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# ELIMINATING FORCED LABOR IN AMERICAN CORPORATIONS AND THEIR SUPPLY CHAIN: EXISTING SOLUTIONS AND FAILURES

*Breann Hunt*<sup>1</sup>

## I. INTRODUCTION

If you've ever purchased some of Nestle's chocolate milk, Nesquik, you may have been purchasing a product sourced by slave labor. As the world's largest food manufacturer,<sup>2</sup> Nestle has maintained its competitive advantage by cutting ethical corners in its sourcing practices. From Thailand to Africa, the global food manufacturer's supply chain is replete with severe human rights violations that have caused public outrage on multiple occasions.<sup>3</sup>

Twenty-one million individuals across the globe are victims of forced labor at any given moment. Included in this statistic are millions of children subjected to "restriction of movement, physical and sexual violence, intimidation and threats, retention of identity

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1 Breann Hunt is a junior at Brigham Young University majoring in Strategic Management. Breann would like to thank her editor, Miranda Olson, for her amazing work reviewing this paper and her excellent contributions to its content.

2 Nancy Levine, *10 Largest Food Companies in the World*, LARGEST.ORG, (Aug. 2, 2019), <https://largest.org/food/food-companies/>.

3 *Nestle Admits to Forced Labor in its Seafood Supply Chain*, THE GUARDIAN (Nov. 24, 2015, 7:15 AM), <https://www.theguardian.com/global-development/2015/nov/24/nestle-admits-forced-labour-in-seafood-supply-chain>.

documents, withholding of wages, [and] debt bondage.”<sup>4</sup> Annual profits of forced labor come to a total of \$150 billion USD for American companies per year, spread over a multitude of industries and global conglomerates.<sup>5</sup> Increased consumer production has created fierce price competition among national corporations, driving subcontractors to resort to illegal and immoral methods to gain labor contracts. Low prices for consumer goods are often paid by the most vulnerable populations.

The financial benefit of forced labor creates little incentive for perpetrators to abandon the practice on moral grounds. The competitive advantage organizations gain from unethical supply chain practices is a lucrative incentive to continue illegal behavior. Human rights organizations often present emotional pleas to governments, corporations, and the general public to demand systematic change, but these organizations lack the power to attack the global and widely entrenched issue of forced labor. These third-party efforts, while laudable in their activism, seek redress in the abstract, as current legal systems are unprepared to litigate on the global stage.

With yearly revenues of \$90 billion, Nestle’s profits rival the GDP of entire nations and possess global influence. In 2005, six plaintiffs alleged that they were enslaved on [Nestle’s] plantations and sued Nestle and its parent companies in *Doe v. Nestle* for aiding and abetting their enslavement.<sup>6</sup> Despite public awareness and pending legal action, Nestle made no change to their supply chain practices, and in 2015--a full decade after the initial attempt at legal action--the company admitted to human rights violations in its Asian

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4 Claire Reade and Samuel Witten, “Understanding the US Ban on Importing Forced Labor Goods | Publications and Presentations | Arnold & Porter,” ARNOLD & PORTER, 2017, <https://www.arnoldporter.com/en/perspectives/publications/2017/04/understanding-the-us-ban-forced-labor-goods>.

5 Int’l Labour Org., *Profits and Poverty: The Economics of Forced Labour* (2014).

6 Jess Bravin, *Supreme Court Voices Doubts Over Suit Alleging Nestle, Cargill Liable for Child Slavery*, WALL ST. J. (Dec. 1, 2020, 7:37 PM), <https://www.wsj.com/articles/supreme-court-voices-doubts-over-suit-alleging-nestle-cargill-liable-for-child-slavery-11606853402>.

supply chain.<sup>7</sup> It should be noted that the 2005 claims were from victims in Africa, thus highlighting the widespread, global scope of the company's behaviors. The lack of legal action likely enabled Nestle to continue illegally sourcing food products. Nestle has never faced legal consequences for its role in human rights violations; instead, the firm released reports as a result of public outcry. However, reports and research can only go so far in moderating the ethics of billion-dollar companies, particularly when voluntary reporting is done by the company itself.

The fact remains that illegal and inhumane labor conditions have persisted despite increasing public awareness of the existence of forced labor conditions. Watchdogs and whistleblowers have appealed to public sentiment in an attempt to enforce good behavior from billion-dollar organizations. However, consumers have been unable to create meaningful change in an economic market with an oligopoly or monopoly that restricts buying power. Indeed, the case of *Doe v. Nestle* has not caused any meaningful legislation to be passed and has only recently been appealed to the Supreme Court for further consideration on behalf of the plaintiff's claims. The lack of effective legislation and cries for change in this matter prove that this issue has gone ignored, preventing a clear legal consensus from emerging. Supreme Court justices remain divided on the issue, including the role of the judiciary in the interpretation of existing laws. In *Doe v. Nestle*, Justice Brett Kavanaugh claims, "[T]his case really is a case, I think, about the proper role of the judiciary as compared to the proper role of Congress here in fleshing out the Alien Tort Statute."<sup>8</sup> It is past time for the American legal system to recognize corporate culpability in the regular, egregious violations rife in global supply chains. The author of this Article will examine existing legal solutions and their failures, while expanding on Justice Kavanaugh's question concerning the expansion of legislation.

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7 *Nestle to Fight Slave Labor in Thailand*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, (NOV. 25, 2015), <https://www.business-humanrights.org/en/latest-news/nestle-to-fight-slave-labour-in-thailand/>.

8 Bravin, *supra* note 6.

## II. BACKGROUND

Many arguments surrounding the issue of illicit supply chain management often focus on the ethical obligation of the courts to rule against corporations that fail to protect and manage risk. Ethical arguments, while often compelling in the eyes of the public, fail to create a sound legal basis for litigation as seen in court precedent where most rulings have sided in favor of the corporations. Indeed, multiple courts have ruled against arguments featuring U.S. law that try to explicitly outlaw slave labor, citing instead the context of the original law as being economically motivated as opposed to morally sanctioned. According to the court in the precedential *McKinney v. U.S. Dept. Treasury* case, “the plain language of § 307 (referring to Section 307 of the Tariff Act of 1930) will not support an interpretation that it was enacted to afford consumers a legal right or interest in preventing, for economic, moral, or ethical reasons, the importation of foreign goods produced by forced labor.”<sup>9</sup>

In recent years, the number of suits brought against American corporations by international plaintiffs has increased, including several high-profile cases<sup>10</sup> such as *Doe v. Nestle* mentioned above, where supply chain violations are the cause of the cited damages. U.S. Code § 1589 explicitly outlaws slave labor in the United States while U.S. Code § 1307 prohibits the import of products produced by such labor, and allows for international plaintiffs to sue American companies. This circumstance appears ripe for litigating supply chain violations, yet slave labor rates are only increasing, and American companies continually face accusations of illicit supply chain management. Thus, the author will examine the effectiveness of various non-governmental and legal statutes and their impact on eliminating forced labor from American corporations’ supply chains to prescribe possible redress.

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9 *McKinney v. U.S. Dept. Treasury*, 799 F.2d 1544 (Fed. Cir. 1986).

10 *Doe I v. Nestlé USA, Inc.*, 929 F.3d 623 (9th Cir. 2019).

### III. PROOF OF CLAIM

#### A. Limited Grounds for Plaintiffs

As American companies globalize their supply chains, the likelihood of violating international human rights statutes increases. Global sourcing also creates issues in determining the legitimacy of plaintiffs' claims to sue on American soil. Justice Elena Kagan questioned the distinction between corporations and individuals in slave labor liability upon hearing arguments from *Doe v. Nestle*. She asks, "if you could bring a suit against 10 slaveholders, when those 10 slaveholders form a corporation, why can't you bring a suit against the corporation?"<sup>11</sup> Her words highlight the extent to which corporations are shielded, not only from financial risk, but from moral (and illegal) violations.

Following a ruling in *Jesner v. Arab Bank* that limited the grounds for plaintiffs to sue for forced labor violations, legal scholars Verider and Stephen argue that "private human rights litigation in federal courts will survive only when plaintiffs either fit within an existing statute, such as the Torture Victims Protection Act (which excludes corporate defendants) or the Anti-Terrorism Act (which only covers injury to U.S. nationals), or can both satisfy the requirements of diversity jurisdiction and find a basis in state or foreign law for their claims."<sup>12</sup> Essentially, current trends in court rulings move towards an extremely narrow definition of human rights violations that leaves plaintiffs struggling to not only seek individual damages, but also to change a system that continues to perpetuate offences against the defenseless. Victims of forced labor may lack resources or access to legal redress, as many live outside of the United States and have linguistic and financial barriers to initiating legal action. The increased restriction on the grounds for redress for victims effectively protects billion-dollar industries from facing accountability for

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11 Bravin, *supra* note 6.

12 Pierre-Hugues Verdier & Paul Stephan, *After ATS Litigation: A FCPA for Human Rights?*, LAWFARE, (May 7, 2018), <https://www.lawfareblog.com/after-ats-litigation-fcpa-human-rights>.

human rights violations perpetrated in pursuit of profit while making it nearly impossible to prevent the creation of future victims through widespread legal action.

### *B. Protection for Corporations*

United States law outlaws corporations and citizens from benefiting from forced labor.<sup>13</sup> Further litigation from the Tariffs Act of 1930 claims that goods produced by convict or forced labor shall not enter any U.S. port.<sup>14</sup> Human rights activists have attempted to argue for a moral and ethical application of the Tariffs Act to bar consumer goods produced by slave labor from entering the U.S. market. Several cases<sup>15</sup> citing this distinct language argue that the Act justifies a ruling in favor of forced labor victims. However, the *McKinney v. U.S. Dept Treasury* ruling appeals to the context of the Tariffs Act, which states that “section 307 was enacted by Congress to *protect* domestic producers, production, and workers from the unfair competition which would result from the importation of foreign products produced by forced labor.”<sup>16</sup> The California District Court’s interpretation of the Tariff Act of 1930 reinforced the lack of ethical business obligation in supply chain cases. In other cases, such as the *International Rights Fund vs. U.S.*,<sup>17</sup> plaintiffs cited Section 307 of the Tariffs Act of 1930 as justification for declaratory and injunctive relief from multiple United States Government entities for failure to investigate allegations of forced child labor in cocoa imports from Côte d’Ivoire. The court in 2005 upheld the decision of *McKinney v. U.S. Dept. Treasury* “because of the undisputed facts regarding the lack of any significant domestic production of cocoa, section

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13 Forced Labor, 18 U.S.C §1589 (2008).

14 *McKinney v. U.S. Dept. Treasury*, 799 F.2d at 1544.

15 *McKinney v. U.S. Dept. of Treasury*, LEAGLE, [HTTPS://WWW.LEAGLE.COM/DECISION/CITINGCASES/19862343799F2D154412108?PAGE=1](https://www.leagle.com/decision/citingcases/19862343799F2D154412108?PAGE=1).

16 *McKinney v. U.S. Dept. Treasury*, 799 F.2d at 1544.

17 *Int’l Labor Rights Fund v. U.S.*, 391 F.Supp.2d 1370 (Ct. Int’l Trade 2005).

307 essentially renders itself moot under these facts.”<sup>18</sup> The court therefore created a precedent that precludes use of Section 307 in litigating violations of forced labor when a U.S. industry is *not* at risk from foreign competition. Essentially, this interpretation protects the interests of those American corporations that are often the perpetrators of human rights violations on international soil. No such protection for the vulnerable population of forced laborers exists.

However, well-known brands and companies that produce popular products for consumers in the United States like Nike, Microsoft, and even Walmart have been linked to forced labor upon which they rely for market success. The nature of subcontracting production and other labor allows U.S. companies to manage the logistics of selling goods through overseas supply chains, far distant from the consumers that will actually purchase the products. Thus, “corporations and manufacturers are not held legally responsible when an outside firm that is sub-contracted to produce their product uses forced labor.”<sup>19</sup> Not only are corporations legally cleared from implications of forced labor by avoiding responsibility for subcontract labor, but consumers are often unaware of the reality of supply chain morality due to the distance between production and purchasing. Therefore, corporations can effectively avoid both legal and societal implications that would arise from aiding and abetting systems of forced labor. While violating the laws prohibiting the use of forced labor, such U.S. companies grow larger and more influential, creating economic monopolies on U.S. markets and barring fair economic competition. Other firms competing in the U.S. market who are not inclined to cut ethical corners find themselves at a disadvantage compared to firms that leverage the lack of information and liability to advance in market share. Indeed, the power, size, and available markets for these products allow the overbearing firms to dictate the price and

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18 *Int’l Labor Rights Fund*, 391 F.Supp.2d at 1370.

19 Chrissey Buckley, *Forced Labor in the United States: A Contemporary Problem in Need of a Contemporary Solution*, HUMAN RIGHTS & HUMAN WELFARE 116, 117 (2008).

speed of manufacturing.<sup>20</sup> In turn, financial inequality and market bias abound, harming victims, customers and the free market alike, though disproportionately.

### C. Competition Inequality

Presently, there is no *adequate* legislation addressing the financial inequality created in the U.S. market when firms who benefit from forced labor compete with other firms who uphold lawful labor practices. While legislation such as code 1307 addresses the concept of forced labor violations, there is no comprehensive legislation that addresses forced labor victims, customers implicated in the purchase of goods produced by such victims, and the protection of the free market from the influence of unethical cost reduction from various corporations. In the ruling of *McKinney v. U.S. Dept of Treasury*, the court addressed the argument of competitive injury in economic markets based on sourcing from forced labor. Such competitive injury can be described as price discrimination that distorts economic fairness. The ruling states that, “Article III [of the Constitution] requires more specific allegations of competitive injury to satisfy the case or controversy requirement.”<sup>21</sup> From the conclusion of this case, it is clear that the court acknowledged the presence of competitive injury abstractly but required appellants to quantify injury further to gain a favorable ruling. The author will address and establish the definition of competitive injury under existing statutes and prescribe additional measures for promoting free market trade by penalizing companies engaging in forced labor.

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20 Genevieve LeBaron, *Subcontracting Is Not Illegal, But Is It Unethical? Business Ethics, Forced Labor, and Economic Success*, 20 THE BROWN J. OF WORLD AFFAIRS, (2014), at 237-249.

21 *McKinney v. U.S. Dept. Treasury*, 799 F.2d at 1544.

### *D. Forced Labor and Its Effect on the Free Market and Antitrust Violations*

The federal government of the United States has developed legislation to promote rigorous business competition in the marketplace. Examples include antitrust laws and SEC requirements which ensure fair competition and freedom of information in the market by breaking up market monopolies and issuing property rights. In relation to supply chain management, antitrust laws enforced by the FTC examine firms' supply chains. The FTC claims that, "A vertical [supply chain] arrangement may violate the antitrust laws [...] if it reduces competition among firms at the same level (say among retailers or among wholesalers) or prevents new firms from entering the market."<sup>22</sup> Supreme Court precedent dictates that antitrust issues be examined through a reasonable framework that includes a consideration of the effect of a firm's actions on competition within the market. The FTC claims that, "[price advantage through supply chain] must be weighed against any reduction in competition from the restrictions."<sup>23</sup> While price advantage is not illegal, gaining market high ground through forced labor creates an unfair vertical supply chain that tilts economic competition in favor of the company with human rights violations.

According to the FTC, "a vertical arrangement may violate the antitrust laws, however, if it reduces competition among firms at the same level (say among retailers or among wholesalers) or prevents new firms from entering the market."<sup>24</sup> Sourcing goods through illegal labor reduces competition by unfairly lowering the cost of goods sold for firms, thus enabling them to undercut competitor pricing. This does have the effect of reducing the advantages of free market competition and prevents new firms from entering the market. For

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22 *Manufacturer-imposed Requirements*, FTC, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-supply-chain/manufacturer-imposed>.

23 *Id.*

24 *Dealings in the Supply Chain*, FTC, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-supply-chain>.

example, a study done on the price increase upon Fair Trade certification of coffee brands (an industry often associated with forced labor in its supply chains), researchers found that price increases did not reflect the consumer's willingness to pay.<sup>25</sup> A Fair Trade certification is a third party supply chain certification that audits participating businesses to ensure their subcontracted labor is well paid and free from slave labor.<sup>26</sup> The study further claims that, "Fair Trade Certification has an impact of raising the price of coffee 22% compared to non-Fair Trade coffees," while "Fair Trade Certification increases the premium consumers are willing to pay for coffee by 1.1%."<sup>27</sup> Thus, while brands that secure their supply chains from human rights violations must necessarily increase their prices, there is not a corresponding willingness to pay the additional price from consumers. The study cited deals with a common consumer good, coffee, where firms compete with similar prices and four brands represent more than 55% of total market share.<sup>28</sup> Other common consumer goods have similar industry structures, such as Nestle, where large competitors compete on price for market share. When industries compete on price, the likelihood of ethical supply chain efforts creating an effective competitive advantage with the majority of consumers decreases.

While there is certainly evidence of forced labor within coffee supply chains,<sup>29</sup> ethically sourced coffee brands have not made a significant entrance into the mainstream market. This represents how

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25 Adam P. Carlson, *Are Consumers Willing to Pay for Fair Trade Certified Coffee?*, U. NOTRE DAME (June 10, 2009).

26 *What Does the Fair Trade Certified Seal Represent?*, FAIR TRADE CERTIFIED, <https://www.fairtradecertified.org/fair-trade-faq-fair-trade-questions#what-does-the-fair-trade-certified-seal-represent>.

27 Carlson, *supra* note 25.

28 Jan Conway, *Key Brands' Market Share of Ground Coffee in the U.S. 2020*, Statista (Nov. 26, 2020), <https://www-statista-com.erl.lib.byu.edu/statistics/451969/market-share-of-ground-coffee-in-the-us-by-leading-brand/>.

29 *Bitter Brew: The Stirring Reality of Coffee*, FOOD EMPOWERMENT PROJECT, <https://foodispower.org/our-food-choices/coffee/>.

dominant, global firms with no legal repercussions for their human rights violations suppress the expansion of ethically sourced U.S. competitors. In the Supreme Court filings for *Doe v. Nestle*, competitors claim that Nestle violated their right to the free market. According to several firms who had taken measures to ethically source their product, “As slave-free cocoa and chocolate companies, [we] are at a competitive disadvantage to companies that source cheap cocoa produced with forced child labor. The higher production costs associated with compliance with international human rights norms require [us] to sell chocolate at higher prices.”<sup>30</sup> If other firms are operating with legally sourced labor, they will be less likely to sustain profits and compete in markets where some firms are illegally benefiting from cheaper labor. Economic scholars Kynak et al. argue that, “The competitive environment, heating up with the emergence of new and powerful competitors in the markets with regard to all sectors, tempts entities to perform unethical maneuvers in their commercial relations with the aim of gaining a competitive advantage.”<sup>31</sup> Unethical maneuvers to gain competitive advantage in the market are often hard to detect and costly to investigate. Indeed, “transaction and auditing costs of the entities increase due to the fact that such operations based on the derivation of unfair advantage are difficult to detect.”<sup>32</sup>

As mentioned above, becoming a Fair Trade certified brand requires rigorous standards and will increase the cost to the firm for goods sold. This includes associated overhead costs. Other certifications for sustainability such as the B Lab, which includes similar standards for labor within the supply chain, represent high costs

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30 Peter Whoriskey, *Supreme Court Weighs Child-Slavery Case Against Nestle USA, Cargill*, WASH. POST (Dec. 1, 2020, 12:45 PM), <https://www.washingtonpost.com/business/2020/12/01/cocoa-supreme-court-child-labor/>.

31 Kaynak, et al., *Supply Chain Unethical Behaviors and Continuity of Relationship: Using the PLS Approach for Testing Moderation Effects of Inter-Organizational Justice*, 162 INT’L. J. PRODUCTION ECONOMICS, 83-91 (2015).

32 *Id.*

to firms who decide to engage in such third-party labels.<sup>33</sup> While these certifications are not necessary for firms to engage in ethical practices, they represent the overall cost disadvantage for firms that refuse to compromise ethical sourcing standards for price cuts. Thus, for this reason, national antitrust legislation can define the federal government's obligation to address forced labor in supply chains, and provide additional context in courts for understanding the quantifiable damage done to free markets by illicit supply chain management.

### *E. Current Legislative Efforts in Forced Labor Reduction and Policing*

The United States federal government has a legal obligation to remedy illicit practices in the supply chains of American companies. However, some may argue that the federal government should not interfere in free market operations due to volunteer efforts by human rights organizations and public advocacy groups that have come to prominence in recent years. Current legal arguments suggest leaving the ethics of human rights violations to the court of public opinion. Logically, if the public can successfully keep businesses from engaging in forced labor in their supply chain through social pressure, there is little need for government intervention. To this end, it is necessary to examine existing legislation and its effectiveness in deterring forced labor as well as voluntary public efforts to reduce human rights violations committed by American companies. Legislation has been limited in this regard, but recently, attempts to police the ethicality of supply chains have been instated. The State of California has attempted to end the practice of forced labor by enacting the California Transparency in Supply Chain Act of 2010. A decade after its inception, the California Transparency in Supply Chain Act has been critiqued by scholars and investors alike. The declared purpose of the CTSCA is to “help California consumers

make better and more informed purchasing choices.”<sup>34</sup> The CTSCA requires businesses worth over \$100 million in California to “disclose on their websites their efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”<sup>35</sup> However, the Act “only requires that covered businesses make the required disclosures, even if they do little or nothing at all to alter their supply chains.”<sup>36</sup> Human rights organizations classify the CTSCA as “more symbolic than substantive in nature.”<sup>37</sup>

Despite the lack of enforcement and means of policing, the act does provide a basis for creating reporting that can be compared across firms. One common critique of corporate social responsibility (CSR) reporting is that voluntary reporting is extremely arbitrary and varies by firm. Legislation such as the CTSCA can standardize the reporting initiatives, though admittedly, the CTSCA does little to create meaningful change in companies’ supply chains without the power to enforce more than reporting statistics. The CTSCA is one of the most widespread examples of modern supply chain legislation. To date, no other states have made similar moves to adopt such legislation. Internationally, the United Kingdom has passed the Modern Slavery Act of 2015,<sup>38</sup> which includes a supply chain disclosure clause similar to CTSCA. As of 2021, the United States government has not passed similar legislation combatting modern slavery.

### *F. Third-Party Efforts in Forced Labor Reduction and Policing*

Voluntary efforts to monitor and improve supply chain human rights violations by third party organizations currently include researching existing work conditions and possible solutions, but these efforts

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34 Kamala D. Harris, California Department of Justice, *The California Transparency in Supply Chains Act: A Resource Guide* (2015).

35 *Id.*

36 *Id.*

37 Rachel Birkey, et al., *Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010*, 152 J. BUS. ETHICS 827, 827-41 (2018).

38 Modern Slavery Act, 2015, c. 30.

do little in the implementation of systematic change. The theory of change behind third party organizations relies on the assumption that the public will put pressure on firms if given compelling narratives of workplace conditions. Organizations striving to end forced labor in supply chains include, but are not limited to, the Fair Labor Association, Know the Chain, and Corporate Human Rights Benchmark (CHRB). These organizations have contributed to a greater understanding of research techniques to identify how supply chains exploit workers globally. CHRB reports specifically on the largest global companies by name and industry. Know the Chain similarly generates reports for companies and investors to voluntarily elect to adopt better supply chain practices. In each case, these supply chain watch dogs are connected to a vast network of other international rights organizations that promote the UN Sustainable Development Goals and other priorities geared towards bettering conditions for all humankind. However, like the results of the California Transparency in Supply Chain Act, these NGOs struggle to make a concrete and sustainable impact. Though they are clearly able to find information concerning human rights infringements in global supply chains, the information only yields value when condemned by courts. In many ways, these efforts are isolated from legislative efforts, which reduces their effectiveness.

In sum, the CTSCA and third-party voluntary efforts focus primarily on reporting yet fall short in implementing real change. Existing precedent for proving corporate injury has so far been limited. These ineffective efforts to penalize global supply chains who engage in forced labor de-incentivize investors from progressing, accepting, and promoting ethical supply chains.<sup>39</sup> However, further development on the issue of ethical supply chain management may come to fruition in the future. As recently as July 21, 2020, the Slave-Free Business Certification Act was introduced to the United States Congress. The bill would require reporting of supply chain violations through external audits and certification of slave-free labor. Ultimately, the bill proposes that “the Secretary may assess punitive damages in an amount of not more than \$500,000,000 against a

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39 Birkey, *supra* note 37.

covered business entity.<sup>740</sup> The proposed Slave-Free Business Certification Act draws on the precedent of the CTSCA by requiring public disclosure of supply chains. It remains to be seen whether this approach to legislating supply chains in the United States will have a similar effect as that of the California Supply Chain Act.

#### IV. CONCLUSION

The author proposes that a more direct approach to supply chain violation be adopted in conjunction with the Slave-Free Business Certification Act or in coordination with SEC or FTC regulations. It is clear that third party organizations have research and analysis capabilities and methodologies that can be utilized to assess corporate injury. In order for claims of corporate injury to be sustained in antitrust regulation cases or SEC information injunctions, the Supreme Court requires clear proof of injury. In accordance with existing capabilities in supply chain analysis, this article demands that trusted supply chain organizations include specific metrics relating to competitor injury. Upon proof of competitor injury, the author argues that anti-trust laws should be applied to cases of forced labor within supply chains, as previously outlined. The author concedes that clear competitor injury must be proven through existing Antitrust definitions of injury, but argues that in the presence of a multiplicity of NGOs and ineffective legislation, resources can be reallocated by both governments and third parties to determine the extent of economic damage when firms engage in illegal supply chain practices compared to legally sourced firms. In this way, human rights violations can be litigated through existing law, and the diversity of research available to the public will serve to create a clear path of action for consumers as well as legal entities charged with upholding existing law.

The author's findings indicate that issues of illicit supply chain management are relevant to today's legal discourse, and that an effective method of incentivizing compliance with national and international human rights standards has not yet been implemented in the

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40 Slave-Free Business Certification Act of 2020, S.4241, 116th Cong. (2020).

United States. Upon examination of the California Transparency in Supply Chain Act, this paper concludes that the lack of enforcement renders this legislation ineffective in changing company practices. Appeals to public virtue have failed to inspire systematic change in the global supply chain, as the Act falls short in prescribing penalties for non-compliant firms. Non-governmental organizations excel in creating research reports and providing statistics on forced labor conditions; however, the quantity of reports has oversaturated the market without effecting change. This paper instead proposes that research organizations focus on proving corporate injury and instances where free market trade has been dampened by unfair advantages gained by illegally sourced labor. The author concludes that the U.S. government has a duty to upholding the free market and protecting its citizens, and this duty must be carried out in eliminating forced labor from U.S. consumer goods.