upon steady employment in its accustomed field (1952, ch.41).

The implied goal for the party in power at the time was to force foreign labor to compete on a more level playing field with American labor by implementing tariffs on imports. The Republican Party had campaigned and had been elected on the idea that tariffs would create an atmosphere of prosperity for all. Higher tariffs would in all likelihood raise factory utilization rates, thus increasing revenue, profits, dividends, and, ultimately, stock prices (Beaudreau, 2018). Therefore, the wording in the Smoot-Hawley Act included the United States' first major effort in confronting forced labor in Section 307 of the Act, stating that:

All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision (19 U.S.C. § 1307 (2016) (Brewer, p.89, 2018).

This part of the Smoot-Hawley Act implied new limits on the ability for any other country to use lower labor standards against American workers. In addition, the Act infers the impossibility of legal profit from slavery outside the United States by entities within the U.S. American labor was not the only player with an agenda and what is now

known as the consumptive demand exemption included a limitation on this ban, which stated:

[I]n no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States Id. (amended 2016) (Brewer, p. 89, 2018).

This consumptive demand exception was the loophole utilized for decades to circumvent restrictions on use of forced labor in supply chains.

Kenneth Kennedy, a senior policy adviser for Immigration and Customs Enforcement (ICE), has described the exemption as the "Achilles heel" of the Tariff Act. The 1930 law granted federal agents the authority to seize shipments where forced labor is suspected and block further imports. Yet it has been used only 39 times in the last 85 years (Holtz, 2016).

This a lack of enforcement left most Americans oblivious or ambivalent about the question of forced labor in the supply chains of companies that imported food, clothing, and other everyday products.

The Impact and Changes as a Result of the CTSCA

Domestic legislation emerged as an alternative method for regulating the extraterritorial human rights abuses of corporations. Within this shift to domestic law, governments were specifically turning to mandated disclosure as a way of filling the governance gap (Chilton & Sarfaty, p. 3, 2017). In 2010, the California Transparency in Supply Chains Act (also referred to as SB 657) was signed into law, and statutes enacted under the Act went into effect on January 1, 2012. The Act required disclosure of particular efforts to eradicate slavery and human trafficking (Albertson's, 2020). The disclosures allowed companies, their customers, and investors to engage in a better understanding of the transparency of their supply chains. Since the enactment of the law, the Christian Science Monitor reported class-action lawsuits have been filed in California against Costco, Nestle, and several other major companies accusing them of selling slave-tainted products (Holtz, 2016). While “fair trade,” “cruelty-free,” and “ethically sourced” products may still fall on the “marketing” side of the compliance ledger, recent U.S. legislation has transformed the global effort to fight human trafficking into a surprisingly settled business imperative (Kendall, Funk, & Banzhoff, p. 55, 2012).

CHAPTER 2

The Challenges of the CTSCA

Marieke Koekkoek, Axel Marx, and Jan Wouters' interest lies with the main three stakeholders. The non-governmental institutions like trade unions are affected.

Consumers who buy and/or sell products and/or services, and companies that, like the consumers, buy and sell through the supply chain, are therefore affected by actions performed within supply chains. (Koekkoek et al., 2017). In order to stay in compliance, the Act does not require corporations to take any action outside of reporting. The following is the text of the law that represents the most relevant wording in the law:

(c) The disclosure described in subdivision (a) shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:

(1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

(2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

(3) Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

(4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

(5) Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of product (California Civil Code section 1714.43:).

The CTSCA used the above wording to enable consumers to see who is doing what in the supply chain, hence the term transparency. Instead of providing the kind of comprehensive information that would be useful to activists or investors, the law was designed to provide information that could potentially change consumer behavior (Chilton & Sarfaty, 2017).

Many of California's citizens want to see an effort by the corporations headquartered in California to determine where slavery can occur in their supply chains (California Office of the Attorney General, 2015). Supply chains can begin in a field thousands of miles away and weave across continents. A widget can pass through many hands on its way to the consumer. For instance, an apple from Washington could travel to China and be combined with flour from the Ukraine and spices from India along with sugar from Brazil and come back into California to be put on a shelf as a "homemade" apple pie. Because supply chains can span so many countries, many supply chains are by their very nature a form of globalism.

Globalism emphasizes the interests of all people rather than favoring one nation over others (Kalso, 2018). In the United States, globalization creates difficulty in

enforcing anti-slavery laws. Globalization has also created a democracy deficit. There are situations where the labor of a person in one country is not valued at the same rate as a person in another (Aman, 2003). To think and act globally means to focus on societies as a whole, rather than a few powerful interest groups (Jost, 1993). This dependence on interconnectedness allows slavery within our economic system without enduring slavery within our borders because it puts labor into another jurisdiction. Multinational corporations “operate as globally integrated entities but are not subject to any single global regulator, thus creating governance challenges not posed by large national firms let alone corner grocers” (Ruggie, p. xii, 2005).

For example, when faced with the issue of wages withheld and other health and safety issues at a factory in Mexico, workers there reached out to the international community for a voice in their struggle.

While much optimism remained among labor and human rights activists about the potential of transnational networks to meet the labor challenge presented by the rapid relocation of manufacturing to ever lower wage markets, a number of stunning and brutal defeats in recent years have served as cautionary notes in drawing conclusions about the direction of citizen action in coming years.

(Williams, p. 527. 2003)

While the United States is not immune to the specter of corruption, attempting to enforce labor laws within another country can be difficult if not impossible.

Support for More Responsible Labor Practices

The United States economy exists in the same world as other economies around the globe. The intent of the Tariff Act and the CTSCA, demonstrate that American citizens are responsible as part of a world economic leader to recognize inequities in our own global system. Americans are investors in the global economy where the power of the dollar does not end at the United States borders. It remains the responsibility of citizens to be cognizant of how supply chain affects people's lives across the globe. In the forward to the 2018 Department of Labor List of Goods Produced by Child Labor or Forced Labor, Secretary of Labor first Alexander Acosta states:

If you are a trading partner that does not abide by and uphold your commitments to end child labor or forced labor, the U.S. will do what it takes to protect vulnerable workers from exploitation, safeguard American jobs, and create a fair playing field for countries that play by the rules (p. 1, 2018).

An ever-growing population of investors study supply-chain efficiency and the costs associated with products and services within those supply chains. Sometimes these costs are the freedom of young children in other parts of the world. The US is not the only country that looks outside its own borders for goods and services. Sweden, for instance, has looked to create an atmosphere of transparency for its own imports. As an importer of American products, the Swedish people have looked into the supply chains of American companies for transparency. According to a study intended to combat slavery in supply chain operations:

Trafficking in persons is a global issue. As such, it makes sense to look to other countries for valuable insights and lessons in implementing effective anti-trafficking in persons measures, especially when those countries are facing similar challenges. The United States government could adopt policies developed by Sweden's County Councils in combating trafficking in persons in public procurement (Woods, p. 444, 2019).

The American Dollar stands as one of the world's most important currencies. The American dream of self-reliance and an honest wage for an honest day's pay should translate throughout the world, just as it does in the United States. Reducing slavery in supply chains may not happen today or even affect the freedom of people in bondage for the products bought in the near future. However, the CTSCA may help to reduce the likelihood that another person is put in bondage for products sold in the United States or throughout the world made from slave labor.

CHAPTER 3

The Future of the CTSCA on Legislatures Around the Country and Throughout the World.

The difference between slavery and labor can be a matter of perspective. The world is full of different cultures. There are many different languages and within almost every language there are differences in dialect. Such differences in dialect can make people speaking the same language confuse meaning. A way of life in one culture looks normal, and in a different culture, that way of life seems strange or even wrong. The future impact of the CTSCA may depend largely on how citizens, as a culture, justify what laws need to be followed in order for someone to earn a living, as well as to what standards.

Working 18 hours in a sweatshop every day may not sound like a good life. However, as long as the worker has a choice and is not coerced, he or she should have the right to that work. In the United States, a citizen might suppose that person is enslaved, but at what point is the ability to perform a job for compensation considered slavery? The labor laws in the United States may seem like slavery to citizens in another country. Even at the state level, there are differing laws on employment. The minimum wage in Tennessee is \$7.25 per hour, whereas in the state of Washington, the minimum is \$13.00 per hour. This demonstrated difference in the United States serves as a mirror to the world. Because of the standards of first world economies and the necessity for Americans to live within certain parameters, Americans do not evaluate the cost of goods and services in the same manner as people from other cultures.

The differences among states may indicate some states examined what California has done or they may emulate the state of Washington's legislation. The state of Washington has a bill before the legislature, SB 5693, the Transparency in Agricultural Supply Chains Act, co-sponsored by Senator Saldaa, Senator Keiser, Senator Hasegawa, and Senator Das, that is designed to provide transparency and corporate accountability for any labor abuses within the agricultural supply chain (United Farm Workers Championing Proposed SB 5693: Transparency in Agricultural Supply Chains Act, p 1, 2019). On a national level:

Congresswoman Carolyn B. Maloney (D-NY) this week introduced the Business Supply Chain Transparency on Trafficking and Slavery Act of 2014 (H.R. 4842). The bill requires companies with over \$100 million in global gross receipts to publicly disclose any measures to prevent human trafficking, slavery and child labor in their supply chains as part of their annual reports to the Securities and Exchange Commission (SEC) (Maloney Targets Slavery, Human Trafficking, and Child Labor with Bipartisan Supply Chain Transparency Bill, 2014).

These examples show that many legislators have introduced bills inspired by CTSCA. The CTSCA proved its viability or usefulness at least as a motivator for politicians, if not consumer behavior. Both of these pieces of legislation referenced companies making 100 million dollars or more as their target for disclosure. These bills are undoubtedly a nod to the effectiveness of the CTSCA on both state and national platforms

DISCUSSION

Steps to enforcing laws to reduce contemporary and future forced labor throughout the world.

What is the key to enforcing laws to reduce forced labor in supply chains? It seems to start with consumer awareness. For example, at the point of sale there may need to be a seal on the product stating that this product is slavery free similar to some of the programs that have been effective in the fishing industry to reduce dolphin injuries in fishing. Using Supply chain disclosure may or may not work in the long run for consumers in all markets. Consumers may not have the patients to research each product or the entity that certifies to find out if it is slavery free on their own regardless of the availability of supply chain disclosure documents.

There may be an ongoing trend toward investor apathy as well. Investors want to go where the money is. Unless there is market pressure, more than with simple disclosure, the likelihood of every consumer researching every product he or she buys seems miniscule. Blockchain technology may offer a solution to this problem. Blockchain technology can help determine where a product comes from very quickly. Also, investigative reporting helps. If a major company is sourcing slave labor, then they can suffer a reputation consequence. What will incentivize consumers to look things up? Usually the law of supply and demand outweighs the conscience.

What will it cost to enforce anti-slavery laws?

The costs may be cost prohibitive when the market chooses not to shy away from the law of supply and demand. Integrating tariffs or taxation into the supply chain in order to enforce regulation on a multinational level could be a difficult sell for any nation.

And there is also the possibility of these laws being hijacked by domestic producers to prevent foreign competition. Once a law is implemented, companies will try to exploit to their own advantage.

How does one make saving the freedom of someone half a world away cost effective? Enforcing the laws that we already have may be the most cost-effective way to eradicate slavery in supply chains. Reevaluating the laws that we have may be the single most cost-effective measure before introducing new legislation. There is no single answer; however, law enforcement continues to home in on areas of non-compliance. The use of the CTSCA disclosure statement is a powerful tool in shining a light on the tragedy of slavery in the supply chains that flow into California. Enforcement is the key for individuals half a world away to finding the pathway to freedom.

CHAPTER 5

CONCLUSION

In the United States enables its citizens the opportunity to hope and within that hope is the opportunity to make a difference. This is demonstrated by the initial work of actor Julia Ormand who advocated for the CTSCA. She pushed for anti-slavery legislation with the intent of shining a light of enslaved individuals all over the world as well as to inform consumers about what they are supporting when they buy products in California. However, the law that Americans depended on to keep goods made from enslaved labor off our shores, the Tariff Act of 1930, was enacted with a built-in loophole; since its passage, it was only used 39 times in 85 years (Holtz, 2016). This exemplifies the fact that the American government made it a standard practice to look the other way if there was a question about products produced from slavery outside of its borders. The CTSCA enacted a law that required companies making over 100 million dollars to create a disclosure statement and that disclosure statement would be available on each company's web page. On a link from the home page of each company, the ability to identify forced labor or human trafficking in their supply chains was to be displayed publicly. Such transparency was intended to reveal the prevalence that forced labor exists within a company's supply chain. The disclosure statements allowed for a structure of information that must be given; at the same time, some companies took this as an opportunity to show how seriously they took this effort to eradicate forced labor from their supply chains. There is one example of a disclosure statement in Appendix 1.

The CTSCA has an effect through this disclosure in several ways since its enactment in 2012. It has been used to launch several lawsuits and also several different

pieces of legislation both to state governments and on the national level. The initial effect of the law in the way that it was written may have been geared towards consumer awareness, but such consumer awareness can translate to global consumer awareness. With our trading partners looking at laws on their own books, they can also look to the state of California in structuring programs that bring consumer awareness to a level of advocacy and emulation.

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Appendix I

California Transparency in Supply Chain Disclosure Statement Example

Safeway/Albertsons

<https://www.albertsonscorporation.com/about-us/our-policies/anti-human-trafficking.html>

Anti-Human Trafficking

California Transparency in Supply Chain Disclosure Statement

We actively pursue growth through leadership in environmental, socially responsible and ethical business practices. Corporate social responsibility is core to our operating philosophy, and that commitment drives our dedication to People, Products, Community and the Planet. That commitment extends to our supply chain, and our suppliers play a critical role in ensuring that we manage our business in a responsible manner.

In 2010, the California Transparency in Supply Chains Act (also referred to as SB 657) was signed into law, and statutes enacted under the Act went into effect on January 1, 2012. The Act requires disclosure of particular efforts to eradicate slavery and human trafficking.

We are committed to conducting its business in a lawful and ethical manner and expect our suppliers to conduct themselves in the same manner. We have implemented

various policies and procedures in our efforts to prevent slavery and human trafficking in our supply chains. This disclosure will describe some of those efforts.

With the assistance of a third-party consultant, we survey our merchandise supply chains in order to evaluate and to address risks of slavery and human trafficking inherent in those activities. This survey forms the basis for additional anti-slavery, anti-human trafficking efforts, including targeted supplier requirements and third-party audits.

We have long used contractual provisions prohibiting the use of involuntary labor and child labor, and requiring compliance with applicable labor and employment laws, in the production of merchandise that we sell. We have a stringent Supplier Code of Conduct (“Code”) that sets out specific standards and requirements for any supplier we do business with which includes provisions to protect workers. Among other things, the Code requires our suppliers to allow factory inspections for contractual compliance, as well as for compliance with laws and regulations dealing with child or forced labor and unsafe working conditions.

In our efforts to confirm compliance with such contractual provisions and to document compliance with the California Transparency in Supply Chains Act, each of our merchandise suppliers has been asked to certify that the materials incorporated into the merchandise they supply complies with applicable laws regarding slavery and human trafficking. Suppliers are also required to ensure that any subcontractor used in the manufacturing or distribution of any merchandise to us complies with the same standards.

Any supplier that is not able to provide the foregoing certification will be required, as a condition to continuing to supply merchandise to us, to submit an action plan to achieve such certification within a reasonable period of time. Those suppliers that fail to comply will be subject to increasing levels of discipline, up to and including termination of their relationships.

In an effort to verify supplier responses and to help us identify areas of increased risk of slavery and human trafficking, we are requiring that our suppliers complete a survey identifying measures they have taken, or intend to take, to prevent these abuses.

We have reviewed the risks of slavery and human trafficking presented by various parts of our supply chain and has inspected the factory premises of the suppliers of our own-branded merchandise for evidence of non-compliance with slavery and human trafficking laws. In addition, we have, on a risk-based basis, engaged third-party auditors to review compliance of certain suppliers with international social accountability standards.

Responsible employees have been advised of our prohibitions against the use of slavery and human trafficking in our supply chains. Additionally, we have implemented training requirements for employees with sourcing responsibilities.