Trafficking in Information: Evaluating the Efficacy of the California Transparency in Supply Chains Act of 2010

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By Alexandra Prokopets*

Abstract: The California Transparency in Supply Chains Act of 2010 (CTSCA) took effect in January 2012. It was designed in an effort to eradicate forced labor and human trafficking in business supply chains, which the legislature recognized as violations of state, federal, and international law. The CTSCA does not forbid the sale of goods produced through trafficked labor. Instead, the CTSCA asks companies to disclose their labor practices to consumers in order to allow buyers to differentiate companies based on their efforts to supply products free from slavery and trafficking, which will in turn inform consumers’ purchasing decisions and drive companies to pay closer attention to their own supply chains. After explaining the requirements of the CTSCA, this article applies Archon Fung and colleagues’ framework for successful transparency regulation to analyze the likely efficacy of the CTSCA. The analysis finds that while the CTSCA meets three of the five essential elements for a successful disclosure regulation, the law fails to meet crucial aspects of having a defined information structure and vehicle, and also lacks an enforcement mechanism. Furthermore, the information disclosed under the CTSCA regime is unlikely to become adequately embedded in users’ routine decision-making to affect the purchase of goods, a necessary aspect for success. Therefore, the CTSCA is not likely to help eradicate forced labor and human trafficking.
I. Introduction

In 1865, slavery was officially abolished in the United States with the enactment of the Thirteenth Amendment to the Constitution. At the peak of the transatlantic slave trade, approximately 80,000 slaves were shipped from Africa to the new world. Today, it is estimated that about 27 million men, women, boys, girls, U.S. citizens and foreign nationals are victims of modern-day slavery, known as human trafficking, around the globe. Human trafficking for labor and commercial sex services occurs when people profit from the control and exploitation of others through the use of force, fraud or coercion. Trafficking victims are generally confined against their will, often in inhumane conditions, and “have typically been [coerced], lied to, threatened, [physically and sexually] assaulted, raped,” and deprived of adequate food, shelter, and medical services. Currently a 32 billion dollar enterprise, human trafficking is among the top three criminal industries in the world. Specifically, $13,000 per year is generated on average by each “forced laborer,” and this number can reach up to $67,200 per victim per year.

As economic globalization continues, business supply chains are becoming more complex, increasing in layers and parties, and exacerbating the difficulties in tracking where and how labor abuses occur. Simultaneously, the push to alleviate and eventually eradicate

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5. TIP REPORT 2012, supra note 3, at 11.
7. Id. at 55–56.
labor trafficking, is gaining momentum as grassroots organizations have vigorously advocated for corporate transparency and developed tools to enhance consumer awareness of labor trafficking. Consumers have begun to consider their individual roles in perpetuating modern-day slavery through technological tools such as the Slavery Footprint website or the Free2Work rating site and mobile application. The goal of the latter tool is to rate companies according to their use of forced labor practices and relay information to consumers in comprehensible terms to change consumer purchasing decisions.

While community members and advocacy groups have led the fight against labor trafficking, state and federal legislators have also attempted to craft creative and effective solutions to the broader problem of human trafficking. Since the United Nations’ adoption of the Palermo Protocol in 2000 (the first international effort to define and address human trafficking), over 125 nations and fifty states and the District of Columbia within the United States, have adopted laws prohibiting human trafficking, and providing penalties for

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10. This campaign is a vision of the non-profit organization Not For Sale. The application allows consumers to access information and company performance regarding the child and forced labor practices for their favorite brands and products. FREE2WORK, http://www.free2work.org/ (last visited Apr. 7, 2014).

11. Id.


14. Id.

perpetrators and services for victims. At the federal level, the United States enacted the Trafficking Victims Protection Act (TVPA) in 2000, and the fourth subsequent reauthorization of the act passed the Senate on February 12, 2013. These laws are examples of "[s]ignificant legislative efforts [that] have been made to capture and punish the perpetrators of [sex and labor trafficking] crimes," as well as to "provide victims with necessary protections and [services]."\footnote{16}

However, the "market is [a] key impetus for [labor trafficking] crimes, and legislative efforts to [specifically target] the market for goods and products tainted by slavery and trafficking have been lacking."\footnote{19} In light of this lack of legislation that specifically targets the labor market, policy makers have begun experimenting with a different approach, namely, a mandatory disclosure regime for companies to provide to consumers information on their labor and human rights practices. "Targeted transparency represents a distinctive category of public policies that, at their most basic level, mandate disclosure by corporations or other actors of standardized, comparable, and disaggregated information regarding specific products or practices to a broad audience in order to achieve a public policy purpose."\footnote{20} California has taken this legal approach to combat the problem of forced labor and slavery in business supply chains.

The California Transparency in Supply Chains Act of 2010 (CTSCA), which took effect in January 2012, was designed in an effort to eradicate forced labor and human trafficking in business supply chains, which the legislature recognized as violations of state, federal and international law.\footnote{21} This particular law does not forbid the sale of goods produced through trafficked labor. Instead, the CTSCA asks companies to disclose their labor practices to consumers in order to allow buyers to "distinguish companies on the merits of
to disfavor.


\footnote{18. CTSCA at § 1714.43 (2)(e).}

\footnote{19. Id. at § 1714.43(2)(f), emphasis added.}


\footnote{21. CTSCA at § 1714.43.}
their efforts to supply products free from the taint of slavery and trafficking," which will in turn inform consumers’ purchasing decisions and drive companies to pay closer attention to their own supply chains.

Scholars have argued that disclosure regulation can do more than simply provide information, that it can actually change practices. Research suggests that transparency policies are most effective when the following elements are met: (1) the regime has a specific policy purpose with (2) specified discloser targets, (3) a defined scope of information, (4) an explicated information structure and vehicle, and (5) an enforcement mechanism. In addition to meeting these conditions, a transparency regime is most effective when the disclosed information becomes “embedded” in subsequent user and discloser decisions because the information and user actions are valuable, compatible, and comprehensive to both parties. In the case of the CTSCA, the law sufficiently meets only three of the five conditions necessary for a successful transparency policy, and the information disclosed under this regime is unlikely to become adequately embedded in users’ routine decision-making to affect the purchase of goods. Therefore, the CTSCA is not likely to help eradicate forced labor and human trafficking.

II. What does CTSCA require?

The CTSCA requires every retail seller and manufacturer doing business in the state of California that has annual worldwide gross profits that exceed one hundred million dollars, to disclose its efforts to eradicate slavery and human trafficking from its direct supply chains for tangible goods offered for sale, via an easily identifiable link on the homepage of the company’s website.

Specifically, the law outlines five key components which must be included on the website regarding whether, and to what extent, the manufacturer or retail seller: (1) verifies product supply chains to evaluate and address risks of human trafficking and slavery and whether the verification was conducted by a third party, (2) conducts

22. Id. at § 1714.43 (2)(h)(i).
23. Fung et al., supra note 20, at 39.
24. Id. at 39.
25. Id. at 55, 65.
26. CTSCA at § 1714.43(3)(a)(1).
supplier audits to evaluate compliance with company standards for trafficking and slavery, and whether such audits were independent and unannounced, (3) requires direct suppliers to certify that component materials used in products 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 (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 product supply chains.  

Lastly, the CTSCA establishes that the exclusive remedy for violation of the law is an action for injunctive relief brought by the Attorney General. Furthermore, the law mandates that each year the Franchise Tax Board will provide the Attorney General, a list of retail sellers and manufacturers subject to compliance based on tax returns starting from 2011.

III. Efficacy of the CTSCA as Mandated Disclosure Regulation

A. Failures of CTSCA Disclosure Design

It appears there have not been any official evaluations of the effectiveness of the CTSCA to date, and any such evaluations would be premature at this stage since the law has only been in effect for two years, and "the full impact of any new law can take [many] years to assess properly." As such, this paper is not meant to provide an assessment of the law's current effect on eradicating forced labor and slavery from global supply chains. Instead, it analyzes the likely efficacy of the law by examining both the disclosure regime design

27. Id. at § 1714.43(3)(c)(1-5)[hereinafter, "CTSCA's Five Key Disclosure Requirements"].

28. Id. at § 1714.43(3)(d) (However, nothing in this section is intended to limit remedies available for a violation of any other state or federal law). To date, it appears that no actions that have been brought against any company in violation of the Act. Kuhn Associates, Sustainability Advisors, LLC, The California Transparency in Supply Chains Act Information Brief (2013), available at http://www.kuhnassociatesllc.com/images/Documents_to_Download/CA_Transparency_in_Supply_Chains_Act_Information_Brief.pdf.

29. CTSCA at § 1714.43(4)(a)(1-2).

30. Todres, supra note 13, at 95.
and the way companies are complying with the regulation.

The first element in the framework for a successful transparency policy is that the regulation dictates a specific policy purpose to bridge the information gap between the information discloser and the information user. Specifically, the goal of the government mandate is to “provide the public with adequate information to make more informed and... socially beneficial [and responsible] decisions.” However, information asymmetry alone is not sufficient to trigger government intervention. In most cases, the government intervenes when the asymmetry gaps lead to well-defined public policy problems, such as “information imbalances that perpetuate unacceptable patterns of discrimination or other social inequities” because “unfair practices that are hidden can deny social benefits to... people.”

CTSCA meets the policy purpose condition and attempts to bridge the information gap between disclosers and consumers. For the CTSCA, the asymmetry lies in the lack of information available to consumers regarding corporations’ labor practices used to sell, harvest, or manufacture goods purchased by the general public, including foods, apparel and footwear, electronics, household items, toys, and cosmetics, among others. According to its own terms, the purpose of CTSCA is to “educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking.” In other words, the intent of the law is to:

inform consumers... which companies are acting socially responsible so that consumers can choose not to patronize those that are not socially responsible, and to even the playing field for socially responsible companies that refuse to work with suppliers that use forced labor in competing against companies that have reduced costs [due to the use of forced labor.]

By providing the aforementioned information to consumers, this disclosure regime forces companies, some for the first time, to

31. Fung et al., supra note 20, at 40.
32. Id.
33. Id.
34. CTSCA at § 1714.43(2)(j).
scrutinize their supply chains to screen for and eliminate illegal labor practices which lead to human rights violations against workers. It is unlikely that such violations would otherwise be uncovered save for large-scale tragedies that gain national and international media attention. Therefore, this law meets the first element for an effective transparency policy.

The second component of a successful transparency policy is a specified discloser target, or "specific organizations that are viewed as responsible for [the] public risk or performance problem (and therefore have unique access to information about it) as disclosers." 36 "[D]esignated disclosers are frequently businesses," 37 and the same is true in this case. Here, the specified disclosers are all retail sellers or manufacturers doing business in the state of California, who have "annual worldwide gross receipts that exceed one hundred million dollars ($100,000,000)." 38 Although most California corporations do not themselves employ slave labor directly, this disclosure regime targets them as the responsible parties for policing practices within their supply chains. 39 When the companies are either unaware of labor and human rights violations taking place within their supply chains, or otherwise blatantly ignore any such knowledge, these corporate entities exacerbate the slave labor and trafficking problem.

The CTSCA goes even further in specifying the discloser targets by providing definitions for what it means to be "doing business in [the] state," what are considered to be "gross receipts," and who are referred to as "manufacturers" and "retail sellers." 40 Identifying who must disclose information can often be politically controversial. 41 Whether politics played a role in defining the disclosers under this regime is uncertain. However, the law does not apply to smaller and medium-sized businesses making less than one hundred million per year in profit 42 but which may still have egregious human rights violations within their supply chains. The text of the legislation does not provide a reason for the exclusion of smaller and moderately-sized businesses from compliance with the law.

36. Fung et al., supra note 20, at 41.
37. Id.
38. CTSCA at § 1714.43(2)(j).
39. Id. at § 1714.43.
40. Id. at § 1714.43(3)(a)(2)(A-D).
41. Fung et al., supra note 20, at 41.
42. Pritikin, supra note 35.
Targeted transparency policies “do not usually define intended information users,” and most often, users are described as “the public” in general.\textsuperscript{43} However, “actual users are often self-selected by their own interests.”\textsuperscript{44} Such is the case here in the human trafficking context as the law describes users as “consumers” generally.\textsuperscript{45} As the framework suggests, the users of the California disclosure regime will be consumers who are either aware of what human trafficking means and are perhaps already involved in the movement to combat it or those who have a desire to become involved. Without prior knowledge on the issue or of the CTSCA specifically, consumers will not take the time to research company websites for information in compliance with the disclosure act, and thus, will not become users of the transparency policy.

A benefit of the broader user groups is that “policies [become] adaptive to change in the makeup of user groups” and allow intermediaries such as community groups, activists, and advocates to act as agents for users.\textsuperscript{46} This benefit is especially apparent in the context of forced labor and slavery through an application such as the Free2Work campaign, which acts as an information intermediary, digesting and repackaging the disclosed information in a way that is more useful to the consumer. Free2Work has provided a tangible tool for consumers to use while shopping by scanning the bar codes of retail products into a mobile application to access a company “grade” or rating along with information on the labor practices of the corporation.\textsuperscript{47} This information is in turn useful for the empowered consumer’s purchasing decision, allowing consumers to limit purchases of goods produced under illegal and inhumane labor conditions, and instead to reward companies who are socially responsible by increasing purchases of their products. Thus, the CTSCA also meets the second condition of the transparency policy framework because it adequately specifies discloser targets.

The third condition required for successful transparency policy regulation is a “defined scope” of information, which “specif[ies] the universe of practices, substances, activities [and] other information” to

\textsuperscript{43} Fung et al., supra note 20, at 42.
\textsuperscript{44} Id.
\textsuperscript{45} CTSCA at § 1714.43(2)(j).
\textsuperscript{46} Fung et al., supra note 20 at 42.
\textsuperscript{47} Free2Work, supra, note 10.
be disclosed. As noted above, the CTSCA's Five Key Disclosure Requirements clearly explicate specific points of information that disclosers are required to report on their website in order to be in compliance with the law.

While the CTSCA's Five Key Disclosure Requirements are more detailed than many disclosure regimes, some of the requirements are still vague in problematic ways. For instance, the third provision under the CTSCA section (3)(c)(3) asks companies to disclose whether and to what extent they require their direct suppliers to certify that materials and component parts integrated into the creation or manufacture of end products comply with anti-slavery laws in the "country or countries in which [the companies] are doing business."

First, there is no definition in the law provided for what the legislature means by "direct suppliers." "Direct suppliers" could be interpreted to mean factories which employ laborers to create basic elements necessary for the production of larger, more complex goods or those that assemble the final products. For example, direct suppliers for electronics companies such as Apple, would be the businesses which are contracted to provide hardware parts for manufacturing computers or cell phones or assembling the end product, such as Foxconn. However, under an alternate interpretation, "direct suppliers" could mean the local subcontractors and companies which oversee the procurement of raw materials. Under this definition, direct suppliers would include companies overseeing the mining of coltan, a metallic ore from which tantalum is extracted to be used in electronics products. Similarly, various interpretations can be made of the term "direct suppliers" in the apparel industry. Are the direct suppliers those who oversee cotton picking from the fields, or factories which employ workers to use that cotton to make clothing? Without a concrete definition for the term "direct

48. Fung et al., supra note 20, at 42.
49. Id.
50. See CTSCA, supra note 27.
51. Id.
52. CTSCA at § 1714.43(3)(c)(3).
suppliers”, corporations are given discretion to interpret the term in the way that is most beneficial to them, which often leads them to select the definition which is most narrow in scope, and doing so impedes the communication of important information to consumer users of the disclosure.

Another problem with section (3)(c)(3) of the CTSCA is the lack of clarity around which country’s laws direct suppliers must follow. Under this provision, corporations must disclose to what extent, if any, they require 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.” However, it is unclear whether this language requires direct suppliers to comply solely with the laws of the production country, or also with the laws of the final destination country where the completed product is sold.\(^{54}\) The language is also vague in identifying what type of certification is required (written or other), and whether there is a standard form of certification to be used across suppliers.\(^{55}\) Again, the law’s ambiguous language of what is to be disclosed can lead to insufficient disclosure of relevant information for a consumer trying to make a socially responsible purchasing decision.

For companies who are subject to the CTSCA, the five key disclosure requirements\(^{56}\) outlined by law should already be information which is tracked or known to the discloser because ideally, such data should be “generated for internal purposes or for experts or other... users,” perhaps for internal audits and evaluations.\(^{57}\) However, for some companies, the mandated scope of information may require new data to be generated that are not readily available, which may force businesses to establish new systems of monitoring, measuring, evaluating, and reporting. For the most part, whether the information is already tracked or requires new data generation, this law adequately satisfies the “defined scope” requirement for what information must be disclosed.

One caveat: despite satisfying the scope requirement, the CTSCA merely mandates disclosure of information,\(^{58}\) which means that “[a]
company theoretically could simply state that it does not take any action, [nor have any policy to eradicate human trafficking and forced labor from its supply chain] and still be in compliance with the Act,\textsuperscript{59} without incurring any legal ramifications. This lack of legal consequences is problematic because companies that have not taken action are not incentivized to change their status quo, to investigate supply chains, or to implement strategies to eradicate human trafficking.

While companies can simultaneously satisfy CTSCA legal requirements but not take steps towards eradication, it is in the best interest of the company to “implement measures that would enable it to confirm that it is meeting the intent of the [law],” since simply stating that the discloser does not take any action could have significant consequences on the company’s reputation, due to public scrutiny, and a negative image could be more costly to the company in the long term.\textsuperscript{60} While the caveat\textsuperscript{61} may be great from a company’s operating perspective, on the whole, it is a negative attribute of the CTSCA because it contradicts the overall intent of the law to help eliminate human trafficking from supply chains.

The fourth element for a successful transparency regime is a “defined information structure and vehicle,” which specifies a “framework that standardizes content and format” of the disclosures so that information is comparable across products and institutions.\textsuperscript{62} An effective framework specifies the time, place, and means by which information will be provided by explicating the metrics, frequency of disclosure, and the communication vehicle.\textsuperscript{63}

The structure and vehicle framework of the CTSCA is weak, and thus, does not provide uniformity in disclosures across companies. This lack of cohesiveness is problematic for consumers on the user end, who will not have accurate points of reference for which companies are making substantial efforts to ensure their supply

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\textsuperscript{60} Timothy G. Hoxie et al., \textit{supra} note 56. See Todres, \textit{supra} note 13, at 96.

\textsuperscript{61} See CTSCA § 1743.43. Hoxie et al., \textit{supra} note 59.

\textsuperscript{62} FUNG ET AL., \textit{supra} note 20, at 43.

\textsuperscript{63} \textit{Id.}
chaints are free from human trafficking. In other words, due to the range of potential disclosure formats, consumers will have no way to compare not only company compliance with the legal mandate, but also which companies meet the consumers' standards of social responsibility for eradicating slavery and labor trafficking.

First, although the qualitative metrics of the CTSCA require disclosers to post the steps they are taking to eradicate human trafficking and slavery from their supply chains, the law does not require companies to disclose for example, how often and what kind of internal and/or external audits are conducted, what type of employee and management training is provided, what kind of certification of component materials is required, and how many and what kinds of internal accountability standards and procedures are provided, among other possible metrics.

Second, nowhere in the law is there a provision regarding the frequency with which disclosers must update their compliance information, which means that once a company has posted the initial disclosure on its website, its compliance requirements are complete. This flaw in the regulation will lead to outdated information on company websites, particularly for companies which have fallen below the threshold for appropriate measures to combat the human trafficking problem. As a consequence of inaccurate or outdated disclosure information, consumers would be misled in their attempts to make socially responsible purchasing decisions.

Third, the vehicle or means of communication under the CTSCA is the discloser's website, and specifically, companies must have, a "conspicuous and easily understood link," on their homepage, to the compliancy information; otherwise in the event that a website is not available, companies shall provide "the written disclosure within 30 days of receiving a written request for the disclosure from a consumer."64 "Vehicles of disclosure are more than merely administrative details" and for optimal success, they should be decided with much forethought and analysis because "[t]hey have profound [policy] impacts... [since] they determine when a user encounters information that influences decision making."65

In the context of human trafficking, there are two major problems with the means of disclosure being the company website

64. CTSCA at § 1714.43(3)(b).
65. FUNG ET AL. supra note 20, at 44.
under this transparency regime. First, a successful "conspicuous" and clearly identifiable link on the corporate homepage should include an explicit title referencing the "California Transparency in Supply Chains Act" or some variation of the language from the law. However, not all companies subject to this law follow such a method. Second, subsidiary companies subject to compliance under the law often have their disclosure on a parent company website, which can be problematic for consumers who may be unfamiliar with parent companies, or how to identify the parent company of a particular subsidiary. For example, PepsiCo is the parent company for a multitude of brands including Pepsi-Cola, Frito-Lay, Tropicana, Quaker, and Gatorade, all of which further produce specific products. Therefore, when searching for the disclosure compliance for a specific product within one of the aforementioned brands, the consumer would have to search on the PepsiCo website. The pitfalls of the CTSCA in establishing an effective framework for the metrics, frequency, and means of information communication to the consumer will render the regime ineffective.

The final element for a robust transparency policy is enforcement. "Monitoring nonreporting or misreporting and then levying penalties for . . . violat[ors of] disclosure requirements remain essential." Thus, "the government must develop methods to monitor compliance with disclosure [regulations]." The CTSCA has an extremely weak enforcement mechanism, if it is considered to have one at all. According to its own terms, the law requires the Franchise Tax Board to provide to the Attorney General, on an annual basis, a list of companies subject to compliance under the law, and the "exclusive remedy for a violation [of the law is] an action brought by the Attorney General for injunctive relief." Companies subject to compliance with the transparency policy are to be identified through filed tax returns demonstrating whether the corporation exceeds gross annual profits of one hundred million dollars. Thus this law does not mandate company action consistent with the information disclosed. The CTSCA does not monitor if companies are disclosing truthful and accurate information regarding steps taken to eradicate

67. FUNG ET AL., supra note 20, at 45.
68. Id.
69. CTSCA at § 1714.43(4)(a)(1–2); Todres, supra note 13, at 95.
70. Id.
human trafficking from supply chains, meaning whether companies are actually carrying out the eradication methods they purport to employ.

Furthermore, the transparency regime does not establish a financial penalty scheme for violations by companies who fail to disclose the required information on their websites. One informal enforcement mechanism, which the law provides by virtue of being a disclosure mandate, is the reputational stake of companies who would receive negative press for discovered incidents of labor trafficking or other violations of human and labor rights, along with any potential profit losses that the company may sustain as a consequence of consumer choices in response to the uncovered violations. However, without more robust enforcement mechanisms and concrete, substantial penalties for violating the law, the CTSCA will be ineffective as a transparency regulation.

B. Lack of Information Embeddedness in Consumer Purchasing Decisions

In addition to the five key conditions required for a successful transparency regime design, transparency policies will be effective only if the information disclosed becomes embedded in both users' and disclosers' behaviors.\(^7\) This phenomenon is the targeted transparency action cycle, whereby the new information from the mandated disclosure becomes internalized in user decisions, which leads to a response to the disclosure.\(^2\) As a result, the user's response may facilitate a new response from the discloser in return, based similarly on the discloser's perceived value, compatibility, and comprehension of the user's response. "A [transparency] policy has effects when the information it produces enters the calculus of users and they consequently change their actions... [a] system is effective, however, only when discloser responses significantly advance policy aims."\(^3\)

"For transparency systems to be effective, it is necessary... that information become embedded" into "users' decision-making routines."\(^4\) This is accomplished through three key factors: (1) the perceived value of the disclosed information in achieving the users' goals, (2) the compatibility of the information with the users' decision-

\(^7\) Funk et al., supra note 20, at 54-55.
\(^2\) Id.
\(^3\) Id.
\(^4\) Id. at 55.
making routines, and (3) the comprehensibility of the new information.\textsuperscript{75} While the CTSCA will provide valuable information to consumers who are seeking to make socially responsible purchasing decisions, investors and shareholders who seek to invest in socially responsible companies,\textsuperscript{76} and to a general public audience interested in issues of labor trafficking, the disclosed information is neither compatible with users' daily routines, nor is it sufficiently comprehensible to adequately become embedded in user decision-making.

First, the CTSCA will provide valuable information to consumers whose goals are to make socially responsible purchasing decisions, which do not inadvertently contribute to and condone labor trafficking by purchasing from companies which employ forced labor and slavery. Because the law requires companies to make disclosures regarding five specific steps they are undertaking to eradicate human trafficking from their supply chains, the disclosure should provide consumers with enough information to make appropriate purchasing decisions. Even if companies fail to disclose or disclose nothing other than the fact that they take no actions to monitor their supply chains for trafficking and forced labor, this information would still be valuable to the user, who can choose not to purchase from such a company. Moreover, because the law covers so many companies,\textsuperscript{77} the information provided by the CTSCA disclosure regime will \textit{hopefully} help to alleviate the potential problem of consumers having few meaningful choices\textsuperscript{78} of socially responsible companies. In theory, the law should provide specific information on the supply chain practices of up to 3,200 corporations,\textsuperscript{79} which would likely include many companies that sell food items, apparel, electronics, and other products that consumers use on a daily basis.

While there is substantial value to the information provided

\textsuperscript{75} Id.

\textsuperscript{76} Although, by its terms, the law does not seem to include investors and shareholders into its intended audience, and explicitly states that the disclosure is meant to "to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking." § 1714.43(2)(j). Thus, this analysis focuses on the consumers as the primary users.


\textsuperscript{78} FUNG ET AL., supra note 20 at 56.

\textsuperscript{79} CBIS, supra note 77.
under the CTSCA, this value may be outweighed by "the cost of acquiring and using [the disclosed] information, which [may not be] low enough to justify users' efforts in relation to expected benefits." To the everyday, general consumer (as opposed to the consumer who knows and cares about labor trafficking issues), the benefit for purchasing goods which have been produced in conditions without forced labor or slavery is indirect and minimal in the short-term, other than perhaps the immediate moral satisfaction. This intangible value of the information provided under the CTSCA may not outweigh the cost to consumers of having to research company websites to find disclosures, or for those who do not have computers, to wait for many companies' hard copies of the disclosures to be sent to their doors, before having to make purchasing decisions. After all, while morally repugnant, forced labor does not impact the immediate well-being of the consumer him or herself. Disclosure may work best when consumers' own health or welfare is impacted, rather than the health or welfare of others.

Despite its potential value, the information disclosed by companies under the CTSCA is not "compatible with the usual ways that [consumers] go about making their [purchasing] decisions" because the "format and time and place of [the] availability" of the disclosure does not coincide with the time and place of the purchasing decision. For the CTSCA disclosures to be compatible with consumers' purchasing decisions, information users would need to have immediate access to the aforementioned disclosures, just before, or at the exact moment that purchasing decisions are made in stores.

However, as the law stands, the time and place of the disclosure is

80. Id.

81. A telling contrast can be made here between the impacts to the consumer of the CTSCA and "[t]argeted transparency's poster child[,] restaurant sanitation grading" in Los Angeles. "The central idea [of restaurant grading] is to summarize sanitation inspections with letter grades ('A,' 'B,' or 'C') and post these in entryways of restaurants to succinctly and intuitively inform consumers. In theory, the disclosure helps consumers select restaurants based on health risk, which in turn incentivizes restaurants to clean up." Daniel E. Ho, Fudging the Nudge: Information Disclosure and Restaurant Grading, 122 YALE L.J. 574, 582 (2012). Under the LA restaurant grading disclosure regime, the consumers' health is affected in a very immediate way, based on their decision of which restaurants to patron. In the case of the CTSCA, however, the impact on the consumer is completely indirect, which weakens the law's effectiveness.

82. FUNG ET AL., supra note 20, at 55.

83. Id.
incompatible with consumers' daily routines. Having companies post the disclosure as a link on the homepage of their website is not a useful format for everyday consumers who often make purchasing decisions in the moment, during the shopping process.\(^{84}\) Therefore, the disclosure information cannot be properly embedded into users' decisions, leaving the disclosure regime ineffective. However, it is important to recognize that as technology advances and globalization continues, more consumers are purchasing items through the internet. For these users, the online disclosure may indeed be the exact place to effect change in their purchasing decisions. In the end, the disclosed information under the CTSCA would still be incompatible with the many users who complete their shopping in stores.

Lastly, the information disclosed under California's new law will not become embedded into everyday consumer purchasing routines because it is unlikely that consumers will "have the capacity to relate [the information] to the decisions they face" as "complexity of information often creates a barrier to comprehension."\(^{85}\) From the average consumer's perspective, the disclosure information required by the CTSCA will be presented in a complex manner.

For example, the law requires information about supply chain audits (internal and external), internal accountability, verification and evaluation of supply chains to address human trafficking risks, and certification of product materials. This information may be presented to the user in a way that does not relay whether forced labor or slavery is actually being employed in the process of manufacturing a product. Also, consumers may not understand the difference between direct and indirect suppliers, which can inhibit their understanding of where in the supply chain labor problems exist, and how those inhumane practices are relevant to the end product purchased by the consumer.

Since the CTSCA is unlikely to be embedded into user decisions, this failure will significantly reduce the likelihood that the law will become doubly embedded, meaning disclosers will either not incorporate or will incorrectly incorporate misinterpreted user responses to the new information into the company decision calculus

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84. Often, consumer behavior is exhibited in the moment, and many consumers make shopping decisions in the store, and once they reach the point of purchase. See generally TIMOTHY M. DEVINNEY ET AL., The Myth of the Ethical Consumer 37-48 (2010).

85. FUNG ET AL., supra note 20, at 59.
for their own practices. 86 "Disclosers will change their practices only if they perceive that shifts in user behavior will have an impact on [the companies'] core organizational goals" such as "enhanced profitability, market share, and reputation."87

Essentially, in order for companies to continue to undertake or enhance current steps taken to eradicate human trafficking from their supply chains, the corporations would have to see a significant reduction or a significant increase in profitability specifically as a result of consumers' reactions to the website disclosures. If companies do not perceive changing consumer purchasing trends to be a direct result of the disclosure mechanism under the CTSCA, then companies are not likely to continue to disclose and update on their websites, existing information regarding their labor practices. Companies are even less likely to make actual changes to their supply chain operations to eradicate human trafficking (despite information indicated on website disclosures).

However, if companies do properly equate changes in consumer purchases and company profitability, as well as the potential for bad publicity and pressure from advocacy groups, to user responses to the disclosure regime, company executives will have a stronger incentive to focus on and respond to supply chain issues of human trafficking and slavery, many for the first time.88 For the reasons stated above, information disclosed under the CTSCA is unlikely to become embedded in most consumers' purchasing decisions.

III. Intermediaries Help to Bridge Gaps in the CTSCA

Shortcomings of the CTSCA, such as lack of information embeddedness in consumer purchasing decisions, can be mitigated by intermediaries. Intermediaries such as grassroots community groups, activists, and advocates, act as agents for users, bringing the information to the users' fingertips through trainings and mobile applications. A prime example of such an intermediary in the labor trafficking context is the Free2Work (F2W) campaign, an operation of Not For Sale, a non-profit organization which "evaluate[s] the use of forced labor in mainstream supply chains, offer[s] social services to

86. Id. at 65.
87. Id. at 66.
88. This would be similar to the response to the legislation disclosure regime for toxic pollution reports explicated by FUNG ET AL., supra note 20, at 67.
survivors and those at-risk to human trafficking, and creat[es] enterprise for vulnerable communities.”  

The F2W campaign includes a website and an iPhone application, which “allows shoppers to scan a product barcode and get an instant rating of the manufacturer's track record on human rights and other labor issues.”90 “F2W provides letter-grade ratings and brand comparisons of companies across a number of sectors, including apparel, electronics, shoes, and chocolates. Grades are assigned by... researchers who evaluate company policies, transparency and traceability, monitoring and training, and worker rights.”91 An important nuance to note about this intermediary entity is that a poor overall grade rating under F2W does not mean that the company employs slave labor, but instead that the company has “no process or management system in place to prevent workers from being abused.”92 Thus, the F2W campaign addresses the exact concerns and mandated disclosures of the CTSCA by grading companies’ “zero-tolerance policies against trafficking.”93

F2W is an important intermediary for alleviating the pitfalls posed by the ineffectiveness of the CTSCA. First, the law on its own will not allow for information to be embedded into users’ daily routines because consumers will not “likely invest time and effort in integrating new information into their choices when they perceive [little] substantial immediate or long-term gain.”94 F2W effectively facilitates the integration of the law’s disclosed information into everyday shopping decisions because the application can be accessed directly from the store where the consumer can make a more informed purchasing decision by taking into account corporate social responsibility.

IV. Advantages to the CTSCA Disclosure Regime

Despite the law’s limited ability to eradicate human trafficking from global business supply chains, some practitioners argue that the
CTSCA could encourage companies to go beyond simply disclosing the mandated steps, and should also compel companies to consider "the impact their actions will have on human rights organizations, consumers, investors, and other interested parties."95 Practitioners argue the law may lead corporations to make substantial efforts to raise awareness about labor trafficking and slavery, such as: circulating press releases and launching public relations campaigns, as well as training suppliers to audit company supply chains and prevent human trafficking situations.

Furthermore, practitioners believe CTSCA will lead companies to "ensur[e] that there are multiple avenues [both internally and externally] for employees to file grievances in the event that they are aware of unsafe work[ing] conditions, unfair labor practices and other conditions which give rise to human trafficking."96 There is scholarly support for these views. Even if information disclosure does not directly cause an action cycle, it can help spawn political organizing and activism as political and economic pathways often intertwine "as community pressure translates into reputational damage."97

Lastly, even if the CTSCA does not immediately transform individual user purchasing decisions, the law may be useful in educating and alerting companies to labor practices in their own supply chains as well as educating consumers on the issues of labor trafficking in general.98 The law can also be used to compel greater awareness by requiring training and education of individuals working in sectors where they might come into contact with trafficked individuals so that they are better positioned to prevent the harm or ensure earlier intervention."99 Thus, there is educational value in properly executed disclosures,100 which in this case would still fulfill the purpose of the law in educating and empowering consumers' decisions in the long-term.

97. Fung et al., supra note 20, at 47.
99. Todres, supra note 13, at 94.
100. Id.
V. Improvements to the CTSCA to Maximize Effectiveness

As a targeted transparency policy, the CTSCA will "introduce important new information about [the] risk[s]" associated with labor trafficking in business supply chains and the human rights practices of consumers' favorite retail sellers "into [users'] established decision-making processes." However, to maximize the law's effectiveness in eradicating forced labor and slavery from supply chains by affecting consumer purchasing decisions, the information provided by the disclosures must "become an intrinsic part of the decision-making routines of users and disclosers."

While the CTSCA has a clear and specific policy purpose and sufficiently explicates and defines discloser targets, the law could better effectuate embeddedness by expanding its defined scope. The CTSCA can expand its defined scope by: providing definitions for terms within the disclosure provisions, enhancing the means of the information communication by making the time and place of the disclosure coincide with the time at which consumers are making purchasing decisions, and by enacting more robust enforcement mechanisms for the law. Furthermore, the legislature should provide additional definitions for ambiguous words in the language of the law. For example, clearly explaining who "direct suppliers" are would help to notify companies subject to the law, about which contractors or businesses in their supply chains they must disclose certification information. Specifically, the CTSCA would be a more rigorous disclosure regime if the law stated that companies must disclose information about whether all of their suppliers certify whether all materials or component parts of final products are made without the use of forced or slave labor. Similarly, legislators should more clearly define which countries' labor laws must be followed at every stage throughout the production process.

To enhance the means of information communication, legislators should implement under the CTSCA a grading or rating system to evaluate company disclosures, and provide to users more beneficial information for their purchasing decisions. Because the CTSCA is a

101. Fung et al., supra note 20, at 90.
102. Id.
103. Id.
104. See Pritikin, supra note 35.
105. Id.
disclosure regime, and not a law that mandates companies to actually take the steps they purport to take in eradicating trafficking from their supply chains, a more helpful regime, at the least, would have a grading system to evaluate the sufficiency of disclosures in their amount and usefulness of transparency. Additionally, embeddedness would be further facilitated if supply chain disclosures were posted in store entryways, and consumers were urged to read them at the time of making a purchasing decision, or for the online shoppers, if disclosures were more easily accessible on company websites with clear titles referencing their compliance with the CTSCA. Lastly, unifying disclosure formats across companies (in both the terms used to disclose information on websites, as well as in a rating system) would allow consumers to compare different products both within and across sectors and larger product lines.

The CTSCA would also benefit significantly from robust evaluation mechanisms. At present, the body tasked with checking company compliance is the Tax Franchise Board, merely by supplying the California Attorney General with a list of companies that are subject to disclosure under the CTSCA. However, the disclosure regime would be more effective if a newly created task force or other existing organization was charged with (1) creating an evaluation tool for measuring uniformity of disclosures, (2) establishing guidelines for how to adequately comply with each disclosure provision and set forth the kind of information that would reach at least a satisfactory level of compliance, (3) promulgating standards for consistent and interval disclosure updates based on changed (improved or worsened company practices), (4) measuring the effectiveness of the regime over time by conducting studies on whether consumers are aware of, actually read, and understand the information provided in the disclosures, and how the information has affected users’ purchasing decisions, and (5) evaluating whether companies are in fact implementing the measures to eradicate human trafficking from their supply chains, which they disclose to take on their websites.106

Lastly, the CTSCA can improve embeddedness in the action cycle by strengthening its enforcement mechanisms. As some

106. Independent auditor companies and labor organizations exist to conduct periodic external and internal audits of companies to investigate their compliance with other labor standards such as those of the International Labor Organization, for example. However, nothing in the CTSCA requires any such auditors or investigators to account for the direct translation of disclosure information under the law into practice in the supply chain.
scholars suggest, the current enforcement tool, injunctions, "may affect the reputation of a retailer or manufacturer and therefore be an effective incentive for complying with the CTSCA."\textsuperscript{107} However, imposing an injunction requires an action to be brought against a corporation for noncompliance with the CTSCA, and no such actions have been brought to date,\textsuperscript{108} despite the fact that not all companies subject to the law are complying with it.\textsuperscript{109} Thus, additional consequences for violation, such as a graduating scale of financial penalties for first and subsequent instances of human trafficking, would provide even stronger incentives for companies to adequately disclose their efforts to eradicate slave labor from their supply chains. Furthermore, the CTSCA should incorporate into its enforcement apparatus, provisions and/or steps for how companies should bring non-compliant suppliers into compliance with industry standards for labor conditions which do not employ human trafficking methods, instead of terminating their relationships with non-compliant suppliers, who will subsequently contract with another company and continue to employ forced labor if doing so yields profits without significant or measurable consequences.

V. Conclusion

The CTSCA of 2010, which took effect in January 2012, was an effort by legislators to push companies to evaluate their supply chains to address risks of human trafficking and slavery. By requiring large corporations (with gross annual profits exceeding one hundred million dollars) to disclose to consumers, on their company websites,

\textsuperscript{107}"In addition, the CTSCA will indirectly prompt companies to enhance clauses in supply contracts, ultimately leading to greater protection for companies from liability caused by the behaviour of their suppliers... [and, c]ompanies that cannot account for the provenance of their products may soon find themselves losing competitiveness to companies that can. They may also be exposed to costly litigation." John Pickles & Shengjun Zhu, \textit{The California Transparency in Supply Chains Act} 4–5 (Capturing the Gains, Working Paper No. 15, 2013 Working Paper 15), available at http://www.capturingthegains.org/pdf/ctg-wp-2013-15.pdf.

\textsuperscript{108}Id. at 7; Kuhn Associates, \textit{supra} note 28.

specific steps they are undertaking to eradicate human trafficking from their supply chains, the State of California sought to curb human trafficking by empowering consumers with necessary information to change their purchasing decisions to reward socially responsible companies and essentially penalize those employing forced labor and slavery to manufacture products. While this law is a positive step in combating human trafficking because of its potential to increase consumer awareness and activism to pressure companies to use socially responsible labor practices, the transparency policy is likely to be ineffective because it fails to meet crucial elements for a successful disclosure regime and will be unlikely to embed itself in the decision making processes of consumers and companies in a way that changes their behavior.

For curbing human trafficking in business supply chains, the CTSCA, albeit a domestic state law, has international implications in the sense that "US-based manufacturers and retailers with overseas supply chains now have to ensure compliance with all aspects of [the law]... along their entire supply chains" and "foreign companies that do a significant amount of business in California... must also abide by the Act to operate in California or to supply retail partners within the state." 10 Because positive international spillover effects implicate the potential for a transnational regime modeled on the CTSCA, understanding the strengths and shortcomings of the domestic law is crucial, and any transnational disclosure regime should be undertaken with these critiques in mind.

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